Crossroads

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Honors School
Monmouth University
431 Cedar Avenue
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07764-1898 U.S.A.

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EDITOR'S NOTE

Crossroads is an interdisciplinary, undergraduate research journal published by the Honors School at Monmouth University. The contributors are Junior and Senior Honors thesis students whose work has been chosen by the Honors Council as representing the most original, thoroughly researched, and effectively argued theses in their fields.

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Deep gratitude must also be given to the Chief Advisors and Second Readers. It is through their inspiration and support that our Honors School students succeed. Without their mentorship, the students would be missing out on a key component of their experience in the Honors School.

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EDITORIAL STAFF

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Cover Design…….…….…….....Pat Cresson, Art Department

Layout..…….…….…….....Erin Hawk

Editorial Assistants……...Erin Hawk
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Microwave-Assisted Synthesis of Esters via the PS-Mukaiyama Reagent

Cody Ross Pitts

Abstract

The carboxylic acid ester is an important functional group used in organic synthesis. Ester moieties can be found in a variety of natural products and synthetic compounds; thus, several esterification methods are available in the literature. Of these, the Mukaiyama esterification allows a one-pot preparation of esters under mild reaction conditions, accomplishing the reaction safely and effectively. Nevertheless, the synthetic method can still be improved to facilitate purification and decrease reaction times. The use of polymer-supported reagents (solid-phase synthesis) limits the purification step to simple filtration and evaporation of the solvent. Another technique, microwave flash heating, has been shown to improve product yields and decrease reaction times. This research combines the concepts of polymer-support and microwave technology in order to further optimize the esterification reaction. Reaction times and yields are reported for the synthesis of three carboxylic esters using the PS-Mukaiyama reagent under room-temperature conditions and microwave flash heating. For comparison of reaction methods, a Fischer esterification procedure was also carried out for the synthesis of methyl benzoate (a standard procedure in Organic Laboratory courses at undergraduate institutions). The microwave-assisted esterification procedure using the polymer-supported Mukaiyama reagent gave the best yields and resulted in the shortest reaction times for each product.

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Understanding the Struggle for Federal Recognition: Two New Jersey Native American Tribes' Perspective on the Process and Expected Outcomes

Blair Fink
Monmouth University

Abstract

This study focuses on the Nanticoke Lenni-Lenape Tribe of Bridgeton, New Jersey and its current pursuit of federal recognition. Previous anthropological research has focused on the federal recognition process from the perspective of the government and tribes that have already received federal recognition. While these perspectives are important for a comprehensive understanding of the process, it is necessary to understand also the perspective of tribes currently unrecognized by the government. Since the 1980s, the Nanticoke Lenni-Lenape Tribe has been seeking recognition; tribal members expect to have the petition completed by the end of the first quarter of 2010. The process has been very stressful for the tribe as its recognition committee attempts to meet the ever changing demands of the Office of Federal Acknowledgement. While there are many negative aspects of the process, there is also a silver lining. Tribal members are constantly uncovering new information about their ancestors and their importance in preserving tribal culture. Although the process is demanding, tribal members are excited about the information they are uncovering, and believe that the benefits of federal recognition far outweigh any negative aspects of the process. On the other hand, tribes such as the Sand Hill Band of Lenape and Cherokee Indians believe that the federal recognition process is unnecessary. They believe they should not have to prove their existence because they were here prior to the arrival of Europeans. These two differing viewpoints of the recognition process demonstrate the rich and vibrant debate that exists and will continue to exist as long as tribes are forced to submit petitions to receive recognition and benefits from the federal government.

Understanding the Struggle for Federal Recognition: A Native American Tribe's Perspective on the Process and Expected Outcomes

The Lenape settled in the area of present day New Jersey and also lived in parts of New York, Pennsylvania, Delaware, and Connecticut. After European contact, the Lenape were forced to leave their homeland and migrate westward. When this happened, there were members of the tribe who decided to hide their identity and remain in the homeland. These members formed the Nanticoke Lenni-Lenape Tribe.

The Nanticoke Lenni-Lenape Tribe is located in Bridgeton, New Jersey and is currently in the process of applying for federal recognition. In order to more adequately meet the Office of Federal Acknowledgment's seven criteria, the Nanticoke Lenni-Lenape Tribe has decided to jointly pursue recognition with the Lenape Indian Tribe of Delaware. The two tribes have created a confederation for this purpose. Tribal members have been actively participating in the process since the 1980s and hope to complete the process by the end of the first quarter of 2010. The members of the Nanticoke Lenni-Lenape Tribe have developed a committee in order to manage the demands of the process. Throughout their involvement in federal acknowledgment process, Nanticoke Lenni-Lenape tribal members have noted many high levels of stress related to the process because the Office of Federal Acknowledgment constants changes its standards. While there are many stressful and negative aspects of the extensive and time-consuming process, the members of the tribe have uncovered parts of their history that they may have never had access to otherwise. In the end, the Nanticoke Lenni-Lenape tribal members believe the benefits of the process outweigh any of the negative aspects.

Although the Nanticoke Lenni-Lenape tribal members believe the federal recognition process is worthwhile, there are some tribes that believe federal recognized tribes are worse off than tribes that assimilate into mainstream society. The Sand Hill Band of Lenape and Cherokee Indians of Monmouth County believe the federally recognized tribes suffer fates far worse than non-recognized tribes. The Sand Hill Band of Indians has no interest at this time in pursuing federal or state recognition. Instead, the tribe has decided to assimilate into mainstream society, and tribal members do not feel they should have to prove who they are to anyone, especially the government. These differing viewpoints can be attributed to a number of factors, such as ability to trace tribal history and historical location.

This study examines the viewpoints of the Nanticoke Lenni-Lenape tribal members actively participating in the compilation of the tribe's

application for federal recognition. Focus is given to the hardships the tribe has faced in the thirty years its members have been compiling documentation for the application. Furthermore, a discussion of the benefits of federal recognition is required to understand why the tribe initially decided to pursue federal recognition. While this study primarily focuses on the Nanticoke Lenni-Lenape tribal members' experiences of the process, a discussion of an opposing viewpoint is necessary to reach a comprehensive understanding of the diversity among tribes and their interest in becoming recognized. The opinions members of the Sand Hill Band of Lenape and Cherokee Indians serve as representatives of the opposing viewpoint. Federal recognition is an extensive process that requires tribes to make tremendous time and financial sacrifices in order to successfully complete a petition, which does not necessarily guarantee that that tribe will be recognized after its petition is reviewed by the Office of Federal Acknowledgment and the Bureau of Indian Affairs. Because of these factors, the importance of completing the process and receiving federal recognition varies among American Indian tribes.

Chapter One: The Lenape
History

A basic understanding of the history of the Lenape and the Nanticoke Lenni-Lenape is needed to grasp the frustration the Nanticoke Lenni-Lenape have experienced throughout the federal acknowledgement process. The Lenape have a rich and well documented history in the eastern United States. The Lenape were the original inhabitants of New Jersey and also lived in parts of New York, Pennsylvania, Delaware, and Connecticut. This geographical area was known as Lenapehoking to the Lenape, and it was considered a sacred place (Kraft, 1987, p. 9; Dowd, 1992, p. 9). Within Lenapehoking, the Lenape formed separate tribes, known by their many different names and languages. The Lenape are members of the "Algonquin language family" and all of the languages spoken by the Lenape belonged to one of two distinct dialects: Muncee and Unami (Zeisberger, 2005, p. 16). These dialects were further used to divide the Lenape into their individual tribes, or communities that have "occupied a more or less definable space for at least the last 250 years, and the members of each community are all related to each other (Kerber, 2006, p. 198-199). Some scholars acknowledge a third major tribe of Lenape, known as the Unalachtigo; however, the existence of this tribal group is debated by anthropologists and other scholars involved in Lenape research (Harrington, 1913, p. 208; Hill Hearth, 2008, p. 26; Norwood, 2007, p. 10; Weslager, 1972, p. 45).

The three tribes are further broken into specific phratries associated with a totem: wolf, turtle, and turkey (Cross, 1965, p. 61; Harrington, 1913, p. 209; Weslager, 1972, p. 43-44; Zeisberger, 2005, p. 17). While reference to these phratries is found in many sources regarding the history of the Lenape, there is much debate surrounding this topic among scholars as well. Each phratry had a chief, or sachem, that led the clan; however, his power was rather limited (Kraft, 1987, p. 24; Kraft, 1996, p. 24). This chief was considered the peace chief, and he "advised the council, mediated in village disputes, and directed such village operations as communal hunting drives or the tracking down of murderers. He also played a religious role, naming the time for the major ceremonies" (Dowd, 1992, p. 13). There was another individual who acted as the war-chief for the phratry. Each of the chiefs had an assistant, or second in command, and a tribal council served each of the tribes (Cross, 1965, p. 62; Harrington, 1913, p. 211). Even though each tribe had these various leaders, the people at large were very involved in the governmental processes of the tribe (Dowd, 1992, p. 13; Kraft, 1987, p. 24; Kraft, 1996, p. 24; Zeisberger, 2005, p. 17). The affairs of the tribe were

handled in a democratic manner that allowed all tribal members to voice an opinion about the issue being discussed.

The Lenape are described as a matrilineal society, with the children inheriting the phratry and ancestry of the mother (Harrington, 1913, p. 211; Nelson, 1894, p.91). Within Lenape society, men were responsible for providing their families with meat, whereas women were responsible for planting, maintaining, and preparing corn and other agricultural goods (Dowd, 1992, p. 19; Kraft, 1987, p. 20-23; Kraft, 1996, p. 20-23; Harrington, 1913, p. 221; Weslager, 1972, p. 54). Even though men seemed to occupy the powerful roles, Lenape women were extremely influential in tribal life. Furthermore, "their input on key decisions for the tribe, as well as within their own families, is an ancient tradition" (Hill Hearth, 2008, p. 154). These differences in gender roles were taught from a very young age. Boys were educated in the ways of hunting and warfare, whereas girls were educated in areas of domestic work (Harrington, 1913, p. 213; Kraft, 1987, p. 28). Major precautions were taken by the parents expecting a child with in the Lenape culture. According to Harrington (1913), extreme efforts were taken by the parents to make the infant appear to be older than it was so that its spirit would not be coaxed away by the ghosts of the dead (p. 212). These efforts included tying strips of corn-husk to the child's wrists and burying the umbilical cord in the woods or near the home depending on the gender of the child (Harrington, 1913, p. 213).

The Lenape communicated with the supernatural world through the use of the dream or vision. The vision was obtained through fasting, and it was the method through which young men received their guardian spirits. According to Cross (1965), "[a]t puberty a boy was sent into the forest, where he remained without food or drink until some object (usually an animal), feeling sorry for him, presented itself in a dream" (p. 10). This object became the boy's guardian spirit and aided him throughout the remainder of his life. Blessings and success were brought to the boy through his guardian spirit (Cross, 1965, p. 58; Kraft, 1987, p. 47; Kraft, 1996, p. 47).

European contact

After European contact, the Lenape lifestyle changed dramatically within the geographical area they had occupied for centuries. These changes included disease, trade with the Europeans, and war. The arrival of the Europeans and their African indentured servant brought many new diseases that the Lenape had very little immunity against (Dowd, 1992, p. 43). Smallpox, tuberculosis, and malaria led to numerous deaths among the Lenape, whereas the Europeans and Africans had survived in areas where

these diseases were prominent for years (Dowd, 1992, p. 43). Of these diseases, smallpox proved to be responsible for the most deaths among the Native American populations. The deaths these diseases caused were detrimental to the tribal members of the Lenape, and the number of living Lenape Indians dropped significantly after contact (Norwood, 2007, p. 10; Zeisberger, 2005, p. 17).

While disease decimated the Lenape population, trade with the Europeans opened a new avenue for the attainment of necessities and desired goods. Dutch, Swedish, and English settlers were the primary groups the Lenape engaged in trade; however, the arrival of these groups was not the first trading opportunity presented to the Lenape. European goods were introduced to the Lenape long before settlers arrived on the shores (Kraft, 1974). The Lenape women traded corn and other agricultural goods to the settlers "for metal utensils and cloth goods" (Dowd, 1992, p. 34). Once the trade system began between the Lenape and the settlers, the Lenape became dependent on the guns and other forms of weaponry the Europeans traded to them. The Lenape utilized stone tools and weapons prior to European contact (Nelson, 1894, p. 33); after contact, these stone weapons became insufficient for defending themselves against their European neighbors (Kraft, 1974, p. iii; Kraft, 1987, p. 38-39; Kraft, 1996, p. 38-39). The Lenape also became very involved in the fur trade. Trading furs allowed the Lenape to have access to the Europeans who had the other goods they required for survival (Dowd, 1992, p. 34). Trade with Europeans introduced alcohol to the Lenape, which had detrimental effects on the functioning of the community. The trade of alcohol led to alcohol abuse among the tribal members of the Lenape (Zeisberger, 2005, p. 19).

The trade among the Lenape and the European settlers did not always commence peacefully. Europeans posed a threat to the Lenape way of life, even if they were partners in the fur trade. Because of this, tensions often rose and resulted in conflicts between the two groups. One of the most serious conflicts experienced in the New Jersey area was Governor Kieft's War. Governor Kieft's War began in 1639 after the governor of New Netherland, Willem Kieft, demanded the Lenape pay tribute to the Dutch settlers (Dowd, 1992, p.37; Norwood, 2007, p. 10; Weslager, 1972, p. 117). When the Lenape refused, Kieft perpetrated a massacre on the Lenape camped at Pavonia. The Lenape responded by engaging the Dutch in warfare, but a full blown war did not begin immediately following the governor's demand. The war that ensued was extremely bloody and resulted in many dead for both the Lenape and the Dutch (Dowd, 1992, p. 37)

Disease, trade, and war were not the only issues the Lenape faced after the arrival of European settlers. In the region of present day Pennsylvania, the Lenape developed a relationship with William Penn, who is considered the founder of Pennsylvania (Hill Hearth, 2008, p. 4). At first the Lenape and Penn had positive interactions, but this would change as the Lenape were forced to leave their sacred Lenapehoking, particularly during the time of Penn's heir (Weslager, 1972, p. 173). Many tribes combined with other tribes and migrated north to Canada or westward. Groups that migrated westward eventually settled in Indian Territory in Oklahoma after travelling through and remaining for some time in Ohio and Kansas (Dowd, 1992, p. 52; Harrington, 1913; Kerber, 2006, p. 200; New Jersey Committee on Native American Community Affairs, 2007, p. 16). The tribes that initially remained behind in New Jersey were recruited by the missionaries' active in the area to convert to Christianity. David Brainerd was one of the most prominent of these missionaries. After his death, his role among the Lenape was filled by his brother John Brainerd (Cross, 1965, p.84). The missionaries living with the Lenape were able to record a detailed account of their history and their cultural practices; this information proved to be valuable for future researchers. They also caused changes in the social organization of the Lenape by changing the status system (Kraft, 1974, p.1). Those who stayed behind also "lived in fear and survived through assimilation into the dominant culture, becoming farmers and traders" (New Jersey Committee on Native American Community Affairs, 2007, p. 16). As groups moved further west into Pennsylvania and Ohio, Moravian missionaries had a strong influence.

Chapter Two: The Nanticoke Lenni-Lenape

The Nanticoke Lenni-Lenape are a combination of the Nanticoke and Lenape people, which are two distinct tribes. While they are separate tribes, "there is historical evidence that indicates the Nanticoke originated from among the Lenape" (Norwood, 2007, p. 6). These two groups have resided "in Southern New Jersey and the Delmarva Peninsula from ancient times" (Norwood, 2007, p. 6; Reaffirmation of state recognition, 2008, para. 1). Congress recognized Native Americans as citizens in 1924, which included the Nanticoke Lenni-Lenape (Indian Citizenship Act, 1924, para. 1). The tribe is concentrated primarily in Cumberland County, New Jersey, specifically in the Bridgeton area (Hill Hearth, 2008, p. 6; Kerber, 2006, p. 200). Currently, there are 2,000 tribal members represented by nine elected tribal council members (New Jersey Committee on Native American Community Affairs, 2007, p. 16). All tribal members are required to abide by the laws the tribal council members created (Norwood, 2007, p. 19).

Preserving Tribal Culture

For the Nanticoke Lenni-Lenape, preserving tribal culture has been an extensive part of their history. Since the tribe has been in existence, the tribal members have worked together to maintain tribal customs, including lure, artworks, and crafts. Summer programs offer younger generations of tribal members the opportunity to learn the arts and crafts of their ancestors. Furthermore, younger tribal members are also taught be tribal elders in after school Indian education programs about tribal language, ceremonies and rituals. Meetings are held among tribal members on a regular basis to keep members involved in tribal governance. The tribal committee meets once a month; elders meet once a week; and children participate in tribal activities throughout the week (J.N[1]., personal communication, July 23, 2009). Furthermore, tribal members are attempting to preserve the tribal language by writing new songs in both the Lenape and Nanticoke languages. Preserving tribal culture is not solely an endeavor of tribal elders; the current reigning tribal princess started and American Indian organization in her school that teaches the tribal culture to both Indian and non-Indian students (J.N., personal communication, July 23, 2009).

The Nanticoke Lenni-Lenape tribe's efforts to maintain and preserve tribal cultural practices have been recognized by major American institutions,

[1] Names of interview participants have been changed for confidentiality purposes.

including the Smithsonian. The Smithsonian recently opened an exhibit on Native Americans. As part of the opening of the exhibit, the Nanticoke Lenni-Lenape were invited by the museum leaders to perform traditional dances. The tribal members were honored that they were chosen to do this, and they believe that this recognition is part of the passive recognition the tribe has always received regarding the legitimacy of its status as an American Indian tribe. Passive recognition is a form of recognition a tribe receives from the federal government and other federal agencies that is part of federal recognition. Passive recognition can come in many forms, including inclusion in Census records, invitations to federally run programs and events, indication on maps, etc.

Tribal Laws

For the Nanticoke Lenni-Lenape, tribal laws have been instrumental in preserving traditional tribal beliefs and tribal culture. The tribal law requires that each of the tribal members establish four generations of tribal descendants and meet blood quantum requirements; currently, all of the tribal members of the Nanticoke Lenni-Lenape meet these requirements (Reaffirmation of state recognition, 2008, para. 1; Tribal laws enacted by the Nanticoke Lenni-Lenape Indians of New Jersey, 2006). According to Norwood (2007), "[e]nrolled tribal citizens must document no less than one quarter blood quantum from the historically documented Lenape and Nanticoke tribal families" (p. 19). Some of the other laws include the banning of gaming activities. The tribe is considered a non-gaming tribe that "bans casino style gambling, the operating of slot machines, the selling of cigarettes, cigars, alcohol, pornography and federally or state banned substances by the tribe or its current of future subsidiaries" (Reaffirmation of state recognition, 2008, para. 3; Tribal laws enacted by the Nanticoke Lenni-Lenape Indians of New Jersey, 2006, para. 3). The Nanticoke Lenni-Lenape pursue a non-gaming policy in order to uphold the traditions and cultural beliefs of their ancestors (Norwood, 2007, p. 32). All tribal members must abide by the legislation outlawing gaming practices if they wish to remain active members of the tribe.

Current Tribal Status

The tribal status of the Nanticoke Lenni-Lenape is recognized by the state of New Jersey. On August 7, 1978, legal papers were signed by five tribal members, Mark Gould, Harry S. Jackson, Marion Gould, Carol Gould, and Edith Pierce that recognized the Nanticoke Lenni Lenape as a non-profit organization. On December 7, 1982, the organization was officially recognized by the state of New Jersey (Hill Hearth, 2008, p. 168). The

Nanticoke Lenni-Lenape Tribe has Tribal 8a status as defined by the New Jersey state government (J.N., personal communication, July 23, 2009). Tribal 8a status assists "eligible small disadvantaged business concerns compete in the American economy through business development" (Small Business Administration, 1999, p. 409).The Nanticoke Lenni-Lenape are one of only three tribes with statuses recognized by the state (Kerber, 2006, p. 200). The other two tribes are the Powhatan Renape Tribe and the Ramapough Mountain Indians (Reaffirmation of state recognition, 2008, para. 5; Ryan, 2009).

State recognition allows the Nanticoke Lenni-Lenape to compete for what is left of governmental funding after it has been appropriated to all of the federally recognized tribes (Reaffirmation of state recognition, 2008, para. 13). Under the provisions of the tribe's current state recognition, the Nanticoke Lenni-Lenape Tribe is also able to compete for government contracts, which benefit the entire community. This status also allows the tribe to start Native American run businesses. Furthermore, state recognition allows the tribe to participate in the census as a tribe, which requires the federal government to collect demographic information on the tribe (J.N., personal communication, July 23, 2009).

Although there are many benefits of receiving state recognition, state recognition does not benefit a tribe by meeting one of the criteria for federal recognition. State recognition aids in the federal recognition process in that it demonstrates that a governmental agency recognizes the legitimacy of a tribe. This provides the tribe with a certain level of political acknowledgment that it would otherwise be lacking. All documentation of state recognition is submitted with a tribe's application for federal acknowledgement to demonstrate that its legitimacy has been previously recognized.

Chapter Three: The Federal Recognition Process

Federal Regulations

The purpose of the federal recognition process is to allow tribes to petition for recognition from the federal government if the tribes are able to meet the criteria established in under the federal regulations. When a tribe receives federal recognition, the tribe's government is able to have a working relationship with the federal government. Federally recognized tribes are eligible for numerous benefits, including educational and health services with monetary support from the government. All members of recognized tribes are eligible to receive these benefits, as long as the tribe as a whole can receive them.

Seven Mandatory Criteria

Under the guidelines provided in the Bureau of Indian Affairs' legislature regarding federal recognition of tribal entities, there are seven criteria that all tribes must meet in order to be granted federal recognition. Tribes pursuing federal acknowledgment must submit proof to the Office of Federal Acknowledgement that they meet all seven of the designated criteria. The first of the seven criteria requires the petitioning tribe to provide documentation that it "has been identified as an American Indian entity on a substantially continuous basis since 1900" (*Title 25of the Code of Federal Regulations*, 2003, para. 1). In order to meet this criterion, a Native American Tribe must submit documentation that illustrates its identity as an American Indian entity. The tribe can do this in one of six ways, and they are as follows:

(1) Identification as an Indian entity by Federal authorities.
(2) Relationships with State governments based on identification of the group as Indian.
(3) Dealings with a country, parish, or other local government in a relationship based on the group's Indian identity.
(4) Identification as an Indians entity by anthropologists, historians, and/or other scholars.
(5) Identification as an Indian entity in newspapers and books.
(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations. (*Title 25 of the Code of Federal Regulations*, 2003, para. 2-7)

Failure to meet this criterion by one of the means described above will result in the BIA's rejection of the application. When a tribe meets these criteria, its application is reviewed to determine if the second of the seven criteria is met.

The second criterion requires that the tribe establish that it is a distinct community. The tribe must submit documentation with its application that not only demonstrates it is a distinct community but also that it has been a distinct community throughout history. The third criterion requires that the tribe illustrate that it is a political entity that has demonstrated authority over its people throughout history. Furthermore, the fourth criterion requires that a tribe must submit "a copy of the group's present governing document including its membership criteria" (*Title 25of the Code of Federal Regulations*, 2003, para. 38). The membership criteria listed in the tribal governing laws must be sufficient in determining if a tribe's members descend from "a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity" (*Title 25of the Code of Federal Regulations*, 2003, para. 39). If a tribe is able to demonstrate this, it meets the fifth criterion for federal recognition. Next, a petitioning tribe must prove that none of its designated members are members of another Native American tribe currently recognized by the federal government. The seventh and final criterion a tribe must meet in order to attain federal recognition is "[n]either the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship" (*Title 25of the Code of Federal Regulations*, 2003, para. 48).

The Process

After a tribe gathers all of the necessary documentation and feels that it has met all seven of the criteria to the best of its ability, the tribe submits its application to the Office of Federal Acknowledgment (OFA) for review. The tribe's application is reviewed by a team composed of members from the OFA staff to determine if the petitioner reasonably meets all of the seven criteria previously discussed. At this time, "OFA is…staffed with a director, a secretary, four anthropologists, three genealogists, and four historians. A team composed of one professional from each of the three disciplines reviews each petition" (*United States*, 2007, p. 2). The team of OFA professionals is responsible for reviewing up to seven petitions at any given time. In the process of reviewing the applications, the OFA team can reject an application if the team members feel that the seven criteria are not reasonably met. If this is the case, the OFA staff makes recommendations for improvement to the tribe and returns the application with a negative ruling. Tribes are then given the opportunity to make the suggested improvements to their applications and resubmit them. Upon resubmission, the process for review begins again. There is currently no standard timeline for the review

of a petitioning tribe's application. However, the Office of Federal Acknowledgment is currently proposing changes to the process that would limit the amount of time staff members have to review each application.

OFA's Proposed Changes

Many tribes that apply for federal recognition find the process to be long and burdensome. Tribes struggle to meet OFAs standards of proof required for each of the seven criteria, and they must overcome the constantly changing standards that are actually employed when the OFA staff review applications. Because of this, many tribes are vocal about their criticisms of the process and the aspects that need to be altered. In response, OFA proposed several changes in September of 2007 to facilitate improvements to the process.

The Office of Federal Acknowledgment proposed that guidelines be distributed to all the tribes and the general public. In doing this, OFA could explain to the tribes applying for recognition what the OFA team of reviewers is looking for in the submitted applications in a more clear and concise way. It has also been proposed the creation of new documents that would allow the public and Native American tribes to better understand any of the decisions made by the OFA staff regarding a specific petition (*United States*, 2007, p. 3). Furthermore, OFA has proposed to set a time frame for the review and evaluation of submitted petitions (*United States*, 2007, p. 4). Many Native American tribes are anxious to see this improvement implemented, because some tribes have been actively involved in the federal acknowledgment process for upwards of thirty years. In order to meet these changes, OFA has considered several options including:

- Hiring or contracting additional staff.
- Establishing a timeline for responding to each step of the regulations to ensure that petitions move along.
- Issuing negative proposed findings or final determinations based on a single criterion would also speed work and maximize researcher time used.
- Allowing for an expedited negative proposed finding if a petitioner has failed to adequately respond to a technical assistance review letter or refuses to submit additional required materials in response to this review.
- Moving the "first sustained contact" requirement of 25 C.F.R. §83.7(b) & (c) for some cases to start at the point when that area became part of the United States or at the inception of the United States in 1776 to ease the burden on

> petitioners and reduce time-consuming research into colonial histories. (*United States*, 2007, p. 4)

All of these changes would speed up the process for many tribes and would make the process more understandable for many people.

Along with the improvements discussed above, OFA has also proposed improvements to the system the staff members use to review each application and the training of staff. Originally, the OFA team of the historian, anthropologist, and genealogist reviewed each application simultaneously. In the 2007 Senate hearing before the Committee on Indian Affairs, R. Lee Fleming, Director of the Office of Federal Acknowledgment, describes the proposed change to the application review process by stating, "[w]e are considering changing this to a review in stages, with the genealogist first, followed by the historian and anthropologist. The genealogist's advance work, prior to the petition going on the 'active' list, would prepare the way for other professionals during the active review process" (*United* States, 2007, p. 3). This change could potential speed up the review process. Furthermore, OFA has proposed changes to the training of new staff members. It is proposed that new staff members receive questions and procedural instructions, which will allow the research team or staff members speed up the evaluation process. These questions and procedural instructions will also allow the team to determine any of the potential deficiencies present in a tribe's application more efficiently.

Since September of 2007, OFA has made at least one change proposed by the director. The change was made during the time period between the end of 2008 and the beginning of 2009. Petitioning tribes now only have to provide documentation to demonstrate a continuous tribal existence beginning from the signing of the Constitution in 1787. This lessens the burden placed on the petitioning tribes because they do not have to trace their histories back to the 1500s, which was the previous criterion. Because tribes were not keeping records in the 1500s, many tribes experienced difficulties in meeting the original criterion (J.N., personal communication July 23, 2009). It is much more likely that the existence of tribes would have been recorded after European contact, especially for tribes located on the East Coast.

Although this change has been made, the new criterion is still contradictory. The Office of Federal Acknowledgment requires the majority of the proof of continual existence come from the 1900s, specifically the early 1900s (J.N., personal communication, July 23, 2009). Some tribal members believe, "if at the end of the 1800s [a tribe] can show that [it was]

seen as an American Indian community…obviously that came from somewhere. People weren't running around trying to be known as Indians at the end of the 1800s. So if [a tribe was] being identified as Indian, it's pretty much a certainty [it] actually [was]" (J.N., personal communication, July 23, 2009). Because so many Native Americans were skeptical about disclosing their ethnic status to government officials for fear of being forced onto a reservation prior to 1900, there are some individuals who believe providing proof of existence at the end of the 1800s should weigh more than being able to prove the same existence in 1900 (J.N., personal communication, July 23, 2009). Even though this change has been implemented, tribes still voice concerns regarding the criterion.

Administrative Process vs. Administrative Decision

The federal guidelines for attaining federal recognition present tribes with two separate opportunities to petition for acknowledgement. Each tribe must submit a petition to the Office of Federal Acknowledgment, but the petition can be used for either of the two processes. The two processes are administrative decision and administrative process. Administrative decision is an argument presented by the petitioning tribe regarding a failure on the part of the Bureau of Indian Affairs to federally recognize the tribe. The focus of this argument is that the BIA made an error in failing to recognize a tribe. There is not a separate application for an administrative decision; the tribe's application is sent to the Office of Federal Acknowledgment and the Bureau of Indian Affairs (J.N., personal communication, August 11, 2009). If there is enough support in favor of the tribe, the tribe is granted federal recognition without having to complete the application review of the administrative process (J.N., personal communication, July 28, 2009). Many tribes enter the federal recognition process with the hope of receiving an administrative decision.

The Nanticoke Lenni-Lenape tribal members believe they have a strong enough argument to result in an administrative decision. One of the strongest aspects of this argument is the fact that the tribal area of the Nanticoke Lenni-Lenape is "indicated on maps prior to 1934. That's a very important date or year and the reason is because in 1934 Congress passed the Reorganization Act, which actually started what is considered federal recognition today" (J.N., personal communication, July 28, 2009). Under the Reorganization Act, the BIA composed a list of tribes that would be recognized without having to go through the acknowledgment process, but many tribes were left off of this list. The Nanticoke Lenni-Lenape Tribe's argument is that the federal government knew about the tribe at the time of

the implementation of the Act; therefore, the tribe should have been recognized. If the government had not known about the Nanticoke Lenni-Lenape, tribal members would not have been able to attend federal Indian schools or receive federal benefits, both of which were available to Nanticoke Lenni-Lenape tribal members (J.N., personal communication, July 28, 2009). Because of this, when the Nanticoke Lenni-Lenape Tribe submits its application, it will be sent to the offices of OFA and the BIA. The application "will also be sent to the Secretary of the Interior and the Deputy Secretary of the BIA" to be reviewed on the basis of an administrative decision (J.N., personal communication, August 11, 2009).

While many tribes, including the Nanticoke Lenni-Lenape Tribe, strive to attain an administrative decision, the administrative process is the most commonly utilized because it is the most widely publicized option. The administrative process has been described by the head of the Nanticoke Lenni-Lenape's committee for federal recognition as "where you simply submit an application and you … have all these people study it and confirm and give a decision" (J.N. personal communication, July 28, 2009). This process first began in the 1970s and required only a small portion of the support required on applications today. For the purposes of this paper, the administrative process will be the focus of analysis in the sections to follow because the Nanticoke Lenni-Lenape Tribe is currently utilizing this option.

Chapter Four: Nanticoke Lenni-Lenape and the Federal Acknowledgement Process

The Confederation of Sovereign Nentego – Lenape Tribes

In order to deal with the demands of the federal acknowledgement process, the Nanticoke Lenni-Lenape have developed a committee of skilled members from the tribe. The committee is composed of members from the Confederation of Sovereign Nentego – Lenape Tribes. Nentego is the word for Nanticoke in the native language of the Nanticoke Lenni-Lenape (J.N., personal communication, August 11, 2009). This confederation is composed of members from the Nanticoke Lenni-Lenape Indian tribe located Bridgeton, New Jersey and the Lenape Indian Tribe of Delaware located in Cheswold, Delaware. The two tribes have joined together for the common purpose "to promote the common good of [their] people, to defend [their] tribal right to govern [themselves] under [their] own laws, to protect and maintain [their] tribal culture and preserve the legacy of [their] ancestors" (The Nanticoke Lenni-Lenape, 2007, para. 1). Under this purpose, the two tribes are collectively pursuing federal recognition in hopes of being able to achieve tribal sovereignty and federal benefits for their people. An invitation to join the Confederation was extended to the Nanticoke Tribe in Delaware, but the Nanticoke Tribe decided not to join the Confederation because tribal members are unsure at this time if they would like to tackle the federal recognition process (J.N., personal communication, August 11, 2009). The Nanticoke Lenni-Lenape and Lenape Indian Tribe of Delaware are able to jointly apply for federal recognition because they share common historical experiences. This shared history can be seen specifically in the church involvement of both tribes. Historically, both tribes "had segregated American Indian churches, social events, and – in Delaware – separate schools. From the mid-1800s through to the mid-1900s, it was primarily through several tribal congregations that we were able to preserve our tribal culture and defend our people" (The Nanticoke Lenni-Lenape, 2007, para. 4). Historic records do not indicate any major divisions between the tribes until the 1920s (J.N., personal communication, August 11, 2009).

Furthermore, both tribes have the same requirements for membership, which must be established as part of one of the criteria for federal recognition. Both tribes "require documented descent and a mandatory one quarter blood quantum from the historical core families of the three interrelated tribes" (The Nanticoke Lenni-Lenape, 2007, para. 6). These criteria are necessary for enrollment in the tribe, and failure to meet

either of these two criteria will result in exclusion of an individual's membership application.

The many similarities between the Nanticoke Lenni Lenape Tribe and the Lenape Indian Tribe of Delaware provide the tribes with an opportunity that many other tribes have utilized in the past as well. In the past, other tribes have created unions and applied to recognition together. This method is not uncommon and gives tribes that may not meet all of the criteria a chance to draw from another tribe's resources as long as it is evident that there is a shared history. These unions have been recognized in the past, and the Confederation is following the process taken by these successful tribes (J.N., personal communication, August 11, 2009).

The Committee

In order to deal with the stresses of compiling information for a petition for federal recognition, the Nanticoke Lenni-Lenape and the Lenape Indian Tribe of Delaware have established a federal recognition committee. The committee is composed of seven to eight tribal members who are all volunteers; the members can come from either of the tribes represented in the Confederation. Each member of the committee is assigned a specific task, and the assigned task is based on the skill set each individual brings to the table. Two tribal elders on the committee are responsible for working on the genealogy of the members of each tribe. Once they have compiled a given person's genealogy, they enter the information into a computer software program that will be submitted as part of the federal acknowledgment petition (J.N., personal communication, August 11, 2009). Another committee member is responsible for working on both genealogy and the history of the tribes and their members; this committee member is also an elder within the tribal community. The head of the committee is actively involved "in the history and the relationship with the government" (J.N., personal communication, August 11, 2009). The remaining committee members are responsible for collecting records in the field that justifies that the tribes are who they say they are (J.N., personal communication, August 11, 2009).

One way the tribe is looking to affirm its identity is by working with historical societies in the area. The tribe is currently working closely with the Swedish Historical Society. Prior to becoming known as New Jersey, parts of southwestern New Jersey, Pennsylvania, and Delaware were New Sweden; therefore, "if a descendant from one of the ancestral Swedish families has documentation that proves you are a descendant from a member of our tribe that they had contact with and dealt with, that weighs heavily towards the

affirmation of relationships with ancestors and our legitimacy as a tribe historically" (J.N., personal communication, August 11, 2009). The committee members who work with historical societies, such as the Swedish Historical Society, look for any documentation that would demonstrate a link such as the one discussed above. Documentation may come in many forms, including photographs, letters, etc.

Furthermore, there are two tribal members who are considered unofficial members of the committee because they are actively involved in the scanning of documents and have displayed extreme dedication towards aiding the tribe in its pursuit of federal acknowledgment. Before allowing these tribal members access to the documents awaiting digitization, the committee members had to be sure the individuals could be trusted because the documents contain personal information. Throughout the process, the committee members have come to be trusted and have grasped an understanding of how all of the documents will be applied to the application for federal recognition. There are two or three members of the Lenape in Delaware who are working on collecting information on the two tribes as well (J.N., personal communication, August 11, 2009).

How the Process Began for the Nanticoke Lenni-Lenape

During the 1960s, there was an increased sense of Indian pride as the Civil Rights Movement came into full swing. The Nanticoke Lenni-Lenape Tribe began organizing the tribal government around the tribe's constitution during this time as well. In the 1970s, the federal government began contact tribes about applying for federal recognition, and the Nanticoke Lenni-Lenape was one of the contacted tribes. At the time, the tribal elders were afraid this was a ploy by the federal government to locate American Indians and force them to relocate outside of their homelands (J.N., personal communication, July 28, 2009). Many of the elders still remembered the Indian removals of the early 1900s where Native Americans were forced to move to reservations in the west. Because of this, the Nanticoke Lenni-Lenape decided to forego federal recognition at that time.

In 1982, the tribal members decided the state of New Jersey should call on Congress on the tribe's behalf. In doing so, the state was asked to encourage Congress to acknowledge the Nanticoke Lenni-Lenape Tribe. This was the initial step for the tribe to really pursue federal acknowledgment (J.N., personal communication, July 28, 2009). Because Congress did not respond initially, the tribe then decided to pursue recognition through the administrative process. In the same year, the tribe submitted a letter of intent, which is the first step of the administrative process. The tribe has been

compiling information for the application ever since then (J.N., personal communication, July 28, 2009).

The Nanticoke Lenni-Lenape Tribe is not the only tribe who has actively involved in the process for over thirty years. According to the testimony of Chairwoman Ann Denson Tucker, the Muscogee Nation of Florida was the 32 tribe to petition the Office of Federal Acknowledgment for federal recognition. After thirty years, the tribe is still awaiting a ruling from OFA (*United States Senate*, 2007, p. 1). Similarly, the Grand River Bands of Ottawa Indians of Michigan were told by the Office of Federal Recognition that "it will be 15 to 20 years at least, maybe longer, before [their] petition will be reviewed" (*Senate*, 2007, p. 2). Furthermore, there are tribes that have been involved in the process since the late 1800s. The Lumbee Tribe of North Carolina first began its pursuit of federal recognition in 1888 (). Therefore, the time the Nanticoke Lenni-Lenape Tribe has spent involved in the pursuit of federal recognition is typical of other tribes in the country.

General Views of the Process

Views of the federal recognition process depend on a variety of factors. Many of these factors can be traced back to the moral beliefs of the tribal members of the tribe applying for federal recognition. For the Nanticoke Lenni-Lenape, this is most evident when discussing the gaming or common Native American stereotypes. The tribal members of the Nanticoke Lenni-Lenape believe "federal recognition is important, and it has nothing to do with gaming or seizing property. Those who are against recognition use those as reasons to overcome tribal rights" (J.N., personal communication, August 11, 2009). The Nanticoke Lenni-Lenape Tribe has tribal legislature banning gaming. Furthermore, the tribe is not looking to seize any land in the surrounding area; tribal members simply want to preserve the land they currently control.

What the Process is Like

Since becoming involved in the process, the members of the Nanticoke Lenni-Lenape Tribe "have seen…the goal post…moved constantly" (J.N., personal communication, July, 23, 2009). The Office of Federal Acknowledgment has continuous changed the way documentation is reviewed and applied to the various criteria the tribes are required to meet. OFA changed its interpretation so that tribes must now prove who they are "beyond even a shadow of a doubt" (J.N., personal communication, July 23, 2009). However, it has become increasingly more difficult for tribes to obtain documentation that meets this standard.

The Office of Federal Acknowledgment is now more stringent about the documentation it will accept as support for one of the criterion. For example, any publications by Frank Speck are no longer accepted by OFA. Frank Speck was instrumental in helping a number of Native American tribes receive federal recognition. The justification for no longer accepting his works as evidence was that "too many communities were being recognized through his research" (J.N., personal communication, July, 23, 2009). Frank Speck is recognized as a talented researcher; however, arguments from federally recognized tribes and government officials have favored limiting the number of tribes granted federal recognition. This forces tribes to look for documentation that may not be available because no one was recording information as far back as the Office of Federal Acknowledgment would like the documentation to show. Furthermore, under the Bush Administration, federal grant money was no longer available to tribes to pay scholars and lawyers. Because of this, many tribes have had difficulty finding the necessary academic and legal support they need to complete the process (J.N., personal communication, July 23, 2009).

Along with these new stringent requirements for documentation, OFA has also changed the way they interpret documentation submitted by petitioning tribes. When providing documentation that supports a tribe's claim it has been a continuous tribal entity since colonial times, a tribe cannot leave out any years. For example, tribes that were in existence and living in similar ways in the 1830s and 1860s must provide documentation that shows similarities are present in the years in-between these dates. The BIA will not allow tribes to tribes to be considered for federal acknowledgment if this documentation is missing (J.N., personal communication, July 23, 2009).

Reasons for Applying

Tribes would be unlikely to go through the tedious federal acknowledgement process if there were not significant benefits for federally recognized tribes. After gaining federal recognition, tribes can decide what federal benefits their tribal members need to receive. The benefits of the process are both monetary in value and psychological. Tribes are not required to take part in all of the different tribal benefits and are given the option to opt out of any benefits that violate a tribe's tribal laws. Some of these benefits include the right to tribal sovereignty, protection of tribal culture, and federal programs for tribal members.

While some tribes pursue federal recognition for monetary purposes, the members of the Nanticoke Lenni-Lenape Tribe have chosen to pursue recognition for reasons that do not include money. The tribe does not wish to

participate in gaming or other forms of vice that would result in the gain of monetary resources. Although some tribes many need financial support from the government, the Nanticoke Lenni-Lenape Tribe is self-sufficient and does not need the same level of support that other tribes may need. For the Nanticoke Lenni-Lenape, the most important thing is having the tribe's sovereignty acknowledged (J.N., personal communication, July 23, 2009).

Tribal sovereignty provides a tribe with the right to self-governance. It is possible for non-recognized tribes to assert tribal sovereignty, but it is much easier for federally recognized tribes to do this (J.N., personal communication, July 23, 2009). When tribal sovereignty is acknowledged, the government affirms that the tribe is who it says it is. Tribal members are then able to overcome the psychological stress that is associated with the federal government being able to prevent a tribe from living in a manner deemed appropriate under tribal governmental regulations (J.N., personal communication, July 23, 2009).

Furthermore, federal recognition protects tribal culture. There are many aspects that fall under tribal culture. For one, federal recognition provides a tribe with the ability to protect skeletal remains and artifacts associated with ancestors. Only federally recognized tribes have the right to claim these artifacts. The arts and crafts of federally recognized tribes are also protected under federal recognition. Individuals who make and sell these objects are permitted to market their goods as genuine American Indian merchandise only if they are members of federally recognized tribes. Another aspect of tribal culture protected under federal recognition is the right to possess eagle feathers. Eagle feathers are spiritually significant to the Nanticoke Lenni-Lenape and are a part of the tribe's faith. Despite the spiritual significance, "only federally recognized tribes are allowed to apply for patents to possess eagle feathers" (J.N., personal communication, July 23, 2009).

Along with the acknowledgment of tribal sovereignty and protection of tribal culture, federally recognized tribes are also eligible for federal programs that benefit all members of the tribal community, including the Indian Incentive Program, the Child Welfare Act, and educational scholarships for students. As part of these federal benefits, federally recognized tribes are encouraged to participate in the Indian Incentive Program. Through the Indian Incentive Program, the federal government encourages "investment in tribally owned businesses" (J.N., personal communication, August 11, 2009). Agencies that interact with federally

recognized tribal businesses received government incentives (J.N., personal communication, August 11, 2009).

Federally recognized are also eligible to incorporate the Indian Child Welfare Act. Under the ICWA, federally recognized tribal governments are able to be involved "in issues of foster care placement and adoption in order to promote placement with tribal families and to protect tribal children from being taken from their tribes" (J.N., personal communication, August 4, 2009). Only federally recognized tribes benefit from this act. Unrecognized tribes must leave the decision up to the court system, and have very little, if any, say in what happens to the child or children involved (J.N., personal communication, August 4, 2009). Children of unrecognized tribes can be placed outside of the tribal community, which may cause them to "lose their tribal identity" (J.N., personal communication, August 4, 2009).

Federal recognition benefits Native American children in regards to education as well in circumstances requiring foster care. Children of federally recognized tribes are qualified to apply for federal scholarships. These scholarships enable American Indian children to attain higher levels of education. Federally recognized tribes are given the opportunity to apply for these scholarships first. After children of federally recognized tribes have received scholarships, the remaining funds are made available to children of non-recognized tribes; however, children of non-recognized tribes must compete for the remaining funds. The process is often very competitive, and children of non-recognized tribes are less likely to receive funding for their education than those of federally recognized tribes (M.G., personal communication, Sept. 1, 2009).

Reasons for the Length of time Required to Receive Recognition

The federal recognition process is very lengthy and time-consuming. So far, the Nanticoke Lenni-Lenape Tribe has been involved in the process for thirty years. While this is the first time the tribe is submitting an application, a letter of intent was filed in the 1980s. According to tribal members, there are many reasons for this extensive process. These reasons can be separated into two groups: tribal reasons and governmental reasons.

Tribal Reasons

When the tribe first began the process thirty years ago, many of the members did not realize the volume of significant information they would uncover regarding the history of the tribe (M.G., personal communication, Sept. 1, 2009). Every day people from within and outside of the tribe are bringing new information to the committee to add to the application. All of this new information continues to make the tribe's application stronger.

Because of this, "it makes it difficult to turn something in that [the tribe] think[s] is incomplete" (M.G., personal communication, Sept. 1, 2009). Thirty years of hard work are invested into the application and the tribe is not going to risk rejection because tribal members feel the application is not completed to the best of the tribe's ability.

Furthermore, the tribe has had to compile documentation that was not originally available to tribal members. Much of the information regarding the history of the tribe "has been locked up in vaults" (M.G., personal communication, Sept. 1, 2009). The tribe may have never found this information if it did not have friends in historical societies and other significant places where tribal members have been conducting research. These friends have not only made the information known to the tribe but also have made it available for inclusion in the tribe's application. This explains why the process has been so long on the part of the tribe.

Governmental Reasons

Most of the reasons associated with the federal government can be linked to politics. The most pressing reason for why the process takes so long is "because the federal government doesn't want to recognize tribes" (J.N., personal communication, July 28, 2009). This is because there are influences from outside groups to not recognize any more tribes. In order to lengthen the process, the government continually throws obstacles in the way of the tribes. The longer it takes a tribe to complete the recognition process, the more obstacles the government and outside sources can throw in the path of the tribe. When dealing with some tribes "the hope is that the tribe may die out or just give up" (J.N., personal communication, July 28, 2009).

Furthermore, the government receives pressure from federally recognized tribes to limit the number of tribes that are affirmed. The resources provided by the government to federally recognized tribes are limited. As the government continues to recognize new tribes, the amount of resources available to each tribe begins to shrink. Less money is available for the federal programs, and the federally recognized tribes feel the process is unfair. Because of this, there are members of federally recognized tribes "are pushing to slow the rate of acknowledgment or stop it all together" (J.N., personal communication, July 28, 2009). However, there are some tribes that are not applying for recognition to receive federal moneys. The Nanticoke Lenni-Lenape, tribe has been self-sufficient for a very long time, so funding is not an essential driver in their pursuit of federal recognition (J.N., personal communication, July 28, 2009).

Influence of State Recognition

While state recognition is not a requirement for tribes applying for federal recognition, it can assist the petitioning tribe. It is helpful because a government agency recognizes the tribe as legitimate and gives the tribe "a certain level of political acknowledgment" (J.N., personal communication, July 23, 2009). Because of this, state recognized tribes can request the state call on Congress and other government agencies on behalf of the tribe. State recognition also allows a tribe to participate in some programs. New Jersey has acknowledged the Nanticoke Lenni-Lenape Tribe with Tribal 8a status. Under this recognition, tribes can compete for government contracts, start business, and participate in the census as a tribe (J.N., personal communication, July 23, 2009).

Changes in the Relationship with State Government

Because the state of New Jersey already recognizes the Nanticoke Lenni-Lenape as a legitimate American Indian tribe, federal recognition will change the relationship between the tribe and the state in fewer ways than it would for a tribe not recognized by the state. These changes include the fact that New Jersey would have to accept the decisions made by the Nanticoke Lenni-Lenape's government and court system. To some extent, the lesser courts of New Jersey already currently accept tribal decisions; however, the acceptance would be in every level of the state infrastructure if the tribe gains federal recognition. After receiving recognition, the tribe would be able to work with New Jersey's government on projects that are restricted to only federally recognized tribes. These programs include "loan programs that would enable entrepreneurship" (J.N., personal communication, August 11, 2009).

Furthermore, federal recognition would stabilize the acknowledgment New Jersey provides the Nanticoke Lenni-Lenape. Presently, tribal members "live in fear that the state will take away the acknowledgment [it has] bestowed on" the tribe (J.N., personal communication, August 11, 2009). Many tribal members live with this fear because they know many members of the general public are quick to accept stereotypes regarding Native Americans. If the general public voices opposition to the recognition of the tribe, the state has the ability to withdraw the recognition if it deems it appropriate to do so. If the tribe is federally recognized, this will no longer be possible (J.N., personal communication, August 11, 2009).

Passive Recognition

Tribes can receive passive recognition from departments of the federal government and other organizations that in essence affirm the legitimacy of tribes. The Nanticoke Lenni-Lenape Tribe has received many forms of passive recognition. For example, the area where the Nanticoke Lenni-Lenape tribal members have resided since historic times was delineated by the Census Bureau in the last census. The area is designated as an American Indian statistical area.

Figure 1: Nanticoke Lenni-Lenape Tribal Statistical Area from 2000 Census (U.S. Census Bureau, 2008)

If the Nanticoke Lenni-Lenape Tribe was not acknowledged as a Native American entity, it would not have received this designation from the Census Bureau, which is a department of the federal government. The 2010 census will be conducted in the same manner (J.N., personal communication, July 28, 2009).

Similarly, the Nanticoke Lenni-Lenape tribal area is designated on maps generated by the government going back to colonial times. These maps indicate the tribal names associated with the area and demonstrate the use of the land by the tribal community from colonial times through the last century. Even though many of the Nanticoke and Lenape moved westward beginning

in the 1800s, the maps continue to show the area where tribal members have continuously resided. After the last century, the census records serve to record the location of the tribal members.

Along with being designated as an American Indian statistical area on the census and recognized on maps going back centuries, the Nanticoke Lenni-Lenape Tribe also has had legal battles that have been addressed in the federal court system, rather than at a local level. When a man misleadingly claimed to be the chief of the Nanticoke Lenni-Lenape Tribe in order to open a casino, the tribal members turned to the legal system to defend their reputations and the tribal name. All legal matters were dealt with at a federal level because the tribe is an American Indian tribe. If the tribe was not designated in this manner, then all matters would have been addressed in the local court system (J.N., personal communication, July 28, 2009). These forms of passive recognition can be used in the application the Nanticoke Lenni-Lenape is submitting to the Office of Federal Acknowledgment. The passive recognition will be used to strengthen the tribe's argument that it meets some of the criteria.

The Role of Community Support

After a tribe submits a petition to the Office of Federal Acknowledgment, a team reviews the application and determines if the tribe meets all of the necessary criteria. As part of the review process, the members of the surrounding community in the area where the petitioning tribe's members reside are asked their opinions of the tribe. Tribes can be denied recognition "if the community puts pressure on the right people" (J.N., personal communication, July 23, 2009). Community members often make their decisions based on stereotypes if they are not educated about the petitioning tribe.

Because community support is a key factor in deciding whether a tribe becomes federally recognized, it is important for a tribe to assess the support from its surrounding area prior to submitting an application. The Nanticoke Lenni-Lenape Tribe has determined "that by and large in [their] community there are enough organizations and people within local government who are very much aware of who [they] are, what [they]'ve been about and have been increasingly more and more supportive" (J.N., personal communication, July 28, 2009). This is significant for the tribe because it spent many years in isolation for survival purposes, but the tribe has made an effort within the last twenty years to educate and share tribal culture with the general public. Members of the Nanticoke Lenni-Lenape Tribe feel the local support is sufficient for application purposes, especially because church

organizations, the Daughters of the American Revolution, and other organizations are currently very supportive.

While the Nanticoke Lenni-Lenape feel the necessary local community support is there, the perception of support changes with the consideration of other areas of outside of Cumberland and Salem counties. The perceptions of the residents in areas outside of these countries are more along the lines of typical stereotypes. Because of this, the Nanticoke Lenni-Lenape could face some issues in receiving the required support in these areas. Because residents of Atlantic City will have an opportunity to voice their opinion of the Nanticoke Lenni-Lenape Tribe, the tribe may "get hurt because…there are politicians tied to gaming down in Atlantic City who are terrified that if any tribe becomes acknowledged Indian gaming is going to get set up in the state and it's going to create a challenge for the revenues currently being generated by gaming in Atlantic City" (J.N., personal communication, July 28, 2009). Even though the Nanticoke Lenni-Lenape have voiced opposition to gaming and offered and upheld a contract with the state banning gaming, residents do not seem to listen. These residents are relying on stereotypes when they refuse to accept measures undertaken as legitimate, and these stereotypes extend beyond just Atlantic City. Members of the Nanticoke Lenni-Lenape Tribe fear these individuals will prevent them from becoming recognized in order to protect rights they erroneously believe may be violated (J.N., personal communication, July 28, 2009).

Expectations of Individual Tribal Families

Although the Nanticoke Lenni-Lenape has a committee designated to addressing all of the issues of the federal recognition process for the tribe, individual tribal families are also required to aid with the process. Each family is responsible for compiling and submitting its family enrollment files to the committee (J.N., personal communication, August 11, 2009). These enrollment files must include birth records, death records, marriage records, etc. for at least four generations. According to the head of the committee, families "need to be able to show how [they] link to the families that we know are tribally related" prior to the four generations documented in the enrollment files (J.N., personal communication, August 11, 2009). For the majority of the tribal families, providing documentation showing this link to ancestors is not difficult to do because "80 percent of the population has been living in the tribal area where … ancestors lived for generations" (J.N., personal communication, August 11, 2009). Therefore, census records and other forms of public documentation would indicate a relationship between the families.

While individual families are only required to provide their enrollment files, some of the families are providing documentation above and beyond what is being asked of them. Some families have access to documentation that affirms the Nanticoke Lenni-Lenape Tribe is who it says it is. These families are submitting this documentation to the committee with their enrollment records, which is greatly appreciated by the members of the committee. The additional documentation that is being submitted includes pictures, family bibles, and newspaper clippings that address and recognize the tribe (J.N., personal communication, August 11, 2009). All of this material will be submitted as part of the tribe's petitions for federal acknowledgment.

Future Generations

Because the process is so long, the Nanticoke Lenni-Lenape Tribe has expectations for the future generations. The first expectation is that the future generations will continue the fight to preserve tribal sovereignty. Future generations should continue this fight whether or not the tribe is federally recognized. Also, future generations should aid other legitimate tribes in their pursuit of federal recognition. This should be done whether or not the Nanticoke Lenni-Lenape are federally recognized or not (J.N., personal communication, July 28, 2009).

Expectations of the General Public

All of the responsibility of the federal recognition process does not fall on the tribe. The Nanticoke Lenni-Lenape Tribe has suggested some things the general public could do to assist with the process. The first thing the general public could do is understand who the Nanticoke Lenni-Lenape Tribe is and its story. In doing this, the general public should reject the stereotypes that are often associated with eastern Native American tribes, including that all tribes have moved westward. Other stereotypes include "that all Indians want casinos, so that any Indian nation that is attempting to get acknowledged by the federal government just either wants to grab your land so they can put a casino on it or do something else that's going to hurt the local population" (J.N., personal communication, July 28, 2009). This is certainly not true because less than half of the tribes that are currently recognized by the federal government own casinos (J.N., personal communication, July 28, 2009). If the general public rejects this stereotype, it will help the tribal members of the Nanticoke Lenni-Lenape with their application for federal recognition.

Another way the general public can be helpful is to understand that in order for a tribe to be considered an American Indian community the

group of people must have a continuous community. Tribes are not composed of individuals who have recently discovered and decided to celebrate the fact they have a common Native American ancestor. This is considered a worthy cause by some tribal members, but it does not constitute a tribe. A tribe can be defined as a group of "people who are related to each other and have been for generations that have a history that goes back beyond the history of this country" (J.N., personal communication, July 28, 2009). For many people, the distinction between tribes and Native American interest groups is difficult to make; however, tribes applying for federal recognition benefit from the general public understanding the difference so educated decisions can be made when a tribe's petition is reviewed for community support.

While the general public should understand the difference between tribes and interest groups, the general public should also be aware of the resources tribes can provide regarding the history of the United States. Whether the tribe if federally recognized or unrecognized, the tribal members have ancestral connections that extend much farther back into the history of the United States than those of European descent. It is undeniable that "American Indian culture is part of the fabric of this country" (J.N., personal communication, July 28, 2009). The life of every individual is touched in some way by the culture, so the general public should make an effort to celebrate this rather than suppress it by believing in stereotypes.

The final way the general public can aid with the federal recognition process is by understanding tribes do not have to be a financial burden on the state and federal governments. Tribes should be given the opportunity to work with governments in a manner similar to two business partners working together. In this way, tribes do not have to rely on any form of government for total assistance. The work of American Indian tribes can be used to enhance the business relationship with the state and federal government rather than being a burden (J.N., personal communication, July 28, 2009).

Goal for Application Completion

The committee members hope to have the tribe's petition submitted by the end of 2009 or by the end of the first quarter of 2010 (J.N., personal communication, July 28, 2009). Although the petition may not be completed to the high standard the tribal members have set for themselves, submitting their petition will initiate the dialog between the tribe and the federal government regarding the application, which does not count against the tribe. Once the application is submitted, the Office of Federal Acknowledgment can indicate the strengths and weaknesses in the application for the tribe

(J.N., personal communication, July 28, 2009). At that point, the tribe can review its application and make the necessary changes. According to the head of the Nanticoke Lenni-Lenape Tribe's committee for federal acknowledgement, the whole process, "to be honest, [is] going to be a labor intensive kind of a thing" (J.N., personal communication, July 28, 2009).

Reasons for This Goal

Recently, there has been some talk of limiting the number of tribes that can be federally recognized. If this would happen a cap would be place on when tribes can apply for recognition; in other words, tribes would have to submit applications before a certain date (J.N., personal communication, July 28, 2009). Furthermore, the Obama administration is showing "showing signs that it'll be more even-handed in dealing with the issue of federal recognition" (J.N., personal communication, July 28, 2009). The Bush administration appeared to be hostile towards Native American nations, which is one of the reasons the Nanticoke Lenni-Lenape Tribe has not applied for federal recognition previously. The tribe wants its petition to be reviewed by an administration that is fairer than previous administrations. Since being elected to office, President Obama has indicated he will to support legitimate Native American tribes in their pursuit for federal recognition. On November 27, 2009, Obama designated the Friday after Thanksgiving to be Native American Heritage Day. The purpose of this designation is to support the sovereignty of Native American and Native Alaskan tribes (Darling & Moody, 2009, para. 1). Because of actions like this, Native American tribes feel Obama's administration will be fairer than the Bush administration in regards to accepting petitions for federal recognition.

Plans for after Federal Recognition is Attained

The Nanticoke Lenni-Lenape Tribe has many items on its list for plans after it is federally recognized. Internally, there would not be a whole lot of change for the tribe; major changes would regard interaction with state and federal governments. When asked what the tribe planned to do if it gained federal recognition, the tribal chairman responded, "celebrate, that's easy" (M.G., personal communication, Sept. 1, 2009). After the celebration, the tribe would like to pursue government to government privileges in order to ensure that the rights of all tribal members are met as promised (J.N., personal communication, August 11, 2009). Part of these privileges would include the ability to claim the rights to tribal history. Because the Nanticoke Lenni-Lenape Tribe "would be the only federally recognized Lenape community existing in the homeland," the tribe would look to preserve sacred

places, including burial grounds and human remains (J.N., personally communication, August 11, 2009).

Along with claiming tribal history, the tribe would put land in trust, which would allow tribally owned land to become reservation land (J.N., personal communication, July 28, 2009). In placing land in trust, the tribe will protect the holdings that it already has in the area. Once the tribe had land in trust, the Nanticoke Lenni-Lenape Tribe would "most likely make the attempt to start a school on [the] land and possibly even a junior college" (J.N., personal communication, July 28, 2009). The tribe would also pursue the right to possess eagle feathers, which is a right only federally recognized tribes receive. Eagle feathers are culturally significant items in the Lenape faith. Measures would be made to more effectively preserve tribal language "because federal tribes can get better support for that" (J.N., personal communication, July 28, 2009). This would aid the tribe in preserving tribal culture.

Furthermore, the tribe would look to assist other tribes involved in the federal recognition process. Tribal members would aid legitimate tribes in finding the documentation needed to submit a petition to OFA. These tribes may be having difficulty meeting all of the criteria, but the Nanticoke Lenni-Lenape would spend both time and other resources on helping these tribes in the process. The head of the tribal committee for federal acknowledgment said, "We would look to help some of our sister nations in any way we possibly could" (J.N., personal communication, August 11, 2009).

Suggested Improvements to the Process

The Nanticoke Lenni-Lenape Tribe proposes many changes to the overall federal recognition process. The first suggestion is to have some standards for the way documentation is interpreted by the Office of Federal Acknowledgment and the BIA. The way documentation is interpreted should not continuously change and precedence should apply to future application (J.N., personal communication, July 23, 2009). For example, "if a certain type of document was proof or accepted at one time, it should be accepted into the future" (J.N., personal communication, July 23, 2009).

Along with having standards for interpretation, the process should take into consideration the unique history of tribes from various areas of the country. For east coast tribes, it should be noted that many tribal members migrate westward or went into hiding to prevent relocation. This means "that the federal government was not continuously monitoring" the tribal members who did not migrate west (J.N., personal communication, July 23, 2009).

Furthermore, tribes should be encouraged to reasonably meet the criteria; they should not have to meet all of the criteria to the highest standard determined by OFA. If a tribe meets five of the seven criteria beyond a reasonable doubt and can provide for the other two, the tribe should not be denied recognition. Tribes may not be able to provide sufficient documentation for some of the criteria because of actions the tribe was forced to take in order to protect its identity. Therefore, a tribe may not meet the criteria because it was "victimized by the very government [it is] asking acknowledgment from" (J.N., personal communication, July 23, 2009). In these instances, the tribe is then being penalized for the victimization perpetrated against it (J.N., personal communication, July 23, 2009).

Although there are many suggestions for the overall process, the Nanticoke Lenni-Lenape also recommend a change in the affirmation or rejection aspect of the process. The tribe believes there should be several different types of affirmation, so tribes who are not recognized for any number of reasons can show that it might not be because they are not considered to be a legitimate Native American tribe (J.N., personal communication, October 1, 2009). The tribe believes the Office of Federal Acknowledgment should provide "a statement that affirms who [the tribe] actually [is] in an effort to protect the identity of that tribe" (J.N., personal communication, October 1, 2009). If this was done, those people who do not want to see Native Americans recognized anymore would have difficulty finding support for their arguments.

Dangers of Completing the Process

For tribes who submit an application but do not receive federal recognition, the process may become detrimental to their reputation as a legitimate tribe. When submitting an application, a tribe must be wary that "even if [it has] a documented history and [it] get[s] declined because of politics or other reasons, it delegitimizes [its] entire community in the eyes of the public and in the eyes of the academics" (J.N., personal communication, October 1, 2009). This makes it difficult for the members of a tribal community to assert their identity. When a tribal community is denied, the outside community shows no mercy, despite the possible reasons for rejection by the federal government. In some instances, "communities are turned down even though the OFA…actually indicates that they have been determined to be Indian, but they're turned down because they have not been able to … prove maybe twenty or thirty years of history that they continued to be a community in the strange way that OFA interprets the criteria" (J.N., personal communication, October 1, 2009). The general public is unlikely to

accept the tribe as legitimate after a rejection for federal acknowledgment and the negative backlash can be significant.

The Silver Lining

While the federal recognition process can be tedious and time-consuming, the benefits associated with receiving federal acknowledgment outweigh any of the negative aspects of the process for the Nanticoke Lenni-Lenape. First and foremost, the process forces tribes to organize and document their history. For the Nanticoke Lenni-Lenape Tribe, this is a benefit in and of itself. In the process of compiling their application, tribal members have collecting data that affirms they are who they say they are. In some instances, this information has not previously been collected and assembled, and it is likely that the information would have been overlooked otherwise (J.N., personal communication, October 1, 2009). For many the uncovering of this new information is exciting. According to the tribal chairman, "everything just seems so significant and important" (M.G., personal communication, Sept. 1, 2009).

In addition to forcing tribes to document their history, the federal acknowledgment process also allows tribes "network and assess support" for their tribal communities (J.N., personal communication October 1, 2009). This allows tribes the opportunity to find new allies within the outside community. These new allies may be able to provide the tribe with new resources that may be helpful to its pursuit of federal recognition. It also allows the tribe to interact with community members outside of the tribal community (J.N., personal communication, October 1, 2009). This bolsters relationships between the two communities which will be beneficial when the tribe's petition is presented to the surrounding community as part of the reviewing process.

Advice to Other Tribes

After completing part of the process, the Nanticoke Lenni-Lenape have some advice for tribes who may consider involvement in the federal recognition process in the future. There are four main suggestions for other recognition-seeking tribes. The first is to make sure the petitioning tribe is "as well documented as possible" (J.N., personal communication, October 1, 2009). In doing this, the tribe should closely examine the Office of Federal Acknowledgment's seven criteria for federal recognition. The tribe should then provide documentation that supports each of the criteria. Secondly, the tribe should make the documentation included in its application as public as possible. This is because "once the application is in…it is a matter of public record anyway" (J.N., personal communication, October 1, 2009). If a tribe

makes its documentation available to the public, the tribe has the opportunity to highlight all of the strengths that legitimate the tribe. Publicizing the documentation also protects the community from any member of the general population who may argue against the tribe.

Furthermore, the Nanticoke Lenni-Lenape suggest that any tribe applying for federal recognition "seriously weighs the value of gaming" (J.N., personal communication, October 1, 2009). Gaming is a very politically charged issue. Tribes can be and have been denied recognition on the basis of gaming alone (J.N., personal communication, October 1, 2009). The Nanticoke Lenni-Lenape tribe does not wish to participate in gaming and believes gaming should not be associated with the federal recognition process. And finally, a tribe applying for federal recognition needs to act sovereignly. Tribes have the responsibility to govern their people and protect the futures of their tribal members. In doing this, the pursuit of federal recognition should not become the center of any tribe's tribal activities (J.N., personal communication, October 1, 2009). The tribe should continue to act in this manner whether or not it receives federal recognition.

Chapter Five: A Differing Perspective

Within the United States, there are tribes that are not interested in pursuing federal recognition. Each tribe that shares this prospective has its own reasons for why it is in the best interest of its members not to pursue federal recognition. Some of these tribes have been recognized by the states in which they reside; others have assimilated into mainstream society. One tribe that shares this view is the Sand Hill Band of Lenape and Cherokee Indians. Recent identity battles have made the Sand Hill Band of Indians a topic of discussion in northern New Jersey.

Sand Hill Band of Lenape and Cherokee Indians

Unlike the Nanticoke Lenni-Lenape who are seeking federal recognition, the Sand Hill Band of Lenape and Cherokee Indians is not interested in pursuing federal or state recognition. The descendants of this tribe can all trace their ancestry to one common family, the Revey family (Ryan, 2009). The tribe is located in Monmouth County, New Jersey, and has a significant history in the area dating back to the 1700s (Sand Hill Band of Indians, 2005, para. 1). Tax records from 1780 indicate two Revey descendants living in Monmouth County; James Revey was living in Freehold Township and Thomas Revey was living in Shrewsbury Township (Sand Hill Band of Indians, 2005, para. 4).

Rather than applying for federal recognition, the Sand Hill Band of Lenape and Cherokee Indians are currently seeking to protect their identity from outsiders who are attempting to usurp the tribal name. When a second division of the tribe surfaced in Paterson, New Jersey, conflict has led to the current lawsuit against the state of New Jersey. The Paterson group is currently suing the state of New Jersey for $1 trillion dollars (Ryan, 2009, para. 1). The irony behind the lawsuit is the two men who have stolen the Sand Hill Band of Indians name are seeking recognition and the ability "to open casinos and other business ventures that are regulated by Federal and State law" (Estrella, 2007, para. 2). Furthermore, the two men behind the lawsuit are not originally from Monmouth County or even New Jersey; one is from Australia and the other is from California (Ryan, 2009, para. 6). The original members of the Sand Hill Band of Indians argue they are not related to the Paterson tribe and want the public to understand that the legitimate members of the tribe are not involved in this lawsuit (C.G., personal communication, September 21, 2009). The tribe's goal is to "educate and inform the governments of the State of New Jersey and the United States" about the history of the legitimate members of the Sand Hill Band Indians (Estrella, 2007, para. 3).

Sand Hill Band of Lenape and Cherokee Indians' View of Federal Acknowledgment

In 1939, the Sand Hill Band of Lenape and Cherokee Indians were recognized by the state of New Jersey by gubernatorial proclamation (Estrella, 2007, para. 1); however, the recognition is no longer acknowledged (C.G., personal communication, Sept. 21, 2009). When the state of New Jersey recognized the only three tribes to be acknowledged by the state, including the Nanticoke Lenni-Lenape Tribe, Powhatan Renape Nation, and the Ramapough Mountain Indians, the Sand Hill Band of Indians was not included. Unfortunately, the Sand Hill Band of Indians did not fill the requirement that the tribe be a distinct entity. While the Sand Hill Band of Indians has a governing council, the members of the tribe have assimilated into the surrounding community for the most part; tribal members live "as part of the community not as a separate community" (C.G., personal communication Sept. 21, 2009).

While it would be difficult for the Sand Hill Band of Indians to apply for recognition, the tribe is not interested in applying for recognition on the state or federal level. Tribal members "have never sought federal or state recognitions because they know themselves to be a sovereign tribal entity" (Sand Hill Band of Indians, 2005, para. 5). The tribe does not feel there is a need to be recognized by any level of government. For over two hundred years, members the Sand Hill Band of Indians have resided in New Jersey. Their heritage is important to them, but they do not feel that it is "necessary to have someone tell [them they're] Indian" (C.G., personal communication, Sept. 21, 2009). The tribe feels the only reason a tribe would pursue federal recognition is if it wanted to open a casino (C.G., personal communication, Sept. 21, 2009).

Part of the Sand Hill Band of Indians' reasoning against applying for federal recognition is based on tribal members' perceptions of federally recognized tribes. Members believe that many federally recognized tribes live in extremely disastrous situations (C.G., personal communication, Sept. 21, 2009). The majority of the federally recognized tribes do not own casinos; therefore, these tribes are not well off financially. Many of the situations federally recognized tribes face are unfortunate. According to a representative of the Sand Hill Band of Indians, federally recognized tribes receive pathetic schooling and housing, and "they have the highest infant mortality rate in the country" (C.G., personal communication, Sept. 21, 2009). Members of federally recognized tribes are worse off than any other population in the United States, including African Americans (C.G., personal

communication, Sept. 21, 2009). Because of this, members of the Sand Hill Band of Indians feel members of federally recognized tribes would have been better off if they had simply assimilated into surrounding communities. If they had chosen this route over becoming federally acknowledged, tribes would not be isolated at least (C.G., personal communication, Sept. 21, 2009).

Nanticoke Lenni-Lenape Tribe's Response

The Nanticoke Lenni-Lenape Tribe agrees that some federally recognized tribes do face some struggles; however, these struggles revolve around maintaining "some element of sovereignty…many federally acknowledged tribes govern out of fear and under the thumb of the federal government" (J.N., personal communication, October 1, 2009). Tribal members of the Nanticoke Lenni-Lenape hope this never happens to their tribe. Their hope is that they will be able to stand on their own without the fear of the government stepping in because they are incapable of providing care for tribal members. For the Nanticoke Lenni-Lenape, this is how federally recognized tribes struggle.

While federally recognized tribes to face some struggles, the struggles are very different from those faced by unrecognized tribes. Tribes that choose to assimilate into mainstream society "suffer a worse fate because they run the risk of the loss of identity and the inability to have any say-so over their heritage and legacy" (J.N., personal communication, October 1, 2009). When this happens, tribal culture begins to disappear. Once tribal culture is lost, it is impossible to get those cultural aspects back. In the eyes of many tribes, including the Nanticoke Lenni-Lenape, the loss of tribal culture is a far worse fate than any experienced by federally recognized tribes (J.N., personal communication, October 1, 2009). Furthermore, it is much more difficult for unrecognized tribes to provide services for their people than federally recognized tribes. Tribal cohesiveness is also difficult to maintain when tribes are not federally recognized. In short, the Nanticoke Lenni-Lenape tribe believes "is much harder being non-federally recognized" (J.N., personal communication, October 1, 2009).

Reasons for These Differences

There are many possible explanations for the differences in opinion expressed by these two tribes. First and foremost, the Nanticoke Lenni-Lenape Tribe can trace the history of tribal members back to approximately thirty core families (M.G., personal communication, Sept 1, 2009). On the other hand, members of the Sand Hill Band of Lenape and Cherokee Indians trace their ancestry back to a single family from Monmouth County (Ryan,

2009). Because of this, it can be assumed that the Sand Hill Band of Indians has fewer members than the Nanticoke Lenni-Lenape. While there is no requirement about how many members a petitioning tribe must have, the more members a tribe has the more people there are available to search for and provide documentation in favor of the legitimization of the tribe.

Furthermore, the Nanticoke Lenni-Lenape tribe has resided as distinct tribal entity in its ancestral homeland since before European contact. This increases the likelihood that documentation will be available illustrating the existence of the tribe, such as maps and census records. It is also more likely that members of the outside community are aware of the tribe and its history. Members of the Sand Hill Band of Indians, on the other hand, have not always resided in Monmouth County. Members of the tribe can trace their lineage back to the Cherokee Indians in Georgia (C.G., personal communication, Sept. 21, 2009). Also, for the most part, the tribe has assimilated into the surrounding population. This makes it more difficult for the tribe to find documentation that supports its existence as a tribal entity in Monmouth County for the time period required by the BIA and OFA.

Conclusion

There are certain limitations of this research that must be addressed at this point. Because the Nanticoke Lenni-Lenape and Sand Hill Band of Lenape and Cherokee Indians are the primary focus of this research study, all of the opinions and information represent the viewpoints of the tribal members of these tribes. Given the small size of the sample interviewed, the perceptions of the process presented in this study cannot be extrapolated to the general Native American population. Furthermore, the Nanticoke Lenni-Lenape tribe is just one of the many Native American tribes that have previously applied for or are currently applying for federal recognition. While there may be some similarities between the experiences of different tribes, the Nanticoke Lenni-Lenape tribe's experience is individualized to it specifically.

Future research should focus on conducting separate studies of other tribes in the Mid-Atlantic region currently applying for federal recognition. Generalizations could not be made unless multiple tribes from different geographical areas within the United States were the focus of a study. Also, it would beneficial to have a follow-up study of the Nanticoke Lenni-Lenape after the tribe's petition has been reviewed by the Office of Federal Recognition. This study could examine the tribal members' reactions to the Office of Federal Acknowledgment's ruling on their application. It would also be interesting to study how the outcome of the process influences tribal activities and future decisions regarding federal recognition.

The Nanticoke Lenni-Lenape Tribe has an extensive history can be proven through methods of documentation that can be submitted with an application for federal recognition. There are seven main criteria a petitioning tribe must meet in order for it to receive recognition from the federal government. When a tribe submits an application, it is reviewed by a team created from the staff of the Office of Federal Acknowledgment. After the team members review the information, they ask the members of the tribe's surrounding community for their opinion on the tribe. If a tribe is denied recognition, it has the opportunity to resubmit a petition after making the necessary changes.

For the Nanticoke Lenni-Lenape, the federal recognition process has been a very long and tedious process. It has involved almost thirty years of continuous work to collect and assemble documents supporting the tribe's ability to meet the seven mandatory criteria. Throughout the process, the tribe has seen the standards applied by the BIA and OFA change continuously. Although the Office of Federal Acknowledgment has proposed

and made some changes, the changes have been insufficient in addressing many of the concerns the members of the Nanticoke Lenni-Lenape Tribe has with the process. However, the tribe has decided to pursue federal recognition for the many benefits associated with the process, including tribal sovereignty, the preservation of tribal culture, and the eligibility for federal resources.

Unlike the Nanticoke Lenni-Lenape Tribe, the Sand Hill Band of Lenape and Cherokee Indians does not feel federal recognition is necessary. The Sand Hill Band of Indians is content with the decision to preserve tribal culture but assimilate into the surrounding community. The tribe has many perceptions of federally recognized tribes that influence its decision not to pursue federal recognition. On the other hand, the Nanticoke Lenni-Lenape refute many of the points the Sand Hill Band of Indians make. There are many justifications for these differences in opinion. These differences capture the heated debate that surrounds the issue of federal acknowledgment.

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Students' Rights or Wrongs? Consequences of Supreme Court Decisions on Students' Free Speech and Search Rights in Public Education

Lindsey Melody
Monmouth University

Abstract

This project seeks to examine the actual effects of landmark decisions in students' free speech and search rights cases on education policymaking and implementation. A great deal of research exists on the cases themselves, as well as on the interpretations of the court opinions, but there is proportionately less information on the effects—negative or positive—that the call for policy change has had on school administration. This project aims to emphasize what happens once changes to education policies have been formulated and are implemented, rather than what they theoretically aim to accomplish. Students' rights is an important and delicate arena, and the long-term effects of litigation are in further need of analysis. In addition to examining cases, subject-matter experts weighed in on whether changes to free speech and search policies have had an effect on school discipline. The results suggest that education policy is a reactive field; it is only when an incident occurs that a policy is re-examined. This suggests that there may be significant challenges associated with detecting whether characteristics of the school environment are caused by these policy changes or whether they are due to other factors.

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The role of the Supreme Court of the United States in policymaking is one that is both indirect and enormous; although not officially a policymaking body, the Court's rulings dictate what is not permitted under the Constitution. As a reactive institution, the Supreme Court's role is to address already enacted laws that are of questionable constitutionality. Judges, especially those who preside over the highest bench in the country, are expected to be objective and to say what the law is, rather than what it should be. Strict adherence to interpreting what the current law means is considered exercising "judicial restraint", while "judicial activism" reflects what a judge believes that law should mean. Many decisions can be viewed as being examples of either term and the language of the opinion can have a greater impact than the actual ruling. Such ambiguity raises questions as to whether the decisions are based on judicial preference. However, in cases concerning civil liberties—particularly those of minor-aged students in public schools—justices must be particularly careful in the language and rationale of their rulings, as the changes made to these policies can elicit unpredictable consequences.

This project will seek to examine the actual effects of landmark decisions in students' free speech and privacy rights on school discipline. A great deal of research exists on the cases themselves, as well as on the interpretations of the court opinions, but there is proportionately less information on the effects—negative or positive—that the call for policy change has had on school administration. Much research focuses on an assessment of the models or theories used by justices to make their rulings, but little exists on how these rulings have changed the environment of schools as learning institutions. Free speech and privacy conflicts between students and school officials can have a major impact on the learning process, especially if the boundaries between student and school power are unclear. This project aims to emphasize what happens once changes to education policies have been formulated and are implemented, rather than what they theoretically aim to accomplish. Although a justice can anticipate what effects his or her ruling will have once implemented (a demand for change is arguably the goal of civil rights litigation and rulings), he or she cannot foresee all the short-term and long-term effects of it. Students' rights is an important and delicate arena, and the long-term effects of litigation are in further need of analysis. The unintended consequences of changes to education policy could have drastic effects on the ways in which our learning institutions teach and discipline young people who will eventually become participants in society.

Project Description

This project is comprised of three major areas of discussion, all of which are necessary to understanding the evolution of students' constitutional rights in school and how those changes have actually affected administrative practices. The project will begin with a discussion of the role of the federal court, particularly the Supreme Court of the United States, in indirectly and directly influencing policymaking, especially concerning civil rights and liberties. It will then discuss the role the Court has played in affecting educational policies concerning the free speech and privacy rights of students while in school. An evaluation and discussion of the text of each of the Court opinions will provide an impression of the Court's view of the educational mission of public schools, and the overall trend among case rulings. The Project will then use information retrieved from interviews with lawyers specializing in education law and with school administrators as data that will illustrate how "there are important links between legal conceptions and social consequences" (Horowitz, 1977, p. 107). Finally this study will consider whether the theoretical models employed by the Courts have produced unanticipated results in the school environment, thus presenting complex challenges for educational practitioners.

The Court and Social Policy

This project will begin with a discussion of the role of the appellate courts in social policymaking. It is important to understand the way in which the courts work, their explicit powers and purpose, and how their roles in the policymaking process have changed since their inception as institutions. Policymaking, an enumerated power of the legislature, is a highly complicated process which is not exclusively influenced by the governing body of Congress. There are many actors who play a major part in the formulation and implementation of new and amended policies, which come from both the private and public sectors and which vary in degrees of involvement and effect. Federalism dictates that there be a separation of powers among the three branches of government, and the Constitution sets forth explicit powers, as well as boundaries, for the executive, legislative, and judicial branches. Of the three branches, the judiciary, most specifically the Supreme Court of the United States, holds the least amount of power in policymaking. It is expected to be a reactive institution rather than a proactive one and to act only when necessary in order to protect the rights of all Americans from the government.

Despite its narrow powers, the Court has had an expansive and often radical effect on policy when it does decide to intervene; cases such as *Marbury v. Madison* (1803) and *Plessy v. Furguson* (1896) illustrate how drastically a single ruling can affect current and subsequent policy and indeed have consequences that are unforeseen by the ruling justices. The extent to which the courts seek to change policy or have a particular policy agenda in mind is debatable. Research has suggested that the courts have played a bigger role in policymaking, particularly social policymaking, in recent decades: "The courts have tended to move from the byways onto the highways of policymaking" (Horowitz, 1977, p. 9). The Civil Rights era brought about great change among citizens and demands for more tolerance and respect for equal rights for everyone. This demand for equal access and rights quickly moved from the wills of the people to the courts; cases such as *Heart of Atlanta Motel, Inc. v. United States* (1964) prohibited discrimination in commerce of individuals based on race, while *Brown vs. Board of Education* (1954) challenged the implicit discrimination of Black students in segregated education. While it was adults who were challenging the status quo and bringing landmark cases to the immediate attention of the Supreme Court, students' rights did not go unnoticed during this period.

Public Education in the United States

The first publically funded school in America—well before it became the United States of America—opened in 1635 in Boston, Massachusetts. Thomas Jefferson, over one hundred fifty years later, proposed a public school system for elementary education (Good Schools Pennsylvania, 2007), illustrating a compelling interest in an educated population. Massachusetts was the first state to implement the public school system that is the foundation of our current one, and it influenced other states to adopt elementary public education for their children. By 1865, nearly all the states provided funding for public education, and by 1918 all had compulsory laws for elementary education. Fall 2009 was expected to see nearly fifty million students attending public elementary and secondary schools (National Center for Education Statistics, 2008). Each fall will bring an even greater number of students to the doors of public schools.

There has been great debate over the "educational mission" of public school institutions which, arguably, has become more passionate in the last several decades. Interestingly, the Department of Education does not have a general mission statement for the purpose of public education—that is, a philosophy that expresses the primary goals of the federal public education system. The federal government's role in education has traditionally been

supplementary: "It is States and communities, as well as public and private organizations of all kinds, that establish schools and colleges, develop curricula, and determine requirements for enrollment and graduation" (US Department of Education, 2009). The purpose of public education, prima facie, is assumed to be that of instilling knowledge and skills in American students; however, schools also act as institutions for socialization, and the role they play in this way has yet to be fully defined by any federal authority, including the Supreme Court. This leaves their mission vulnerable to vast interpretation at the hands of those who have the ability to effect education policy according to personal preference.

Education Policy and the Court

Until *Brown v. Board of Education* (1954) and the Civil Rights movement of the 1950's and 60's, federal intervention in public education policy was minimal, acting primarily as supplementary funding for districts and schools governed by state laws. *Brown vs. Board of Education* was the first major case that challenged education policy and questioned the extent of students' rights within schools. Traditionally, education law and policy has been an area of practice left to the discretion of the states. The Constitution does not mention it as an enumerated power of the federal government, and education decisions are therefore left to the states until the federal government feels a need to intervene. The specifics of curriculum, disciplinary policies, and definitions of appropriate behavior for students had traditionally been decided by local districts in compliance with state-mandated subjects and standards.

Education policy is an area of law in which those treading must do so lightly and with great consideration. Curriculum and students' rights have been the focus of the attention of the courts concerning this area, and the First and Fourth Amendments have been discussed more widely and deeply than nearly all other rights and have had the greater and more immediate impact on administrative procedures. These decisions affect students during their most formative years, and the impact policy changes have on the development of young people could have major consequences when they become adults.

This project will evaluate the opinions and justifications of the rulings in the following seven major Supreme Court cases on students' free speech and privacy rights within the school environment: *Tinker v. Des Moines Independent School District* (1969), *NJ. T.L.O* (1985), *Bethel v. Fraser*(1986), *Hazelwood School District v. Kuhlmeier*(1987), *Vernonia v. Action* (1995), *Morse v. Frederick* (2007), and *Safford Unified School*

District v. Redding (2009). The question of whether students who are typically minors in public schools are entitled to the same free speech and privacy rights of adults in public is addressed in all of the aforementioned cases. *Tinker, Fraser, Hazelwood,* and *Morse* deal with First Amendment rights of students in school: freedom of speech and expression. *T.L.O., Vernonia,* and *Safford* concern the right to and degree of privacy of students from school administrators.

Free speech and freedom of expression.

Tinker is the most notable of the free speech/expression cases, as it was the first time students were acknowledged as having the right to express their personal or political views in a non-disruptive manner. *Tinker* created its own "test" to determine validity and "reasonableness" of a school's policy or an administrator's actions. *Tinker* contains one of the most commonly cited lines in students' rights litigation: "It can hardly be argued that students…shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines School District*, 1969, p. 2). It opened the gates for students and their parents to challenge the authority of school administrators to suppress speech and expression however and whenever they like. The ruling also made it necessary for administrators to prove that their actions to censor or prohibit student speech were necessary to prevent disruption in the school environment. This placed the burden of proof upon administrators, rather than on students, shifting near absolute power away from administrators.

The remaining free speech cases also set major precedents, volleying power between students and administrators and illustrating the Supreme Court's internal debate and indecision as to the social purposes of educational institutions. The literature on the Court's perspectives of the educational mission of public education focuses primarily on two models: the social reconstruction model and the social reproduction model. The social reconstruction model follows that schools, as institutions, are designed to give students the tools necessary to transform and influence their society (Dupre, 1996, p. 53). Social reproduction follows that schools are institutions that teach students social norms, values, and expectations, as well as how to assimilate into society (Dupre, 1996, p. 53). The model that the justice (or justices)writing the opinion appears to follow has a great impact on the way that he or she explains the rights and roles of students and administrators and how he or she interprets the constitutional question. This interpretation, naturally, affects the way new policies are shaped in efforts to be compliant

with the court's ruling and how they will reflect the intentions of the Court in that very specific area.

Expectation of privacy and student searches.

Those major cases dealing with the expectation of privacy students have in school perhaps have more direct effects on the amendment of school policies than those with fewer procedural restrictions, such as regulation of speech. The constitutionality of student searches and drug testing often depends on the very specific measures of a search or the context within which a drug test is ordered, rather than more abstract, qualitative determinations, such as intent to disrupt or conflict with a particular school's educational mission. As in its rulings regarding free speech, the Court has ruled inconsistently in Fourth Amendment student search cases in public schools, making this particular area of students' rights very tempting to those seeking to identify the Court's position on the duties of public schools.

New Jersey v. T.L.O. (1985), *Safford United School District v. Redding* (2009) and *Vernonia v. Acton* (1995) involve administrative searches of students while in school and mandatory drug testing of student athletes. The expectation students have to privacy while in school sometimes conflicts with the duties teachers and school administrators have to ensure a safe and secure environment for all of their students. The rationale a school administrator must have for the search of student's person or personal possessions must reach a certain criteria and follow a specific procedure; each time the Court makes an amendment to this process, school administrators must create new procedures according to the new standard, as well as educate their faculty as to the appropriate steps. This could have major implications for the degree of order administrators are able to maintain in school, as well as for disciplinary philosophy and procedure.

Implications to Changes in Education Law

With each change to a policy, large or small, there are an infinite number of unanticipated consequences that could result from any given amendment. The Court is not designed to offer specific policy suggestions and justices are not expected to pursue their own policy preferences Alexander Hamilton in Federalist 78 argued that Court is bound by precedent, and its strong independence from the legislature and President is designed to keep it impartial. Because the Court determines only whether a law is constitutional, it is up to the state boards of education and school districts to figure out how best to design and implement new policies that will respect the rights of students to the best of their abilities. As they do with

any law, Congress and other traditional policymakers approach the formulation of a policy with the intent to solve an identified problem with a set of specific steps. Each policy will have intended short-term and long-term goals and methods for evaluation policies after they have been implemented. Of course, when the policy is evaluated, it is often found that there have been unanticipated effects on other policies or the public. When it is the Court, however, forcing changes to policy, it does not take part in the design, execution, or evaluation of a policy; it just provides the theoretical framework for others to follow. This, especially in the realm of students' rights, has the potential for a great degree of unintended consequences within the school environment and present additional challenges for school administrators. The researcher seeks to explore those changes to education policy which have been most influential, the Court's intentions with its rulings, and the possible existence of a discrepancy between the purpose of a law and its practical application and results.

Literature Review

It is indisputable that the Supreme Court had become much more active during the twentieth century, especially in the realm of social policy and civil rights. Previously, the Court had only granted certiorari to very specific cases concerning civil rights. The power of policy lay in the hands of Congress and of the states with little intervention from the federal government. The Supreme Court traditionally addressed constitutional questions concerning the extension of federal power over the states and in contracts, but had almost no hand in debates concerning the civil rights of individuals. It has avoided hearing cases that concern "political questions," which would require it to interfere with the actions of the other branches of government or with issues that are best solved through the political process. The literature discussing the ways in which the Court affects social policy—and subsequently the rights of students in public schools—and the effects of those decisions vary, but scholars appear to agree that students' rights remains a murky area the Court has done little to make clear (Friedman, 1986; Strahan & Turner,1987; Laycock, 2008). Further, the effects of these decisions on the administrative practices of school officials and on students' behavior are neglected. Friedman (1986) summarizes it best when he explains that "despite what courts say, we know little about students' rights in practice…We are even more in the dark about the real world of the classroom"(p. 238-239). Scholars also do not foresee resolutions between conflicts of "conscience…state legislative acts…and the First Amendment"

(Strahan & Turner, 1987, p. 14) and a clearly delineated rule guiding the rights of minors in school in the near future.

The Supreme Court and Social Policymaking

The Supreme Court is designed and expected to be a neutral, reactive authority acting as a check on the powers and actions of the legislative and the executive branches. Removed from the partisan politics game, the justices of the Court are expected to be objective; scholars debate, however, the degree to which a judge's personal biases and policy preferences influence his or her decisions. Judge Aldisert (2010) argues that judges must "screen out personal bias, passion and prejudice, and attempt always to distinguish between a personal cultivated taste and the general notions of moral obligation" (p. 8). This concept, however, is seen as idealistic by many legal scholars, who have conducted studies which suggest multiple decision-making models within the Court. Segal and Spaeth (2002) discuss the attitudinal model, rational choice model, and legal model in the context of judicial activism and judicial restraint and the pursuance of policy goals, particularly in the realm of social policy and civil rights.

According to Hurwitz and Lanier (2004), "few social scientists today would argue…that the courts are not involved in the policymaking process" (p. 429) and Segal and Spaeth (2002) concur, arguing that even justices recognize their policymaking powers. Hurwitz and Lanier (2004), as well as others, cite Pritchett's 1948 study on judicial policymaking and outcomes which suggests that the courts are "political institutions" which have "tangible effect[s]" on public policy (p. 429). Horowitz (1977) supports this argument when he discusses the Court's expansion into "unfamiliar territory" (p. 5) and that individual cases have become subordinate to judicial policymaking for larger problems. He, as well as Epstein and Knight (1998), Segal and Spaeth (2002), Romero (2002), Hurwitz and Lanier (2004), and Aldisert (2010), acknowledges the power of the courts to effect policy and the many ways they pursue their own policy preferences. Scholars agree that judicial restraint and judicial activism are practices by both liberal judges (who are usually more activist) and conservative (who usually exercising more restraint)(Horowitz, 1977; Segal & Spaeth, 2002;Romero, 2002; Hurwitz & Lanier, 2004) and that justices use the court as means to achieve their policy goals (Epstein & Knight, 1998).

Horowitz (1977) argued that the Court has moved from the "byway" to the "highway of policymaking" (p. 9) and more recent scholars support that point with more retrospective analysis. West & Dunn (2009) conclude that the courts' roles in social policymaking greatly expanded during the rights revolution of the 1960's as the public called for "total justice" and funded advocacy programs flourished, which stretched the federal judicial system's arm into every branch of policy, including education.

Public Education in America

Federal court intervention and regulation of elementary and secondary education were rare until the mid-twentieth century (Melnick, 2010, p. 17). Strahan and Turner (1987) discuss the common-law doctrines America inherited from England and France which recognize the rights and responsibilities of parents, including their duty to provide their children with education that would be "suitable to his or her station in life" (p. 3). Schools were expected to be both second homes for children and places where they would be taught by educated and moral instructors and learn discipline and proper conduct. Additionally, and most importantly perhaps, schools would help students develop characteristics that would enable them to be "productive and democratic citizens"(Swidler, 1986, p. 92). Public education was "a kind of nation-building through the creation of virtuous citizens" (p. 93). Schools were expected to teach students how to treat others with respect, to adopt basic democratic values and other skills they might need in order to assimilate to and participate in society in a civil manner (Friedman, 1986; Dupre, 1996; Laycock, 2008).

Scholars of education policy note that the Supreme Court has consistently referred to a public school's "educational mission" but has failed to fully define and explain that mission (Swidler, 1987; Dupre, 1996; Laycock 2008; Garnett, 2008; West & Dunn, 2009). This is not altogether surprising, however, as many seem conflicted about the responsibilities and the mission of the public school system; not even the United States Department of Education has an explicit mission statement for example. Public education, however, has two general primary purposes: to provide the students with basic learning skills and to provide them with civic socialization (Friedman, 1986; Dupre, 1996; Laycock, 2008; West & Dunn, 2009). The types of basic knowledge taught in schools is still an area of some

contention; the much more convoluted questions lie, however, in the degree to which schools are responsible for socializing children, and with what ideals and values (Laycock, 2008).

Dupre (1996) discusses two models of school power and argues that the Court's conception of public school's institutional social responsibility bounces back and forth between the two models. The social reconstruction model sees the school as an institution that "needs power only to facilitate the students in their attempt to construct a new social order" (p. 53) and encourages students to identify the flaws in society and effect a new and improved social order. The idea of schools as institutions for teaching children how to change their societies is a new concept (Dupre, 1996; Swidler, 1987), as is the idea that education should be based on the needs of the child rather than on the traditions of society. This model views the student-teacher relationship as adversarial, with the teachers inhibiting the students from individual growth by forcing tradition on them.

The more traditional model of school power- the social reproduction model-views public education as the best institution for inculcating the students with the social values and skills that will help them best assimilate as adults (Dupre, 1996; Swidler, 1987; Laycock, 2008; Dunn&West, 2009; Friedman, 1986). The school is seen as an extension of the family and teachers and administrators as substitutes for parents. Under this model teachers and administrators must possess power similar to that of parents. Early education was informal—apprenticeships and private tutoring—and order, discipline, and respect were thought essential to the process. Schools were expected to teach students the basic tenets of republican society so that, when they became adult citizens, they could uphold its political institutions (Dupre, 1996; Laycock, 2008; Tyack, 1986).

Scholars argue that the Court has done little in its decisions to clarify the "basic educational mission" of schools, which has made determining exactly what values public schools should teach very ambiguous (Friedman, 1986; Dupre, 1996; Laycock, 2008; Garnett, 2008; West &Dunn, 2009). Some, like Dupre (1996), see order and discipline in schools as an integral part of the education process; others, like Laycock (2008), are suspicious of the extent of the government's authority in schools to indoctrinate students with majoritarian ideas.

The Court and Education

Prior to the twentieth century, litigation in the area of students' rights was very rare, and those cases that were brought were in the interests of parental powers to make choices for their children. Teaching of religion in schools, compulsory education laws, and disciplinary practices made up the majority of cases, with the Court often ruling in favor of the school unless the rules were "unreasonable" or the punishment too severe: "Parents' rights were distinctly subordinate to the power of local majorities to mold the character of local schools" (Kirp & Jensen, 1986, p. 241). Further, scholars frequently discuss the concept of *in loco parentis* or *parens patriae*, which means that the school has the authority to act as a guardian concerning the welfare of children while in school (Friedman, 1986; Strahan & Turner, 1987; Dupre, 1996; Laycock, 2008; West & Dunn, 2009). The Court and society viewed public schools as social institutions responsible for molding the characters of young people in addition to educating them and, as the states had vested interests in educated citizens, began to allow for compulsory education laws (Strahan & Turner, 1987, p. 5).

With the advent of compulsory education laws, parents began to take issue with the curriculum and practices within the schoolhouses of their children. Tyack (1986) concluded that court "decisions usually favored majority rule over the individual rights of conscience" (p. 220). This eventually led to further legislation regulating vaccinations, curriculum, and other regulatory issues. Generally, students who dissented (or students whose parents dissented) and brought the dispute to court were not victorious, and the courts upheld the power of the schools to determine what is in the best interest of their students: "Conformity, or obedience, was a virtue, and democracy depended, not on the wilder excesses of 'individualism', but on a kind of balanced self-control" (Friedman, 1986, p. 241). *Minersville v. Gobitis* (1940) ruled that Jehovah's Witnesses, for example could be mandated to salute the flag despite their religious objections.

Court decisions such as *Meyer v. Nebraska* (1923), *Pierce v. Society of the Sisters* (1925) and *West Virginia Board of Education v. Barnette* (1943) illustrated progress in the way of parents' rights to "direct the upbringing and education of children under their control" (Tyack, 1986, p. 223). Tyack (1986) and Melnick (2009) discuss the rights of parents to choose which schools to send their children to, as well as to excuse them from school practices such as prayer and flag salute. Tyack and Melnick

further suggest that the protection of individual rights of parents and students was superior to the need for national unity and a homogenous society.

Students' Rights

Friedman (1986) notes that there was not one case before World War II concerning students' rights that made it to a federal court (p. 242). Tyack (1986) found that the 1940's and 1950's saw great increases in students' rights cases—112 cases between 1946-56 and 729 between 1956-65 made it to federal courts. It was in the 1960's, however, that cases concerning the civil rights of students naturally increased the most with 1276 cases between 1966-76 (p. 229), establishing a permanent and prominent position on the Court's agenda. Friedman (1986) argues that, as it is only appellate cases that are reported, known students' rights cases may be the "tip of the iceberg" (p. 238). Friedman describes students' rights as becoming increasingly judicialized, which is the "process of converting disputes or conflicts into court cases" (p. 239). Melnick (2009) notes several reasons for the shift of education policy to the courts, including the famous *Brown v. Board of Education* (1954) case, the inclusion of the Bill of Rights in the due process clause of the Fourteenth Amendment, civil rights legislation of the 1960's, and the expansion of the federal government's role in education policy (p. 17). *Brown* opened the door for litigation in an area previously untouched by the federal courts—the civil rights of individual minor students in public institutions. Scholars are careful to note, however, that the Court has repeatedly stated that the "constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings" (Garnett, 2008, p. 105), leaving students' rights, particularly in the realm of free speech and privacy, to be incrementally defined case by case.

Free Speech. Although expansion of students' rights to school choice and religious freedom in schools preceded *Tinker v. Des Moines* in 1969, scholars agree that "[t]he simple statement in *Tinker v. Des Moines*…that 'students do not shed their constitutional rights…. at the schoolhouse gate' is not self-evident as appears at first glance, it is actually a startling shift in doctrine and attitude" (Friedman, 1986, p. 245; Dupre, 1996; Laycock, 2008; West &Dunn, 2009). The 1960's are credited with "launching a new breed of more activist students"(Hudgins & Vacca, 1985, p. 319) and, despite the landmark cases in student expression, "the expression freedoms allowed public school students have not been fully and comprehensively tested" (p. 320) even today. The most frequently cited

student speech cases are *Tinker v. Des Moines* (1969), *Bethel v. Fraser* (1986), *Hazelwood v. Kuhlmeier* (1988), and *Morse v. Frederick* (2007).

Tinker set the precedent for student speech cases, but the Court has noted several instances when a school is reasonably allowed to restrict student speech. Waldman (2010) explains that the Court's standards for restricting speech include speech that is distributed through a school sponsored medium for which the school has a "legitimate pedagogical reason"; speech that is significantly disruptive to schoolwork or if it violates other students' rights; speech that is offensively lewd or indecent or if it can be reasonably interpreted as encouraging drug use (p. 1). Laycock also notes that the Court accepts restrictions of student speech that advocates for violating school rules (p. 122). Strahan & Turner (1987) found that in *Fraser* the school officials must have a reasonable basis for interfering with student speech. Strahan and Turner (1987) and Laycock (2008) discuss in detail how schools are not permitted to restrict speech because of an unpopular or controversial political or religious position. Those types of speech are at the heart of the First Amendment, and the burden of proof now lies with the school officials.

Friedman (1986), West (2008), Laycock (2008), Dunn (2009) and others discuss how the landmark free speech cases have done little to clarify what "substantial disruption" includes, as well as how to determine if and how the restrictions on speech are contrary to a school's "educational mission"; it is difficult to clearly establish whether a student's speech is being suppressed because of its controversial position. Friedman (1986) and Dupre (1996) argue that these landmark decisions and the Court's vague language have greatly decreased the authority of administrators, placing more power in the hands of students. Laycock (2008) argues, however, that more recent decisions such as *Morse* have given the government—through school administrators—too much power and discretion because they are so vague. Citing Justice Alito, Garnett (2008) also expresses concern that the regulation of student speech which may conflict with a school's mission is immensely dangerous. West (2009) agrees with Laycock (2008), expanding his argument to include the acknowledgement that *Morse* extended the physical scope of school power to events outside of the schoolhouse. Scholars seem to agree, however, that the Court has tried to balance students' speech rights with the school's responsibility to maintain an ordered and

effective educational environment, but that students' rights vary greatly depending on the situation.

Privacy and Search. The realm of student privacy and searches while in school is far less nuanced than that of free speech and expression, and the Court has clarified definitively a number of acceptable—and unacceptable—search procedures. Strahan & Turner (1987) and Hudgins & Vacca (1985) found that the Court in early decisions did not feel that the Fourth Amendment protection against unreasonable searches and seizures was applicable to students for several key reasons: school officials were not agents of the state but private citizens; the 'in loco parentis' doctrine gave school officials similar authority as parents; and that some courts have allowed more freedom of search if the students would not be charged with criminal activity. Strahan & Turner (1987) go on to explain that since *N.J. v. T.L.O.* (1985) these standards have become obsolete. Students are not entitled to the same Fourth Amendment rights as adults, but a search must be reasonable in regards to objectives and procedure. As is the case with student speech, much debate revolves around what is "reasonable," and that determination is almost always what establishes the validity of a search (Laycock, 2008; Dupre, 1996; Arum & Preiss, 2009). *Vernonia v. Acton* (1995) asserted that drug tests of athletes are permissible because they serve a narrow purpose in the best interest of the health of student athletes. In both of these major cases the Supreme Court reversed the lower courts' decisions and supported the schools (Arum & Preiss, 2009). The most recent landmark case in student searches is *Safford Unified School District v. Redding* (2009). Though there is little published literature on this case yet, a great deal is to be expected, as it more narrowly defines the appropriate extent of a reasonable search.

Conclusion

Although the Court has taken an active interest in student civil rights in the past several decades, expanding students' rights in the areas of free speech and protection of privacy, the justices have avoided giving students equal rights of adults in public places, noting that "schools have special characteristics" (Garnett, 2008, p. 104). Many justices are hesitant to becoming too deeply involved in education policy and to change the environment too drastically; West and Dunn (2009) cite Justice Jackson as early as 1948 warning the Court against "establishing themselves as a 'super board of education for every school district in the nation'" (p. 3).

Additionally, West and Dunn explain that when the Court's decision has called for a change in policy "primary responsibility for public education continues to rest with the state and local government" (p. 8) to implement that change in policy and try to make it work. Some scholars, like Garnett (2008), report that school officials have a very difficult time in determining the necessity and appropriateness of suppression, as well as the reasonableness and extent of the search.

As the Court has been vague in its remedy suggestions, school officials have experienced great difficulty and confusion when enacting new policies. Scholars agree that students' rights, most especially in free speech/expression and privacy, is an extremely nuanced and delicate area and one in which little can be predicted (West& Dunn, 2009; Laycock, 2008; Garnett, 2008). Dupre (1996), and Arum and Preiss (2009, 2010) argue that students now hold a great deal more power in the classroom than teachers and that this has had significant and enduring effects on the school environment and educational process. There are volumes written assessing the Court's role in social policymaking, its role in education policy, and even its hand in students' rights policymaking; the research is negligible, however, in assessing and evaluating the ways schools and administrators have tried to amend their policies and practices to suit Court decisions and the effects these changes have had on the school environment. A great deal more research into the real effects of students' rights litigation is necessary to understand better how inconsistent shifts in the authority of school officials has shaped the classroom and affected students.

Methodology

This project will cite information from over thirty critical articles, books, authoritative websites, and original texts of Supreme Court opinions on judicial policymaking, public administration, school discipline, and analyses of the case decisions. These sources will provide the support for an in-depth discussion on the role of the Court in social policymaking in education and on intended effects of Court decisions. The source will also help preface a discussion on the unintended consequences of students' rights litigation on the school environment, for which information will be gathered through interviews with individuals who are experienced with both legal procedure and administrative procedures.

The Court cases to be analyzed were selected because of the constitutional issue in question and the frequency of reference in literature

about students' rights. Each case concerns students' rights, either in a possible violation in the free speech rights of students or of privacy rights. Four have been selected concerning First Amendment rights: *Tinker v. Des Moines Independent School District, Morse v. Frederick, Hazelwood v. Kuhlmeier,* and *Bethel v. Fraser;* and three concerning Fourth Amendment rights: *N.J. v. T.L.O, Vernonia v. Acton,* and *Safford v. Redding*. These major cases will be introduced, summarized, and analyzed for an understanding of the intended results of the justices. This will be established by the language in and ruling of the Court's decisions, as well as the rationale for those decisions. The researcher will also discuss the rulings in the context of judicial activism or judicial restraint, seeking to determine whether the decisions intended to redefine the mission of public education and the role of free speech and privacy in public schools.

The results will be used to shape subsequent interviews with key informants, including an education law attorney, two former principals and current professors of education, and an assistant school superintendent. The interviews will be used in an investigation into the way changes to education policies affect administrative practices as well as the overall climate of the public school. The study will be qualitative, most closely following the grounded theory method. The professional opinions of both attorneys and school administrators will be analyzed for patterns and similarities and reported in a discussion comparing all the results of interviews. The conclusions reached by the researcher as to whether students' rights legislation has had unintended effects on the practices on school administration will be based upon the data collected through speaking with attorneys and school administrators.

The key informants will be selected via "snowball sample." A snowball sample is used when members of a desired population are difficult to locate and the researcher, having located a few of the members of a targeted population, asks them to refer her to or give information about other members with whom she can speak (Babbie, 2001, p. 180). The key informants in this sample will be an attorney specializing in education law, professors of education who have former experience as school administrators, and a current assistant superintendent. These individuals were chosen because they have experience in both legal procedure in public schools and knowledge of how policies are implemented, enforced, and handled in challenging situations. The researcher believes that the information retrieved from interviews and discussions with an attorney specializing in the relevant field of law will shed light on the technical and legal changes to policies and

inquire about subsequent litigation in students' rights. The attorneys will be asked about the most influential cases in education policy as well as about the way they have affected the public school environment. The data gathered from these key informants will also give the researcher an understanding of the changes in administrative legal boundaries in students' rights and subsequently shape the questions she will ask school administrators regarding their experiences as practitioners.

School administrators will be selected by predicted degree of experience-i.e., former or current principals, teachers, or superintendents are preferable. The researcher will seek out those school administrators who will have first-hand experience in handling challenges to free speech or privacy policies and who can comment on the current school climate and status of discipline. School administrators will be asked about the ways in which policy changes have affected the school environment, including the potentially unintended consequences they have observed and the challenges that they have experienced after new policies have been enacted. Interviews with administrators will be collected and will serve as data towards answering the question whether there have been unintended consequences of Court changes to education policy in students' free speech and privacy rights. **The interviews will be transcribed and the researcher will analyze them for themes and disagreements among the responses, discussing them as they relate to the key Court decisions and other research presented in the project. The researcher will use the themes found during the analysis to direct a discussion about whether unintended consequences of the decisions have manifested in public schools, how they have affected policies, and how that has affected the ability of administrators to do their jobs. Quotes and examples from the interviews used in the analysis/discussion will not be linked to the individual participants, but rather to the respective professional roles.**

Findings

Free Speech Cases

Tinker v. Des Moines (1969). This project will look at the Supreme Court majority opinions to investigate the rationale of the Justices for ruling the way that they did. It is important to look at the language, intent, and principles of the Court opinions, as they are the catalysts for policy change and are what direct the way legislators formulate their policies and subsequently how administrators handle instances of uncertainty in balancing students' rights with order in the classroom and schools.

Tinker v. Des Moines School District in 1969 produced what is arguably the most famous Supreme Court quote in students' rights litigation and which has become the principle by which all subsequent students' rights cases are measured: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (Tinker v. Des Moines, 1969, p. 2). *Tinker* set the precedent in students' rights violations cases in that it, for the first time, placed power in the hands of the students, rather than in those of school officials. *Tinker* was also groundbreaking in that it affirmed that an individual's constitutional rights are applicable in all public environments, including school (Dupre, 1996; Laycock, 2008; Garnett, 2008).

Tinker occurred at the height of the Vietnam War, during an intensive and divisive time in US history. Young people, especially students, became very active politically, and college campuses in particular were forums for anti-war rallies and other forms of public expression (Hudgins & Vacca, 1985). Institutions of higher education, albeit public ones, were generally more liberal in their speech codes and free speech restrictions, due perhaps to the voluntary nature of higher education and the adult status of nearly all students.

John and Mary Beth Tinker, a high school and junior high school student, respectively, under the permission and guidance of their parents, displayed their objections to the Vietnam War and support of a moratorium by donning black armbands from December 16th until after the New Year. Their school district, having been made aware of their plan to protest, prohibited all students from wearing armbands and threatened to suspend those who violated this policy. All the students were made aware of this new policy. John and Mary Beth Tinker and their friend Christopher Eckhardt wore their armbands to school and were suspended until they came to school without them. The Tinkers did not return to school until after the agreed upon period.

The Tinkers' and Eckhardt's fathers filed a complaint against the school district, arguing that their children's First Amendment rights had been violated and seeking an injunction preventing the school officials from punishing the children, as well as nominal damages. The District Court rejected the complaint and found the school's choice to prohibit students from wearing armbands in order to prevent disruptive behavior reasonable. The Tinkers appealed to the Court of Appeals for the Eighth Circuit, which

could not come to a decision and affirmed the District Court's decision. The Supreme Court granted certiorari.

The Court's opinion discusses the decision of the District Court, explaining that the wearing of an armband is a form of symbolic speech, which is considered the most "pure" form of speech- that is of a political nature; political dissent and expression, along with religious speech, are at the heart of the First Amendment. *Tinker* not only brought students' rights to the forefront of policy discussion but also became the case by which all subsequent student speech conflicts are measured. Justice Fortas and the Court struck down the District Court's decision that the Tinkers had the right to wear armbands protesting the Vietnam War regardless of the "fear" of a confrontation it may have inspired. Fortas reasoned that any form of expression that deviates from that which is common may inspire fear or disruption. He writes that speech cannot be struck down simply because it is contentious or supports a controversial viewpoint; rather, he reasoned that unpopular viewpoints and openness are "the basis of our national strength and of the independence and vigor of Americans" (*Tinker v. Des Moines*, 1969) and are essential to a free society. The problem lies not with students exercising their right to free expression but rather with students exercising their "First Amendment rights" which collide with the rules of school authorities" (p. 3). Fortas and the Court acknowledge the special characteristics of schools, which make them different from any other type of public forum, but agree that that does not allow schools to suppress arbitrarily student free-speech.

The Court's decision in *Tinker* is arguably one of judicial activism. This suggests that schools are not merely institutions for strictly academic pedagogical learning, but they can also serve as forums for political debate and discussion for students as long as the forms of expression exercised do not disrupt the educational process. This was a significant step away from the traditional view of the public school's mission and responsibility. Many scholars argue that the Court's decision in this case—and in many others—was strongly influenced by the rapidly liberalizing social culture of the 1960's and the Civil Rights movement. The *Tinker* decision was an "important social shift to move from thinking of students as people whose job was to obey, to thinking of them as people owning personalities and a bundle of 'rights' (Friedman, p. 246). This decision is easily one reflecting the social reconstruction model; Justice Fortas and the other justices thought it

important that students are allowed to express themselves so long as they are not disruptive. Upholding students' freedom to exercise their free speech rights is clearly in support of their right to also hold unpopular beliefs that may be counter to "social values." It can be reasonably argued that the majority opinion in *Tinker* suggests that the Justices see the school as serving more than just a pedagogical purpose; public schools now appear more like public forums than they had.

Justice Stewart, concurring with the majority opinion, made it a point to argue that, while students do have the right to free speech while in school, the rights of children are not equal to those of adults, especially while in school. Justice Black, dissenting in this opinion, argued that the ruling in this case would confer power to discipline and control students in public schools to the Court, which is obviously not its responsibility. He argues that in deciding that symbolic speech is acceptable if it does not "unreasonabl[y]" disrupt school activities, the Court has taken the power to discern what are appropriate disciplinary practices from those in charge of running schools. He was reluctant to allow students and teachers the freedom to use the school and school-time as platforms for exercising free speech, and cites the Court's decision in *Cox v. Louisiana* (1965) that the right to free speech and assembly does not give an individual the ability to talk about whatever he wants, whenever he wants, wherever he wants (p. 7). Justice Black feared that by giving students expanded rights that they previously did not have, that the order and discipline necessary to the educational process will diminish, and students will be able to "defy and flout orders of school officials to keep their minds on their own schoolwork" (*Tinker v. Des Moines*, 1969, p. 7). Justice Black expressed concern with the ability of administrators and schools to do their job, which is educating students.

Garnett argues that, despite the Court's acknowledgement that schools have special characteristics and that students and teachers do not relinquish their rights upon entering, the Court has not for itself determined the mission of public school, and therein lies the problem. The uncertainty of the Court about the mission of public schools makes it nearly impossible for it to determine the mission of students' free-speech rights and the implications of the *Tinker* decision (Garnett, 2008). The majority opinion in the *Tinker* case does little to clarify the purpose of public schools and the role free speech should play in them. The dissenting opinion, however, expressly describes schools as being solely institutions of academic learning. He also

expresses concern with the Court's turn towards activism by using "reasonableness" as a universal test.

The legacy of the *Tinker* decision has been highly influential. Tinker introduced what has come to be called the "Tinker Test," by which subsequent student free-speech cases have been measured. The Court in *Tinker* permits for administrators to suppress speech or expression only if there is a reasonable substantial threat to safety or order within the school, or if it impinges on the rights of another student. The Tinker Test was the only test of its kind until 1986, when the Court granted certiorari to *Bethel School District v. Fraser* (1986), which narrowed *Tinker*'s decision to uphold school restrictions on student speech that was "lewd and indecent"; this changed the *Tinker* standard in that it did not have to pose a reasonable threat to order or safety.

Bethel v. Fraser (1986). Matthew Fraser was a senior in high school in Washington state when he gave a speech at a student assembly nominating a fellow student for a student office. Fraser's nomination speech was wrought with sexual innuendo, and he was suspended for his conduct in violation of a school policy prohibiting conduct that substantially interferes with the educational process, including conduct that uses "obscene, profane language or gestures" (*Bethel v. Fraser*, 1986, p. 2). Fraser and his parents opposed the disciplinary action, arguing that his freedom of speech had been violated. The District Court weighed in favor of Fraser, stating that the school's policy and behavior are vague and his suspension from school and from speaking at the graduation ceremony were in violation of due process. The Court of Appeals affirmed the District Court's decision with the rationale that the speech was identical to the symbolic speech protected by *Tinker*.

The Supreme Court acknowledges in the decision, written by Chief Justice Berger, that *Tinker* affirms the existence of students' rights in the classroom; however, it criticizes the Court of Appeal's neglect to acknowledge the difference between the "political message of the armbands in *Tinker* and the sexual content of respondent's speech" (p. 3). The Court argues that *Tinker* gives students the freedom of expression as long as it does not inhibit the learning process or violate the rights of other students.

Justice Burger in this decision, unlike *Tinker*, presents a definition and statement of purpose for the American public school system, which

includes the responsibility of teaching students "the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-governance" (p. 3). While acknowledging that there must be tolerance of controversial topic discussion and unpopular opinions, Burger clearly explains that exercise of these fundamental rights must not ignore the "sensibilities of others" (p. 3) and the specific characteristics of a public school full of children. The Court explains that even in Congress, where politicians debate with intensity, there are rules of decorum that govern the participants, prohibiting them from using indecent or offensive language. Burger explains the specific rules for Congress, and asks a straightforward yet profound question: "Can it be that what is proscribed in the halls of Congress is beyond the reach of school officials to regulate?" (p. 4).

Burger and the Court answer this question with a resounding "No." They reason that the First Amendment guarantees freedom in "matters of adult public discourse" (p. 4), and that expression or speech by adults which may offend is still protected. The Court states that children are not privilege with the same scope of freedom as adults and that it has maintained that viewpoint consistently. Burger goes on to state that the responsibility of teaching students the fundamental values of a democratic society is "truly the work of the schools" (p. 4). These values include freedom of expression, assuredly, but also understanding the appropriate time, place, and medium through which to express one's self. Burger clearly states that schools do not simply teach students reading, writing, and arithmetic; they also are charged with inculcating students with an understanding of a "civilized social order" (p. 4) and must lead by example. Burger suggests that, by allowing Fraser to have given his speech without penalty, the school would be implicitly encouraging lewd speech and obscene conduct, thereby giving him the impression that his behavior is acceptable—in school or in public. Additionally, Burger argues that Fraser's speech, which was focused on male sexuality, was offensive to the teenage girls, in addition to possibly being damaging to the immature students in the crowd. Fraser's speech, unlike the peaceful political statements made by the Tinkers' armbands, was not conducive to any exchange of ideas or of any social value, thus making it markedly different from the *Tinker* case.

The Court has limited free speech, especially of a sexual nature, when it is in the presence of children. Burger, as did Justice White in *Tinker*,

references the *in loco parentis* responsibility of school officials to protect children from lewd, vulgar, or offensive speech. To have allowed Fraser to give his speech without repercussion would have been irresponsible of the school and negligent of the other students according to Burger. The Court held that Bethel School District, in imposing sanctions against Fraser, was entirely within its right and it was even its responsibility to punish him in accordance with his conduct. Prohibiting students from lewd and vulgar speech is within the school's educational mission to teach students acceptable conduct and fundamental social values.

Fraser argued that he was unaware that his speech would lead to any consequences. The Court on the other hand points to the complete lack of support for this statement. There was a specific policy governing this type of situation, and Fraser was warned beforehand by officials that he should not deliver his speech. The Court therefore upheld the school's right to punish lewd, offensive speech that is in opposition to the school's educational mission, and the Court offered, for the first time, a clear definition of its view of the mission of public schools.

Fraser clarified several confusing questions about what is "reasonable" use of free speech for students that the *Tinker* decision elicited, as well as gives a clear perspective of the way the Court views public education's mission. The Court in *Fraser* exercised a substantial degree of restraint, basing its decision on the traditional expectations of schools—by defining them more clearly than the *Tinker* Court had—and upholding a very specific school policy. The *Fraser* Court added a new component to the student free speech test, pulling back the *Tinker* standard to restrict speech which may not cause substantial disruption, but whose content is lewd and inappropriate for an audience of children. *Tinker* appeared to have allowed for free exercise of speech as long as it did not violate the rights of other students or was disruptive—content or message could not be the basis of suppression. *Fraser*, however, determined that the message *could* be the reason for suppression, if it was in opposition to public school's educational mission of inculcating students with an understanding of basic social values. *Tinker*'s error, perhaps, was in the Court's ambiguity of the purpose of public schools, making it difficult for anyone to discern what the mission of public schools are and, subsequently, how free speech of students fits into that mission—if it does at all.

Justice Burger and the Court clearly saw the public school system as being responsible for teaching students more than just mathematics or history; rather, the ruling falls into the social reproduction model, which Dupre (1996) describes as the school's responsibility for ensuring that students leave the system knowing society's expectations and values and with the capacity to function sufficiently in a democratic society. The justices in the *Fraser* Court feared the lack of direction *Tinker* provided and were careful to include a clear definition of public education's mission and the role of free speech in that mission. The Court reasoned that there is room for and purpose to free expression in schools, but that it must not shadow the pedagogical purpose and balance with "society's countervailing interest in teaching students the boundaries of socially appropriate behavior" (Bethel v. Fraser, 1986, p. 3).

Hazelwood v. Kuhlmeier (1987). Within a year, the Supreme Court had again restricted the extent of free speech of students in school *Hazelwood School District v. Kuhlmeier* (1987) determined that public school officials could reasonably restrict the content of school curricular newspapers and that student papers are not subject to the same First Amendment protections as independent student expression or newspapers specifically established for open student expression. The Court in *Hazelwood* upheld the school's right to enforce some limitations on school-sponsored publications if the speech is in opposition to or somehow violates the school's legitimate pedagogical goals.

The students in a journalism class at Hazelwood High School sought to publish an issue of its school newspaper that would address the impact of teenage pregnancy and divorce on their fellow students. The staff of the newspaper had written an article about teenage pregnancy which included interviews with several students who had been pregnant while in school. Another article addressed the impact of divorce on students and discussed their personal experiences. Neither article used the real names of the interviewed students.

As was the custom, Principal Reynolds reviewed the issue which contained these articles. He objected to the two above articles, stating that, despite the assigned pseudonyms, the identities of the pregnant students were still easily discernible and that the discussion of birth control and sexual activity in that article was inappropriate for the younger high school students.

Further, the article about divorce quoted a student by name saying less than favorable things about her father. Reynolds was concerned that the parents in the article were not given the chance to refute or comment on what was said, and that this did not comply with the fair journalism standards the students were surely meant to learn in this course. Reynolds determined that it was not plausible to delay the production of the paper to accommodate these edits and that the most reasonable solution was to omit those particular articles from the issue. He informed the journalism teacher and his superiors of his decision, which they supported. The respondents filed action against the school district, arguing that their First Amendment rights had been violated. The District Court ruled that no violation had occurred if the restraints reflect a substantial pedagogical concern and have a reasonable basis (*Hazelwood v. Kuhlmeier*, 1987, p. 3). It determined that the principal's actions exhibited both in the time he had to make a determination.

The Court of Appeals reversed this decision, holding that the school newspaper was indeed a public forum, as it was designed to be a medium for student expression. It cited *Tinker* arguing that censorship is only permissible to avoid interference with discipline or the rights of others. This Court did not see any reasonable basis for the principal's concerns, stating that he could not have reasonably predicted any substantial disruption in the school from the publication of these articles. As there was no risk of disorder or violation of the rights of others students, the Court of Appeals held that the principal's actions violated First Amendment protections.

The Supreme Court reversed the decision of the Court of Appeals, holding more closely to the decision of the District Court and affirming the Court's position in *Fraser* that students in school do not have the same rights as adults in a public place, and that the "determination of what manner of speech in the classroom or in school assembly is inappropriate rests with the school board" (p. 4). The Court affirmed the special characteristics of public schools, public schools' pedagogical mission, and the school's responsibility for determining appropriate student behavior while in school.

Justice White, writing for the majority opinion, first addresses the status of the school newspaper as a public forum. The Court clearly and definitively determined that "public schools do not possess all of the attributes of streets, parks, and other traditional public forums" (p.4) and can only be considered as such if school officials have opened their doors to unrestricted use by the public. The school paper was governed by school

board policies that require school publications to be in line with school curriculum and serve an educational purpose. The journalism class at Hazelwood was designed to be a learning experience for students, including learning the "legal, moral, and ethical restrictions imposed on journalists within the school community" (p. 5). The newspaper and student staff was supervised by a teacher, who assigned stories, chose editors, and oversaw all the general workings of the student paper. Justice White and the Court saw no basis for the Court of Appeals' finding that the school paper is a public forum. The policy governing the school newspaper clearly states that the publication is under control of school officials, who retain the right to determine and teach concepts of responsible journalism in the context of a school-run newspaper. Students are permitted to exercise First Amendment rights, but they must be appropriate for a school-run newspaper.

The Court dismisses the Court of Appeals' ruling that the "substantial disruption" principle of *Tinker* is the standard for *Hazelwood*. Rather, the Court relied on a different standard in *Tinker*—that school officials were permitted to regulate speech on reasonable grounds. Additionally, the Court reasoned that this case poses a question different from that in *Tinker*—"the question whether the First Amendment requires a school to tolerate particular student speech—the question [the Court] addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech" (p. 6). The former question addresses the school's ability to suppress a student's individual speech or expression. The latter, which is applicable to *Hazelwood*, addresses the right of school officials to regulate student speech that is expressed through school-sponsored activities. Like the school assembly in *Fraser*, the Hazelwood High School newspaper was school funded, supervised, and was designed to serve an educational purpose. Views expressed in the newspaper, as in the assembly in *Fraser*, could be perceived to be advocated by the school.

The Court charges educators with ensuring that the ideas conveyed to students—whether by teachers or fellow students—are designed to "teach, [and] that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school" (p. 6). This gives a school the ability to remove itself from student speech that it believes will interfere with its mission, but also from speech it sees as vulgar, lewd, biased,

or of poor quality (p. 6). The Court argues that schools must be able to set standards for speech with which it can reasonably be associated and must consider the maturity level of its students, especially when it concerns sensitive topics. Justice White and the majority stated that schools can refuse to support speech that they feel are inconsistent with their educational mission or with accepted and shared values of society.

Additionally, the Court held that Principal Reynolds acted reasonably in requiring the omission from the issue of the two articles in question from the issue, rather than delay the whole issue. It found that his concern that the sexual nature of the article was inappropriate for a young audience and that the articled did not sufficiently protect the identity of the interviewees to be legitimate. His concerns for the depiction of reputation of the parents in the article and the journalistic fairness of the article were also found to be reasonable. It was clear to the Court that, under deadline constraint, Reynolds' actions were reasonable and in the best interest of the newspaper and the students.

The *Hazelwood* ruling is very similar to that of *Fraser*; it is almost indistinguishable in principle. The Court upheld the right of school officials to reasonably suppress speech that it deems inconsistent with its educational mission, as well as to protect schools from being forced to be associate with student views with which it may not agree. Like *Fraser*, this decision allows school officials to retain what it feels is a necessary degree of discernment for the best interests of their students. The Court affirms that public schools are responsible for instilling in children common social values and skills necessary to function in a democratic society and that speech need not fit *Tinker*'s "substantial disruption" criterion in order to be inappropriate in a school context.

The Court in *Fraser* spent a substantial amount of time defining what it believed was the mission of public schools in order to support its interpretation of the First Amendment in the context of school. This is an important step skipped by the *Tinker* Court, as it legally recognizes that public schools are not public forums and that students are not privy to the same speech freedom as adults. The *Fraser* and *Hazelwood* Courts, unlike the *Tinker* Court, leave little ambiguity as to the responsibilities of schools and therefore give much clearer guidelines for the amendment of policies governing this issue. The *Fraser* and *Hazelwood* Courts viewed public

education as being socially reproductive—students were expected to learn academics, as well as social values and general civilized behavior.

Morse v. Frederick (2007). Two decades after the *Hazelwood* decision the Supreme Court again weighed in on the extent of students' free speech rights. In 2007 the Court heard *Morse v. Frederick* and further modified the extent of school officials' authority by upholding a principal's suppression of a student's banner at a school-sanctioned event that the principal reasonably interpreted as advocating illegal drug use. This landmark decision held that school officials have the power to regulate student speech outside of the classroom if the event is endorsed by the school and the message is contrary to a school's specific policy.

In 2002 the Winter Olympics were held in Salt Lake City, Utah, and the Olympic Torch Relay passed through Juneau, Alaska on its way. The relay route passed in front of Juneau-Douglas High School (JDHS) during school hours, and Principal Morse permitted staff and students to observe the relay as a social event. Students were allowed to watch from both sides of the street with supervision by teachers and administrators. Joseph Frederick, a senior at the high school, arrived to school late that day and joined several of his friends across the street from school to watch the relay. As the torch passed his position, Frederick and his friends held up a banner that read, "BONG HITS 4 JESUS", which was visible to students even across the street. Principal Morse quickly approached Frederick and his friends and ordered that they take down their banner. All but Frederick complied, and Morse told him to report to her office. He was suspended for ten days. Morse said that she ordered the banner to be taken down because it could be interpreted as advocating or encouraging illegal drug use, which is clearly against school policy and mission. The Juneau School District has a specific policy against advocacy of illegal drug use, as well as one that subjects students who participate in school approved social events or trips to the same rules and expectations as when they are in school during regular hours.

Frederick appealed his suspension to the school board, which upheld Morse's decision and agreed that Frederick's banner could reasonably be interpreted as advocating illegal drug use. They found his message lacking any political or religious interpretation and was therefore not subject to the First Amendment protections determined by *Tinker*.

Frederick then sued Morse and the school board for violating his First Amendment rights. The District Court found Morse and the school board not in violation of First Amendment rights and held that Morse had the authorization to stop Frederick, if not the obligation to do so. The Ninth Circuit Court of Appeals, however, reversed the District Court's decision, stating that the school did not show any way in which Frederick's speech could cause a substantial disruption (*Morse v. Frederick*, 2007, p. 3). The Appeals Court also concluded that "a reasonable principal in Morse's position would have understood that her actions were unconstitutional" (p. 3) and she was not entitled to immunity.

The Supreme Court examined whether Frederick had a right to display his banner, as well as whether this was so obvious that the principal was not entitled to immunity. The Court ruled that Frederick did not have the right to display such a banner at school and that the second question is rendered irrelevant by this determination. The opinion, delivered by Chief Justice Roberts, immediately dismisses Frederick's claim that this was not "school speech." The Court points to characteristics that clearly classify Frederick's speech as "school speech": it occurred during school hours, it occurred during a school sanctioned activity, there were teachers supervising, and he was surrounded by fellow students, including the school band, which performed at the event. Although the Court acknowledged that there are some unclear boundaries, there is no way, according to the Court, that Frederick could say that he was not "at school."

The Court acknowledged that the message of Frederick's banner was unclear, although Frederick claimed that it was meaningless and only a prop for attention. Although the Court cannot weigh in definitively on an interpretation of the banner, it supported Principal Morse's interpretation of illegal advocacy as reasonable. The assumption that the term "bong hits" was in reference to a common way of smoking marijuana is hardly a stretch of the imagination; Frederick's motivation for displaying the banner is irrelevant to the interpretation. Chief Justice Roberts referenced the counterargument that Frederick was making a political statement about an issue of national contention—legalization of marijuana—and rejected it, as Frederick did not appear to be calling for a change in policy. Frederick himself admitted that it was not meant to convey any political or religious message.

The Court allows for a school official to suppress student speech at a school event if it can reasonably be interpreted as promoting illegal drug use. *Tinker* prohibited the suppression of student political speech if it could not be "reasonably concluded that it will 'materially and substantially disrupt the work and discipline of the school" (p. 5) and the facts of *Tinker* clearly show it in violation of First Amendment rights. Political speech, albeit unpopular, is "at the heart of the First Amendment" (p. 5) and cannot be suppressed simply for its message or position if it does not pose a substantial threat to order in the classroom or halls. Chief Justice Roberts then discussed the implications of Fraser and *Hazelwood*, applying their standards of "lewd or vulgar" speech or the prohibition of promoting that which is contradictory to a school's mission and what is appropriate for the school environment. He concluded that the promotion of illegal drug use falls into the latter category; public schools teach students about the harms of drugs and try to prevent students from using them. Allowing a student to promote what can reasonably be interpreted as smoking marijuana undermines the school's authority in preventing and handling drug use.

As in *Fraser* and *Hazelwood*, The Court reiterated its view of the mission of public schools, becoming more specific in *Morse* by directly charging schools with the responsibility to teach students about illegal drugs. The Court reported statistical evidence that suggests that drug use among children has increased and has become a serious concern of school officials—a "compelling interest" (p. 6), even. Schools are not public forums by nature, and the rules governing speech in schools are subject to restrictions on those grounds, as well as specific interests—discouraging drug use—of the administration. Congress has even stated that drug education is the responsibility of schools, and school districts across the country have adopted and implemented policies aimed at preventing drug use. It is clear to the Court that the government's interest in preventing drug use among students and the role public schools play in that endeavor are strong and serious—strong enough to merit suppression of what could reasonably be interpreted as drug advocacy. The Court believes that *Fraser*'s standard of "clearly offensive" speech is too broad and to ask schools to allow speech that supports illegal drug use because it does not pose an immediate threat is unreasonable.

Scholars argue that the Supreme Court's decision to reverse the Court of Appeal's ruling that Principal Morse's actions violated Frederick's

First Amendment rights is an illustration of judicial activism, giving school officials a dangerous amount of latitude and power to suppress anything that is in opposition to a school's "educational mission." Although the Court has clearly established that Congress and the general public support the school's mission to prevent drug use among students, this decision gives school officials the ability to suppress anything they feel opposes some aspect of their school mission; as there is no universal definition of public education's purpose, this leaves student speech vulnerable to broad interpretations and subjective determinations of school officials.

West (2008) argues that the Court ignored the biggest question looming over this case—does a school official have a right to suppress student speech that does *not* occur within school? West questions the new scope of administrative jurisdiction and whether this allows school officials to designate any event occurring during school hours a "school sanctioned event", which is therefore subject to regulation. Laycock (2008), Garnett (2008), and Schildge and Stahler (2009) also express concern over this development, arguing that the vague principle in *Morse*—that officials could suppress that which they feel is contradictory to school teachings—leaves the framework set by the previous rulings vulnerable to abuses. The lack of consensus about the "educational mission" of schools, as well as legal literature, reflects "remarkably little thought about just what the basic educational mission of public schools is" (Laycock, 2008, p. 115). It is clear that the Court views the school as responsible for reproducing in students social values and norms, and it is perhaps this view that drove Roberts to write an opinion that is regarded as "vague" and which"…[confers] an utterly standardless discretion on school officials" (Laycock, 2008, p. 116). The Court did not give any clear directions for the lower courts and school officials to follow, making regulating student speech perhaps more difficult than ever.

The Court has tried to balance between two foundational frameworks—that students are not without rights in schools, but that they do not have the same degree of rights that adults do. These four major cases, each a modification of the previous case, are attempts at clarifying what rights students are free to exercise and the degree of that freedom. The Court, particularly in *Fraser* and *Morse*, seeks to balance these two principles in the context of the public school environment. Emily Waldman (2010) summarizes the conclusions of the four cases discussed above—*Tinker*,

Fraser, *Hazelwood*, and *Morse*—and concisely explains what type of speech is and is not allowed in public schools:

> As an initial matter, of course, speech that is entirely unprotected by the First Amendment—such as…defamation, true threats, or incitements to imminent lawless action—lacks any protection…*Tinker* and *Hazelwood* generally divide the student speech universe in two, with *Tinker*'s "substantial disruption"/ "invasion of rights" prongs applying to independent student speech, and *Hazelwood*'s "legitimate pedagogical concern" test applying to school-sponsored. *Morse* and *Fraser*, in turn, provide special rules for particular categories of disfavored student speech, i.e. plainly offensive speech or advocacy of illegal drug use. (p. 8)

The current place of student free speech in public schools is, as many scholars would say, "muddy" and the Court has done little to alleviate the confusion for lower courts and school administrators for how to handle conflicts with student speech. Scholars argue that the lack of a comprehensive definition or statement of purpose for public schools is at fault for the Court's ambiguity in the opinions of many of the case. If the US Board of Education does not have a definitive mission statement, how can the Court determine whether a policy claiming to support that mission is constitutional? Despite the Court's discussion of what it sees as the mission of public education—inculcating social values and educating students about drug abuse—the role free speech plays in that mission has been left unclear and there are questions about whether free speech even has a place in the classroom.

Student Privacy and Search Rights Cases

Although the Court's assertion that students do not relinquish their constitutional rights upon entering school was in response to the right to free speech, that principle applies to all rights guaranteed under the Constitution—including the 4th Amendment concerning unreasonable search and seizure. Traditionally, teachers and school officials have been viewed as temporary guardians for their students—the *in loco parentis* doctrine—and had latitude similar to that of parents when it came to searching student property or confiscating inappropriate items. This doctrine is steeped in

common law and social tradition, as well as the expectation of schools to help "…model the student in the same manner as a parent" (Dupre, 1996, p. 68). As caretakers of students, they had the power to search them the way that parents do and even discipline them accordingly. After *Tinker*, however, the right of students to reasonable searches while in school also gained attention, and the Court began to address whether students are entitled to privacy and search restrictions within the classroom.

One difference between students' right to exercise free expression and their right to be protected from unreasonable searches is the effect it can have on the safety of the students; it is difficult to see how voicing an unpopular opinion can lead to imminent danger, but not as difficult to see how a concealed weapon might. How far do the rights of students extend if it means decreased security for the school? This dilemma is arguably at the heart of the Court's rulings on the three major cases discussed in this paper: *New Jersey v. T.L.O.* (1985), *Vernonia School District 47J v. Acton* (1995), and *Safford Unified School District v. Redding* (2009). In each decision, the Court tried to balance the rights of the individual student within the context of the school environment and the expectations of school officials and public education principles. Whether they have successfully balanced these seemingly conflicting principles has yet to be determined.

N.J. v. T.L.O. (1985). In 1980 a teacher at Piscataway High School in New Jersey found two female students smoking in the girls' bathroom. One of the girls, who is referred to as T.L.O., was a freshman. As smoking in the bathroom was in violation of school policy, the teacher escorted the two girls to see Assistant Principal Theodore Choplick. Assistant Principal Choplick questioned the two girls, and the other girl admitted to having violated the rule. T.L.O., on the other hand, denied she had been smoking and stated that she did not smoke at all. Choplick requested that T.L.O. enter his office and insisted on searching her bag, where he found cigarettes. As he showed them to T.L.O. and accused her of lying, he noticed cigarette rolling papers, which are commonly used to smoke marijuana. Choplick, suspecting that T.L.O. might be carrying illegal drugs, proceeded to search the rest of her purse. He found a small amount of marijuana, a pipe, plastic bags, a significant amount of cash in dollar bills, a list of students who appeared to owe T.L.O. money, and two letters that linked T.L.O. to dealing marijuana (*N.J. v T.L.O.*1986, p. 2).

T.L.O.'s mother was notified by Choplick, who turned over the evidence to the police. T.L.O. confessed to selling marijuana at police headquarters, and the State brought delinquency charges based on her confession and the evidence found in her purse. T.L.O. moved to suppress the evidence, arguing that Choplick's search of her purse violated her Fourth Amendment rights, as well as influenced her confession to the police. The Juvenile Court denied her motion to suppress and, although acknowledging that students are protected by the Fourth Amendment, asserted that a school authority is permitted to conduct a search of a student's person if there is reasonable suspicion that the student has committed a crime or plans to commit a crime or if the search is reasonably necessary to maintain school discipline and policies. Mr. Choplick's search was deemed reasonable, as his initial suspicion to examine the purse was founded on the belief that T.L.O. had been smoking in the lavatory. Once the bag was opened, the marijuana paraphernalia was in plain view and Choplick was warranted to conduct a thorough search to determine the degree of T.L.O.'s involvement in drug trafficking activity.

The Appellate Division affirmed the trial court's decision regarding the search, but questioned the validity of the confession and whether T.L.O. voluntarily waived her Fifth Amendment rights. The Supreme Court of New Jersey reversed the Appellate decision and ordered the suppression of the evidence in T.L.O.'s bag. The New Jersey Supreme Court asserted that the Fourth Amendment does apply to school officials and that if a search violates a constitutional right the evidence is not permissible. It did, however, agree with the Juvenile Court that a warrantless search by a school official does not violate the Fourth Amendment if there are reasonable grounds to suspect a student of illegal activity or threat of disruption of discipline and order.

The Supreme Court granted review of the case and found that the search of T.L.O.'s purse by Assistant Principal Choplick did not violate her Fourth Amendment rights. The opinion, written by Justice White, begins by determining whether the Fourth Amendment's prohibition on unreasonable or arbitrary searches applies to school officials. The Court found that it applies through the Fourteenth Amendment, prohibiting citizens from unreasonable searches by state officers (p. 3). The first important part of this decision is the establishment by the Court that teachers and school officials are indeed "creatures" of the State (p. 3); they are not, however, the same as law enforcement officials, for whom the Court interprets the Fourth Amendment

to restrict: "[P]ublic school officials are indeed concededly state agents for the purpose of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable to them" (p. 4). The Court has imposed restrictions on "government action" and explains that the purpose of the Amendment is to protect the security and privacy of citizens against arbitrary searches and invasion of privacy (p. 4). It notes that several courts have exempt school officials from the same "state agent" status as police officers because of the nature of their authority over children; the *in loco parentis* doctrine gives them authority more akin to that of parents than law enforcement officers, and that characteristic alone should exempt them from the limits of the Fourth Amendment.

Justice White rejects this absolute standard. The Court has already shown that school officials are not excused from the commands of the First Amendment and the due process clause of the Fourteenth Amendment; their state actor status cannot be only temporary to meet those demands. Additionally, compulsory education laws prevent the Court from asserting that school officials have equal authority over students as parents. School officials are responsible for forwarding publically mandated curricula and disciplinary policies, including search policies, making them agents of the State rather than voluntary caretakers.

Having established the state agent status of school officials, the Court then addressed how to determine the reasonableness of a search in the context of the school environment. Justice White reasoned that the "reasonableness" of a search is determined by the necessity of the search balanced against the degree of invasion: what methods of search are effective and still protect the expectation of privacy of the individual. The Fourth Amendment only protects legitimate expectations of privacy—that which is socially accepted as the expectation. The State of NJ had argued that students have almost no legitimate expectation of privacy in their personal effects (purses, backpacks, etc.) while in school. Justice White writes that the Court understands the difficulty in maintaining discipline in schools, but that students are not so uncontrollable as to lose their rights to reasonable searches and privacy completely. The State's argument that students have no reason to bring personal items to school was rejected: "Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming" (p. 5). The Court lists a multitude of reasons why students might need to

carry personal items to school and there are no grounds for arguing that they waive their rights to privacy just by bringing them to school.

The Court acknowledges the difficulty in maintaining discipline and order among students and simultaneously respecting their rights to privacy. The school environment naturally demands an ease of search restrictions to which school officials are subjected. It is unreasonable to require a school official to obtain a warrant before searching a student who violated a policy at school, which necessitates more informal disciplinary procedures. The special characteristics of schools themselves also factor into an easing of restrictions. "Probable cause" is not necessarily required for a search; the Fourth Amendment demands that searches be reasonable. The legality of the search of students must depend on whether it can be shown to be reasonable. This is determined by the initiation of the search weighted against the invasiveness of the search.

The initial search of T.L.O.'s purse was found reasonable by the Court, even though possessing cigarettes is not a crime. The school's policy about smoking in the lavatory is found to be reasonable; therefore, the suspicion that T.L.O. had been smoking in the bathroom, thus violating this policy, was grounds for questioning and initiation of the search. Once the cigarettes were found T.L.O.'s denial lost credibility. Mr. Choplick had reasonable suspicion to believe that T.L.O.'s bag contained cigarettes, and the Court finds it strange that the NJ Supreme Court found him to have no reasonable suspicion. A teacher reported that she was smoking in the bathroom and the most obviously hiding place for them would be T.L.O.'s purse. Mr. Choplick's suspicion was not unfounded or arbitrary, but a "common sense conclusion" (p. 8). Of course, T.L.O. could have borrowed a cigarette from a friend to smoke in the bathroom, but Mr. Choplick's suspicion was not unreasonable, and "the requirement of reasonable suspicion is not a requirement of absolute certainty" (p.8).

The Court, in finding the initial search of T.L.O.'s bag reasonable, moved on to discuss the issue of further search of the bag for marijuana paraphernalia. Justice White writes that the suspicion necessary for Mr. Choplick to continue searching the purse after he found the cigarettes was fulfilled by him finding the rolling papers, which are commonly used for making marijuana cigarettes. The sighting of the rolling papers constituted reasonable suspicion for searching the purse for other marijuana related items. Once Mr. Choplick discovered the card with the names of "people who

owe [T.L.O.] money" (p. 8) he had ample suspicion to search her entire purse. The Court found both the search for cigarettes and the continued search for marijuana paraphernalia reasonable and well within the authority of Mr. Choplick.

In deciding for the State of New Jersey, the Court exhibited a substantial degree of judicial restraint by adhering to previous Court rulings that held that students, while privilege to exercise their rights, are not entitled to the same rights as adults. The decision maintains that public schools are institutions with special characteristics and that the law allows for searches to be conducted without warrants and with reasonable suspicion, rather than probable cause, in special circumstances. The necessity for swift and informal searches in schools meets these criteria. Justice White was careful to maintain that students do have a reasonable expectation to privacy while in school and that they are protected from arbitrary searches and unnecessarily invasive searches. The Court made it a point to reiterate the previously established rights of students and to examine the actions of Mr. Choplick in the context of those rights, rather than in the context of a search of an adult by a law enforcement officer. The Court clearly holds that schools are institutions of social reproduction, and the maintenance of a disciplined and ordered student body is highly important and conducive to the wellbeing and safety of the students. The Court, as in past decisions, was hesitant to take on the responsibility of school disciplinarian and upheld a reasonable policy designed to discourage students from drug use and to maintain order. Mr. Choplick's search was not arbitrary and did not exceed what was necessary or reasonable in invasiveness. By upholding the reasonableness of the search, the Court asserted that school officials, although employees of the state, are given a delicate task in caring for students, which merits a decreased level of restriction and a reliance on their professional judgments and discretion.

Vernonia School District v. Acton (1995). In the 1980's, Vernonia School District in Oregon noticed a substantial increase in drug use among its students, as well as a leap in the frequency and seriousness of disciplinary problems. School authorities determined that drug use among athletes was particularly high and that athletes were encouraging other students to follow their example. The school district instituted drug awareness classes and presentations to deter students from using drugs. When that failed to be effective, the district adopted a drug testing policy with unanimous support from parents at an open "input" night. The procedures of the program were

fairly simple: all student athletes would be required to accept the program and be tested at the beginning of the season. Moreover, 10% of the athletes would be randomly selected for a urine sample every week (*Vernonia v. Action*, 1995, p. 2). The distinct purpose was to prevent student athletes from using drugs, which teachers and coaches had observed to be affecting their health and athletic ability. Students who participated in athletics were required to sign a form accepting the condition of the policy and obtain permission from their parents.

Urine tests would be conducted discreetly. Students would be supervised by a teacher of the same sex to ensure legitimacy of the sample. A male teacher stands 12-15 feet behind a male student, listening for regular sounds of urination, while female students produce a sample from within a bathroom stall, monitored aurally by female teachers outside the stall. The teachers then check for tampering (unexpected temperature, color, etc.). The results are sent to an independent lab which tests for common drugs—marijuana, cocaine, amphetamines. The identity of the student does not determine what the urine is tested for. A strict chain of procedure ensures that the identity of the student remains unknown and test results are sent only to the superintendent. Only the superintendent, principals, vice-principals, and athletic directions have access to results, which are not kept for more than a year. If athletes test positive for drugs, they are tested again, and, if that is also positive, his or her parents are notified. The student is then given the option to undergo a six-week assistance program with weekly urinalysis or to forfeit participating in athletics for that season and the next. Second offenses merit suspension of that season and the next, and third offenses receive suspension for the season and the following two seasons.

In 1991, James Acton, a seventh grader, was denied participation in the football program at one of the District's grade schools for refusing to sign the consent forms (his parents refused as well). The Actons filed suit, claiming that the policy violated James' Fourth Amendment rights against unreasonable searches and seizures. The District Court ruled that Acton's rights were not violated. The Court of Appeals for the Ninth Circuit reversed.

The Court opinion, written by Justice Scalia, first examines what is meant by "reasonableness" in the Fourth Amendment, concluding that the reasonableness of a search can be supported without a warrant or probable cause: "[W]hen special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable" (p. 3). The

Court established in *T.L.O.* that the nature of public schools fits the "special needs" standard exempting them from needing warrants and probable cause to conduct searches of students to allow them the necessary freedom to maintain discipline and order. Additionally, the Court has upheld suspicionless searches to conduct drug testing on railroad personnel and on government employees who are permitted to carry guns or are involved in drug interdiction (p. 3). The Fourth Amendment only protects legitimate expectations of privacy, and the Court has ruled that students have a decreased expectation to privacy while in school. This is not to say, however, that they have no privacy; the Court is careful to repeat that school officials are subjected to some restraints and do not have the full latitude to search that parents do.

"The 'reasonableness' inquiry cannot disregard the schools custodial and tutelary responsibility for children" (p. 4) and students are routinely and voluntarily subjected to various physical examinations and requirements to maintain health and safety. Vaccinations, annual physicals, hearing and vision screenings, and other types of examinations are provided by schools, illustrating that students already have lowered expectations of privacy in school. Student athletes in particular have a substantially lowered expectation of privacy; school locker rooms are hardly private, and student athletes regularly shower and change with little privacy. In trying out for school sports, athletes voluntarily subject themselves to more regulations than do non-athletes, including physical exams, insurance mandates, minimum grade requirements, and codes of conduct and dress set by respective coaches (p. 5). Voluntary student-athletes should expect intrusions upon normal expectations of privacy.

Justice Scalia acknowledges the highly invasive nature of collecting urine samples; however, it is the way in which the samples are obtained—the procedures—which determine whether it is a reasonable invasion of privacy. Vernonia School District mandated that students be monitored by same-sex teachers while giving samples, but are fully clothed and only observed from behind, if at all. These conditions are comparable to those one might experience in a public restroom, which students use regularly, and the privacy interests of this procedure are insignificant.

The next aspect of privacy invasion the decision looks at is the confidentiality and handling of the urinalysis results. The Court found Vernonia's procedures to be reasonable for several reasons. First, the Court

expressed that the required identification of prescription drugs students are on prior to the test is a cause for concern: it had previously expressed concern that Civil Service drug testing required lists of current medications unless an employee tested positive. The Court did not say this was unreasonable, however, and found that the invasion of privacy in requesting this information is not significant. The school's interest in deterring student-athletes from using drugs is compelling; school years are when students go through the biggest physical, social, and psychological changes, and drug use can therefore have a damaging effect on the growing individual. Additionally, drug use affects the performance of student-athletes and could endanger their lives. The disciplinary problems in Vernonia caused by drug use affected the entire student body and inhibited the ability of school officials to educate students. In this way, the narrow interest of the policy, and the protection of reasonable expectations to student privacy, is served through the procedures set forth by Vernonia's policy. The Court found this method of deterring drug use to be both reasonable and effective and therefore constitutional.

In the same way that *T.L.O.* was an example of restraint, the Court in *Vernonia* upheld a narrowly determined school policy which sought to serve a compelling state interest, as well as a social one. It held that schools and school officials have reduced search requirements because of the nature of their responsibilities, which has been established and upheld in previous major students' rights cases. The Court's decision is very similar to that of *T.L.O.* in its emphasis of the role schools play in shaping the values and caring for the wellbeing of their students and the assertion that their authority must remain high to do so. This ruling easily follows the social reproduction model: school officials are expected to exercise good judgment and common sense in their dealings with students and are allowed some leniency when faced with disciplinary measures requiring swift judgment.

Safford Unified School District v. Redding (2009). *Safford Unified School District v. Redding* (2009*)* is the most recent Supreme Court decision to be handed down concerning the privacy rights of public school students. The Court ruled that the invasive search conducted by school officials of a student was unconstitutional, as school officials had no reason to suspect that the student was hiding drugs in her underwear. The Court also ruled that the school officials (now petitioners) were entitled to immunity, as the constitutionality of the search was not clear at the time of the incident.

Savana Redding was a 13-year-old student at Safford Middle School in Arizona who had been reported to have given a classmate prescription drugs. The Assistant Principal Wilson escorted Savana to his office, where he showed her a day planner containing knives, lighters, a permanent marker, and a cigarette. Savana admitted that the planner was hers but denied that the items were, and she said that she had lent the planner to her friend Marissa several days earlier. Wilson then showed her four prescription-strength ibuprofen pills and an over-the-counter naproxen pill which are prohibited in school without permission. Savana denied knowing about the pills, and when Wilson told her that she had been reported as giving them to classmates, continued to deny the accusation and permitted Wilson to search her belongings. A female administrative assistant, Helen Romero, entered Wilson's office and she and Wilson conducted a search of her backpack. They found nothing.

Wilson directed Romero to escort Savana to the nurse's office and search her clothing for pills. Romero and the nurse instructed Savana to remove her outwear—jacket, socks, shoes—and then to remove her pants and shirt. Savana was then asked to shake out her bra and underwear, revealing her slightly, but producing no pills.

Savana's mother sued the Safford School District for conducting a "strip" search that violated Savana's Fourth Amendment rights. The District Court ruled that there was no Fourth Amendment violation and therefore that the officials had no need for immunity. A panel for the Court of Appeals for the Ninth Circuit agreed. In an en banc hearing, however, the Ninth Circuit panel was reversed and found Savana's Fourth Amendment rights violated and rejected the defendant's claim of immunity.

The opinion by Justice Souter, with a notable 8-1 majority, begins in the same vein as *T.L.O.* and *Vernonia,* discussing the intent of the Fourth Amendment to protect citizens from unreasonable searches by law enforcement officers by requiring probable cause. An officer must reasonably show that an offense has been committed, and that there is reasonable belief that evidence bearing on that offense will be found in the place searched. In *T.L.O.* the Court recognized that schools require a modification of the level of suspicion necessary to merit a search, and a school search is permissible if its measures do not exceed the objectives of the search, and are not "excessively intrusive in light of the age and sex of the student and nature of the infraction" (*Safford v. Redding*, 2009, p.3). Souter explains that the

degree of probable cause required for a search to be legitimate must be assessed in the context of the search and the standards governing probable cause are not necessarily fixed. The standard for law enforcement officials requires a "fair probability" that evidence will be found; for school officials, however, a "moderate chance of finding wrongdoing" is sufficient for a search (p.3).

The school's policy strictly prohibits students from possessing, using, or selling any drug on the school grounds, except those drugs that are approved via permission by school authorities. A male student at Safford had reported that students were bringing drugs and weapons to school and that he had gotten sick from a pill Marissa had given him. He also said that several students were planning to take the pills at lunch. Wilson called Marissa out of class and was handed the day planner by Marissa's teacher, which contained the knives, lighters, etc. Marissa was escorted by Wilson to his office and asked to empty her pockets while being monitored by Romero and Wilson. She handed over several pills and a razor and told Wilson that Savana had given her the pills. Marissa denied knowing about the contents of the planner and was not asked when she was given the pills or whether Savana might have any on her at the time. Marissa was subjected to a search of her undergarments by Romero and the nurse, which yielded no pills.

The Court holds that the information provided by Marissa and evidence found sufficiently warranted suspicion that Savana was involved in drug distribution and also justified Wilson's suspicion that she may be hiding them in her backpack or coat pocket. The search of Savana's bag, and even her outer clothing in the presence of Romero, were not excessively intrusive, as Wilson's suspicion that a student distributing drugs might hide them on her person is reasonable. While the Court holds that a search of Savana's belongings was reasonable, it finds the "strip search" of Savana to be excessively invasive and the school officials failing to justify the need for going beyond a search of her outerwear.

Although students have a decreased expectation of privacy in school, the strip search of Savana is easily understood as being embarrassing, scary, and humiliating (p. 4). There was not reasonable suspicion that Savana was hiding pills in her underwear. Although Wilson claimed that students sometimes hide contraband in their underwear, he had insufficient reason to suspect that this was the case with Savana; neither Marissa nor the male student suggested that Savana had hidden pills. Further, Wilson did not know

when Marissa had received the pills from Savana and the conclusion that Savana was concealing them on her person, let alone in her underwear, was formed on inadequate and broad assumptions. The Court found the search of Savana Redding to be unconstitutional, but held that Wilson conducted the search with good intentions and therefore is protected from liability through qualified immunity.

The Court adhered closely to its previous student privacy rulings, directly applying *T.L.O.*'s "reasonable scope" and "reasonable suspicion" standards to the search of Savana Redding. Assistant Principal Wilson met the reasonable suspicion standard to search Savana's bag, but this standard did not merit a search of her person and certainly not her underwear. The Court exercised restraint in firmly holding that school officials, while having to show less than probable cause for conducting a search, are still subject to restrictions by the Fourth Amendment.

The educational model followed by the Court in *Safford* is more difficult to determine, however. This ruling could arguably be an example of the social reproduction model in the same way as *T.L.O.* and *Vernonia*; the Court upheld a policy (prohibiting unauthorized prescription drug possession) designed to protect students and rejected a search that not only violated Savana's expectation of privacy, but would be found excessively invasive by the general public. Conversely, the Court's decision to uphold limitations on the power of school officials can be viewed as an example of social reconstruction—school officials do not have unlimited power and the *in loco parentis* doctrine is not absolute. The Court's attempts to maintain that school officials do hold more discretionary power than law enforcement officials in search procedures, however, nudge this decision closer to the social reproduction model.

The Court in *T.L.O., Vernonia,* and *Safford* established that school officials have a compelling interest to ensure the safety and health of their students through the ability to search with fewer restrictions. It has followed two principles determined in *T.L.O.* and applied in both *Vernonia* and *Safford*: "Prior to conducting searches of students and their property, school officials must have reasonable grounds to lead school authorities to believe that a search is necessary" (Yell & Rozalski, 2008, p. 9). The search must be justified at initiation with reasonable suspicion—not probable cause—which still limits school officials. Valid searches based on this standard could include targeted and random searches of lockers, voluntary searches, search

of material left in plain view, emergency searches to prevent damage/injury, searches of lost property, and of students' cars on campus (p. 9). The purpose of the search must be related to the policy violation or school rule and, therefore, the extent of the search must reflect the circumstances. In the case of *T.L.O.*, the search of her purse was directly related to the suspicion that she was smoking in the bathroom and was consequently found constitutional. Conversely, Assistant Principal Wilson did not have a legitimate reason to suspect Savana had been concealing pills in her underwear, making that search unconstitutional. Vernonia School District's requirement that student athletes sign consent forms and submit to a urine test was neither arbitrary nor unreasonably invasive and the procedure was found to protect the privacy of the tested students as much as possible.

Interview with Key Informants

An unfortunate and inevitable aspect of policymaking is that few policies ever yield the type of results for which they are designed. When changes to policies are influenced or mandated by the court system, however, this adds an additional layer of complexity; as courts are not theoretically intended to make law, policymakers must do their best to interpret court decisions and design or alter policies to be in line with what the courts rule. The Supreme Court's rulings and decisions in matters of students' rights have been deemed ambiguous by many scholars; an analysis of the cases has found that the Court's reliance on terms such as "reasonable suspicion" and the responsibility of school officials to advance public education's mission—when a mission has not very clearly been defined—have not given very clear guidance to education policymakers or school officials who are the individuals charged with handling current and future free speech and privacy challenges.

A review of the literature, as already mentioned, has suggested that the decrease in the authority of school officials, supported by the Court's move away from *in loco parentis* as the dominant educational power philosophy, has negatively affected the level of discipline in public schools, making teaching students and maintaining order very difficult tasks. If allowing students to have their rights is detrimental to the educational process, it is questionable as to whether the Supreme Court could have anticipated this result, let alone intended it.

The Supreme Court cases previously analyzed concerned what this researcher concluded to be the Court's underlying—and sometimes overt—perspective of what public education should be like. The cases were also reflective of the values students should be learning through their instructors. In order to examine whether these Supreme Court decisions have had as notable an impact on the school environment as Dupre, as well as others, suggests, key informants were interviewed and were asked questions about major cases, challenges in balancing discipline and students' rights. A school board attorney, two university education professors, and a current assistant superintendent were interviewed. They were asked about their professional experience with student challenges to school policies and how these challenges were handled, as well as more specific questions related to their respective positions.

The interviews yielded several unexpected results. The respondents were not able to answer the interview questions directly, and this is an interesting finding in itself. Although they were all officials of the local level (rather than state or federal level), their unfamiliarity with several of the most famous students' rights cases was surprising.

The school board attorney explained that the education policy field is entirely reactive: "[Y]ou…seem to ask "How are schools reacting [to these Court decisions]? Well they're not" (School board attorney, 2010). He explained that most school districts in New Jersey (with perhaps the exceptions of the larger urban ones) receive their policies from a "policy making company," who update the policies when necessary, include cross references, and even post them online. In this way, school districts and school officials in particular are not reacting to case law as it is handed down. In fact, they might be wholly unaware of what brought about a change to a policy or that there had been a change at all. Policies are often only consulted after an incident demands the need for action by school officials. He explained that if a major policy is changed, schools may conduct an in-service or inter-district education to update their staff. Although this is an active step in making the limitations of school officials clear and well known, school officials have numerous responsibilities and often address students' rights only when a conflict develops. Even then, however, few are challenged and even fewer make it out of the principal's office.

Two former principals and current education professors, as well as the assistant superintendent, gave similar responses to the school board

attorney's. They explained that even when an incident occurs, teachers and principals will attempt to mediate the problem as swiftly as possible, often seeking compromises rather than strictly adhering to a policy. One education professor explained that "Attorneys are in law… [but school officials] are in the business of education. [Their] first responsibility is to educate" (Education professor A, 2010) and that school officials rely most heavily on common sense and professional discretion. All respondents agreed that school officials are heavily reliant on their professional experience and common sense. If that does not suffice, then school board attorneys may be called for consultation. Although they explain that it is usually better to err on the side of safety or political correctness, respondents firmly believed that their first priority is to students to educate them and keep them safe.

Surprisingly, respondents did not report that they have noticed a significant decrease in discipline in public schools in their years of working in them. Each respondent had more than twenty years' experience in the public school system and worked in a wide range of environments, including poor urban districts, affluent suburban districts, and districts representing diverse populations. All respondents felt that discipline is governed by the climate of the individual school and, most importantly, the principal and school officials. One education professor said that "[discipline] depends on the situation and the principal. He sets the tone in the building" (Education professor B, 2010) and that if students believe him or her to be authoritative and "no-nonsense," there will be fewer incidences of misbehavior. School officials must be effective as well as efficient in handling disciplinary issues. It is necessary to be proactive in preventing future conflicts in addition to responding quickly to them. The school board attorney suggested that fluctuation in discipline levels among students might be caused by factors outside the school, including social changes: "[c]ertainly there have been changes. Is that because of the law? That may be more of a function of culture" (School board attorney, 2010). The assistant superintendent and education professors concurred, stating that in their careers as educators, including those who had worked in multiple districts, discipline among students has been relatively consistent: "When a teacher would say "discipline is getting out of control" I would remind them of an incident several years back. I don't think students have really changed" (Education Professor B, 2010).

Conclusion

The responsibility of school officials, according to the Supreme Court, is to provide students with an effective and safe learning environment. Students are given freedom to express themselves, but lines must be drawn if there is a disruption or risk of danger, explains an education professor. This has also been and continues to be the view of the Court, which has consistently ruled in favor of school policies which aim to uphold these two principles.

Allowing students to freely express themselves while maintaining order and discipline seem contradictory at first. Ideally, public schools would have clearly guided and comprehensive policies explaining what types of speech are acceptable or what constitutes "reasonable suspicion" and a constitutional search of student property. Unfortunately, these policies can only be created and implemented after a line has been crossed and a problem has developed. The education policy system is inherently reactive—as many policy areas are—and those who are responsible for implementing them are often the most unfamiliar with the legal philosophy and abstract concepts governing these policies. The Court has not provided sufficient guidelines for shaping policies that it would uphold, and arguably it is neither intended nor designed to do so.

Balancing students' rights against the need for an organized student body is not impossible, however, and requires cooperation from all parties. Fortunately, all the respondents agreed, most students are able to see why certain policies restricting behavior exist and are willing to compromise so that balance between their rights and school order is maintained. Perhaps the best way to avoid conflict is to create policies with the help of students and parents so that they all have a vested interest in maintaining an ordered school environment. Zero-tolerance policies are an example of school officials' reluctance to handle cases individually based on their facts. It takes considerable effort to address whether the facts of an incident require strict application of a policy or more flexibility: "it's almost easier to just create a blanket policy prohibiting lots of different types of things. What is a reasonable accommodation? [School officials] are saddled with language that is capable of different interpretations" (School board attorney, March, 2010). Students are much more willing to understand the aim of reasonable policies restricting behavior if they can see the pedagogical rationale behind it. School officials, conversely, must know when to adhere to policies unyieldingly and

when to be flexible. All parties must understand that policies are designed to enable school officials and students to effectively work together to achieve common goals.

It is difficult to show a direct connection between Supreme Court decisions affecting students' rights—either expanding or restricting them—and a change in discipline in public schools. Through speaking with individuals who have a great deal of experience in implementing school policies concerning students' rights and working towards effective school environments, it has been discovered that the education policy field is highly reactive and informal and conflicts between students and school officials are sometimes handled without much direct application of a school policy. Additionally, discovering that school districts might not even write their own policies illustrates not only an obstacle to policy aims being fully understood but also decreases accountability when an error is made. This also might make implementing policies problematic, as there is no one supervising to ensure that a policy is fully actualized or properly applied.

The Internet is one of the biggest challenges in the future for school officials is managing student speech and privacy. Several scholars, as well as the respondents interviewed for this project, have expressed concern in the extent of the school's role in restricting student Internet speech, especially if it occurs on school websites or if problems, such as Internet bullying, make their way into the halls. Although the Court has cast out the absoluteness of *in loco parentis*, public school officials still play an enormous role in the social, moral, and intellectual development of their students. The advent of mass communication technology pulls the school official into a student's home and it is difficult to establish where the responsibility of school officials really ends. Conversely, decisions like *Morse*, which give school officials more authority to regulate students outside of the classroom, places a dangerous amount of power in the hands of the administrator which are to designate student activities off campus as school sanctioned activities, thus subject to high degrees of regulation. The ambiguous "educational mission" of public schools, although incompletely discussed by the Court, also allows school officials to label almost anything as either part of or in opposition to their "educational mission."

The future of students' free speech and privacy rights will continue to be defined case by case and new modifications to existing principles will emerge. It is safe to say, however, that the Court is committed to ensuring

that students are at liberty to express themselves freely and be secure in their persons while in school, as long as they are not disrupting the educational process or endangering the rights of other students. School officials still hold a considerable degree more flexibility of power to regulate students and conduct searches than law enforcement officials, but are far more restricted by the Fourth Amendment than before the Court began ruling on students' rights cases. It is clear that students do not leave their constitutional rights at the schoolhouse gate, but the extent of these rights and the role those rights play in the educational process is still not defined by any textbook.

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The Miskitu Nation-Stateless

By: Amir Mohamed

Abstract

This thesis considers ethnicity and nationalism as they relate to the political and militant mobilization of the Miskitu during the Nicaraguan civil war (1979-1990). Miskitu ethnicity and nationalism can be traced from its formation in the late sixteenth century through the reconciliation process between the Miskitu and the Nicaraguan government during the civil war. The underlying roots of a contemporary Miskitu separatist movement are explored. This thesis shows that although prior analyses have described the Miskitu as engaging in an ethnic struggle, their demands are in fact nationalist by nature.

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Following 1979s successful Nicaraguan revolution, the Sandinistas were faced with the challenge of answering the "Indian question", one that had been ignored by the preceding dynastic dictatorship.[2] In the spring of 1987, the Sandinista government, eight years into a civil war, passed laws granting autonomy to two regions on the country's Atlantic coast. The Autonomy Statute of 1987 gained international recognition as "having gone further than that of any other Latin American country in establishing the rights of indigenous peoples and of an autonomous region."[3]

The intention of the Autonomy Statute was to quell ethnic militancy among the indigenous populations; however opponents of the law have charged that "it does not recognize indigenous or even regional political rights to any meaningful extent" and is therefore in need of fundamental revision.[4] This is because the Autonomy Statute only answered the Miskitu's cultural demands and failed to acknowledge the legitimacy of nationalist aspirations. Similarly, failure to address Miskitu nationalism leads scholars to treat the Miskitu as "either... hapless victims of Sandinista genocide or dupes of the CIA-backed Contras."[5] Either conclusion falls short of properly addressing the Miskitu-Sandinista conflict.

In the case of the Miskitu, ethnic categorization brings with it the ascription of indigenousness. A scholar of Native American studies, Stefano Varese reminds us that the concept of being indigenous or "Indian was, of course, invented by European colonialism;" he goes on to describe the term as "an epistemological category that has served, since then the dual purpose of occluding the complexity found in this hemisphere and leaving them with a diminished, uncertain social identity."[6] By grouping populations together and allotting reparations based on post-colonial borders, current international

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[2] Hale, Charles. Resistance and Contradiction: Miskitu Indians and the Nicaraguan State, 1894-1987. Stanford: Stanford University Press, 1994, pp.89-92 126-128.

[3] Jonas, Susanne and Stein, Nancy. "The Sandinista Legacy: The Construction of Democracy in Nicaragua" in Latin American Perspectives, Vol. 17, No. 3, 1990, p.22

[4] Hannum, Hurst. Autonomy, Sovereignty, and Self-Determination. Oxford Oxfordshire: Oxford University Press, 1996, p.224.

[5] Noveck, Daniel. "Class, culture, and the Miskito Indians: A historical perspective" in Dialectical Anthropology, Vo. 3, No. 1, 1988, p.17.

[6] Varese, Stefano. "The Ethnopolitics of Indian Resistance in Latin America" in Latin American Perspectives, Vol. 23, No. 2, 1996, p.58.

legislature ascribes special significance to the status of indigenous peoples,. This approach not only overlooks the ethnic diversity and complex history that underlies populations of "indigenous" peoples, but it also devalues the significance of nationality.[7]

In Nicaragua, for example, the Miskitu community differs greatly from the neighboring Sumu community. In fact, the two groups have an extensively antagonistic history. Yet in the efforts of the Miskitu to politicize, the Sandinistas recognized Miskitu-run organizations as representative of the entire indigenous population on the Atlantic Coast. This allowed the Miskitu to establish organizational hegemony over the Sumu. In this way, what has frequently been presented as negotiations for indigenous rights were actually negotiations between the Nicaraguan state and Miskitu nationalists. The umbrella notion of indigenous ignores the nationalist component and entrenched inter-ethnic complexities of the region.[8]

On April 19th, 2009, La Prensa, a national Nicaraguan newspaper, reported that the Miskitu Council of Elders, under the leadership of a newly elected *wihta tara* (Miskitu for 'great judge'), issued a declaration of independence for the Miskitu Nation ('la Nación Moskitia') that denounced over a century of allegedly illegitimate Nicaraguan rule and called for a mass boycott of federal taxes and the upcoming elections. Proposed plans to form an independent state out of the North Atlantic Autonomous Region (RAAN) included the adoption of a Miskitu flag and new national currency.[9] Four months later, word of the independence declaration made its way to the BBC news agency, which ran a story entitled "Nicaragua's Miskitos Seek Independence." In the BBC article, indigenous lawyer Oscar Hodgson

[7] Mauro, Francesco; Hardison, Preston D. "Traditional Knowledge of Indigenous and Local Communities: International Debate and Politcy Initiatives," in *Ecological Applications*, Vol. 10, No. 5, 2000, p.1264.
[8] Guenther, Mathias; Kenrick, Justin; Kuper, Adam; Plaice, Evie; Thuen, Throd; Wolfe, Patrick; Zips, Werner; Alan, Bernard. "Discussion: The Concept of Indigeneity" in Social Anthropology, Vol. 14, No. 1, 2006, pp 17–32.
[9] "Grito de independencia en Bilwi," La Prensa. (accessed March 2, 2010).

summed up the Miskitu nationalists' position: "Every nation has the right to independence, and we are a nation."[10]

In February 2010, La Prensa ran a story in which the Miskitu *wihta tara*, Hector Williams, was again publicly calling for the indigenous population of Nicaragua to abstain from voting in the regional elections being held the following month. The article included an interview with Williams, in which he explained his view that the Nicaraguan political process does not effectively represent the rights of the indigenous peoples situated throughout the Atlantic region.[11] The autonomy law adopted by the Sandinistas in 1987, "despite its impressive achievements and potential," did not "resolve the entire problem" because it failed to account for the nationalist element of the Miskitu community identity and instead focused on cultural/ethnic demands.[12]

Constitutional law scholar Yash Ghai contends that ethnicity "is not primordial" but rather the result of "a variety of social and economic factors."[13] Ghai asserts that the "tendency to label conflicts as 'ethnic' both by members of minority groups and by the media," has the effect of simplifying the problem while complicating the solution.[14] Ghai does not deny the significance of ethnicity; rather he suggests that its complex nature can be difficult to reconcile. Anthropologist Frederick Barth defines ethnicity as "the social organization of cultural difference."[15] This approach treats ethnicity as a socially constructed boundary that functions to differentiate between culturally distinctive groups, which makes interaction the determining factor in ethnicity formation and development.[16]

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[10] Gibbs, Stephen. "Nicaragua's Miskitos seek independence." BBC News. http://news.bbc.co.uk/2/hi/americas/8181209.stm (accessed January 12, 2010).

[11] Romero, Erika. Héctor Williams Wihta Tara, Líder Indígena Del Caribe," La Prensa. (accessed March 2nd, 2010).

[12] Hale 11.

[13] Ghai, Yash. Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States. Cambridge: Cambridge University Press, 2000, p.5.

[14] Ibid. p.5.

[15] Barth, Frederick. "Enduring and emerging issues in the analysis of ethnicity" in *The Anthropology of Ethnicity.* Ed. Vermeulen, Hans, and Cora Govers. Oxford Oxfordshire: Oxford University Press, 1994, p.12.

[16] Ibid.

Anthropologist Katherine Verdery furthers the discussion by asserting that it is a mistake of social scientists to treat ethnicity and nationalism separately because they "are names for two closely related forms of social ideology."[17] The difference that Verdery identifies between ethnicity and nationality is the latter's goals of promoting "an actual or potential political entity."[18] Political scientist Paul Brass asserts, in Ethnicity and Nationalism, that a nationality "may be seen as a particular type of ethnic community or, rather, as an ethnic community politicized."[19] The distinguishing feature of a nationality, according to both Verdery and Brass, is political organization, which aims at establishing group identity as "defined not only by its language and/or its religion and/or its claimed territory, but by the political organization that pursues its interests."[20] Hence, the goal of a nationalist movement is to elevate an ethnic group to the status of nation. This struggle is at the heart of the Miskitu separatist movement.

While the Miskitu remained virtually disenfranchised during the years between 1894 and 1979, it can be said that before and after this time span the group was politicized to the extent that, under the conditions set forth by Brass and Verdery, they constituted a distinct Miskitu nation and nationality. That is, aside from less than a century of absolute disenfranchisement, Miskitu-ness simultaneously defined an ethnic and a nationalist identity. The contemporary separatist movement on Nicaragua's Atlantic Coast is a continuation of this ethno-nationalist Miskitu struggle for self-determination. This struggle has long been mislabeled as merely an ethnic struggle when in fact it is also a nationalist one.

The Origins and Evolution of the Miskitu Nation

Accounts vary regarding the origins of Miskitu ethnicity. Some scholars suggest that the Miskitu ethnicity pre-dated European contact. Historian David Dodds proposes that the Miskitu had "successfully survived at least three centuries of contact with 'outside people' such as Europeans

[17] Verdery, Kathleen. "Ethnicity, Nationalism and State-making" in The Anthropology of Ethnicity. Ed. Vermeulen, Hans, and Cora Govers. Oxford Oxfordshire: Oxford University Press, 1994, p.49.
[18] Ibid. p.50.
[19] Brass, Paul. Ethnicity and Nationalism. Oxford Oxfordshire: Oxford University Press, 1991, p.20.
[20] Ibid. p.50.

and various other ethnic groups."[21] Dodd implies that Miskitu ethnicity existed prior to European contact and that its continued existence occurred in spite of interactions with foreigners. Other studies assert that the mixing of indigenous, European, and African inhabitants during the seventeenth century brought about a new multiracial ethnicity.[22],[23] This emphasis on a phenotypic amalgamation falls short of addressing the salient societal transformations that gave rise to the Miskitu ethnic identity. More nuanced analysis reveals that British commercial presence resulted in social and economic transformations that indeed initiated the Miskitu ethnogenesis, prescribing racial intermixing secondary significance.[24] The Miskitu ethnicity emerged from the intersection of two newly acquainted groups, the native inhabitants and the English, the interaction of whom gave rise to a third, intermediary group identity. This new group constituted not just a new ethnicity, but the foundation of the Miskitu nation, which emerged from the interfusion of British mercantilism and traditional indigenous kinship organization and subsistence production.[25]

The first Europeans who arrived, in the sixteenth century, on the Atlantic Coast of modern day Nicaragua (referred to hereafter as 'the Coast') bore witness to a fleeting state of power relations and societal constructs that had been employed in the region prior to European contact.[26] Small, egalitarian, kin-based groups occupied the banks of the various rivers that snake out from the dense forest to the Coast.[27] These groups interacted through "a system of mutual raiding and trading," which maintained a general balance of power between the various and distinct ethnic groups collectively labeled as the Sumu.[28],[29] Coincident with the arrival of the

[21] Dodds, David J. "The Miskito of Honduras and Nicaragua" in *Endangered Peoples of Latin America.* Ed. Stonich, Susan C.. Westport, CT: Greenwood Press, 2001, p.92.
[22] Garcia, Claudia. The Making of the Miskitu People of Nicaragua. Uppsala: Acta Universitatis Upsaliensis, 1996, p.44.
[23] Vilas, Carlos. State, Class, and Ethnicity in Nicaragua. Boulder: Lynne Rienner Publishers, 1989, p.17.
[24] Noveck pp.18-21.
[25] Ibid.
[26] Ibid.
[27] Noveck p.19.
[28] Ibid. p.19.
[29] Garcia p.44.

British, a substantial number of indigenous communities began to resettle along the Coast. These communities would trade slaves for European goods. Of these goods, firearms were surely the most influential, as their introduction radically disrupted the balance of power in the region, causing the unarmed population to flee inland.[30],[31]

Acquiring access to muskets allowed the groups that had established contact with British merchants to gain a distinct military advantage, which anthropologist Daniel Noveck suggests gave the Miskitu their name. This led to the disruption of the mutual raiding/slaving practices and to the formation of two distinct groups: the dominant Miskitu and the oppressed Sumu. In the past, egalitarianism and reciprocity had allowed for "considerable diversification" and "ethnic differentiation between kin-units."[32] In other words, the presence of the British empire on the Coast brought about a radical power shift that prompted the emergence of the Miskitu ethnic identity and the Miskitu nation.[33]

Around the turn of the eighteenth century, a Miskitu tributary kingship emerged which, borrowing the nomenclature from the British military, employed political titles such as 'general' and 'admiral.' The appointment of these political offices was related to "successes in trade and pillage."[34] Miskitu leaders benefitted from the exclusive access to European goods, which afforded them control over the distribution of those resources.[35] An economic basis in slaving meant that militarism became a fundamental aspect of the Miskitu social structure. The ability to control the distribution of European firearms gave the Miskitu leaders the means by which to establish military dominance. In 1720, the British invoked the help of Miskitu soldiers to quell a slave uprising in Jamaica, early evidence of the presence of an organized and functioning Miskitu military.[36] This military prowess enabled the Miskitu kingdom to exercise control over the region for well over a century and established the roots of Miskitu nationalism in ethnic militancy.[37]

[30] Vilas pp.13-22.
[31] Noveck pp.19-26.
[32] Noveck p.20.
[33] Ibid. p.19.
[34] Vilas p19.
[35] Ibid. p15.
[36] Ibid. p18.
[37] Vilas pp.17-23.

According to anthropologist Morton Fried's theory on societal evolution, a stratified society forms following "the shift of prime authority from kinship means to territorial means."[38] The social stratification that leads to state formation often "proceeds from contact with and tutelage by cultures which are" already in possession "of mature state organization."[39] This shift occurred primarily as a result of the Miskitu's contact with the British, and to a lesser degree with the Spanish. Later, contact with the United States and the Nicaraguan government would further influence the Miskitu group consciousness and self-identification. Thus, Miskitu ethnicity and nationalism was produced by the interaction of various nation-states that introduced and supported the development of supra-kinship nationalist identities where beforehand "embryonic institutions" of egalitarianism had been practiced.[40]

The Miskitu's ethnic militancy, however, did not only target the Sumu. For as long as the British had been present on the Atlantic Coast, the Spanish empire had existed on the Pacific Coast. Spanish colonial efforts produced ideologies significantly different from those manifest in colonizing attempts of the British. While the British expressed mainly mercantile interests, the Spanish imperial strategy involved complete political and social reconstruction, including the systematic dismantling of indigenous culture and the promotion of a new Mestizo ethnicity. Thus, while the Atlantic Coast was being Miskituized, the Pacific Coast was being Mestizoized. In either case, the rise of these new ethnic categories came about as a result of the arrival of European nation-states on the continent.

Though hampered by geographic obstacles, the Spanish made several attempts at undermining the cohesion of the Miskitu kingdom by co-opting Miskitu governors and admirals.[41] Yet these efforts seem to have emboldened Miskitu nationalist militancy, and insurgencies were squashed. Even after Nicaragua's claim to independence in 1838, inhabitants of the Pacific Coast continued to express their overt interest in wresting control of the Atlantic Coast from Miskitu (and British) hands.[42] Thus, the Mestizo

[38] Fried, Morton. "On the Evolution of Social Stratification and the State," 1960, p. 275.
[39] Ibid. p.276.
[40] Ibid. p.276.
[41] Vilas pp.17-21.
[42] Ibid. pp14-22.

Nicaraguan population on to the West and Miskitu population to the East developed a growing and militant sense of antagonism towards one another.

The Decline of the Miskitu Nation

Over the remainder of the nineteenth century, the Miskitu kingdom experienced a decline, accelerated by the 1841 British abolition of slavery.[43] Having lost its main economic foothold, the Miskitu ruling class gave way to the rise of a Creole elite-Afro-American anglophones that had come to hold administrative positions in the Coast's lucrative enclave economy.[44],[45] Coincident with the decline of the Miskitu kingdom, British influence in the area began to wane and by the last two decades of the nineteenth century American businessmen controlled ninety five percent of the Coast's economy.[46],[47] In 1860, the Treaty of Managua "ended the British protectorate over the Coast."[48] This treaty also acknowledged that Nicaragua's borders extended to the Atlantic coast, but stipulated that the Miskitu must retain autonomy, though in practice the treaty catered primarily to capitalist interests.[49],[50] The Managua treaty did not satisfy Nicaraguan nationalists, as evidenced by their continued efforts to secure international support for the complete annexation of the Coast.[51]

Along with the decline of the British presence in the nineteenth century, the Moravian Church began to proselytize Creoles and Miskitu in the area. Anthropologist Claudia Garcia (1996) views the Moravian church as a crucial aspect of Miskitu ethnic identity, positing that

> "The Moravian church allowed the maintenance of Anglo-Saxon cultural identification while at the same time, contributing to the formation of a new identity: the Christian identity."[52]

Later Garcia adds:

[43] Ibid. p.25.
[44] Garcia p.17.
[45] Vilas pp.27-29.
[46] Vilas p.29.
[47] Garcia p.55.
[48] Vilas p.27.
[49] Ibid. pp.27-41.
[50] Ibid. pp.27-29.
[51] Garcia pp.49-56.
[52] Ibid. p.54.

> "Religious conversion implies a transformation of the collective identity, and it produced a new collective self-understanding and an alternative construction of the distinction between 'self' and 'others.'" [53]

The assertion that the Miskitu adopted a new Christian identity based on a collective spiritual reformation is questionable. Garcia's account of the ascendancy of the Moravian church implies an intrinsic harmony between the Moravian church and the Miskitu. Instead, the evidence reveals that Moravian missionaries experienced "great resistance" and "intense power struggles" among the Miskitu, and conversion was a slow process.[54] In 1960, over a century after the arrival of Moravian missionaries, less than half of the Miskitu population identified itself as affiliated with the Moravian church.[55] Furthermore, mirroring the social hierarchy that came to predominate the Coast's society at the time, the upper ranks within the Moravian church were held by Creole elites, while the Miskitu were primarily restricted to the role of lay person.[56] It seems unlikely that Moravian Christianity had become the basis of Miskitu community identity.

Although the Moravian church did exercise considerable institutional power, it cannot be said to have superseded elements of Miskitu identity that existed prior to Moravianism's arrival on the Coast. One of the difficulties confronting the Moravian missionaries was their unwillingness to tolerate the longstanding religious practices and traditional customs of the Miskitu. The Miskitu saw little reason to forfeit their traditional customs in favor of a foreign religion and developed syncretic practices to accommodate their Miskitu identity with their membership in the church. When it meant forfeiting their ethnic identity in exchange for no apparent gain, the Miskitu rejected Moravianism's assimilationist policies, as evidenced in journals of Moravian missionaries.[57] It was only when the Moravian church offered

[53] Ibid. p.62.
[54] Hale p.48.
[55] Ibid. p.49.
[56] Freeland, Jane. "Nationalist Revolution and Ethnic Rights: The Miskitu Indians of Nicaragua's Atlantic Coast" in Third World Quarterly, Vol. 11, No. 4, 1989, p.171.
[57] Hale p.48.

some benefit to the Miskitu that they would accept integration, and even in these cases conversion often fell short of the aspirations of the missionaries.[58]

A combination of factors that occurred during the latter decades of the nineteenth century help explain the Miskitu's partial accommodation of the Moravian presence. In 1881, for example, "natural disasters and the death by poisoning of" then Miskitu King William Henry Clarence, inspired entire Miskitu villages to integrate into the Moravian church.[59] This was referred to by Moravian chroniclers as the "Great Awakening." Anthropologist Jane Freeland posits that the "destabilizing effects of" foreign commercial ventures and "a general fear of the dissolution of Miskitu society" contributed to the shift towards Moravian integration.[60] In 1894, when the leader of a successful liberal revolution in Nicaragua, José Zelaya, ordered troops to occupy the Atlantic Coast, the Moravian church became the only functional institution open to Miskitu participation.[61]

Noveck concludes that "Moravianism's emphasis on community solidarity provided an ideological framework that supported the kin order" of the Miskitu just as "their society was undergoing serious and probably stressful internal and external transformations."[62] He suggests that the Miskitus' embrace of the Moravian institution was based on utility rather than spirituality, challenging Garcia's notion of a fundamentally new Christian identity.

The Miskitu generally resisted the assimilationist efforts of the Moravian church when it threatened the maintenance of their ethnic values. Nevertheless, coincident with the collapse of the Miskitu kingdom and the annexation of the Coast, the Moravian church's institutional framework did provide a means of preserving cohesion within the now formally disenfranchised Miskitu community. This motivated a conscious community effort, though far from unanimous, towards incorporation into the church structure. The Moravian church also contributed to a revival of Miskitu hegemony over neighboring indigenous groups by using the Miskitu language in their proselytization of the Sumu communities.[63] For many

[58] Garcia pp.120-144.
[59] Freeland p.171.
[60] Ibid.
[61] Ibid.
[62] Noveck p.27.
[63] Freeland p.171.

Miskitu who joined the ranks of the Moravian church, the motive was to embolden, rather than relinquish, Miskitu identity.

Zelaya euphemistically labeled his annexation as the "Re-incorporation" and passed radical laws aimed at "hispanicizing" the Coast, making Spanish the official language and barring other languages, like Miskitu, from use in official transactions and schools. The language laws forced the closure of Miskitu Moravian schools, many for over a decade. Coupled with an influx of west-Nicaraguan Mestizos to the newly annexed territory, the turn of the twentieth century saw a heightened level of nationalist militancy among the Miskitu towards Nicaraguans.[6465] In 1909, when Zelaya's own "nationalist pretensions began to pose a threat to . . . growing U.S. interests" the United States supported a rebellion to oust him.[66] The American military established a presence on the Atlantic Coast, where the majority of American business interests were located, that lasted until the mid-1920s. The American troops suppressed various subsequent attempts at rebellion, helping to secure the rule of "unpopular Conservative politicians" who maintained "predatory, centralist, and ethnocentric relations with the Coast."[67]

In 1927, a rebel general, Augosto Sandino, launched a "highly successful" guerilla campaign against the United States.[68] Operating primarily out of the Mestizo populated Northwest, Sandino's army launched regular incursions into the Coast harassing American businesses and Marines. Although a Mestizo nationalist, Sandino was "aided by a well-organized network of Miskitu collaborators."[69] This was due, in part, to the fact that Sandino promoted his plans to set up cooperatives throughout the region, which would have provided economic support to the Miskitu communities. The Miskitu resisted requests by the Marines to help capture Sandino, leading the Marines to resort to impressment, which only furthered Miskitu support for Sandino.[70] This support for Sandino frustrated the Moravian church, who

[64] Vilas pp.23-26, 37-42.
[65] Garcia pp.49-56.
[66] Hale p.46.
[67] Ibid. p.46.
[68] Ibid. p.53.
[69] Ibid. p.54.
[70] Brooks, David C. "US Marines, Miskitos and the Hunt for Sandino: The Rio Coco Patrol in 1928" in Journal of Latin American Studies, Vol. 21 No. 2,1989, pp. 320

had detested the revolutionary's anti-American stance. When Sandino's army executed Moravian missionary Karl Bregenzer for acting as an informant, the church promoted the view that "Sandino and the Sandinistas were nothing more than a handful of bandits and plotters."[71]

The Miskitus' accommodation of Sandino and his army troubles many scholars, most of whom subscribe to the notion that the Miskitu unanimously supported the Moravian church or American interests.[72] However, Sandino offered economic benefits to the impoverished and depoliticized Miskitu communities. The Miskitu did not see themselves as supporting Nicaraguan nationalism, but rather as advancing the Miskitu nationalist agenda by procuring the means towards economic viability. Analysts who emphasize Miskitu allegiance with either the Moravian or Anglo-American presence misinterpret and are therefore confused by Miskitu collective action.

Sandino's guerilla campaign lasted for five years, ending in 1934, with his assassination. The same year the United States military covered its withdrawal with the appointment of Anastasio Somoza, founding a dictatorial dynasty that lasted nearly half a century.[73] Somoza established what anthropologist Deborah Yashar calls a "corporatist citizenship regime."[74] He sought centralized control over the Nicaraguan population through the establishment of subsidized, class-based federations. Because this system left "swaths of territory and significant numbers" of Miskitu "beyond the political and military control of the state," Somoza's neglect affected Miskitu ethnic militancy in two complimentary ways.[75] Somoza ignored the ethnic demands and socio-economic needs of the Miskitu, which emboldened their sense of militancy, but this same neglect also allowed the Miskitu room to organize.[76] As Freeland points out, Somoza's "neglect and isolation gave many an illusion of autonomy."[77]

Despite this illusory autonomy, without the support of the state, the Miskitu had little hope of overcoming the economic and ecological burdens that resulted from centuries of resource exploitation. They no longer profited

[71] Vilas p.50.
[72] Hale pp.53-58.
[73] Ibid. pp.58, 69, 87.
[74] Yashar pp.81-83
[75] Yashar p.83
[76] Hale pp.118-121.
[77] Freeland p.172.

from the presence of American businesses because they no longer owned the land on which the businesses operated. Noveck concludes that the decline of the Miskitu kingdom was brought on by the "transformation of the coast into an enclave for North American export-oriented companies."[78] This resulted in the "rearrangement of the ethnic and ideological contexts in which they operated" and uprooted "the basis of the Miskito's coastal hegemony over other Indian groups."[79] During periods of economic booms, the Miskitu population gained access to consumer markets, purchasing food and other goods from company stores. During the inevitable busts, the Miskitu would return to subsistence and kinship strategies of production and distribution.[80] This cycle existed on the Coast for decades before Somoza was put into power; however it was under Somoza that the situation became dire. [81]

By depleting the resources of the very territory they had fought so hard to maintain control over, the Miskitu found themselves startled out of virtual quiescence by an "ecological and social crisis."[82] The work of anthropologist Bernard Nietschmann, regarding Miskitu turtling, supports this notion. Prior to the 1960's, the green turtle, which remained one of the last viable resources left in the Miskitu's environment, constituted the historic basis to their means of subsistence.[83] In the words of one Miskitu informant "Green turtle meat would be shared all around. That was old people's times, no one went hungry."[84] For centuries, the Miskitu maintained kinship practices based largely on the distribution of green turtle meat.

The arrival of foreign turtle companies began in 1968, prompting the Miskitu to overexploit and sell a subsistence resource.[85] This economic shift had serious social consequences for the Miskitu. By the early 1970's, Miskitu were selling as much as ninety percent of the turtles they harvested, sacrificing the nutritional staple for cash and compromising their ability to

[78] Noveck p.25
[79] Ibid.
[80] Noveck p.26 .
[81] Nietschmann, Bernard. "When the Turtle Collapses, the World Ends" in Natural History, June/July 1974, pp.115-118.
[82] Noveck pp.25-26.
[83] Nietschmann, Bernard. "When the Turtle Collapses, the World Ends" in Natural History, June/July 1974, pp.115-118.
[84] Hale p.70.
[85] Nietschmann p.118.

engage in subsistence production.[86] Through dependence "on outside systems to supply them with money and materials," the Miskitu had "lost their autonomy and their adaptive relationship with their environment."[87] The collapse of adaptive subsistence practices and the disruption of the traditional kinship structure brought about a sense of urgency in the Miskitu population, similar to that which they had experienced during to the Moravian "Great Awakening." The difference is that this time the Miskitu would organize not under a spiritual institution, but under a political one.

Beginning in 1974, Miskitu ethno-political mobilization experienced a resurgence on the Coast with the formation of the Alliance for Progress of Miskitu and Sumu (ALPROMISU).[88] At first, ALPROMISU found its constituency in the river communities, primarily electing officials from the Moravian church. As the organization began to form ties with the international indigenous movement, however, its membership and leadership shifted to young Miskitu professionals who lived in large coastal cities.[8990] Despite the inclusion of the Sumu into its name, ALPROMISU was dominated by Miskitu, and the Sumu often contested the organizations "ethnic chauvinist viewpoint."[91] Although Somoza refused to grant ALPROMISU legal recognition as a legitimate agency or to make any concessions to any of the organization's demands, "by Pacific coast standards . . . repression was mild, and it never kept ALPROMISU from functioning."[92] The founding of ALPROMISU signified that Miskitu ethnic militancy, which, since the decline of the kingship had remained dormant under the structure of the Moravian church, was now taking form as a politicized, nationalist movement.

Ethnic Militancy as Miskitu Nationalism

Anthropologist Charles Hale identifies two crucial aspects of Miskitu identity: "from early in the (twentieth) century, the premises of both ethnic militancy and Anglo affinity became deeply embedded in Miskitu

[86] Ibid. pp.118-121.
[87] Ibid. p.122.
[88] Vilas p 89.
[89] Ibid. pp.89-93.
[90] Garcia pp.100-101.
[91] Vilas pp.91, 126.
[92] Hale p.127.

people's consciousness, mutually reinforcing each other."[93] Hale explains the Miskitu's Anglo affinity as having "developed out of their efforts to secure subsistence, resist oppression, and assert or defend a separate identity while living under multiple spheres of inequity."[94] This description reflects the fact that Hale's historical analysis of the Miskitu glosses over the years prior to Zelaya's annexation, neglecting to identify the origins of the Miskitu ethnicity.[95] He mistakenly equates Anglo affinity with a resistance to oppression, when in fact the very origins of Anglo affinity established the Miskitu as the militant participants in the slave economy.[96] Anglo affinity was actually a strategic orientation sought by the Miskitu in order to advance their political and economic position. Anglo-affinity should be viewed as a strategy, and not, as Hale's analysis implies, a distinct ethnic proclivity. Given the Miskitu lack of support for U.S. Marines against Sandino and their selective acceptance of Moravian values, Anglo-affinity did not constitute an abandonment of Miskitu self-interest.[97]

In turn, ethnic militancy, according to Hale, constituted a central part of the Miskitu "political worldview, fed by memories of past oppression, present perceptions of inequality, and unrealized aspirations."[98] Once again, Hale has ignored the two centuries of Miskitu existence prior to the annexation of the Coast. Ethnic militancy was in fact a product of Miskitu dominance. Ethnic militancy complemented the slaving economy and served to legitimize oppression of the Sumu and resistance against the Spanish. It was not until the abolition of slavery and the decline of Miskitu hegemony that ethnic militancy took on the form that Hale describes.[99] The ethnic militancy espoused by the Miskitu during the century following the annexation expressed nationalist aspirations, not just for autonomy but also for Miskitu hegemony, long lost since the primacy of the kingship.

It follows, then, that Miskitu ethnic militancy can be described as an expression of Miskitu nationalism. Towards the end of his analysis, Hale briefly touches upon the concept of nationalism, however he does not fully expand upon it. Hale suggests that since the Miskitu consider themselves a

[93] Hale p.58.
[94] Ibid. pp.57-58.
[95] Ibid. pp.37-39.
[96] Noveck pp.21-25.
[97] Hale pp.52-58, 70-74, 83-86.
[98] Hale p.81.
[99] Noveck pp.21-25.

people, they should be categorized as "protonationalists," where the prefix "proto" is meant to signify their existence within a dominant nation-state.[100] Rather than view ethnic militancy and Anglo-affinity as the fundamental elements of Miskitu ethnic identity, Anglo-affinity should be viewed as an extension of ethnic militancy, a means by which to attain nationalist aspirations.

According to Paul Brass:

> There are two stages in the development of a nationality. The first is the movement from ethnic category to community. . .
> The second stage in the transformation of ethnic groups involves the articulation and acquisition of social, economic, and political rights for the members of the group or for the group as a whole.[101]

According to this model, the Miskitu kingdom constituted a nation, having a distinct sense of ethnic cohesion complimented by socio-economic and political constructs. Following the decline and annexation, the Miskitu, according to Brass's definition, experienced a devolution back to ethnic community. A more convincing interpretation is that the structural basis for Miskitu nationhood transferred from the failing kingship to the Moravian church, where the institutional framework enabled the maintenance of community cohesion. In other words, despite being politically disenfranchised, the institution of the church gave the Miskitu the ability to locally self-organize and, thus, maintain a semblance of (Miskitu) national cohesion. Miskitu ethnic militancy came to express both the will to retain community solidarity and the desire to recover the once prosperous Miskitu nation.

The establishment of ALPROMISU in 1974 signified the Miskitus' active re-engagement in the second stage of nation-formation identified by Brass, ethno-politicization, and constituted yet another transformation of the Miskitu nationalist movement. The Miskitu, having achieved nationhood under the kingship, never parted with the idea that they embodied a distinct people. This sense of Miskitu nationalism, embodied by elements of the Moravian church and later ALPROMISU, would come to provide the

[100] Hale pp.214, 274.
[101] Brass p.21.

framework for subsequent ethno-political movements that would emerge in response to the success of the Sandinista revolution.

Miskitu Nationalism vs. Nicaraguan Nationalism

In the 1960's, a revolutionary movement formed in Nicaragua, with the goal of reviving the anti-imperialist legacy for which Augosto Sandino had become a martyr.[102] These Sandinistas, while amassing immense public support in the west, failed to realize the political significance of the extant indigenous population on the Coast. They saw "little to gain by extending the revolutionary struggle" to the region and assigned it an "ambiguous and marginal position" in their revolutionary agenda.[103] The Sandinista's 1969 Historic Program even described the indigenous coastal population as backwards, "lost in the depths of greatest abandonment" and, worse, the willing victims of "Yankee imperialism."[104]

The Sandinistas' Marxist ideology led them to discount ethnicity as marginal, simply a "mask that conceals class identity."[105] Thus, "the Miskito's insistence upon identifying themselves as Miskito and not as proletarian Nicaraguan" was seen by the Sandinistas, not as a competing form of nationalism, but as "a form of naivete or backwardness."[106] The Sandinistas, rather than treating the Miskitu as "protagonists of" their own "political struggle and transformation," assumed that they lacked "the capacity to shape their own destinies," a decisive underestimation.[107]

Since the Sandinistas neglected to gain the Miskitu's support for the movement, when the Sandinista Front for National Liberation (FSLN) chased Somoza out of the country in 1979, the Miskitu "viewed the revolution as a distant battle."[108] The Sandinistas were fighting for Nicaraguan nationalism, an ideal to which the Miskitu did not subscribe. The success of the FSLN did, however, lead to a resurgence of Miskitu nationalist aspirations. Immediately following the triumph of the revolution, "radicalized Miskitu university students," most notably Steadman Fagoth and Brooklyn Rivera,

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[102] Judson pp.19-21
[103] Hale p.92.
[104] Vilas pp.102-103.
[105] McAll, Christopher. Class, Ethnicity, and Social Inequality. Montreal: McGill-Queen's University Press, 1990, p.70.
[106] Noveck p.17.
[107] Hale pp.113-114.
[108] Hale p.88.

"worked to revitalize" Miskitu nationalism.[109] Despite the Sandinistas initial refusal to acknowledge any ethnically framed organization, Fagoth and Rivera led negotiations that resulted in the institution of Miskitu, Sumu, Rama, Sandinista Asla Takanka (Miskitu for:Unity of Miskitu, Sumu, Rama, and Sandinistas or MISURASATA).[110] Fagoth was elected as the leader of MISURASATA and gained a seat on the Nicaraguan Council of State, thus establishing distinct political representation for the group within the framework of Nicaraguan national politics.[111]

In her analysis, Garcia equates the polarized positions of the Miskitu and the Sandinistas as "hegemony vs. autonomy." Garcia differentiates Miskitu aspirations for autonomy from Sandinista efforts to achieve national hegemony.[112] This analysis fails to account for the element of Miskitu hegemony, which remained paramount to "the feeling of nationalism expressed in MISURASATA's political discourse."[113] Reports that community members interpreted the purpose of MISURASATA as "working for the return of the king" gives a sense of the national aspirations that the organization helped to inspire.[114] As Freeland suggests, the establishment of MISURASATA "revive[d] hopes of a return to the old Miskitu hegemony."[115]

MISURASATA's immediate demands involved the incorporation of indigenous languages into the originally Spanish exclusive National Literacy Campaign.[116] Within a year their linguistic demands became more radical and involved the recognition of Miskitu as a second national language. This is just one of many examples of how MISURASATA, although in theory representing three distinct ethnicities, actually represented Miskitu nationalist intentions, imposing aspects of the Miskitu identity on demographically smaller groups.[117] In effect, MISURASATA was the political vehicle for Miskitu nationalism and hegemony. By 1981, the group's position had

[109] Ibid. pp.132-133.
[110] Garcia p.103.
[111] Brass pp.20-21.
[112] Garcia p.105.
[113] Ibid.
[114] Freeland p.176.
[115] Ibid,
[116] Vilas p.123.
[117] Freeland pp.175-176.

evolved to include the assertion of "the historic rights of 'indigenous nations' to more than 30 percent of national territory."[118]

Interpreting MISURASATA's demands as a separatist threat, in February of 1981 the FSLN arrested several of the organizations leaders, in a confused effort to thwart the impact of the movement. Mass demonstrations led to the leaders' release, as well as a violent clash which left both Miskitu and Sandinistas dead. Fagoth fled across the Honduran border accompanied by some 3,000 Miskitu. From exile, he allied with the *contra* Nicaraguan Democratic Front (FDN) and founded MISURA, the first of several armed indigenous organizations that would engage in combat against the FSLN. In Fagoth's absence, Rivera assumed control of MISURASATA, establishing in Costa Rica his base of operations against the FSLN. Unlike Fagoth, Rivera distanced his organization from the FDN because it did not acknowledge "Miskito demands concerning land rights or autonomy and was unwilling to incorporate indigenous leaders into its command structure."[119] Still, MISURA, MISURASATA, and the FDN shared the United States as their sole financier.[120]

Faced with a multitude of CIA-supported enemies that primarily operated out of Honduras, the FSLN declared the Coast "to be a restricted military zone" and evacuated the populations, primarily Miskitu, living in the many communities situated along the Coco River.[121] This mass dislocation emboldened the element of ethnic militancy amongst the Miskitu and led to a swelling of the ranks for MISURASATA and MISURA.[122] FSLN forces that occupied the Coast were repeatedly frustrated by "MISURASATA hegemony."[123] In 1983, the Inter-American Commision on Human Rights ruled "in favor of a new political order for the Indians of the Atlantic Coast."[124] This prompted the Sandinista government, in 1984, to declare its "intention to respect Coast peoples historic rights to autonomy."[125]

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[118] Garcia p.104.
[119] Hannum p.210.
[120] Freeland p.177.
[121] Garcia pp.104-107.
[122] Jonas & S.p.21.
[123] Hale pp.174-176.
[124] Anaya, S.. Indigenous Peoples in International Law. Oxford Oxfordshire: Oxford University Press, 2004, p.153.
[125] Hale p.174.

Realizing the political complexity that faced them, the Sandinistas unveiled the Regional Autonomy Commission (CRA), an entity designed to study the logistics involved with granting autonomy to the indigenous population on the Coast.[126][127] Yet only after four more years of war did significant negotiations take place between the entrenched nationalist Miskitu organizations and the FSLN.[128] During these years, while struggling to maintain military control of the Coast, the revolutionary government engaged in fervent efforts to "repair the army's negative image," even allowing unarmed Miskitu combatants unimpeded access to their home communities.[129] Hale concludes that the "profound transformation of state presence on the Coast . . . made a significant impact" in softening the Miskitu's grassroots militancy towards the FSLN.[130]

Autonomy, Autonomía, and Miskitu Rights

Although the path had been paved for reconciliatory negotiations, it soon became apparent that the two parties had very different conceptions of autonomy.[131] While autonomy can take various forms, the type that was under consideration was regional autonomy. Ghai asserts that by "its nature, regional autonomy is asymmetrical" since it "acknowledges the unevenness of diversities and opens up additional possibilities of awarding recognition to specific groups."[132] Asymmetrical autonomy is thus "administratively and politically difficult to manage," something that would become readily apparent to the Sandinistas.[133]

The CRA, in 1986, sponsored public held meetings, seeking to gain community support for their autonomy proposals, and called for the election of local delegates to take part in autonomy workshops. The Sandinistas sought to entice the Miskitu by promising regional development. When the residents of the Sandy Bay abstained from the autonomy process "until the government had reached an agreement with MISURASATA," the FSLN coerced their participation by threatening to halt government aid.[134] Not

[126] Garcia pp.108-110.
[127] Hale pp.168-171.
[128] Garcia p.111.
[129] Hale p.168.
[130] Ibid. pp.176-177.
[131] Ibid. p.195.
[132] Ghai p.9-12.
[133] Ghai p.13.
[134] Hale p.183.

wanting "to jeopardize their access to material aid from the government," residents accommodated the CRA's efforts, while maintaining their loyalties with the indigenous combatants.[135]

Miskitu even began to "use the Spanish term autonomía" when speaking in their own language.[136] While the Miskitu did not have a word for autonomy, the phrase *miskitu ai raitka nani* roughly translates to "Miskitu rights," and was understood as being distinctly different from the *autonomía* being offered by the Sandinistas.[137] *Miskitu ai raitka nani* was what the MISURA and MISURASATA soldiers saw themselves fighting for. It can fairly be described as the Miskitu's notion of nationalism, a longing for the return of a sovereign Miskitu nation. This dichotomy meant that Miskitu villagers who had stayed behind could vigorously support those fighting for Miskitu rights, while still accepting the community-benefitting aspects of Sandinista autonomía.[138]

In April of 1987, MISURASATA proposed a peace treaty, which, in practice, would have put into place "an independent state, joined by a treaty of federation" with Nicaragua.[139] This state would be governed exclusively by Miskitu leaders and would claim ownership to all resources within its boundaries. Furthermore, "Miskitu cultural practices should prevail, defining the norms by which non-Miskitu inhabitants must abide."[140] This draft was "explicitly rejected by the Sumu" and Creole populations alike, as it failed to acknowledge their lasting presence on the Coast.[141] The proposed treaty reveals the radical nationalist views that MISURASATA espoused and provides a sense of how the Miskitu understood autonomy.

The Sandinistas ignored MISURASATA's proposal; they instead officiated their own autonomy statute, which addressed a very different set of demands. Indeed, while offering "important linguistic and educational guarantees," the 1987 Autonomy Statute achieved very little in the way of granting political rights to the population it was designed to accommodate.[142] Not only does the "law's multi-ethnic dynamic" fall "short of Miskitu

[135] Ibid. pp.181-197.
[136] Ibid. p.188.
[137] Ibid. p.188.
[138] Hale p. 188.
[139] Hannum p. 212.
[140] Hale p. 192.
[141] Freeland p. 182.
[142] Hannum p. 224.

nationalist aspirations,"[143] but also the "administrative participation and decentralization it envisages" depended primarily "on good faith cooperation between authorities in Managua and the essentially advisory Regional Councils."[144] In other words, the statute guarantees the rights of the Miskitu to preserve their language and culture but denies them rights to political power. It ignores the nationalist component of the conflict and grants strictly ethnic concessions.

Conclusions

In 1987, the leaders of the various armed indigenous groups coalesced into an organization called Yapti Tasbaya Masrika (Children of Mother Earth or YATAMA).[145] At the end of 1989, YATAMA announced "the return of its leaders to the country," in anticipation of the FSLN's expected fall from power in the 1990 elections. The Miskitu participated in these elections, voting overwhelmingly anti-Sandinista.[146] Upon their return from "the bush," ex-militants maintained their nationalist aspirations but hoped to gain short-term concessions through the newly implemented regional political system. YATAMA took the majority of the seats in the regional elections for the North Atlantic Autonomous Region.[147] Still, the legal framework of the 1987 Autonomy Statute considerably limited the ability of these Regional Councils to employ any real political power, and as a result dissension within the Miskitu community remained.[148]

Miskitu identity should not be understood as an affixation to Anglo-American values. Instead, Miskitu ethnic identity was distinctly linked to the primacy of the Miskitu kingdom and was therefore intertwined with Miskitu nationalism. While the pursuit of"'Miskitu rights," at times, led the Miskitu to accommodate Moravian missions and commercial enterprises, these accommodations did not translate into a forfeiture of Miskitu ethnic militancy or nationalism. Furthermore, though currently living in oppressive conditions, the Miskitu kingdom's historic prominence plays a definitive role in the ideology of Miskitu nationalism. An analysis that romanticizes the

[143] Freeland p. 181.
[144] Hannum p. 224.
[145] Garcia p. 111.
[146] Hannum p. 485.
[147] Ibid.
[148] Hannum p. 486.

Miskitu as an historically oppressed people misses the very underpinnings of Miskitu nationalism. Miskitu nationalists engage a specific goal, viewing the Miskitu nation not as something new to be invented but something that already existed and awaits revival.

Often the Miskitu-Sandinista conflict is labeled as ethnicity versus nation, rather than as parties in a common context. Furthermore, the concept of indigeneity contributes to the complex nature of the situation to the extent that the "indigenous nation" seems to be commonly granted a lesser status then that of post-decolonization nations. In this way, scholars and lawmakers alike tend to assume that an indigenous nation can harmoniously exist within another governing nation, as if the two existed in different dimensions of sovereignty. This treatment ascribes indigenous sovereignty secondary significance to that of the dominant nation-state and, in the case of the Autonomy Statute, restricts indigenous politicization to advisory regional councils.

Twenty years after the passage of the Autonomy Statute, with no substantive revisions or amendments, it is clear that the Miskitu are continuing to struggle for their sovereignty as a nation. One of the primary obstacles facing Miskitu nationalists is they are no longer a majority population in the region. Aside from the growing and culturally dominant Mestizo population, the presence of other indigenous groups on the Coast also complicates the Miskitu's ethnocentric nationalist demands. Likewise, Nicaragua's firm stance on national indivisibility remains a definite obstruction to Miskitu separatist aspirations. While it is clear that this conflict is complex, there remains hope that by building off of an understanding of past events, a means may be found to overcome the current confusion and antagonism that exists between Miskitu nationalists and Nicaraguan lawmakers.

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The Transition from Female Midwives to Male Physicians in America from the Seventeenth Century through the Twentieth Century

Felicia Norott

Abstract

This paper examines American birthing culture during the past four centuries. Birthing culture changed because it moved from woman-assisted home births to the present day when most women give birth with doctors in hospitals. This change from female midwives to male physicians happened gradually and for many complex reasons. One of the central reasons for this change was the conscious effort of male physicians to take over the role of midwife because they wanted the power and the profit that came from assisting women giving birth. In addition to these primary motivations, the following factors also influenced this transformation: the importance of God in the society, the development of new technologies and science forbidding women from entering medical school, the changing view of birth from a natural to a disease process, the change from a female to a male-controlled experience, and the view of women as delicate and modest. This change from female midwives to male physicians happened gradually but purposefully.

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American birthing culture changed in the past four centuries from woman-assisted home births to the present day, when most women give birth with doctors in hospitals. The change in birthing practices from female midwives to male physicians in America happened gradually and for many complex reasons. One of the central reasons for this change was a conscious effort made by male physicians; they tried to take over the role of midwife because they wanted the power and profit that came from assisting women giving birth. In addition to this primary motivation, other factors that influenced this transformation were the declining importance of God in the society, developing technologies and science, forbidding women from entering medical school, the changing view of birth from natural to a disease, moving from a female to a male-controlled experience, and viewing women as delicate and modest. The change from female midwives to male physicians happened gradually but purposefully. Then, in the late twentieth century, there was a small, but strong, reemergence of midwifery in the United States.

In early America, most women, according to Jane Donegan, "were socialized to view themselves as innately inferior beings, that is, beings whose sexual natures assigned them roles subordinate to those held by men."[149] A woman's job was to get married, run her husband's household, and have many children. In this society, women did not have much power or say over their lives. The exception was the profession of midwifery. During childbirth women did not have to answer or listen to men. The women who chose this profession, according to Marsden Wagner, tended to be, "strong, independent women in the community, women who [were] difficult for men to control and whom some men [came] to fear."[150] Female midwives held a monopoly on childbirth until male physicians usurped them.

In colonial America, childbirth was considered women's work. It was attended by women, and it was a frequent occurrence since it was a time when women gave birth to a child about every two to three years from

[149] Jane B. Donegan, *Women & Men Midwives: Medicine, Morality, and Misogyny in Early America* (Westport, Conn.: Greenwood Press, 1978), 20.

[150] Marsden Wagner, *Born in the USA: How a Broken Maternity System Must be Fixed to Put Mothers and Infants First* (Berkeley: University of California Press, 2006), 101.

puberty to menopause.[151] According to historian Laurel Thatcher Ulrich, the evidence for childbirth as a form of work was evident in many colonial diaries. She noticed in her study of colonial New England diaries that many women recorded childbirth in the same straightforward manner as they did any other work. The fact that childbirth was designated as women's work gave females a lot of power during "travail." Ulrich explained that, "For a time a laboring woman and her midwife took command of a house, ordering men about, demanding services from persons they otherwise served, transforming the mark of Eve's subjugation into a source of power, collecting attention as the price of their pain." This power also extended to how much information expectant fathers received. Since they were not allowed to be present during the birth, they relied on the midwife for all of their information.[152]

Though men were not allowed to be present for the birth, they had a lot of work to do before and after the event. It was their job as husbands to pick-up the midwife and other female neighbors, and transport them home after the birth. Sometimes they were also responsible for picking up an after-nurse who helped the new mother care for the infant. The husband's last responsibility was to pay the midwife.[153] This was evident from the fact that when midwives kept journals of their births, they were recorded in the

[151] There is no conclusive data for fertility during this time period. There are numbers from specific midwives and physicians who kept records, but no national numbers. Most women gave birth to six or more children. Women were giving birth every two or three years as long as they were breast-feeing. This was like a natural form of birth control that women used throughout their childbearing years. (Margaret Marsh, *The Empty Cradle: Infertility in America from Colonial Times to the Present* (Baltimore: Johns Hopkins University Press, 1996), 11.

[152] Laurel Thatcher Ulrich, "Women's Travail, Men's Labor: Birth Stories from Eighteenth-Century New England Diaries," in *Women's Work in New England, 1620-1920* ed. by Peter Benes (Boston: Boston University, 2003), 176.

[153] If a woman was not married, she still gave the baby the father's last name. This was done to ensure that he was financially responsible for the child. If no father was named, then the community became responsible for the child.

father's name. Examples of this practice were shown in midwife Martha Ballard's diary and other contemporary New England midwives. This practice showed how, through patriarchy, the father was the provider and solely responsible for the fees.[154]

Childbirth was entirely in the hands of midwives and women because it was part of their female-centered world. Female midwives gave assistance to women during childbirth. For example, they tried to make the woman more comfortable and used various herbal concoctions to help the birthing woman. They used all-natural lubricants like butter and hog's grease for lubrication during delivery to ease any pain. Midwives also tried to make the environment as calm and pleasant as possible to make the birth experience more relaxed.[155] Another important aspect of this experience was that female friends and relatives gave support to the woman during labor and delivery. They were not called in as early as the midwife was, though. Instead, they usually arrived later into the delivery, a few hours before the baby was born. The friends and relatives did not come as early as the midwife, so that their lives, chores, and families were not interrupted for a few days at a time.[156] Having the female neighbors present meant that birth was a community-oriented experience. They were present to offer support, both physical and emotional, and advice because they had all been in the situation themselves, or would be soon.[157] During this time, Ulrich explained,

[154] Laurel Thatcher Ulrich, "Women's Travail, Men's Labor: Birth Stories from Eighteenth-Century New England Diaries," in *Women's Work in New England, 1620-1920* ed. by Peter Benes (Boston: Boston University, 2003), 170-182.

[155] Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1983), 127.

[156] Laurel Thatcher Ulrich, "Women's Travail, Men's Labor: Birth Stories from Eighteenth-Century New England Diaries," in *Women's Work in New England, 1620-1920* (Boston: Boston University, 2003), 175-176.

[157] Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1983), 128.

"Childbirth reversed the positions of the sexes, thrusting women into center stage, casting men into supporting roles." The experience was important because it gave authority to and was controlled entirely by women, without the interference of men. This emotional intimacy was important to holding the community of women together.[158]

Midwives and other women who assisted with childbirth were also important in times when an unmarried woman was in labor. While assisting with the labor, they also tried to find out the identity of the baby's father. This was done during some of the hardest parts of labor, when the woman's attention was directed elsewhere. Confessions made to midwives during labor were thought to be very accurate and acceptable as evidence for court. It was important to find out the identity of the father because, at this time, the community would have been responsible for supporting the mother and child if the father was not known. The fact that it was the midwife's job to testify to the identity of the father showed that they had power in their communities. They were seen as important in these instances and were respected because of it. Typically, in the seventeenth century, women did not testify in court cases, but it was acceptable for midwives to testify because they were considered experts on all the aspects of women's issues and childbirth.[159]

Even in colonial America, midwives sometimes did seek help from men in their communities. Men had the ability to get a medical education, and because of this they were seen as knowledgeable about childbirth. This education gave them power over situations that would normally have been handled by midwives. According to Ulrich, "In a moment of extreme peril the traditional experience of the midwife gave way to book-learning and professional aura of the minister-physician."[160] Martha Ballard's diary described her experiences when working with a local doctor during

[158] Ibid., 131-132.

[159] Ellen Fitzpatrick, "Childbirth and an Unwed Mother in Seventeenth-Century New England," *Signs* 8, no. 4 (Summer 1983), 744-745.

[160] Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1983), 132.

deliveries. During her long career of 814 births, she only called a doctor to the delivery twice during emergencies. On a few occasions, the woman in normal labor called for both her and a local doctor, but Ballard normally delivered the child without assistance.[161]

Since records of maternal deaths were few and far between in the eighteenth century, it was important to look at midwives' diaries to get a sense of the maternal mortality rates. Throughout Ballard's career, she had a maternal mortality rate of one maternal death for every 198 live births. A midwife named Lydia Baldwin, who was a contemporary of Ballard's, practiced in Vermont. Out of the 926 births that she attended, there was only one maternal death, though her records were not as meticulous as Ballard's. These rates were even more shocking when compared with the rates of London's hospitals during the same period. [162] According to Ulrich, "Maternal mortality ranged from 30 to 200(!) per thousand births, compared with 5 per 1,000 for Martha."[163] By 1930, the maternal mortality rate was higher than each of these midwives' at one maternal death for every 150 live births. This conclusive evidence showed that midwives did not have high maternal mortality rates as the physicians claimed.[164]

Outside the opinions of doctors, the remaining community continued to think highly of their midwives. According to Tina Cassidy, "The colonists deemed midwifery to be so important that midwives were allowed to ride ferries for free and pass over toll bridges without paying."[165]

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[161] Laurel Thatcher Ulrich, "'The Living Mother of a Living Child': Midwifery and Mortality in Post-Revolutionary New England," *The William and Mary Quarterly* 46, no. 1, Third Series (January 1989).

[162] Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on her Diary, 1785-1812*, 1st ed. (New York: Vintage Books, 1991), 170-173.

[163] Ibid., 172.

[164] Ibid., 170-173.

[165] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 35.

Midwives were also though highly of because these women had few rules or regulations to follow. This made sense because there were few rules governing other medical occupations, like physicians. The colony of New York was one of the few to have a law concerning midwives. The midwives had to take an oath, but there was no test of their abilities. Part of this oath was revised in the 1730s, and it dealt with keeping men out of the birthing room. Other colonies also adopted statements to prevent men from practicing as child birth assistants. Maine prosecuted a man for acting as one in 1646. The only exceptions were for extreme emergencies, such as when a physician needed to be called in to save the woman or the child's life. This overall lack of regulations did not change until after the 1850s.[166]

In colonial America, most people viewed midwives as competent. Some women learned the art of midwifery while they were living in Europe and then immigrated to America. Others read manuals on midwifery written by men. Some women went into the practice of midwifery with only minimal knowledge and with only the experiences of their own births to draw from. A majority, however, learned through an apprenticeship. They attended births and observed a respected midwife do the job, so that they could learn their technique from her.[167] According to Nancy Schrom Dye, "Many midwives were knowledgeable empirically about the birth process. Competent midwives knew the stages of labor, recognized and managed a variety of difficulties such as abnormal presentations, and employed a variety of mechanical and pharmacological means to alleviate pain and speed labor."[168] Formal training for midwives did not begin in America until about 1760.[169]

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[166] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 5.

[167] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 429.

[168] Nancy Schrom Dye, "History of Childbirth in America," *Signs* 6, no. 1 (Autumn 1980), 99.

[169] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 6.

During the seventeenth century, there were a few cases where women healers were known as "doctresses." These women had no formal training, but they worked in addition to male doctors, who also had very little formal training in this era. According to historian Norman Gevitz, "To some of their neighbors, the status of these healers, particularly when they charged for their services, conflicted with attitudes about women's appropriate place in society."[170] These New Englanders had no problems paying male physicians for their services, but the fact that the healers were women made them less willing to pay for their services.

In the seventeenth century and into the beginning of the eighteenth, the belief in God was one of the most important aspects of life. Childbirth during this time was almost inevitable for all women because knowledge about birth control was not as widespread or uniformly practiced as in the present. Women also had many children because families needed them for their labor. Women believed that childbirth was agonizing and treacherous because that was the way that God wanted it.[171] Since childbirth was viewed as a completely natural process, midwives normally did not interfere with the delivery unless it was necessary. Mostly they encouraged women and waited with them for nature to run its course.[172] Then, in the later part of the eighteenth century, people started to manipulate the world to suit their needs and God became less of a focus. During this time, women started to change their beliefs about childbirth. For example, they no longer solely believed that birth was in the hands of God. With this new outlook on the nature of the

[170] Norman Gevitz, "'The Devil Hath Laughed at the Physicians': Witchcraft and Medical Practice in Seventeenth-Century New England," *Journal of the History of Medicine and Allied Sciences* 55, no. 1 (2000), 5-36.

[171] Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Oxford University Press, 1983), 129.

[172] Janet Bogdan, "Care or Cure? Childbirth Practices in Nineteenth Century America," *Feminist Studies* 4, no. 2 (June 1978), 92-99, 93.

world, women were more willing to experiment with new medicine, technology, and ways of childbirth.[173]

One significant reason for the change from midwife to physician was Peter Chamberlen's development of forceps in the beginning of the 1600s. This created a substantial difference between the knowledge of the midwives and that of the physicians. Forceps were expensive, which was a problem for most midwives who were paid less than physicians, and sometimes took goods or services instead of currency. Even if the midwives could obtain a pair of forceps, they had to find a physician to teach them the proper way to use them, which rarely happened. As birthing technologies continued to develop, the status of midwives declined. Many people believed that because they were women, midwives were not capable of using advanced technologies. Women were not allowed to attend medical school, which would have increased their knowledge about birthing practices, so they found themselves at a disadvantage.[174]

As the use of forceps by physicians increased, they became employed as childbirth assistants more often. The doctors then began to make modifications to the only piece of equipment that midwives used, the birth chair. The version of the chair that midwives used was low to the ground so that it was easier for the soon-to-be mother to push against the floor during her contractions. Being so low to the ground required the midwife to squat or bend down for long periods of time to get a good view of the birth. Physicians changed birth chairs because as professionals they did not want to inconvenience themselves. They made birth chairs higher, sometimes gave them foot rests, and even occasionally added straps for arms and legs. These were not added for the woman's benefit, and mostly made it more difficult to give birth. The modifications made it easier for doctors to get a good view, and they did not have to bend down during the birth. Also, since they intervened with instruments much more often than midwives, physicians needed a way to hold women down while they used them. These changes

[173] Pamela Eakins, *The American Way of Birth* (Philadelphia: Temple University Press, 1986), 17.

[174] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 7-9.

were all about power. Physicians wanted more control over birth, and they had the power to make changes, so they did. [175]

Physicians did not stop at forceps and modified birth chairs; they also implemented other changes during the birth to make the process more convenient for themselves. Doctors tried to expedite births so that they were not waiting around for long periods of time for nature to take its course. Midwives believed in non-interference, except in emergencies, but many doctors intervened whenever possible to speed up the process. Some things that they introduced into the birthing room more frequently were, "obstetrical drugs, bloodletting, [and] the heavy use of anesthesia."[176] According to Amanda Banks, none of these changes were made to help women who were giving birth. Women had been giving birth since the beginning of time without any of these drugs or tools. All of these changes were to make the process easier for the doctor. Physicians used these changes to take control of the event and put the power in their hands, instead of in the hands of the mother.[177]

During the 1700s, many ideas about childbirth began to change. Originally, physicians came late into deliveries attended by midwives if complications arose, because of their knowledge of anatomy. Soon, they wanted to be the primary attendants at all deliveries.[178] One reason for this change was that doctors began to practice midwifery for normal deliveries of upper-class, urban dwellers.[179] A cultural change took place due to the

[175] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 39.

[176] Ibid., 47.

[177] Ibid.

[178] Janet Bogdan, "Care or Cure? Childbirth Practices in Nineteenth Century America," *Feminist Studies* 4, no. 2 (June 1978), 92-99, 92.

[179] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 434.

actions of wealthy women. It became popular during the Victorian era, according to Deborah Sullivan and Rose Weitz, for upper-class women to be, "idle, even physically weak, as evidence of their cultured delicacy and husbands' wealth." Since they were much less likely to have done physical labor in their lifetimes, they were also probably less prepared for the vigor of childbirth. For this reason, upper-class women probably expected to receive pain relief during labor. They were able to achieve this by having physicians as their birth attendants who had knowledge and access to pharmaceuticals.[180]

These upper-class women invited men to deliver their children because of their fears of a difficult birth and death. This was likely more of a cultural fear than a realistic one because the maternal mortality rate was lower when women delivered with midwives compared to doctors. Upper-class women were not the only ones to fear death, but they were the only ones able to pay the high physician's fees. Also, paying these high fees was a sign of status. These upper-class women and their values were additional factors that led the way for the view of male physicians as superior to midwives. Their endorsement of these doctors as competent influenced other women of lower classes to accept doctors as well. [181]

In some ways, though, during this period of Victorian ideals childbirth was becoming more difficult. Many upper-class women living in the city were not as healthy as their working-class contemporaries who spent their days toiling on farms. Living in cities, women deprived themselves of fresh agricultural products and exercise. This lack of essential nutrients caused a disease called rickets, which was a bone disease that developed in women when they did not get enough calcium or vitamin D. Rickets deformed the pelvis so that it was much more difficult to deliver a baby.[182]

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[180] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 7.

[181] Judith Walzer Leavitt, "'Science' Enters the Birthing Room: Obstetrics in America Since the Eighteenth Century," *The Journal of American History* 70, no. 2 (September 1983), 282.

[182] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 14.

Also, the fashions of the time hurt their ability to give birth. For example, the corset and other binding undergarments permanently changed the shape of their bodies, which sometimes made it difficult to give birth. These cultural and physical changes facilitated doctors taking over the position of birth attendant.[183]

Another important societal change taking place during this era also related to women of the upper classes. Men's perceptions of women were undergoing a transformation. In previous years, women and men worked side by side just to survive, but with the rise of the upper class, that was no longer necessary. It became unpopular for women to work or be intellectual. [184] According to Banks, "[Doctors] believed that not only did the use of the brain detract from the normal development of those important organs of women, the uterus and ovaries, but it also significantly contributed to women's general poor health." Since these women were supposed to be viewed as frail, it made complete sense that their births needed to be attended by trained physicians.[185]

An additional cultural shift during this time period made it easier for doctors to take over the role of birth attendant. This cultural shift was related to the Protestant religion. In earlier times, illness was seen as a magical phenomenon. People did not get sick from germs but because of supernatural events. Then the Protestant religion began teaching that disease was related to a person's morals. When the population started rejecting magical explanations, a window was left open for physicians to use laws of nature to account for illnesses. As science became more acceptable, so did the accompanying physicians. Also, as explanations for medical problems became more complex, women were less likely to go to a midwife for assistance.[186]

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[183] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 58.

[184] Ibid., 38.

[185] Ibid., 55.

[186] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 6.

During this period of transition in the late 1700s and early 1800s, midwives and physicians competed to be the attendants at births. One way that they competed was by advertising in local newspapers. Instead of relying on word of mouth, as had previously been the way that midwives got new patients, they had to resort to the media to stay in business.[187] In their advertisements, many claimed that they were endorsed by doctors and were available on short notice for deliveries. Advertisements in newspapers during the mid-1700s were also how physicians let the community know that their services were available. Many times they explained that they were doctors as well as experienced male-midwives, though there was no evidence of their credentials present for either claim.[188]

Throughout this period of transition, ideas about gender and the definition of birth were also evolving. According to historian Deborah Kuhn McGregor, "Male dominance of medical practice rested on the subordination of women and the objectification of their bodies."[189] For male physicians to take control of childbirth, they had to change its definition from a natural process to a disease. By making childbirth a disease it implied that it was something to be cured medically. Physicians took advantage of this new definition of birth to use their new technology and instruments, which set them apart from midwives and made them appear more capable.[190]

There was also physical evidence during this time to support the change from birth being seen as natural to a disease. Originally birth chairs were completely upright, so that it was easier for women to use gravity to

[187] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 10.

[188] Jane B. Donegan, *Women & Men Midwives: Medicine, Morality, and Misogyny in Early America* (Westport, Conn.: Greenwood Press, 1978), 120-121.

[189] Deborah Kuhn McGregor, *From Midwives to Medicine: The Birth of American Gynecology* (New Brunswick, N.J.: Rutgers University Press, 1998), 3.

[190] Janet Bogdan, "Care or Cure? Childbirth Practices in Nineteenth Century America," *Feminist Studies* 4, no. 2 (June 1978), 92-99, 93.

their advantage. As the definition of birth changed, so did the design of birth chairs. According to Banks, "The peak in this shift in the philosophy of birth was the transition from an upright posture for delivery in a birth chair to a horizontal position, the posture of ill health, in bed or on a bedlike table device."[191] Pregnant women were now supposed to lie in bed to deliver their children. This was the doctors' way of telling them that they were sick and what was happening to them was not a natural process.

One way that physicians obtained more control over normal childbirths was by trying to get rid of the female friends and relatives typically present to help a woman give birth. These women were important to the birthing mother because they were there to support the woman giving birth when she could not do it for herself. Even in the second half of the 1800s, when doctors were occasionally called in as birth attendants, a woman still called in her friends and relatives to be present. They were there to give or withhold permission for any procedure that the doctor wanted to perform. If the friends and relatives decided to restrict the physician, he usually conceded to their demands. Soon, however, the doctor limited the number of women in the room to one or two, so that he would have control of the delivery. The friends of the woman, and the pregnant female herself, lost any control they had previously possessed in the process.[192] Doctors also argued that with so many women in the birthing room there would be too much talking and gossip, which the doctors claimed, was distracting. This was significant to the change from a female to a male-centered and controlled experience.[193]

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[191] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 73.

[192] Judith Walzer Leavitt, "Under the Shadow of Maternity: American Women's Responses to Death and Debility Fears in Nineteenth-Century Childbirth," *Feminist Studies* 12, no. 1 (Spring 1986), 145-146.

[193] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 443.

The fact that female friends and relatives were no longer allowed in the birthing room meant the loss of another aspect of female power, knowledge. With women attending fewer and fewer births, they had less opportunity to learn about their bodies and the birthing process. According to Banks, "Birth was removed mentally, physically, and conversationally from the community."[194] The less these women knew, the less control they had over their own births. Women started turning to instructional books, mostly written by men, to learn how to deal with their pregnancies and how to choose the right doctor to be their birth attendant. What was once information passed down from mother to daughter was now learned through reading instructional books. Since literacy was something much more common among the upper and middle classes, these women had more opportunities to learn about childbirth.[195]

To achieve the transformation from midwife to doctor, physicians had to overcome centuries of traditions concerning childbirth and convince the public that it was a good idea to have them deliver most normal births. During the Victorian Era, there were objections on the basis of modesty, with both men and women uncomfortable with a man in the birthing room when a woman was so "vulnerable" and "delicate".[196] One way that physicians got around these Victorian views of modesty was by trying to conduct themselves as so-called "upper-class gentlemen". They kept discussions to completely neutral topics and sometimes used a third party to speak with the delivering woman. Physicians also did not perform vaginal exams unless it was absolutely necessary. Even if they did have to conduct an exam, the

[194] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 50.

[195] Ibid., 34 & 50.

[196] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 9-10.

woman was always completely covered so the physician had to use touch only, without being able to see what he was doing.[197]

Physicians also had to set themselves apart from midwives if they wanted to be the primary birth attendants. Since midwives did not usually interfere with the natural birth process, physicians took the completely opposite approach to compete with them. Physicians separated themselves with claims that their procedures and instruments provided expectant mothers with more safety during the delivery. Doctors also claimed faster deliveries with the use of forceps and ergot, even when it was not necessary to use them. However, speeding up the birth was not for the mother's benefit, but for their own.[198] Physicians also intervened in normal births in ways that were not used by midwives except in emergencies, like bloodletting and the use of drugs like opium. It would be foolish to think that many doctors did not know that this was not necessarily the best way to attend normal births. One Kansas doctor admitted as much, acknowledging that to keep his job he had to intervene, even though it was not necessarily best for the mother or the child.[199] Women who heard claims of increased safety and faster deliveries sometimes asked doctors to assist them in their childbirths. Death was a major fear during pregnancy during this time, and some expectant mothers did everything they could to avoid it. They believed that doctors would be able to help them in case of complications, but this contradicted the evidence that doctors were more dangerous than female midwives.[200]

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[197] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 443.

[198] Janet Bogdan, "Care or Cure? Childbirth Practices in Nineteenth Century America," *Feminist Studies* 4, no. 2 (June 1978), 92-99, 96.

[199] Judith Walzer Leavitt, "'Science' Enters the Birthing Room: Obstetrics in America Since the Eighteenth Century," *The Journal of American History* 70, no. 2 (September 1983), 286-295.

[200] Deborah Kuhn McGregor, *From Midwives to Medicine: The Birth of American Gynecology* (New Brunswick, N.J.: Rutgers University Press, 1998), 38.

Doctors took any opportunity that they had to discredit midwives, and thus promote their own services. According to Banks, "Charges of illiteracy were equated with incompetence, use of traditional practices with ignorance, and the use of birth chairs with narrow-mindedness."[201] They contrasted the scientific way of giving birth with what they claimed was the backwardness of midwives. Physicians were not the only ones discrediting midwives, though. In popular literature of the late nineteenth century male authors portrayed midwives as, "dirty, cruel, and incompetent."[202] This push by prominent males led some women to change birth attendants.

Doctors also claimed that because they went to medical school in either Europe or America, they had superior knowledge about the process of childbirth. They tried to assert that this knowledge was necessary to deliver a baby. Excluded from this knowledge solely because they were female, midwives did not have any way to compete with this form of education. It was assumed that they would be unable to learn the languages, sciences, and mathematics necessary to become doctors. Men automatically had the advantage of being able to be educated, and education led to status during this time. This assertion of medical knowledge by doctors led to the beginning of professionalization, which was another factor in their dominance over midwives. Midwives typically did other things with their time, and only went to deliver babies when they were needed; it was not their full-time job. Doctors, on the other hand, went to large medical schools where they were able to network and organize. They had enough patients so that being a doctor was their full-time job.[203] Also, because being a physician was now an occupation, its members had increased communication among themselves. Midwives never achieved this level of communication because

[201] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 68.

[202] Ibid., 67-68.

[203] Pamela Eakins, *The American Way of Birth* (Philadelphia: Temple University Press, 1986), 18-19.

they were never able to successfully organize, which ultimately helped to lead to their downfall.[204]

Some physicians did not agree with the general trend towards physicians delivering babies. They supported women as birth attendants because they felt that male physicians were not acting decently by wanting to be midwives.[205] Two physicians made an effort in the early 1800s to try and educate women in midwifery. They were Dr. William Shippen and Dr. Valentine Seaman. Shippen taught private lessons to women for a short while before he focused primarily on men. He taught women at the beginning because he believed that without this knowledge they were ignorant to important things that they needed to know to deliver babies. Seaman, like Shippen, believed that women were not knowledgeable enough to be midwives, but thought that with his training they could become better at the practice. He mostly offered these lessons because he did not believe that men should be in the birthing room.[206]

Another important opponent to men acting as birth attendants was Dr. Samuel Gregory. He believed that the only way to keep men out of the business of childbirth was to educate midwives. His goal was not to empower women, but to keep childbirth modest and firmly in the hands of women. In 1848, he founded Boston Female Medical College, where midwives received formal studies in medicine relating to birth. This college did not give women medical degrees like men received, but they were able to acquire certificates in midwifery. Four years later they allowed women receive a full medical

[204] Ibid., 29.

[205] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 11.

[206] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 440.

degree at this institution, and the name was changed to the New England Female Medical College.[207]

A woman named Elizabeth Blackwell took matters into her own hands in 1847. She was not a midwife, but she was one of the first women accepted into a medical school in America. The fact that she was accepted at all was unintended. The faculty of Geneva Medical College asked their students to vote on her acceptance, assuming that they would not want to go to school with a woman. They were wrong; she received a unanimous vote of admittance by the students almost as a joke against the faculty. After graduating at the top of her class, she travelled to London and Paris for an apprenticeship because no American hospital would have her. When she returned to the United States she opened not only a hospital for women and children but also a medical college for women. According to historians Richard and Dorothy Wertz, "Blackwell was more interested in encouraging the entrance of women into the profession than in actually practicing medicine herself."[208] She believed that it was especially important that women attend other women during childbirth. Blackwell did believe in the medical model of childbirth, though. She did not think that it was appropriate for midwives to be childbirth attendants any longer, since they did not have the appropriate training. Instead, she believed that women had to become physicians in order to assist women in childbirth.[209]

Since some physicians believed that it was not appropriate for men to be present during childbirth, substandard educational practices went unchallenged. Oftentimes the subject of childbirth embarrassed doctors instructing the courses. The students were likely embarrassed to begin with, and the doctor's discomfort probably made it even worse. Also, the education itself was only about *theoretical* childbirth, anatomy, and physiology, with no hands on learning on actual women giving birth. The farthest that the instruction went in that regard, was to demonstrate on a mannequin how to do

[207] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 12.

[208] Richard W. Wertz and Dorothy C. Wertz, *Lying-In: A History of Childbirth in America* (New York: Free Press, 1977), 60.

[209] Ibid., 59-60.

an exam, without the doctor looking at the woman under the sheet. The first time that these new doctors saw a woman in labor was after they graduated, which meant they were not qualified to be the birth attendant.[210]

This changed in 1850 when Dr. James Platt White of Buffalo Medical College began having "demonstrative midwifery" in his classroom. This meant that the medical students he instructed were able to see a birth while they were still in school.[211] His first subject was an unwed immigrant woman who was living in a nearby poor house. When she was ready to give birth, White demonstrated the appropriate techniques to perform during delivery for his students. According to historian Jane Donegan, the woman received ten dollars for the demonstration and, "labor and delivery were natural, and at no time did she complain of her treatment."[212] Many of the subjects used for these demonstrations were immigrants or poor women. They both benefitted because the woman got a free medicalized delivery and the doctors had an opportunity to learn. However, the population doctors wanted to use for demonstrations was also the population that typically used midwives, giving them an advantage in poor and immigrant women. It should also be noted that the doctors were delivering babies without any real experience.[213]

As midwifery was made a part of medical science, in the early nineteenth century, doctors changed to the more scientific sounding word obstetrics. This was done by an English doctor in 1828. He suggested this

[210] Judith Walzer Leavitt, "'Science' Enters the Birthing Room: Obstetrics in America Since the Eighteenth Century," *The Journal of American History* 70, no. 2 (September 1983), 285.

[211] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 20.

[212] Jane B. Donegan, *Women & Men Midwives: Medicine, Morality, and Misogyny in Early America* (Westport, Conn.: Greenwood Press, 1978), 240.

[213] Amanda Banks, *Birth chairs, Midwives, and Medicine* (Jackson Miss.; London: University Press of Mississippi, 1999), 67.

word based on the Latin meaning, "to stand before."[214] The other professors of midwifery began to use this word because they wanted a "title free of the feminine connotations of the word midwife."[215] Since midwife technically meant "with woman" in Old English, it was certainly a feminine word.[216] The separation of obstetrician from midwife changed the way that midwives were viewed in society. Having a midwife attend a birth was considered low class because the stereotype that midwives were ignorant was increasingly wide-spread. Women did not want to risk having someone who was not competent delivering their children, so they turned to doctors for their childbirth needs.[217]

The stereotype of the "ignorant midwife" was so widespread because that was what doctors were publishing in medical journals. Dr. Ira S. Wile wrote that, "The present system of allowing dirty, ignorant, untrained, incompetent women to care for parturient women and to give post-partum care is an evil that has crept into our community from foreign lands and has failed to receive the attention it needs in order to be adapted to our mode of life."[218] In a publication by the Department of Public Welfare there they explained that, "The word 'midwife' in America calls up a mental picture none to agreeable. It suggests as a rule a frowsy, none-too-clean, illiterate, untrained, unskilled woman, steeped in ignorance and superstition, usually a

[214] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 131.

[215] Catherine M. Scholten, "'On the Importance of the Obstetrick Art': Changing Customs of Childbirth in America, 1760 to 1825," *The William and Mary Quarterly* 34, no. 3, Third Series (July 1977), 436.

[216] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 29.

[217] Edwin R. Van Teijlingen, *Midwifery and the Medicalization of Childbirth: Comparative Perspectives* (New York: Nova Science Publishers, Inc., 2004), 21.

[218] Ira S. Wile, "Surgical Sociology," *Journal of Surgery* XXV (1911).

foreigner, who for a moderate compensation (or for nothing) assists women through the perils of childbirth."[219] These publications were some of the reasons that the view of midwives was becoming increasingly negative at the beginning of the twentieth century.

At the beginning of the twentieth century, there was also a trend toward the complete professionalization in the field of medicine. This led to a higher degree of separation between trained doctors and those not trained in medicine. Mostly this separation went by social class because only the wealthy could afford the medical school training to qualify them as doctors. Due to the professionalization of medicine, more doctors were working in America and the competition for patients increased. This was another reason why physicians were trying to discredit the work of midwives. [220] They wanted both the prestige of an official profession, and the profits that came with it.[221]

During the time period before hospital maternity wards, more physicians attended more home births; they were sometimes met with difficult decisions to make if the labor was not progressing naturally. Historically, if an important decision was to be made, the midwife consulted with the woman in labor along with her female friends and neighbors. In the 1880s, though, women were no longer attending their friends' births. Instead,

[219] Department of Public Welfare, "The Midwife Question," *The Trained Nurse and Hospital Review* (1918).

[220] Karen Michaelson, *Childbirth in America: Anthropological Perspectives* (South Hadley Mass.: Bergin & Garvey Publishers, 1988), 3.

[221] Also, at the beginning of the twentieth century doctors were also trying to use "hysteria" to make money off of women. This was a disease that they invented to convince women, mostly of the upper-class, that they were sick. The only cure for this "disease" was female orgasm. Physicians even created electric vibrators to further separate their services and make their jobs easier, just like they did with forceps. This was also just like what they did with childbirth; physicians tried to medicalize a natural process for profit. Rachel P. Maines, *The Technology of Orgasm "Hysteria," the Vibrator, and Women's Sexual Satisfaction* (Baltimore, Johns Hopkins University Press, 1999).

only the physician was at the house, along with the husband, which changed the power dynamics of the situation, even though the husband was not allowed in the birthing room.[222] According to Leavitt, "Sometimes the physician, other consultants, and the husband would confer about whether or not to do a certain procedure, weigh the possible outcomes, and debate whether or not to inform the woman of their deliberations. Reports of such conferences…starkly reveal a shift from women's to men's decision making."[223] Through the growing power of physicians, women as a whole were losing their traditional power over their own bodies during childbirth. Some doctors claimed that one reason that they did not want to take the woman's opinion into account was that she was supposedly not on the side of the fetus. They felt that women would choose to save themselves in an emergency, instead of their baby. Doctors claimed that they had to ignore what women wanted, in order to look out for the best interests of the un-born child.[224]

Until the beginning of the twentieth century, even though doctors had attended childbirths since the 1760s, midwives were still the primary attendants because physicians had been focused mostly in urban areas. At that time, doctors began fighting against the practice of midwifery altogether, and succeeded, especially in the case of middle and upper-class white women. The physicians worked in some states with law makers to make midwifery illegal. Other states passed regulations for midwives, which were almost impossible for them to meet.[225]

Many medical journals of the 1910s and 1920s were used by doctors to discuss solutions to the "midwife question" or the "midwife problem" Some authors described the need for training for midwives because at that

[222] Judith Walzer Leavitt, "The Growth of Medical Authority: Technology and Morals in Turn-of-the-Century Obstetrics," *Medical Anthropology Quarterly* 1, no. 3, New Series (September 1987): 230-255.

[223] Ibid., 238.

[224] Ibid., 245.

[225] Nancy Schrom Dye, "History of Childbirth in America," *Signs* 6, no. 1 (Autumn 1980), 104.

moment in time there were not enough physicians to deliver all babies. Many felt that at the time when there were enough physicians, then midwives would become unnecessary. But until that time there was still a need for midwives. These doctors felt that midwives were causing harm to mothers and infants, so they needed to be properly informed about childbirth. The unnamed author of "The Influence of the Midwife on Infant Mortality" explained that, "Consequently steps should be taken by state authorities to insist that midwives should be properly trained. It is really a very serious matter and one upon which the welfare of the nation largely depends." He then went on to explain that if midwives had training there would be many less infants born blind or with other serious illnesses.[226]

Even some professional women at the beginning of the twentieth century were writing about dissuading pregnant women from using midwives. The director of the Maternity Center in New York was a nurse named Ann Stevens. She believed that it was her job, and the job of other nurses, to convince women not to use "un-certified" midwives. Stevens explained that, "We try to steer the patient to either the part pay, or free, outdoor service of a hospital, when one exists, or to that service of the School for Midwives." She thought that one of the main reasons that women in New York City were still turning to midwives was because they provided other services, like housecleaning and infant bathing. These were not services that doctors offered, especially if the woman was giving birth in a hospital.[227]

Not everyone was against the midwives, though. A minority of public health supporters realized the benefits that midwives provided and tried to take action. After the Nineteenth Amendment was ratified, progressive women reformers were able to pass the Sheppard-Towner Maternity and Infancy Protection Act in 1921, even though it was not supported by the American Medical Association. According to Sullivan and Weitz, "Fourteen states chose to use funds provided under the act for

[226] William Edward Fitch, ed., "The Influence of the Midwife on Infant Mortality," *Pediatrics* XXVII (1915).

[227] Ann Stevens, "Maternity Center Work1," *The American Journal of Nursing Company* XX (1920).

midwifery training and regulatory programs."[228] These training programs were then used to annually certify midwives as birth attendants.

The midwife training programs were modeled off the work of Dr. Josephine Baker. According to Molly Ladd-Taylor, "Baker played a central role in the 1911 establishment of Bellevue School for Midwives…She saw midwives as a necessary part of the health care system, and argued in popular and medical periodicals that death rates for midwife-attended births were not higher than for deliveries attended by physicians." Though she believed in the work of midwives, she also inadvertently lowered the number of midwives where she was working in New York.[229] The midwife classes based on Dr. Baker's work were set up to teach these women about hygienic practices and medical laws in their states. The nurses and other staff sent to teach these programs were not especially successful, just like Baker. It also did not help that the staff looked at the fact that many midwives in the south were illiterate and assumed that they were not intelligent enough to assist women in childbirth.[230]

The Sheppard-Towner Act was a great step in the right direction for midwives because it gave funding to training programs and offered them credibility, but this only lasted until 1929 because the act was not renewed. It likely did not get renewed because of the increasing influence of the AMA.[231] This act was also weakened by the fact that the power of women as a political group was faltering. Once they won the right to vote, they no longer had one overarching goal or reason to organize as a group. According to historian Nancy Cott, "Literally millions of women were organized into groups, competing with and opposing one another rather than gathering into one

[228] Deborah Sullivan and Rose Weitz, *Labor pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 13.

[229] Molly Ladd-Taylor, "'Grannies' and 'Spinsters': Midwife Education under the Sheppard-Towner Act," *Journal of Social History* 22, no. 2 (1988), 257

[230] Ibid., 263-264

[231] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 13.

denomination." Because of this, things that were traditionally "women's issues" were no longer supported by all women. When they lost their power base, so did the Sheppard-Towner Act.[232]

In their quest to further discredit midwives, physicians warped the perception of birth further. They continued to hold to the idea that childbirth was a seriously dangerous occurrence that needed to be handled by male professionals. The more feared the event, the less likely women chose to deliver with midwives. Doctors also had another reason for saying that birth was dangerous. They had to explain why the infant and maternal mortality rates were much higher in America than they were throughout Europe. [233] At the beginning of the twentieth century, these types of birth statistics were becoming readily available through the national birth and death registration system, which was developed in 1915.[234] Instead of seeing themselves as the problem, the physicians used the remaining practicing midwives as their scapegoat, even though these accusations were completely unfounded. The male doctors had no evidence that the high mortality rates were attributed to midwives. On the contrary, they had published evidence that midwives were not the problem. One female doctor, Charlotte Amanda Blake Brown, who was practicing in San Francisco in the 1890s, "pointed out that that midwives had a much better record in San Francisco than professional doctors. Midwives attended over half the births, and stillbirths seldom occurred when they attended. Moreover, there was not one death from childbed fever in women attended by midwives."[235] The physicians ignored this evidence, and still blamed the midwives for the high maternal mortality rates.

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[232] Nancy Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1987), 277.

[233] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 10-11.

[234] C. G. Borst, "Teaching Obstetrics at Home: Medical Schools and Home Delivery Services in the First Half of the Twentieth Century," *BULLETIN OF THE HISTORY OF MEDICINE* 72, no. 2 (1998), 224

[235] Joan Jensen, "Politics and the American Midwife Controversy," *Frontiers: A Journal of Women Studies* 1, no. 2 (1976), 20

In 1933, a study was done by The White House Conference on Child Health and Protection called *Fetal, Newborn, and Maternal Mortality and Morbidity*. According to Wertz and Wertz, "It featured the fact that maternal mortality had not declined between 1915 and 1930 despite the increase in hospital delivery, the introduction of prenatal care, and more use of aseptic techniques. The number of infant deaths had actually increased by 40 to 50 percent from 1915 to 1929."[236] A further analysis of the data revealed that besides a lack of proper prenatal care, doctors were mostly to blame for these increases. It found that doctors excessively intervened in childbirth when there was no reason to do so. Also, many of the operations that they performed were done improperly. In some instances, the study even found that doctors were performing unnecessary procedures to be able to charge higher fees for their services. Doctors of the early 1900s were wrong in putting the blame for high maternal mortality on midwives. They were the culprits behind the problem.[237]

A physician named Joseph DeLee also realized that physicians were likely responsible for the high rates of maternal mortality. He attributed this to the move from home to hospital births that doctors had pushed for so strongly. Through his years as a doctor, DeLee began to understand that infections were brought to the soon-to-be mothers from the hospital staff themselves. They attended many women at a time and did not properly sanitize themselves between visits. Hospital staff also brought infections from other parts of the hospital into the maternity wards. DeLee believed that giving birth in the hospital was severely detrimental to the health of both mothers and babies, but in the 1920s and 1930s no one was ready to listen yet. He believed that the only solution to this problem was to have women give birth at home, or to separate the entire maternity wing from the rest of the hospital to prevent contamination.[238]

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[236] Richard W. Wertz and Dorothy C. Wertz, *Lying-In: A History of Childbirth in America* (New York: Free Press, 1977), 161.

[237] Ibid., 161-162.

[238] Judith Walzer Leavitt, *Brought To Bed: Childbearing in America, 1750 to 1950* (New York: Oxford University Press, 1986), 183-185.

One place where women were continuing to have homebirths at this time was in the southern half of the county. Historically, the change from midwife to physician happened more slowly for African-Americans in the south. In most instances on slave plantations births were handled by African-American "granny" midwives. These women usually did not have any formal training, but they had some experience delivering babies. They were qualified based on the fact that they had given birth themselves or had watched other women give birth on the plantation. These grannies were not midwives full-time. Many did many other jobs around the plantation along with midwifery, but assisting women giving birth gave them power that they normally would not have had.[239] According to historian V. Lynn Kennedy, "The birthing room became a space where normal social rules did not always apply. Birth assistants were chosen for their expertise and availability rather than their social identity."[240] Because of this, these granny midwives sometimes were the birth attendants for their white mistresses. Childbirth was one of the few times when the power shifted to the slave versus the owner. At this same time during the antebellum period doctors were also being called in to attend births of some white mistresses after the fashion of the upper-class women in the north. These women wanted to be able to show that they were just as delicate and feminine as their white sisters in the north.[241]

One thing that happened in the south much more than it was recorded in the north was the respect and cooperation between some physicians and midwives. Also, in the south some white birthing women liked to have both a doctor and a midwife present at their birth to get the best outcome. The women who were able to hire both were definitely in the upper-class, though. This option was not available to all women. In cases where both a doctor and a midwife were present, some physicians were

[239] Marie Schwartz, *Birthing a Slave: Motherhood and Medicine in the Antebellum South* (Cambridge Mass.: Harvard University Press, 2006), 143-148.

[240] V. Lynn Kennedy, *Born Southern: Childbirth, Motherhood, and Social Networks in the Old South* (Baltimore: Johns Hopkins University Press, 2010), 57.

[241] Ibid., 62.

happy to have the midwife take over and wait out the lengthy labor process while they attended to other things. According to Kennedy, "Doctors gained the glory if a successful intervention occurred in a difficult delivery, but they had a scapegoat in the midwife if things went wrong."[242] Some doctors in the south even went as far as training midwives to assist in normal labor. This did not mean that doctors thought that midwives were equal to them as labor attendants; it just meant that they understood the benefits that midwives brought to the delivery.[243]

During the early 1800s, before the Civil War, the long-held tradition of having slave midwives attending all births began to change as slave owners began calling in doctors when slave women were experiencing difficult deliveries and problems. Some plantation owners hired a full-time doctor in case of any kind of emergency. Doctors charged expensive fees and while some plantation owners did not want to spend the money if they did not have to, African American slave women were their property and they did not want to waste their investment if anything happened to them during childbirth. Also, the slave-owners did not want to have their reproductive organs harmed in anyway. This was because slave women were responsible for giving birth to the next generation of slaves.[244]

Sometimes, though, physicians who were called to attend births could not make it in time. The south was geographically different than the cities and villages of the north. The women giving birth in the south were much more separated from their neighbors because the area was so rural. Also, some women were so separated from the rest of southern society that there was no doctor that could possibly get to them in time for a delivery. According to Kennedy, "One estimate suggests that in 1850 Alabama had only 1 physician for every 610 residents, Georgia had 1 in 697, Louisiana had 1 in 567, and Mississippi had 1 in 498. Many of these physicians would be

[242] Ibid., 146.

[243] Ibid., 147.

[244] Marie Schwartz, *Birthing a Slave: Motherhood and Medicine in the Antebellum South* (Cambridge Mass.: Harvard University Press, 2006), 143-148.

found in urban areas, far beyond the reach of plantation dwellers."[245] These women, both black and white, relied on midwives to deliver their children. [246]

African American women were especially suspicious of white male doctors called to deliver babies. According to historian Marie Jenkins Schwartz, "Differences in social status and gendered identities conspired to alienate black women from the white physician and thus to ensure that he remained less aware of the needs of the women and their infants than did traditional attendants."[247] Even though doctors were called in during difficult deliveries, midwives were still used during most other deliveries in the south. Into the 1900s, African-American women were the majority of the remaining midwives. According to Anne Lee in 1940, "Close to half of all black births were attended by a midwife or some other non-physician and occurred outside a hospital. By contrast, less than 4 percent of white babies were delivered by midwives that year." These numbers decreased slowly and did not drop off until 1972.[248]

Though doctors as birth attendants in the south did not become very common until the twentieth century, this was not for lack of effort. Professor Charles Meigs believed that if physicians were properly trained in childbirth they would have been more respected in their professions overall and they would have been able to earn more money. He then taught this belief to his male students at medical school. According to Kennedy, "Given the patriarchal structure of southern society, male doctors sought to naturalize socially constructed ideas about gender through discussions of birth and

[245] V. Lynn Kennedy, *Born Southern: Childbirth, Motherhood, and Social Networks in the Old South* (Baltimore: Johns Hopkins University Press, 2010), 144.

[246] Ibid., 62.

[247] Marie Schwartz, *Birthing a Slave: Motherhood and Medicine in the Antebellum South* (Cambridge Mass.: Harvard University Press, 2006), 145.

[248] Anne Lee, "Maternal Mortality in the United States," *Phylon (1960)* 38, no. 3 (1977), 264.

biology."[249] This also applied to how they felt about race and childbirth. Many southern physicians treated women differently while in labor based on their race, and even their class. Though it took longer in the south, male doctors did take control of childbirth for both white and African-American women just like the physicians in the north.[250]

The transition from midwife to doctor also happened at a slower pace for immigrant women. For example, according to Sullivan and Weitz, "In New York City…only 4 percent of midwives practicing in 1906 were native-born Americans."[251] In the early 1900s, midwives continued to attend 80-90 percent of the births for foreign-born women. Dr. Ira S. Wile explained that, "In Chicago in 1907, 86 percent of births among Italians was(*sic*) attended by midwives, and 68 percent, of those among Germans…"[252] This use of midwives by immigrants happened for many reasons. The lives of immigrant women were considerably different than the lives of native-born women. Using midwives as birth attendants fulfilled their needs, and using a doctor or going to a hospital was not part of their birth tradition. One of the reasons that midwives met their needs was that the fees were significantly less than what physicians charged. Also, since these women likely knew each other in their communities, they were sometimes able to pay in livestock, other important supplies, or services. Immigrant women were especially likely to go to a midwife because that tradition was still common in many areas of Europe, and because they likely spoke the same language. In addition, women who lived in rural areas of the country relied heavily on midwives, or close female friends and relatives to attend their births because

[249] V. Lynn Kennedy, *Born Southern: Childbirth, Motherhood, and Social Networks in the Old South* (Baltimore: Johns Hopkins University Press, 2010), 141.

[250] Ibid., 143-144.

[251] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 11.

[252] Ira S. Wile, "Surgical Sociology," *Journal of Surgery* XXV (1911).

there were fewer doctors in those areas.[253] Physicians realized that they did not have a strong following in immigrant, poor, or rural communities. These physicians then tried to use patriotism to try and take over these markets by making false statements about midwives.[254]

One nurse, Ann Stevens, believed that it was possible to convince some immigrant women to stop using midwives, if there was a way to meet their needs. She explained that they were more comfortable giving birth with male doctors if they had a woman nurse or doctor with them during the delivery.[255] The second generation of immigrants soon stopped the tradition of using midwives, as they tried to assimilate to the American ways. Not only did they quickly learn the language and the customs, but they also decided to use doctors as their birth attendants. This led to a severe decrease in the number of births that midwives delivered. Also, with the new regulations on immigration, far fewer new midwives arrived in the United States. Young immigrant women also were not choosing to become midwives because they now had the option of higher paying jobs in their new country. These two factors combined to diminish the number of immigrant midwives practicing in America after the 1930s.[256]

The last groups of women who actively used midwives at the end of the nineteenth and the beginning of the twentieth century were frontier women travelling to, and living in, the west. According to historian Sylvia Hoffert for the women on the frontier, "The kind of childbirth women experienced depended on such factors as ethnic and class backgrounds, religious affiliations, and whether the women bore their children on the trail, on isolated farms or ranches, in small communities or missions, or in army

[253] Judy Litoff, *American Midwives, 1860 to the Present* (Westport Conn.: Greenwood Press, 1978), 27-29.

[254] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 11.

[255] Ann Stevens, "Maternity Center Work1," *The American Journal of Nursing Company* XX (1920).

[256] Richard W. Wertz and Dorothy C. Wertz, *Lying-In: A History of Childbirth in America* (New York: Free Press, 1977), 216-217.

forts."[257] Since the population was so small, and the distances between people so far, women had to make do with whoever was available to help them during childbirth. Sometimes this was a doctor, other times it was a midwife, and on some occasions their neighbors were the only ones available to assist in childbirth. Many times the only women who had the option of a doctor were the ones living in organized communities like forts or missions. Also, the only groups of women who consistently had access to midwives were the Mormons. Not only were they community centered, but they also held on to the belief that it was important for women to deliver their babies with other knowledgeable women. Due to their religious beliefs, these midwives followed the tradition of non-interference. They let labor progress naturally unless a serious problem arose. These women in the west, along with African-Americans, and immigrants were the last groups of women to consistently turn to midwives as their childbirth attendants.[258]

Poor, and sometimes unwed, women who lived in northern cities who chose not to give birth with a midwife occasionally got medical attention for free in return for being models for instruction to young medical students. According to historian Judy Litoff, "To reach working-class women, doctors established out-patient obstetrical clinics in impoverished urban neighborhoods." In America, these clinics were important to the medicalization of childbirth. Doctors developed this idea from the "lying-in" hospitals of Europe. Many physicians in Europe and America used these to practice and experiment on women. [259] The conditions in these clinics were horrible, but women who had nowhere to go still went to them for their childbirth needs. What these women did not realize was that the likelihood that they were going to contract childbed fever increased exponentially just from going to one of these clinics because of the substandard practices of the physicians. American doctors realized that they needed this demographic of women to use their services, and they did not like that some were getting

[257] Sylvia Hoffert, "Childbearing on the Trans-Mississippi Frontier, 1830-1900," *The Western Historical Quarterly* 22, no. 3 (1991), 274.

[258] Ibid., 277-283.

[259] Pamela Eakins, *The American Way of Birth* (Philadelphia: Temple University Press, 1986), 35.

their childbirth care from midwives. Due to this, they opposed midwives even more strongly.[260]

This change in birth attendants also led to a significant change in birth place. According to Dye, "In the 1920s, nearly three-fourths of American births took place at home. By 1960, 96 percent took place in hospitals." Physicians wanted to control the whole experience, including the setting of the event itself. They believed that their new medical instruments could only be safely used in the sterility of hospitals.[261] Women themselves also facilitated the change from home to hospital births. According to Leavitt, "The hospital appealed to women because it was modern, well equipped, and staffed by experts: it represented the newest medical advance." Another appeal of the hospital was that women were able to get away from their domestic lives. In previous years, women did housework even while their labor was progressing. Having a hospital stay offered a small break from domestic responsibilities. It was ironic that women wanted this though, because movement helped labor to progress more quickly.[262]

A phenomenon called Twilight Sleep was developed at the beginning of the twentieth century, which also made giving birth in the hospital with a doctor more appealing to some women. Twilight Sleep occurred after a woman in labor was given a combination of scopolamine and morphine. Scopolamine was used as a narcotic and an amnesiac. Some soon-to-be mothers chose this because they did not want to experience the pain or exhaustion associated with childbirth. When women were given this combination of medication they went to "sleep" during labor, and then they normally woke up the next day and were given their new baby with no recollection of the events from the previous day. Women who experienced

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[260] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 56.

[261] Nancy Schrom Dye, "History of Childbirth in America," *Signs* 6, no. 1 (Autumn 1980), 106

[262] Judith Walzer Leavitt, "'Science' Enters the Birthing Room: Obstetrics in America since the Eighteenth Century," *The Journal of American History* 70, no. 2 (September 1983): 281-304, 297.

Twilight Sleep had no control over their birth experience. There was no way for them to know what was happening and no way for them to make any kind of decision. Also, the only other people present for the birth were the doctors and nurses. Husbands and friends were not involved in the experience at all.[263]

One surprising thing about Twilight Sleep was that it was advocated by women for women. Women's embrace of Twilight Sleep led it to become popular in a relatively short period of time, even with some doctors saying that the procedure had risks.[264] The female advocates for this procedure, according to Leavitt, "Demanded their right to decide how they wanted to have their children…This loss of control was less important to them than their determination to control the decision about what kind of labor and delivery they would have." [265] Taking control of a childbirth experience was a very early feminist movement concerned with women's control over their own bodies. Even though they were informed about the procedure and completely understood the risks, they knew what they wanted and went after it. In a way, these women even helped physicians in their efforts to categorize birth as a disease that required drugs, a hospital stay, and supervision by a professional.

After the craze of Twilight Sleep, doctors began giving drugs much more often to women during childbirth. Between 1915 and 1948 doctors tried to separate themselves from midwives with developments of new pain relief drugs. Many of these drugs were given even before the mother was experiencing pain. It was their policy to interfere in the process of childbirth before a problem occurred. They gave women drugs based on how "natural labor" was supposed to progress, not what was actually happening. These physicians were doing this partly because that was what the modern obstetric practices needed to become modern. The drugs were important progress towards an even more medicalized process of childbirth, to further separate doctors from midwives. Some doctors felt that women were pressuring them

[263] Judith Walzer Leavitt, "Birthing and Anesthesia: The Debate over Twilight Sleep," *Signs* 6, no. 1 (Autumn 1980): 147-164.

[264] Ibid.

[265] Ibid., 161.

for pain relief during labor and delivery, though. They did not want to refuse women these drugs because they did not want to lose patients.[266]

When birth changed from a home setting to a hospital one, the role of fathers was affected. In colonial America fathers had certain tasks they had to accomplish, like picking up the neighbors and the midwife, but then they tended to go on with their daily chores as if it was just another day. This was not possible once childbirth moved into the hospital. Just as in earlier times, fathers were not allowed to be with their wives through labor or to witness the delivery. Some went home, back to work, or did other activities to pass the time. Others stuck around the hospital to wait for their wives. Sometimes, if they pushed the hospital staff, they were allowed to see their wives periodically through the labor. They were never admitted to the delivery room, though. Instead, men had to find other things to do while their wives were in labor. Most people thought that they patiently paced through the waiting room awaiting news. This was mostly accurate, except for the part about patience. While waiting some expectant fathers wrote in Fathers' Books, which were left in waiting rooms for the men to read and add to as they wished, many times these books showed the fathers' frustration at the lack of information. They were left wondering what was happening to their wives and powerless to shape the outcome.[267]

As more husbands were allowed to stay with their wives during labor, they wanted to stay with them all the way through to delivery. In the 1960s, only about fifteen percent of men were allowed to stay with their wives through the whole process. By the 1970s the majority were allowed to stay.[268] This was debated by physicians from the 1950s through the mid-

[266] Margarete Sandelowski, *Pain, Pleasure, and American Childbirth: From the Twilight Sleep to the Read Method, 1914-1960* (Westport Conn.: Greenwood Press, 1984), 28-34.

[267] Judith Walzer Leavitt, "What Do Men Have to Do with It? Fathers and Mid-Twentieth-Century Childbirth," *Bulletin of the History of Medicine* 77, no. 2 (2003), 235-249.

[268] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 207.

1970s. Many doctors did not believe that the delivery room was a place for visiting; they saw it as a medical space where laypeople were not free to enter. Some also believed that when the husband was present, the people who were there to do their jobs were distracted. Also, physicians worried about being able to hold onto their power with another male in the room. Nonetheless, many soon-to-be mothers and fathers fought the authority of physicians to allow husbands to be present during the birth. Some did this through legal methods in specific cities and counties, while others worked out arrangements with their personal doctors. In these instances, doctors realized that the consumers of their services had some say in the matter. If the physician did not allow the father into the birthing room, he might lose his clientele to another doctor who would allow the father to be present. In the mid to late 1970s, it started becoming much more common for the father to present for the whole experience right along with his wife. By the 1980s husbands were being encouraged by the hospital personnel to accompany their wives through the delivery process.[269]

By the 1950s, even though hospital births had recently gotten safer, women's appreciation of them was beginning to change. Some began to question the sterility and severity that accompanied birth in the hospital. Many did not like the isolation of the experience, with only strangers present. In many cases they were put in rooms with other women in labor, but this was not necessarily comforting. Other women did not like the fact that they were given drugs against their will and made to give birth the way the doctor wanted them to. Doctors, in some instances, strapped women down to birthing tables and confined their movements in humiliating ways. In the move from the home to the hospital, women lost power and control over the birth of their children. When they gave birth at home with a doctor, they still had some options, but the move to the hospital changed that.[270] An additional problem that some women were having with hospitals was the fact that they

[269] Judith Walzer Leavitt, "What Do Men Have to Do with It? Fathers and Mid-Twentieth-Century Childbirth," *Bulletin of the History of Medicine* 77, no. 2 (2003), 249-262.

[270] Judith Walzer Leavitt, "'Science' Enters the Birthing Room: Obstetrics in America since the Eighteenth Century," *The Journal of American History* 70, no. 2 (September 1983), 301-302.

had to wait to have their babies until the doctor arrived. In some cases nurses even told women not to push until they could get a doctor there, which was extremely uncomfortable.[271] Another concern associated with hospital births at mid-century was that women no longer attended the births of their friends and relatives. Because of this, women lost the knowledge about childbirth that they used to have. Now, women had no alternative than to allow physicians to assist them in birth because the experience was mystified.[272]

Another issue that women during this era had with doctors and hospital births was that their newborns were taken away from them right after the birth. This practice began in the 1890s, but did not gain prominence until more women were giving birth in hospitals. With homebirths and midwifery, the mother was almost never separated from her child. Then in the mid twentieth century, newborns were taken away to the nursery with almost no interaction with their mothers. They were then put on feeding schedules that made breastfeeding difficult. Doctors thought that this was advantageous because they believed that a mother's breast potentially carried germs. They were much happier putting newborns on sterilized formula for their nutrition. In doing this, they again took the decision and the power out of the hands of the mother. They were the ones deciding what was best, not the new mothers.[273]

The one exception to this was the brief and not especially popular trend of "rooming-in," created in the 1940s by Dr. Edith B. Jackson. She believed that the hospital should be more like the home, with infants kept close to their mothers after birth. Dr. Jackson believed having newborns stay in the same room as their mothers was a more natural way for infants to bond with their mothers compared to nurseries. She did not come up with this idea entirely on her own however. According to Elizabeth Temkin, "Consumers

[271] Margot Edwards and Mary Waldorf, *Reclaiming Birth: History and Heroines of American Childbirth Reform* (Trumansburg N.Y.: Crossing Press, 1984), 57.

[272] Pamela Eakins, *The American Way of Birth* (Philadelphia: Temple University Press, 1986), 42.

[273] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 26.

too, contributed to the rise of rooming-in. In fact, the earliest incidents were initiated at the request of individual mothers and their doctors."[274] The idea would likely not have been accepted like it was if it did not have other practical values besides mother-child bonding. One practical value was that it reduced nursery epidemics, which were very common during this time. There was also a nurse shortage during and after World War II. These two reasons helped rooming-in take off when it did in some hospitals. [275] Soon, though, these reasons were no longer as relevant. Birth rates were falling after the baby boom, and the amount of nurses was increasing. Also, studies were done which showed that having babies stay with their mothers did not necessarily reduce the rates of infections.[276]

In reaction to these criticisms, an obstetrician named Grantly Dick-Read took women's concerns to heart. He realized that doctors were treating women like machines without taking into account the subjective nature of childbirth. He advocated in the late 1940s and 1950s for a natural view of childbirth. Some changes that he advocated were educating soon-to-be mothers about childbirth, enabling them to voice their individual desires, and encouraging them to have a supportive individual (like their husband) in the room with them for the birth.[277] Dr. Dick-Read also believed that it was possible for women to give birth with very little pain. According to Cassidy, "He believed that if women could just 'let go,' they would experience no pain, have more effective contractions, and therefore have a shorter labor. Likewise, if women were taught what to expect and were supported throughout labor by caring people, there would be no pain."[278] These were

[274] Elizabeth Temkin, "Rooming-In: Redesigning Hospitals and Motherhood in Cold War America," *Bulletin of the History of Medicine* 76, no. 2 (June 1, 2002), 274.

[275] Ibid., 280.

[276] Ibid., 295-297.

[277] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 28-29.

[278] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 145.

radical ideas for the time period when many women gave birth alone and afraid.

Around the same time, another doctor was working on similar ideas. Dr. Fernand Lamaze came up with his beliefs when he was on a trip in the Soviet Union. He observed that they used psychologist Ivan Pavlov's work with conditioning dogs to assist women giving birth. According to Cassidy, "Pavlov applied these principles to laboring women, believing he could condition them to be desensitized to pain, just as he had the dogs. His method combined education about what to expect with breathing techniques, including gently rubbing the belly."[279] Dr. Lamaze then brought this method back to America, where it was embraced by women who were looking for an alternative to "traditional" childbirth. Dr. Lamaze trained husbands as labor coaches for their wives. His goal was to help women relax by breathing through labor, instead of responding with fear and stress to the contractions. He supported this because if women could control their pain with help, then they would not have to take drugs to solve that problem.[280]

These views of Dr. Dick-Read and Dr. Lamaze were a good start, but everything changed in the mid-1960s and the 1970s with the rise of a new type of feminism. Women were gaining strength and supporting each other in many parts of their lives, including childbirth. They wanted to expand the work of Dick-Read and Lamaze. Some of the changes they wanted to make included allowing husbands or lovers to attend deliveries, keeping the newborns with their mothers, encouraging breastfeeding, and having control over the procedures that were performed on them in the hospital.[281] There was also a resurgence of the idea of "mother-infant bonding." The need for this came from a study conducted about neonatal intensive care units or NICUs. According to Temkin, "Studies found that some parents separated from their infants during prolonged NICUs stays had difficulty relating to their infants once they came home." Through this study, rooming-in was

[279] Ibid., 150.

[280] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 28-29.

[281] Ibid., 30-31.

reintroduced to many hospitals to encourage this kind of bonding. This unintentionally gave women more power over their birth experience because they had a greater say in what happened to their newborns.[282]

During the 1970s, the second wave of feminism continued to gain momentum. Women around America wanted to take control over their bodies. They believed childbirth attendants offered a service, so they had to provide services that women wanted. Participants in this feminist movement believed that the way childbirth was managed was based on how men wanted to control it. This did not make sense to them because men were not the ones giving birth. According to Karen Michaelson, "To the woman who views medical treatment as a consumer good rather than a sacred trust, childbirth takes on a political dimension that involves the negotiation of power relationships between a woman and her care provider…These power relationships are expressed in terms of male domination of the medical profession."[283] This was not acceptable to many feminists who saw childbirth as a powerful female-controlled experience, so they actively sought alternatives to the medicalized model.

All of these changes concerning childbirth were supposed to be achieved by educating women. According to Sullivan and Weitz these changes, "Disturbed physicians by threatening to draw childbearing women into the decision-making process. A woman who understands her physiology and has someone to support and articulate her choices about childbirth procedures is far more likely to assert her preferences." Physicians did not like to have these women who stood up for themselves for patients because they were a threat to the doctors' power. They tried many tactics to hold on to their control and monopoly over childbirth. Some wrote articles for women's magazines that explained the reasons for "regular" medical procedures that were done to women during labor. Others relied on their interactions with

[282] Elizabeth Temkin, "Rooming-In: Redesigning Hospitals and Motherhood in Cold War America," *Bulletin of the History of Medicine* 76, no. 2 (June 1, 2002), 297.

[283] Karen Michaelson, *Childbirth in America: Anthropological Perspectives* (South Hadley Mass.: Bergin & Garvey Publishers, 1988), 27.

their patients to try and convince them that natural childbirth was not safe and not for them.[284]

In the 1960s and 1970s, along with the counterculture movement, women began to seek alternatives to giving birth in the hospital with doctors. These women sought out other females, who were not necessarily trained midwives to assist them while they gave birth. One of the most famous of these uncertified "lay-midwives" was Raven Lang. She became a midwife after she had a horrific and painful birth experience when she gave birth in the hospital. Lang wanted to help other women avoid such traumatic situations. After witnessing about thirty-five women give birth, she began to attend women in childbirth, and she also taught childbirth classes. Along with a few other like-minded women, she opened a birthing clinic in a home in Santa Cruz, California. Midwifery had been outlawed in that state for a number of years, so once the center became popular it was raided by the police. The original court ruling decided that Lang had committed no crime because birth was a natural function of women, not a disease. This was a great step in the right direction, except when the case went to the state supreme court; they ruled that midwives needed licenses to practice because childbirth was a medical process. Raven Lang was one of the first well-known midwives who attended women who gave birth at home. She put the power and control in the hands of women, until it was taken away by the courts.[285]

Then in the 1980s, more women began questioning the power of obstetricians in regard to their civil rights. According to Barbara Katz Rothman, "We are in danger of creating of pregnant women a second class citizen, without basic legal rights of bodily integrity and self-determination. Competent adults in this society have the right to refuse medical treatment, even when it is believed to be life-saving."[286] She was referring to the fact

[284] Deborah Sullivan and Rose Weitz, *Labor Pains: Modern Midwives and Home Birth* (New Haven: Yale University Press, 1988), 30-31.

[285] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 44-49.

[286] Barbara Rothman, *Recreating Motherhood: Ideology and Technology in a Patriarchal Society*, 1st ed. (New York: Norton, 1989), 164.

that women were being seen as vessels for babies, while being ignored as human beings themselves. The doctors saw pregnant women as objects to practice their trades on. In this decade, women's voices were not listened to by some doctors in regards to their own health during pregnancy. This led to court-ordered cesarean sections that were forced on women when they refused certain treatments.[287]

A study conducted in 1998 looked at births in the United States during one year that were not in the high-risk category (about 10 percent of births). This study compared birth outcomes between physicians and midwives. It discovered that, "Compared with physician-attended low-risk births, midwife-attended low risk-births have 33 percent fewer newborn infant deaths. Furthermore, midwife-attended low-risk births have 31 percent fewer babies born too small, which means fewer brain-damaged infants."[288] This study showed that the historical change from midwife to physician-attended births did not benefit women. Now there is a movement in America that is arguing that obstetricians should only attend high-risk births and leave the rest to qualified midwives.

Starting in the 1970s, there was a reaction by women against having doctors deliver their babies. New programs for "direct entry" midwives were initiated by midwives. Women who went into these programs did not train as nurses first like nurse-midwives who typically worked in hospitals. According to public health specialist Marsden Wagner, "In 2006, the practice of direct-entry midwifery was legal in twenty-four states, 'alegal' (that is direct-entry midwives were allowed to practice without legal interference) in seventeen states, and explicitly illegal in only nine states."[289] The women who were trained as direct-entry midwives followed a model of midwifery that categorized childbirth as a natural event. Instead of intervening in the process, they encouraged and calmed the woman in labor, much like

[287] Ibid., 165.

[288] Marsden Wagner, *Born in the USA: How a Broken Maternity System Must be Fixed to Put Mothers and Infants First* (Berkeley: University of California Press, 2006), 108.

[289] Ibid., 102.

midwives of previous years did. They also put the birthing woman in a position to independently make decisions about the process.[290]

Along with an increase in direct entry midwives, there was also rise in birthing centers and home births, for women who were uncomfortable giving birth in a hospital. According to Mary Waldorf and Margot Edwards

> By 1980, there were over three hundred alternative birth centers (ABCs) in the country, varying in services and philosophy of care. Most advertised a homelike setting, a minimum of intervention…and welcomed family members, including children and friends of the laboring woman. They offered consumers a pleasant blend of home and hospital with the safety and emergency equipment near at hand.[291]

Some of these alternative birthing centers were sections of hospitals, while others were privately owned. One study discovered that the ones that were attached to hospitals did not give women as much freedom or natural birth experience as ones that were set up apart from hospitals. Independent birthing centers allowed midwives to call on their training without having to answer to doctors or bureaucracy on a regular occasion.[292]

In recent years, the number of birthing centers has been decreasing even though many women have been happy with their experiences there. One reason for this was that these centers did not offer epidurals. For some women, no matter how much they believed in the idea of control over their own bodies, the option of giving birth without pain was too much to resist. The other reason was the rising cost of malpractice insurance. Even if birthing centers never had a suit filed against them, they were still facing the

[290] Ibid., 105.

[291] Margot Edwards and Mary Waldorf, *Reclaiming Birth: History and Heroines of American Childbirth Reform* (Trumansburg N.Y.: Crossing Press, 1984), 182.

[292] Ibid., 185-186.

burden of the high-priced insurance. So, even though women were seeking out these services, the number of options dwindled, mostly due to problems within the medical industry.[293]

The same natural childbirth movement that argued for midwives as birth attendants also argued for home births instead of births in hospitals or birthing centers. Many women made this choice because of their own beliefs about what was best for their babies. According to anthropologist Karen Michaelson, "Women choosing out-of-hospital births are consistently oriented toward individual control of their own health and childbirth environment…Many homebirth couples distrust the medical system and are concerned about the iatrogenic risks to both mother and child."[294] Now that women were empowered, they were able to look at all of the options and make decisions about their bodies for themselves. These women were also able to choose their environment and visitors to make them as comfortable as possible just like women were able to do in colonial America. Women in the late twentieth century saw that they were being treated like badly by physicians, so some made a conscious choice to avoid using doctors to deliver their children.

More women were also choosing to give birth with midwives in the late-twentieth century for other reasons. One important reason was that previously The American College of Obstetricians and Gynecologists reported that home births were unsafe. Recent studies have begun to prove them wrong. One Canadian study discovered that, "Women who gave birth at home were less likely to need interventions or to have problems such as vaginal tearing or hemorrhaging. These babies were also less likely to need oxygen therapy or resuscitation."[295] Another reason that women were choosing the option to give birth at home or to use a midwife was a change in

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[293] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 71-72

[294] Karen Michaelson, *Childbirth in America: Anthropological Perspectives* (South Hadley Mass.: Bergin & Garvey Publishers, 1988), 24.

[295] "Home Birth with Midwife as Safe as Hospital Birth: Study," *Health Day* (August 31, 2009), 2.

ideology. Many women wanted to have a more natural childbirth in a comfortable environment.[296]

One way that feminists encouraged childbearing women was through sharing their stories in *Our Bodies, Ourselves*. This collection was created in 1973 by women, for women, to educate them in all matters concerning their health. One section of the book looked specifically at childbirth. It explained that the present medical system (in the early 1970s) did not provide for their needs. Instead, it subordinated women and kept them in the dark throughout pregnancy and childbirth. These women wanted to have control over their experiences, and they were not getting it. The authors of this collection explained that, "We want to improve maternity care for ourselves and all women by calling into question the present care we receive. This care interferes with the rhythm of our lives. It turns us into objects. We want to be able to choose where and how we have our babies. We want adequate flexible medical institutions…"[297] These women then bravely went on to share personal stories of their birth experiences so that other women going through the same thing would have somewhere to turn.

A little over thirty years later, *Our Bodies, Ourselves* was still educating women and giving them advice about childbirth. In the 2005 edition, women still encouraged other women to take control of their birth experience. It was remarkable to see that there was evidence that childbirth was still being seen by some medical personnel as an event to be controlled by science. The authors explained that, "Unfortunately, a climate of doubt prevails in thinking about pregnancy and childbirth in the U.S. today. Childbirth is seen as an unbearably painful, risky process to be 'managed' in a hospital setting with a wide range of tests, drugs, and technologies. Routine medical practices regularly disregard and disrupt the natural rhythms of nature…"[298] They did report some encouraging news, however, that about ten

[296] Ibid., 1-2.

[297] Boston Women's Health Book Collective, *Our Bodies, Ourselves* (New York: Simon and Schuster, 1973), 157.

[298] Boston Women's Health Book Collective, *Our Bodies, Ourselves: A New Edition for a New Era*, 35th ed. (New York: Simon & Schuster, 2005), 421.

percent of births in recent years were attended by midwives. The number seemed to be slowly rising.[299]

The only other group of women, besides feminists and those part of the natural birth movement, who have gravitated towards homebirths with midwives were the devoutly religious. According to Cassidy, "Many of them refuse to enroll with health insurances that cover abortions; they are modest about exposing themselves to men; and they want to keep birth within the family and out of institutional control."[300] For the devoutly religious, using a midwife and giving birth at home were not about female empowerment or control. Though these women were not necessarily progressive in their reasons for using midwives, they were still looking back to the way childbirth was done historically.

Besides doctors themselves, there was another group that has been fighting against this resurgence of both midwives and home-births. The health care industry has been against this because of how much they have invested in birth technology. According to Waldorf and Edwards, "The partnership is further supported by a medical insurance system that rewards the use of costly technology and surgical intervention and penalizes those who choose more conservative methods." [301] This showed how doctors have been using medications and procedures not only when they were necessary, but also to make a profit. Midwives, as separate entities, did not have to rely on the health industry as much for their livelihood. Instead, they have relied on the women who seek their services.

Through the use of statistics it was easy to see that what the health industry was doing was not good for women. In the United States the birth rate was about 14 births per 1,000 people in 2009. According to The World

[299] Ibid., 425.

[300] Tina Cassidy, *Birth: The Surprising History of How we are Born*, 1st ed. (New York: Atlantic Monthly Press; Distributed by Publishers Group West, 2006), 68.

[301] Margot Edwards and Mary Waldorf, *Reclaiming Birth: History and Heroines of American Childbirth Reform* (Trumansburg N.Y.: Crossing Press, 1984), 191.

Factbook, each woman in the United States was having about 2.05 children. Of those children that were born, the infant mortality rate was 6.26 deaths per 1,000 live births.[302] This was a rather high rate for a wealthy and industrialized country. In 2005, the United States ranked thirtieth in the world by infant mortality rate.[303] In other countries that has similar economies and levels of industrialization there were, "significantly lower rates of infant mortality but [they] spend only about half as much for health care overall." Many of these countries also used midwives at much higher rates than the United States did.[304]

Some groups of women have used their newly won power from the feminist movement to fight against the health industry. Both the women's health movement and childbirth organizations have been working together to empower women while changing health services to suit their needs. According to Waldorf and Edwards, "As a result of feminist activism, more women are able to plan their children; more have positive images of themselves and their bodies, and are more aware of their rights in a medical situation."[305] Other women came to these organizations after having disappointing birth experiences. They knew that they were not satisfied with what was available, and they worked to change the system.

Even though the use of midwives in the United States has been increasing, still only a minority of women use them. In 2006, only 7.9 percent of all births in the United States were attended by a midwife, including both home births and births in hospitals. This statistic was broken down by birth attendant: certified nurse midwives (CNMs) and midwives.

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[302] CIA, *CIA World Factbook*, 2009, https://www.cia.gov/library/publications/the-world-factbook/index.html.

[303] MF MacDorman, "Behind International Rankings of Infant Mortality: How the United States Compares with Europe." *NCHS Data Brief*, no. 23 (November 2009), 1-8.

[304] J Rooks, "Marginalization of Midwives in the United States: New Responses to an Old Story," *Birth* 35, no. 2 (2008): 159.

[305] Margot Edwards and Mary Waldorf, *Reclaiming Birth: History and Heroines of American Childbirth Reform* (Trumansburg N.Y.: Crossing Press, 1984), 193.

When these two distinctive categories were taken into account, 94.3 percent of births attendant by a midwife were specifically attended by a CNM. This statistic was even more interesting because only 0.9 percent of births take place outside of a hospital in America. Of the 0.9 percent of births outside of a hospital, 64.7 percent took place in a home and the remaining percent gave birth in a birthing clinic or in a doctor's office.[306] When just women who gave birth at home were looked at, the statistic was broken down into birth attendant. According to Joyce Martin, "In 2006, midwives attended 60.9 percent and physicians attended 7.6 percent of home births."[307] One reason that many women might have chosen to not to give birth at home was the fact that if there were complications, they felt that the transition to the hospital would not be easy. After they were transported to the hospital, women in labor would possibly be subjected to lectures and unfair treatment by the hospital staff because these doctors and nurses believed that the only safe place to give birth was in a hospital.[308] For these and other reasons, women in the United States have chosen to give birth in the hospital with a doctor present. The percentage of women who gave birth in the hospital in 2006 was 99 percent. Of these women who gave birth in the hospital, 92 percent gave birth with a physician.[309]

Now, in the early twenty-first century, childbirth is still changing. The number of women scheduling cesarean sections instead of allowing labor to happen naturally has increased dramatically. According to Dale King, "The cesarean rate for 2004, all races and origins, was 29.1. This represents a 6% increase over the 2003 cesarean rate of 27.5. This is the highest United States cesarean rate ever reported and represents an increase of over 40%

[306] Joyce Martin et al., "Births: Final Data for 2006," *National Vital Statistics Reports* 57, no. 7 (January 2009).

[307] Ibid., 16.

[308] R. De Vries et al., "The Dutch Obstetrical System: Vanguard of the Future in Maternity Care," in *Birth Models that Work* (Berkeley: University of California Press, 2009), 31-54.

[309] Joyce Martin et al., "Births: Final Data for 2006," *National Vital Statistics Reports* 57, no. 7 (January 2009).

since 1996."[310] In previous years, c-sections were seen as complicated surgeries that were done in emergencies or high-risk pregnancies. Now, doctors and women have been using it as a way to make childbirth easier. Instead of waiting for nature to take its course, doctors can have a fixed schedule without "wasting time" waiting for a woman to go through labor. Male obstetricians, but also female ones who have trained in the male medical model, have pushed women in this direction for their own personal benefit. Many times they do not explain that c-sections are complicated surgeries that come with a long recovery time.[311] This mostly applies to middle and upper-class women with insurance, because c-sections cost a great deal of money. Cesarean sections are the exact opposite of the natural childbirth philosophy that midwives prescribe to. What was once a completely natural process that was in the hands of women has now been medicalized by male physicians. Childbirth was a female ritual, but it is now going in two completely opposite directions. On one side is the minority of women who are opting to control their childbirth experience with midwives, home births, and other personal choices. The majority of women, though, seem to be going along with the male medicalized model of childbirth, and losing their power in the process.

[310] Dale King, "Birth and Delivery Rates for 2004," *International Journal of Childbirth Education* 21, no. 4 (December 2006), 30.

[311] Cindy Heffron, "Meeting a Need: Preparing Couples for a Planned Cesarean," *International Journal of Childbirth Education* 21, no. 4 (December 2006), 23.

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"Influential Factors on Citizen Crime Reporting"

Frank Presutti

Abstract

The purpose of this study was to determine whether confidence in the police, crime severity, victim-offender relationship, and several demographic variables are influential factors on citizen crime reporting. Convenience sampling was used to gather a sample of 103 students from Monmouth University. Data collection involved the use of a survey questionnaire, and responses were analyzed using multiple regressions, repeated measures ANOVAs, and several t-tests. Confidence in the police was found to be statistically significant except when the reporting as a witness or bystander dimension was analyzed by itself. Crime severity and victim-offender relationship were also found to be statistically significant. Gender, age, race, and neighborhood were not found to be statistically significant except for the reporting of felonies and several specific offenses.

RATIONALE

I. Introduction and Problem

One issue that greatly affects the criminal justice system is the underreporting of crimes to the police. Since most crimes are not directly observed by police officers, law enforcement agencies rely heavily on victims and witnesses to bring offenses to their attention. However, the fact that many victims and witnesses of crime never report offenses to the police is widely known (Baumer, 2002). As a result of this underreporting, many crimes are never discovered by the police and many offenders are never apprehended.

This is a problem that impacts law enforcement agencies at the local, state, and federal levels throughout the United States. Since many offenders are never pursued or captured, many victims never obtain justice. Also, some offenders who would have been captured if they had been brought to the attention of the police, go on to victimize other persons. In addition, the underreporting of crimes introduces error into the official crime statistics which are used to determine crime policies and procedures. As such, there is a significant need to understand the factors that determine whether a person reports a crime to the police.

The purpose of this study was to determine whether confidence in the police, crime severity, victim-offender relationship, and several demographic variables are influential factors on citizen crime reporting. Further research in this area has the potential to help find new ways to increase crime reporting, improve the accuracy of crime statistics, and impact the policies of police departments throughout the country. Ultimately, new research on the factors that impact crime reporting may help reduce the rates of crime and victimization in the United States.

In this study, the dependent variable was crime reporting. Crime reporting was conceptually defined as the likelihood that a citizen would report victimization or an observed offense to the police. The dimensions of crime reporting were whether the citizen reports the crime as a victim, as a family member or friend, or as a witness or bystander.

The first independent variable examined in this study was confidence in the police. Confidence in the police was conceptually defined as the degree of trust a citizen has in the police's ability to control crime and carry out other police services. The dimensions of confidence in the police were satisfaction, effort, and helpfulness. Satisfaction was defined as how pleased citizens were with the police services in the places the frequent and that areas in which they live. Effort was defined as a citizen's perception of how much time and resources police would devote to responding to a crime report. Helpfulness was defined as a citizen's perception of how beneficial the police response to the reporting of a crime would be.

The second independent variable examined in this study was crime severity. Crime severity was conceptually defined as a citizen's perception of the seriousness of a crime. The dimensions of crime severity were status offenses, misdemeanors, and felonies. In addition, a fourth dimension which included the special offenses of murder, rape, domestic violence, suicidal ideation, and child abuse was also examined.

The third independent variable examined in this study was victim-offender relationship. Victim-offender relationship was conceptually defined as the degree of familiarity a victim of crime has with his or her offender. The dimensions of victim-offender relationship were that the offender is a coworker, the offender is a friend, or the offender is a family member.

In addition to these three variables, the independent variables of gender, age, race, and neighborhood were also examined in this study. Gender was conceptually defined as whether a person is biologically male or female. Age was conceptually defined as the number of years since a person's birth. Race was conceptually defined as a category of human beings that is based on real or imagined physical differences. Neighborhood was conceptually defined as the type of area in which a person lives.

Besides these variables, there are many others which may have an impact on citizen crime reporting. Variables such as employment status, type of employment, socioeconomic status, level of education, and offender age may also impact whether a person decides to report a crime to the police. However, these additional variables were not of interest to the researcher in this particular study.

Several research questions were raised in this study. Does a person's confidence in the police influence his or her reporting of crime? Does the severity of a crime affect reporting? Does the relationship between the victim and the offender influence reporting? Do men and women differ in their reporting of crime? Does reporting vary by age and race? Does reporting differ between people living in different types of neighborhoods?

Although this study specifically focuses on the effects of confidence in the police, crime severity, victim-offender relationship, gender, age, race, and neighborhood on citizen crime reporting, there is value in examining the general theories and issues that are involved. A large number of studies have been conducted to determine the factors that influence crime reporting. Several studies have examined the particular factors of interest in the present study. Each of these prior studies has contributed to the creation of the theoretical framework that is the basis for the organization of the rest of this study.

METHODOLOGY AND RESOURCES

II. Literature Review and Theoretical Framework

In recent years, a number of studies have examined the factors that influence citizen crime reporting. Together these studies have produced a firm foundation on which to construct a theoretical framework. The theoretical framework used in this study is based on rational choice theory (Cornish & Clarke, 1986). Rational choice theory is based on the belief that citizens analyze the positive and negative aspects of reporting a crime to the police. When a citizen believes that the benefits of reporting a crime outweigh the downsides, the citizen is likely to report the crime to authorities. However, when a citizen believes that the downsides outweigh the possible benefits, the victim is unlikely to report the crime. These aspects of rational choice theory form the basis of the seven propositions of this study.

The first proposition of this study was that confidence in the ability of the police to solve crime affects crime reporting. Based on rational choice theory, a citizen who has a high degree of confidence in the police will be more likely to believe that the police will be able to capture an offender. As such, the fact that the offender will be punished and that future crimes will be prevented will outweigh any possible risks or hassles associated with reporting. These risks and hassles may include "fear of reprisal from offenders, embarrassment at having been victimized, disapproval from others in groups where cooperation with government officials is frowned upon, and fear of formal sanctions for victims themselves who have engaged in illegal activities" (Zhang, Messner, & Liu, 2007, p. 963). Several recent studies provide evidence for this proposition.

Researchers Gartner and Macmillian (1995) examined a sample of over 6,000 women who had been a victim of at least one crime since the age of 16. These researchers found that one of the top three reasons why victims did not report crimes to the police was because they felt that the police would not be able to do anything about the crime (Gartner & Macmillian, 1995). This study suggests that people consider the benefits of reporting a crime to the police when they are deciding whether or not to report a crime.

Similarly, Goudriaan, Lynch, and Nieuwbeerta (2004) analyzed data from the International Crime Victims Survey of sixteen western countries. These researchers initially believed that characteristics beyond the crime itself would have an impact on citizen reporting. However, they found that confidence in the police was the only variable that they tested that increased the likelihood that a victim would report a property crime to the police (Goudriaan, Lynch, & Nieuwbeerta, 2004). This study directly supports the belief that a high degree of confidence in the police increases crime reporting.

In another study, researchers Felson and Paré (2005) examined data from the 1995-1996 National Violence Against Women Survey. These researchers looked at a sample of over 6,000 men and women who had been victims of physical and sexual assaults. For each assault, the researchers looked at whether the assault had been reported to the police and the reasons victims gave for not reporting. Felson and Paré (2005) found that sexual assaults were less likely to be reported to the police than physical assaults. They discovered that two of the main reasons why sexual assault victims were less likely to report the crime were because they thought they would not be believed and they felt there was nothing the police could do (Felson & Paré, 2005). This study showed that when people are deciding if they should report a crime, they consider whether they will be believed and therefore whether the police will actually put effort into solving the crime as well as if there will be sufficient benefits for going through the trouble of reporting.

Xie, Pogarsky, Lynch, and McDowall (2006) conducted a study that examined data from the National Crime Victimization Survey which had been collected between the beginning of 1998 and the end of 2000. Xie et al. (2006) wanted to know whether any relationship existed between crime reporting and police responses to prior victimization. They found that greater police effort during a prior victimization increased the likelihood that a person would report a future crime. This suggests that people who believe that the police will put sufficient effort into solving a reported crime based on their prior experiences with the police will have a higher degree of confidence in the police and therefore will be more likely to report future crimes.

In another study, Thompson, Sitterle, Clay, and Kingree (2007) conducted a survey of 492 female students at a large southeastern university in order to determine the reasons female college students do not report

victimization to the police. The researchers focused on both physical and sexual victimization. The researchers found that sexual assault victims were more likely than physical assault victims to believe that the police could not do anything about the crime and stated this as a reason for not reporting (Thompson et al., 2007). Once again, a belief that the police would not be able to respond to the reported crime in a helpful manner and thus a lack of confidence in the police were shown to influence people's crime reporting decisions.

The second proposition of this study was that a person feels a greater obligation to report more severe crimes to the police. Based on rational choice theory, not reporting a serious offense to the police has the potential of resulting in more negative consequences than not reporting a less serious offense. The greater harm created by serious offenses and the greater danger posed by serious offenders outweigh many of the risks and inconveniences that may prevent less serious offenses from being reported. Several recent studies also provide evidence for this proposition.

Veneziano and Veneziano (2000) conducted a study to determine whether citizens believe that there should be an obligation to report crimes to the police. They conducted a survey of college students and non-college educated citizens in which these participants were presented with crimes and asked which of five punishments they believed should be given to a person for not reporting each crime to the police. Veneziano and Veneziano (2000) discovered that most of the participants believed that punishment should be given to people who do not report crimes to the police. They also found that the participants tended to give harsher punishments for not reporting more serious crimes and less severe punishments for not reporting less serious crimes (Veneziano & Veneziano, 2000). This study supports both the notion that people feel an obligation to report crimes to the police and that people feel a greater obligation to report more serious crimes.

In a prior study, researchers Gartner and Macmillian (1995) had found in their study of over 6000 women that the primary reason why victims did not report crimes to the police was because they did not believe the crime was serious enough to warrant police intervention. This study provides direct evidence that the severity of an offense is taken into account in crime reporting decisions. The study also suggests that a person will be less likely to report a crime that they feel is relatively minor and not worthy of police attention.

Further direct evidence that offense severity influences crime reporting decisions is found in two studies published in 2008. Researchers Addington and Rennison (2008) conducted a study of rape co-occurrence by examining the NCVS and the NIBRS. Among their findings, the researchers found that victims of rape are more likely to report their crime to the police when the rape occurs in the presence of either a knife or a gun. Similarly, Wong (2008) conducted an in-depth study of the reporting of hate crimes. He found that people are more willing to report violent hate crimes than they are to report non-violent crimes. Both studies provide further support for the belief that increased crime severity increases people's willingness to report.

The third proposition of this study was that a victim's relationship to his or her offender influences that victim's reporting of crime to the police. Based on rational choice theory, reporting an offender whom a victim knows well has the potential of resulting in more negative consequences than reporting an offender that the victim does not know well. An offender that is familiar with a victim is likely to know personal information about that victim such as the victim's name, address, and place of employment. As such, an offender who is familiar with a victim is in a much better position than a stranger to retaliate against the victim. In addition, victims are likely to share friends, family members, or colleagues with offenders whom they know well. These additional relationships may be hurt if the victim reports the offender to the police.

Several studies provide support for this proposition. Two recent studies provide evidence that victims weigh different consequences when considering whether or not to report a stranger or someone familiar to the police. Felson, Messner, Hoskin, and Deane (2002) analyzed data from the National Crime Victimization Survey in order to find out what factors influence the reporting decisions of victims of domestic violence. The researchers found that privacy, protection of the offender, and fear of retaliation discouraged victims from calling the police on family members and romantic partners (Felson et al., 2002). These same factors are not likely to be as important when a victim is considering reporting a stranger especially in regard to protecting the offender factor. Similarly, Vijayasiri (2008) conducted a study to examine the factors that influence the reporting of sexual harassment. The researcher examined data from the 2002 Status of Armed Forces: Workplace and Gender Relations Survey and found that fear of coworker retaliation and disapproval discouraged the filing of complaints

(Vijayasiri, 2008). Although this study used a sample of military personnel and did not look at the reporting of sexual harassment to police officers, the study did identify factors that victims take into account when considering reporting a friend or coworker to authorities. These same factors are likely taken into consideration when a victim considers whether to report a crime to the police.

Rennison (2007) analyzed data from the National Crime Victimization Survey from 1993 to 2003. She found that Caucasians were more likely to report a crime committed by a stranger than a crime committed by someone they knew (Rennison, 2007). Addington and Rennison (2008) found that victims of rape were more likely to report strangers and non-intimates to the police than they were to report intimate partners. Both of these studies provide direct support for the belief that crime reporting increases as familiarity with the offender decreases.

The fourth proposition of this study was that a person's gender influences his or her reporting of crime to the police. Based on rational choice theory, men are likely to feel more embarrassment at the prospect of reporting crimes to the police than women. Men in American society are expected to be tough, dominant, and independent. They are also expected to handle most problems on their own. Reporting crimes to the police, especially crimes in which they are the victim, may be viewed by many men as an admittance of weakness or vulnerability. For many men, the perceived embarrassment that may result from reporting a crime to the police may outweigh the benefits of reporting that crime. Several recent studies provide support for this proposition.

In their study of whether people feel that there should be an obligation to report crimes to the police, Veneziano and Veneziano (2000) found that women tended to give harsher punishments than men for not reporting crimes. This indicates that women feel a stronger obligation to report crime to the police than men. In addition, researchers Goudriaan, Wittebrood, and Nieuwbeerta (2006) found that women were more likely to report their victimization to the police than men. Similarily, Rennison (2007) found that women were more likely to report violent crimes to the police when they were the victim. Both of these studies provide direct evidence that women tend to be more likely than men to report crimes to the police.

The fifth proposition of this study was that a person's age influences his or her reporting of crime to the police. Based on rational choice theory, older people may feel less apprehension toward the process of reporting a crime to the police. Older people typically have had more experience with the police than younger people. As such, older people are less likely to feel intimidated by the prospect of having to call the police or having to go into a police station to report a crime. The fact that older people feel less anxiety and uncertainty in their dealings with the police may reduce some of the fear that could potentially discourage younger people from reporting. Several recent studies provide support for the belief that older victims of crime are more likely to report crime to the police.

Researchers Goudriaan, Lynch, and Nieuwbeerta (2004) found that older victims of crime were more likely to report both property and contact crimes to the police. Rennison (2007) found that older victims were more likely to report violent crimes to the police. In their analysis of data collected from the Police Population Monitor, Residential Environment Data Base, and Residential Needs Survey, researchers Goudriaan, Wittebrood, and Nieuwbeerta (2006) also found that older victims were more likely to report crimes committed against them to the police. There is clearly much support for the belief that older victims are more likely to report crimes to the police.

The sixth proposition of this study was that a person's race influences his or her reporting of crime to the police. Based on rational choice theory, people from minority races may have less confidence in the police and more fear of reporting crimes. Therefore, people from minority races are less likely than Caucasians to report crimes to the police. Several studies provide some evidence for this proposition.

Sigler and Johnson (2002) conducted a survey of citizens living in a city in Alabama. They found that African American citizens were less likely to report crimes to the police. In later interviews with minority citizens who worked at the University of Alabama, the researchers found that "there did appear to be a belief that the police were not effective in controlling disruptive youth and that the justice system often goes too far in punishing mild offenders" (Sigler & Johnson, 2002, p. 289). This study provides direct support for the belief that minority victims' crime reporting is impacted by their lack of confidence in the ability of the police to solve crime as well as their fear of the police.

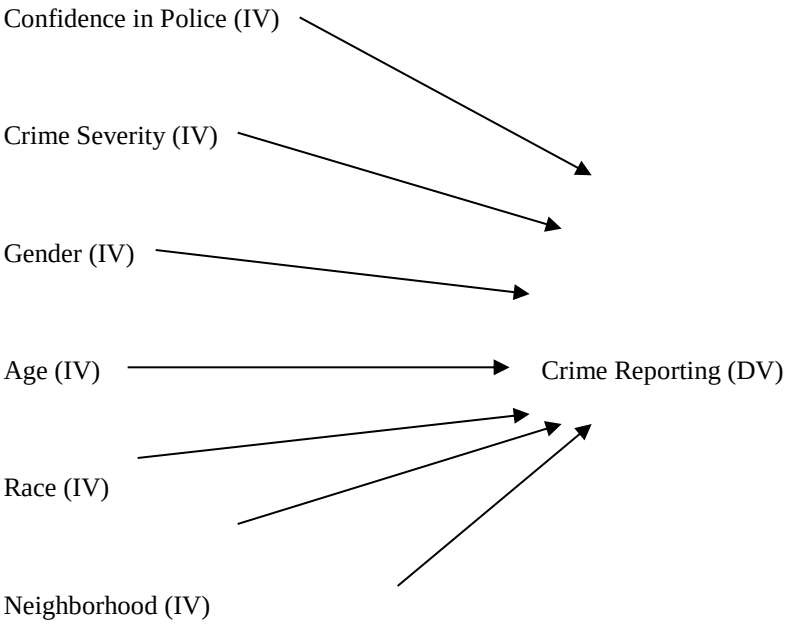
Two studies conducted in 2007 provide further support that there are racial differences in crime reporting. Rennison (2007) found that overall, non-Hispanic Whites were less likely to report violent victimization to the police than Hispanic, African American, American Indian, and Asian victims. However, Hispanics were found to be less likely to report rape and robbery than Caucasians (Rennison, 2007). Thompson, Sitterle, Clay, and Kingree (2007) found that minority women were less likely than Caucasian women to report sexual assault to the police. The main reasons for this difference in reporting were that the minority women tended either not to want the police's help or felt that they would be blamed for the crime (Thompson et al., 2007).

The seventh proposition of this study was that the type of neighborhood a person lives in influences the reporting of crime to the police. Crime rates tend to be higher in urban neighborhoods than in suburban and rural neighborhoods (Walker & Katz, 2005). As such, people living in urban neighborhoods may get accustomed to the presence of crime and be less likely to see much benefit in reporting specific offenses to the police. In contrast, people living in rural or suburban areas where crime rates tend to be lower may be shocked by the presence of crime in their neighborhoods and therefore be more likely to report specific crimes to the police. A few recent studies provide some support for this proposition.

Researchers Goudriaan, Wittebrood, and Nieuwbeerta (2006) found that victims from neighborhoods with a large degree of socio-economic disadvantage were less likely to report crimes to the police. Urban neighborhoods tend to be more socioeconomically disadvantaged than suburban or rural neighborhoods. In addition, Rennison (2007) found that crimes that occurred in the suburbs and rural areas were more likely to be reported. The reporting of crimes to the police seems to be higher in suburban and rural neighborhoods.

Overall, the past research on crime reporting suggests that confidence in the police, crime severity, victim-offender relationship, gender, age, race, and neighborhood all have an influence on whether citizens report crimes to the police. The theoretical model that was created based on the theories and research just discussed is shown below.

Theoretical Model



PROJECT DESCRIPTION

III. Hypotheses and Variable Measurement

Two different types of hypotheses were included in this study. The research hypotheses, which are symbolized by H1, show the expected relationship between two variables. The null hypotheses, which are symbolized by H0, are the opposite of the research hypotheses. The null hypotheses are statistically testable statements that were created with the expectation that they would be rejected. The rejection of a null hypothesis generally allows for the acceptance of the research hypothesis. On the other hand, the acceptance of a null hypothesis demonstrates that the data failed to support the research hypothesis.

Based on the theoretical model, seven primary research hypotheses and three sub-hypotheses were tested in this study. These hypotheses are shown below with their null hypotheses.

Hypothesis #1:

H1: More confidence in the police increases citizen crime reporting.

H0: More confidence in the police does not increase citizen crime reporting.

Sub-hypothesis #1:

H1a: More satisfaction with the police increases crime reporting.

H0: More satisfaction with the police does not increase crime reporting.

Sub-hypothesis #2:

H1b: Citizens who believe that the police will put more effort into solving a crime will be more likely to report crimes.

H0: Citizens who believe that the police will put more effort into solving a crime will not be more likely to report crimes.

Sub-hypothesis #3:

H1c: Citizens who believe that the police response will be more helpful will be more likely to report crime to the police.

H0: Citizens who believe that the police response will be more helpful will not be more likely to report crime to the police.

Hypothesis #2:

H2: More severe offenses increase the likelihood that a crime will be reported to the police.

H0: More severe offenses do not increase the likelihood that a crime will be reported to the police.

Hypothesis #3:

H3: Less familiarity with the offender increases the reporting of a crime to the police.

H0: Less familiarity with the offender does not increase the reporting of a crime to the police.

Hypothesis #4:

H4: Women are more likely to report crime to the police.

H0: Women are not more likely to report crime to the police.

Hypothesis #5:

H5: Older persons are more likely to report crimes to the police.

H0: Older persons are not more likely to report crimes to the police.

Hypothesis #6:

H6: Caucasians are more likely to report crimes to the police.

H0: Caucasians are not more likely to report crimes to the police.

Hypothesis #7:

H7: People living in suburban or rural areas are more likely to report crimes to the police.

H0: People living in suburban or rural areas are not more likely to report crimes to the police.

As shown in the above hypotheses, the variables included in this study were crime reporting, confidence in the police, crime severity, victim-offender relationship, gender, age, race, and neighborhood. Before proceeding, each of these variables had to be given a clear operational definition.

The dependent variable in this study was crime reporting. Crime reporting was defined as the likelihood that a citizen would report victimization or an observed offense to the police. Crime reporting consists of the dimensions of reporting as a victim, reporting as a family member/friend, and reporting as a witness/bystander. A Crime Reporting Scale was used to measure this variable.

For status offenses, the following questions were asked:

1. I would report a friend's underage drinking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

2. I would report a stranger's underage drinking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

3. I would report a friend's underage gambling to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

4. I would report a stranger's underage gambling to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

5. I would report a friend's underage smoking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

6. I would report a stranger's underage smoking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

For misdemeanors, the following questions were asked:

7. If someone stole my DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

8. If I witnessed the theft of a family member's DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

9. If I witnessed the theft of a stranger's DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

10. If my car was keyed, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

11. If I witnessed the keying of a family member's car, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

12. If I witnessed the keying of a stranger's car, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

13. If I witnessed a friend paying for sex, I would the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

14. If I witnessed a stranger paying for sex, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

For felonies, the following questions were asked:

15. If I was the victim of a burglary, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

16. If I witnessed the burglary of a family member's home, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

17. If I witnessed the burglary of a stranger's home, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

18. If I was the victim of arson, I would report the arson to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

19. If I witnessed the arson of a family member's home, I would report the arson to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

20. If I witnessed the arson of a stranger's home, I would report the arson to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

21. If I was the victim of an aggravated assault, I would report the aggravated assault to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

22. If I witnessed an aggravated assault being committed against a family member, I would report the aggravated assault to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

23. If I witnessed an aggravated assault being committed against a stranger, I would report the aggravated assault to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

For the special offenses examined in this study, the following questions were asked:

24. I would report the murder of a family member to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

25. I would report the murder of a stranger to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

26. If I was forced to have sex by a friend, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

27. If I was forced to have sex by a family member, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

28. If I was forced to have sex by a stranger, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

29. If I was the victim of domestic violence, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

30. If I witnessed domestic violence being committed against a family member, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

31. If I witnessed domestic violence being committed against a stranger, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

32. If a friend told me that they were seriously contemplating suicide, I would notify the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

33. If a stranger told me that they were seriously contemplating suicide, I would notify the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

34. If I witnessed the physical abuse of a family member's child, I would report the child abuse to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

35. If I witnessed the physical abuse of a stranger's child, I would report the child abuse to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

This variable was scored by dividing the questions into the three categories of reporting as a victim, reporting as a family member or friend, and reporting as a witness or bystander. The total score for each category was found by adding up all the points corresponding to the questions in that category. An average score for each category was found by dividing the total score for the category by the number of questions in that category. A total score for overall crime reporting was found by adding the total scores of the

three categories together. An average score for overall crime reporting was found by dividing this overall total score by the total number of questions used to measure this variable.

The first independent variable in this study was confidence in the police. Confidence in the police was defined as the degree of trust a citizen has in the police's ability to control crime and carry out other police services. Confidence in the police had been divided into the dimensions of satisfaction, effort, and helpfulness. A Confidence in the Police Scale was used to measure this variable.

The satisfaction dimension was measured by asking the following question:

> 36. How satisfied are you with police services in the areas where you live and frequent?
>
> **Not Satisfied 0 1 2 3 4 5 6 7 8 9 10 Very Satisfied**

The effort dimension was measured by asking the following questions:

For status offenses:

> 37. If you reported underage drinking to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?
>
> **None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount**
>
> 38. If you reported underage gambling to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?
>
> **None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount**

39. If you reported underage smoking to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

For misdemeanors:

40. If you reported a theft to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

41. If you reported an act of vandalism to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

42. If you reported prostitution to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

For felonies:

43. If you reported a burglary to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

44. If you reported arson to the police, how much time and resources do you believe the police would devote to

catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

45. If you reported an aggravated assault to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

For the special offenses examined in this study:

46. If you reported a murder to the police, how much time and resources do you believe the police would devote to catching the offender or preventing further the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

47. If you reported a rape to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

48. If you reported domestic violence to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

49. If you reported someone who is contemplating suicide to the police, how much time and resources do you believe the police would devote to the situation?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

50. If you reported child abuse to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

The helpfulness dimension was measured by asking the following questions:

51. If you reported a status offense to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

52. If you reported a misdemeanor to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

53. If you reported a felony to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

This variable was scored by dividing the questions into the three categories of satisfaction, effort, and helpfulness. A total score for each category was found by adding up all the points in the category. An average score for each category was found by dividing each total score by the number of questions in the category. An average score for confidence in the police was found by adding the total scores together and dividing that total score by the total number of questions used to measure this variable.

The second independent variable in this study was crime severity. Crime severity was defined as a citizen's perception of the seriousness of a crime and consisted of the dimensions of status offenses, misdemeanors,

felonies, and the specific offenses of murder, rape, domestic violence, suicidal ideation, and child abuse. This variable was imbedded in the measurement of crime reporting.

Crime severity was scored by dividing the crime reporting questions into the four categories of status offenses, misdemeanors, felonies, and special offenses. The total score for the categories of status offenses, misdemeanors, and felonies was found by adding up all the points corresponding to the questions in each category. An average score for each of these three categories was found by dividing the total score of the category by the number of questions in that category. The special offenses were kept separate so that they could be examined individually.

The third independent variable in this study was victim-offender relationship. Victim-offender relationship was defined as the degree of familiarity victims of crime have with their offender and consisted of the dimensions of offender is a coworker, offender is a friend, and offender is a family member. A Victim-Offender Relationship Scale was used to measure this variable. The Scale consisted of the following questions:

The offender is a coworker dimension was measured by asking the following questions:

54. If a coworker committed a misdemeanor against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

55. If a coworker committed a felony offense against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

The offender is a friend dimension was measured by asking the following questions:

56. If a friend committed a misdemeanor against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

57. If a friend committed a felony offense against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

The offender is a family member dimension was measured by asking the following questions:

58. If a family member committed a misdemeanor against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

59. If a family member committed a felony offense against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

This variable was scored by dividing the questions into the three categories of offender is a coworker, offender is a friend, and offender is a family member. A total score for each category was found by adding the points from the two questions in the category together. An average score for each category was found by dividing each total score by 2.

The fourth independent variable examined in this study was gender. Gender was defined as whether a person is biologically male or female. A Gender Scale was used to measure this variable. The Gender Scale consisted of the following question:

60. What is your gender?

1). Male 2). Female

Responses to this question were scored by assigning 1 to male participants and 0 to female participants.

The fifth independent variable examined in this study was age. Age was defined as the number of years since a person's birth. An Age Scale was used to measure this variable. The Age Scale consisted of the following question:

61. What is your age? _____

Participants of similar ages were grouped together into the categories of under 21 and 21 and over. 1 was assigned to the participants who belonged to the under 21 category and 2 was assigned to the participants who belonged to the 21 and over category.

The sixth independent variable examined in this study was race. Race was defined as a category of human beings that is based on real or imagined physical differences. A Race Scale was used to measure this variable. The Race Scale consisted of the following question:

62. What is your race?

1. Caucasian 2. Minority

Responses to this question were scored by assigning 1 to Caucasian participants and 2 to Minority participants.

The seventh and final independent variable examined in this study was neighborhood. Neighborhood was defined as the type of area that a person lives in. A Neighborhood Scale was used to measure this variable. The Neighborhood Scale consisted of the following question:

63. Which of the following best fits the area in which you live?

1. Working Class Urban 2. Lower Middle Class Urban
3. Upper Middle Class Urban 4. Suburban 5. Rural

This variable was scored by assigning 1 to participants living in a working class urban area, 2 to participants living in a lower middle class urban area, 3 to participants living in an upper middle class urban area, 4 to participants living in a suburban area, and 5 to participants living in a rural area. The working class urban, lower middle class urban, and upper middle class urban participants were combined into a new urban category. The suburban and rural participants were combined into a new suburban/rural category. 1 was assigned to participants belonging to the new urban category and 2 was assigned to the participants belonging to the new suburban/rural category.

Of great importance to this study were the validity and reliability of the different instruments used. Validity refers to whether an instrument actually measures the variable that the instrument was designed to measure. Survey research can often have weak validity because survey questions and their responses are only approximate indicators of what the researcher has in mind. However, in this study several steps were taken to try to increase the validity of the study. First, all of the questions included in the survey had a specific purpose and were relevant to the study. Second, all of the dimensions of the concepts included in this study had been specifically laid out and measured. In addition to validity, reliability must also be considered. Reliability refers to whether a question would be answered the same way by a participant if he or she was asked the question several times. The reliability of this study is still unclear but survey research in general tends to have a high degree of reliability.

IV. Methods

The ideal design for this study was the survey questionnaire. In this study, a lot of questions had to be asked to participants, and a large number of different cases had to be examined. A survey questionnaire was the easiest and most efficient way of having all the questions answered by a large number of people. In addition, surveys tend to have a high response rate when administered in a group setting such as the surveys administered in this study. Surveys can also be given anonymously, as in this study, to make participants feel more comfortable with answering questions honestly. Lastly, a survey questionnaire was the best option in this study because of the limited time and money available to the researcher.

Survey questionnaires do have several disadvantages. First of all, surveys are not very flexible. Once sampling begins, the questions and answers on the survey cannot be changed or altered to better fit the population. Second, although surveys tend to be reliable, they may lack validity because specific questions are only approximate indicators of the ideas that the researcher has in his or her mind. Lastly, since non-probability sampling was used in the study, the results were very limited in terms of their generalizability.

The population that was examined in this study was college students. In order to obtain a sample from this population, convenience sampling was used. After receiving professor consent, a survey was self-administered by students in classrooms at Monmouth University. This survey included a consent form that had to be read and initialed by the students. After the students completed the survey, they returned the survey and consent form directly to the researcher.

The size of the final sample was 103 students. 57 students were male and 46 students were female. 46 students were under the age of 21 and 57 students were 21 years of age or older. 78 students were Caucasian and 25 students were minorities. 27 students lived in urban neighborhoods and 76 students lived in either suburban or rural neighborhoods. After data collection was complete, the researcher used statistics to examine the results.

V. Analysis and Results

Several different statistical techniques were used to analyze the data in this study. Multiple regression was used to analyze the relationship between confidence in the police and crime reporting. Multiple regression was used because the level of measurement for both variables was scale. A repeated measures ANOVA was used to analyze the relationship between crime severity and crime reporting. A repeated measures ANOVA was used because crime severity was imbedded in the measurement for crime reporting so there was no separate independent variable to analyze. A repeated measures ANOVA was also used to analyze the relationship between victim-offender relationship and crime reporting. Once again, there was no separate independent variable to analyze. Finally, several t-tests were used to analyze the relationships between gender, age, race, neighborhood, and crime reporting. T-tests were used because gender, age, race, and neighborhood were dichotomous categorical variables and crime reporting was scale.

The variable of crime reporting had been divided into the three dimensions of reporting as a victim, reporting as a family member/friend, and reporting as a witness/bystander. The means for crime reporting are broken down by each of these dimensions and by specific offense in Tables 1, 2, and 3. There is importance in noting that all of the means in this study are on a scale between 0 and 10 with 10 representing the highest likelihood or the

highest amount depending on the variable or dimension under consideration. The overall mean for reporting a crime as a victim was the highest of the three dimensions at 7.93. The overall mean for reporting a crime as a family member or friend was 5.19. The overall mean for reporting as a witness or bystander was the lowest of the three dimensions at 5.13. The overall likelihood of reporting a crime to the police was found to be 6.08.

The confidence in the police variable had been divided into the three dimensions of satisfaction, effort, and helpfulness. The mean for satisfaction was 6.65 which indicates that overall the participants were moderately pleased with the police services in the areas they live and frequent. The mean for effort was 7.31 which indicates that overall the participants believed that the police would devote a relatively high amount of time and resources to responding to a reported crime. The means for effort for each of the 14 crimes examined in this study are shown in Table 4. As was expected, perceived effort increased with the severity of the crime. The participants indicated that the police would devote the least amount of time and resources to responding to the status offenses and the most time and resources to the felonies. The mean for helpfulness was 6.19 which indicates that overall the participants believed that reporting a crime to the police would be moderately beneficial. The means for helpfulness for each type of crime are shown in Table 5. Of interest is that the participants indicated that reporting misdemeanors to the police would be less beneficial than reporting status offenses. Combining these three dimensions together, the mean for confidence in the police was found to 6.71. This indicates that the participants had a moderate to high amount of trust in the police's ability to control crime and carry out other police services.

As was mentioned earlier, the statistical technique used to measure the relationship between confidence in the police and crime reporting was multiple regression. One multiple regression was run to analyze the relationship between the satisfaction, effort, and helpfulness dimensions of confidence in the police to overall crime reporting. Three more multiple regressions were run to analyze the relationship between satisfaction, effort, and helpfulness on each of the three dimensions of crime reporting. In all of the multiple regressions run in this study, the significance level of the test was set at .05 to reject the null hypothesis and accept the research hypothesis.

The first multiple regression analyzed the relationship between satisfaction, effort, and helpfulness and overall crime reporting. R was .312

which indicates that there is a moderate positive correlation between confidence in the police and crime reporting. R^2 was .098 which means that satisfaction, effort, and helpfulness explained 9.8% of the observed variability in crime reporting. The model was found to be significant with a significance level of .017. Since the significance level was below .05, the researcher rejected the null hypothesis which had stated that more confidence in the police does not increase citizen crime reporting. In turn, the researcher accepted the research hypothesis which stated that more confidence in the police increases citizen crime reporting.

In this multiple regression model, Beta was .061 for satisfaction, .231 for effort, and .083 for helpfulness. Since Beta indicates how much each of these dimensions contributed to the dependent variable of crime reporting and a higher Beta indicates a more important dimension, effort contributed the most to crime reporting. Satisfaction and helpfulness were found to be not significant at significance levels of .590 and .459 respectively. Effort was significant at a significance level of .040. Since the significance level of satisfaction was above .05, the researcher failed to reject the null hypothesis: More satisfaction with the police does not increase crime reporting. In turn the research failed to the support the research hypothesis: More satisfaction with the police increases crime reporting. Since the significance level of helpfulness was also above .05, the researcher failed to reject the null hypothesis: Citizens who believe that the police response to a crime will be more helpful will not be more likely to report crime to the police. In turn, the researcher failed to support the research hypothesis: Citizens who believe that the police response will be more helpful will be more likely to report crime to the police. Since the significance level of effort was below .05, the researcher was able to reject the null hypothesis: Citizens who believe the police will put more effort into solving a crime will not be more likely to report crimes. In turn, the researcher was able to accept the research hypothesis: Citizens who believe that the police will put more effort into solving a crime will be more likely to report crimes.

The second multiple regression analyzed the relationship between satisfaction, effort, and helpfulness and the reporting of crime as a victim. R was .313 which indicates a moderate positive correlation. R^2 was .098 which means that satisfaction, effort, and helpfulness explained 9.8% of the observed variability in crime reporting as a victim. The model was significant with a significance level of .017. Beta was -.099 for satisfaction,

.326 for effort, and .043 for helpfulness. Satisfaction and helpfulness were found to be not significant at significance levels of .384 and .700. Effort was significant at a significance level of .004. So, more confidence in the police does increase the reporting of crime as a victim.

The third multiple regression analyzed the relationship between satisfaction, effort, and helpfulness and the reporting of crime as a family member or friend. R was .298 which indicates a moderate positive correlation. R^2 was .089 which means that satisfaction, effort, and helpfulness explained 8.9% of the observed variability in crime reporting as a victim. The model was significant with a significance level of .026. Beta was .102 for satisfaction, .198 for effort, and .065 for helpfulness. Satisfaction, effort, and helpfulness were found to be not significant at significance levels of .368, .079, and .567 respectively. So, more confidence in the police does increase the reporting of crime as a family member or friend.

The fourth multiple regression analyzed the relationship between satisfaction, effort, and helpfulness and the reporting of crime as a witness or bystander. R was .205 which indicates a weak positive correlation. R^2 was .042 which means that satisfaction, effort, and helpfulness explained only 4.2% of the observed variability in crime reporting as a witness or bystander. The model was not significant with a significance level of .232. Beta was .120 for satisfaction, .061 for effort, and .075 for helpfulness. Satisfaction, effort, and helpfulness were found to be not significant at significance levels of .305,.597, and .517 respectively. So, confidence in the police was not found to significantly influence reporting as a witness or bystander.

Twelve more multiple regressions were run to analyze the influence of confidence in the police on the five specific offenses included in this study. The R, R^2 , and significance for each of these models is shown in Table 6. Confidence in the police was only found to be significant for the reporting of murder as a family member, murder as a stranger, rape by a stranger, suicidal ideation in a stranger, and child abuse as a family member. The Beta values and significance for satisfaction, effort, and helpfulness in each of these models is shown in Table 7.

The second research hypothesis was that more severe offenses increase the likelihood that a crime will be reported to the police. In order to test this hypothesis, a repeated measures ANOVA was used. The

significance of the test was set at .05 to reject the null hypothesis and accept the research hypothesis. The relationship between crime severity and crime reporting was shown to be very significant at a significance level of .000. As such, the researcher rejected the null hypothesis: More severe offenses do not increase the likelihood that a crime will be reported to the police. In turn, the researcher accepted the research hypothesis: More severe offenses increase the likelihood that a crime will be reported to the police. The means for crime reporting are broken down by crime severity in Table 8.

The third research hypothesis was that less familiarity with the offender increases the reporting of a crime to the police. In order to test this hypothesis, a repeated measures ANOVA was once again used. The significance of the test was set at .05 to reject the null hypothesis and accept the research hypothesis. The relationship between victim-offender relationship and crime reporting was shown to be very significant at a significance level of .000. As such, the researcher rejected the null hypothesis: Less familiarity with the offender does not increase the reporting of a crime to the police. In turn, the researcher accepted the research hypothesis: Less familiarity with the offender increases the reporting of a crime to the police. The means for crime reporting are broken down by the dimensions of victim-offender relationship in Table 9.

The fourth research hypothesis was that women are more likely to report crime to the police. In order to test this hypothesis, the t-test was used. As mentioned earlier, the t-test was used because the independent variable of gender is categorical and dichotomous and the dependent variable of crime reporting is scale. Once again, a significance level below .05 was needed to accept the research hypothesis and reject the null hypothesis. Overall, the mean for reporting for males was 5.91. The overall mean for reporting for females was 6.29. Gender was found to be not significant at a significance level of .178. Since the significance level was above .05, the researcher failed to reject the null hypothesis: Women are not more likely to report crime to the police. Therefore, the researcher cannot accept the research hypothesis: Women are more likely to report crime to the police.

Even though the data failed to support the hypothesis that women are more likely to report crime to the police, the researcher ran several additional t-tests to see whether women were significantly more likely to report any specific types of crimes to the police. The reporting of crimes by males and females is broken down by crime severity in Table 10. Only the

reporting of felonies was found to be significant between men and women at a significance level of .043. The reporting of crimes by males and females is broken down into the three crime reporting dimensions in Table 11. Only reporting as a victim was found to be significant at a significance level of .043.

After reviewing these results, the researcher decided to go a step further and run several more t-tests to see which specific offenses men and women significantly differed in reporting. The reporting of crimes by males and females is broken down by specific offense in Tables 12 and 13. Out of the 35 crime reporting situations analyzed in this study, women had a higher mean for 27 of these situations. However, the differences in means were only significant for the reporting of aggravated assault and the special offenses of rape by a friend, domestic violence as a family member, and child abuse as a family member.

The researcher ran four additional t-tests to determine whether there was any significant difference between men and women's confidence in the police. No statistically significant differences were found between men and women's confidence in the police or any of the confidence in the police dimensions. The means and significance levels of confidence in the police are broken down by dimension and gender in Table 14.

The fifth research hypothesis was that older persons are more likely to report crimes to the police. In order to test this hypothesis, the t-test was used. The t-test was used because the independent variable of age was recorded into a categorical, dichotomous variable and the dependent variable of crime reporting is scale. Once again, a significance level below .05 was needed to accept the research hypothesis and to reject the null hypothesis. Overall, the mean for reporting for participants under age 21 was 6.26. The overall mean for reporting for participants aged 21 and over was 5.94. Age was found to be not significant at a significance level of .264. Since the significance level was above .05, the researcher failed to reject the null hypothesis: Older persons are not more likely to report crime to the police. Therefore, the researcher cannot accept the research hypothesis: Older persons are more likely to report crimes to the police.

Even though the data failed to support the hypothesis that older persons are more likely to report crimes to the police, the researcher ran several additional t-tests to see whether older persons were significantly more

likely to report any specific types of crimes to the police. The reporting of crimes by participants in the two different age groups is broken down by crime severity in Table 15. Only the reporting of felonies was found to be significant between the age groups at a significance level of .046. However, older participants were found to be less likely to report felonies. The reporting of crimes by participants of the different age groups is broken down into the three crime reporting dimensions in Table 16. None of these dimensions were found to be significant.

The researcher decided to go a step further and run several more t-tests to see which specific offenses participants in the different age groups significantly differed in reporting. The reporting of crimes by the different age groups is broken down by specific offense in Tables 17 and 18. Out of the 35 crime reporting situations analyzed in this study, participants aged 21 and older had a higher mean for just 13 of these situations. Only one of these 13 situations, reporting underage smoking of a friend, was found to be significant. Reporting arson as a victim, arson as a family member, aggravated assault as a family member, and the murder of a family member were found to be significantly more likely to be reported by those less than 21 years of age.

The researcher ran four additional t-tests to determine whether there was any significant difference between age and confidence in the police. No statistically significant differences were found between the two age groups in regard to confidence in the police or any of the confidence in the police dimensions. The means and significance levels of confidence in the police are broken down by dimension and age in Table 19.

The sixth research hypothesis was that Caucasians are more likely to report crimes to the police. In order to test this hypothesis, the t-test was used. The t-test was used because the independent variable of race had been recoded into a categorical, dichotomous variable and the dependent variable of crime reporting is scale. Once again, a significance level below .05 was needed to accept the research hypothesis and reject the null hypothesis. Overall, the mean for reporting for Caucasians was 6.17. The overall mean for reporting for minorities was 5.81. Race was found to be not significant at a significance level of .265. Since the significance level was above .05, the researcher failed to reject the null hypothesis: Caucasians are not more likely to report crimes to the police. Therefore, the researcher cannot accept the

research hypothesis: Caucasians are more likely to report crimes to the police.

Even though the data failed to support the hypothesis that Caucasians are more likely to report crime to the police, the researcher ran several additional t-tests to see whether Caucasians were significantly more likely to report any specific types of crimes to the police. The reporting of crimes by Caucasians and minorities is broken down by crime severity in Table 20. Only the reporting of felonies was found to be significant between Caucasians and minorities at a significance level of .039. The reporting of crimes by Caucasians and minorities is broken down into the three crime reporting dimensions in Table 21. Only reporting as a victim was found to be significant at .004.

After reviewing these results, the researcher decided to go a step further and run several more t-tests to see which specific offenses Caucasians and minorities significantly differed in reporting. The reporting of crimes by Caucasians and minorities is broken down by specific offense in Tables 22 and 23. Out of the 35 crime reporting situations analyzed in this study, Caucasians had a higher mean for 26 of these situations. However, the differences in means were only significant for the reporting of theft, aggravated assault, vandalism as a victim, rape by a family member, and domestic violence as a stranger. In addition, the means for minorities were found to be significantly higher for the reporting of the underage drinking of a friend and the underage gambling of a friend.

The researcher ran four additional t-tests to determine whether there was any significant difference between Caucasians and minorities' confidence in the police. No statistically significant differences were found between Caucasians and minorities' confidence in the police or any of the confidence in the police dimensions. The means and significance levels of confidence in the police are broken down by dimension and race in Table 24.

The seventh and final research hypothesis was that people living in suburban or rural areas are more likely to report crimes to the police. In order to test this hypothesis, the t-test was used. The t-test was used because the independent variable of neighborhood was recoded as a categorical, dichotomous variable and the dependent variable of crime reporting is scale. Once again, a significance level below .05 was needed to accept the research hypothesis and reject the null hypothesis. Overall, the mean for reporting for

participants living in urban neighborhoods was 5.64. The overall mean for reporting for participants living in suburban or rural neighborhoods was 6.24. Neighborhood was found to be not significant at a significance level of .060. Since the significance level was above .05, the researcher failed to reject the null hypothesis: People living in suburban or rural areas are not more likely to report crimes to the police. Therefore, the researcher cannot accept the research hypothesis: People living in suburban or rural areas are more likely to report crimes to the police.

Even though the data failed to support the hypothesis that people living in suburban or rural areas are more likely to report crime to the police, the researcher ran several additional t-tests to see whether people living in suburban or rural areas were significantly more likely to report any specific types of crimes to the police. The reporting of crimes by urban and suburban/rural participants is broken down by crime severity in Table 25. Only the reporting of felonies was found to be significant between urban and suburban/rural participants at a significance level of .000. The reporting of crimes by urban and suburban/rural participants is broken down into the three crime reporting dimensions in Table 26. Only reporting as a victim was found to be significant at .002.

The researcher decided to go a step further and run several more t-tests to see which specific offenses urban and suburban/rural participants significantly differed in reporting. The reporting of crimes by urban and suburban/rural participants is broken down by specific offense in Tables 27 and 28. Out of the 35 crime reporting situations analyzed in this study, participants living in suburban/rural neighborhoods had a higher mean for 30 of these situations. However, the differences in means were only significant for reporting theft as a stranger, vandalism as a victim, vandalism as a family member, burglary, arson as a family member, arson as a stranger, aggravated assault, murder of a stranger, rape, domestic violence, suicidal ideation, and child abuse as a stranger.

The researcher ran four additional t-tests to determine whether there was any significant difference between urban and suburban/rural participants' confidence in the police. No statistically significant differences were found between urban and suburban/rural participants' confidence in the police or any of the confidence in the police dimensions. The means and significance levels of confidence in the police are broken down by dimension and neighborhood in Table 29.

There are a number of conclusions that can be reached in light of the original hypotheses. Since the null hypotheses for confidence in the police, crime severity, victim-offender relationship, and the confidence in the police dimension of effort were rejected, relationships between these variables and crime reporting can be assumed. However, since the null hypotheses for gender, age, race, neighborhood and the confidence in the police dimensions of satisfaction and helpfulness could not be rejected, relationships between these variables and crime reporting cannot be assumed in the general population.

VI. Discussion

The results of this study allow the researcher to finally answer the research questions that were first raised at the beginning of the study. Confidence in the police was found to influence the reporting of crime to the police. Overall, more confidence in the police was found to increase the likelihood that a person would report a crime. Crime severity was also found to affect crime reporting. More severe crimes were found to be much more likely to be reported to the police than less severe crimes. The relationship between the victim and the offender was also found to influence the reporting of crime. The likelihood of reporting a crime increased significantly as the victim's familiarity with the offender decreased. Gender, age, race, and neighborhood were not found to have an influence on overall crime reporting but these factors did have an influence on several specific offenses.

The confidence in the police, crime severity, and victim-offender relationship findings directly support rational choice theory (Cornish & Clarke, 1986). People do appear to weigh the positive and negative consequences of reporting a crime to the police. The confidence in the police findings support the work of many researchers including Xie et al. (2006), who found that greater police effort during a prior victimization increased the likelihood that a person would report a future crime, and Goudriaan, Lynch, and Nieuwbeerta (2004), who found that confidence in the police increased the likelihood that a victim would report a property crime to the police. The crime severity findings also support the work of many prior researchers including Veneziano and Veneziano (2000), who found that people felt the greatest obligation to report the most serious crimes. The findings also support the work of Gartner and Macmillian (1995), who found that crime

severity was one of the main reasons why victims did not report crimes to the police. The victim-offender relationship results support the work of Rennison (2007) who found that Caucasians were more likely to report a crime committed by a stranger than a crime committed by someone they knew. The findings also support the work of Addington and Rennison (2007) who found that victims of rape were more likely to report strangers to the police than intimate partners.

The gender findings only provide partial support for rational choice theory. Although gender was not found to be a significant factor in overall crime reporting, women were found to be significantly more likely to report aggravated assault, rape by a friend, domestic violence as a family member, and child abuse as a family member. These offenses, particularly aggravated assault and rape, seem like the types of offenses that would be especially embarrassing for men to report. So, potential embarrassment may be a key factor that men take into account when weighing the positive and negative consequences of reporting some crimes to the police.

The age findings provide very limited support for rational choice theory. People aged 21 and over were only found to be significantly more likely to report the underage smoking of a friend to the police. This finding may reflect a changing attitude toward smoking as one ages. Older persons may be less likely to view smoking as something that is cool and a display of independence and more likely to view smoking as something that is addictive and hazardous to one's health. As such, persons in their early and late twenties may want to discourage smoking amongst their teenage friends. The findings that persons aged 21 and over were less likely to report arson as a victim, arson as a family member, aggravated assault as a family member, and the murder of a family member are very surprising and difficult to explain. These results may simply reflect the fact that the total range of ages examined in this study was relatively small.

The race findings provide some support for rational choice theory. Minorities were found to be less likely than Caucasians to report theft, vandalism as a victim, aggravated assault, rape by a family member, and domestic violence as a stranger. Since minorities tend to live in high crime areas (Walker & Katz, 2005), these findings may reflect a feeling that crimes such as theft and vandalism are common and not worth the effort to report. Perhaps some minorities have reported these types of crimes in the past, have

not seen them decrease in frequency, and have decided that there is little benefit to reporting them again.

Similarly, the neighborhood findings also provide some support for rational choice theory. People living in urban neighborhoods were found to be significantly less likely than people living in suburban or rural neighborhoods to report theft as a stranger, vandalism as a victim, vandalism as a family member, burglary, arson as a family member, arson as a stranger, aggravated assault, the murder of a stranger, rape, domestic violence, suicidal ideation, and child abuse as a stranger. Since urban neighborhoods tend to have higher rates of crime (Walker & Katz, 2005), these findings may reflect a feeling amongst residents of urban areas that these types of crimes are common and not worth the hassle of reporting to the police.

The findings of this study have several important implications for the criminal justice system. First of all, the results suggest that one way to increase the reporting of crime to the police is to increase people's confidence in the police. As such, finding new ways to boost citizens' confidence in the police may increase reporting rates. Secondly, the results of this study suggest that areas with people who have a high degree of confidence in the police may also have higher crime rates. Since people with more confidence in the police seem to be more likely to report crimes, more crimes should be reported in neighborhoods where people have a high degree of trust in their police. This is an important consideration to take into account when reviewing crime statistics and making new crime policies. Thirdly, the results of the study suggest that some efforts at increasing crime reporting may have to be tailored to specific genders, age groups, races, and neighborhoods. Men and women, the young and the old, Caucasians and minorities, and people living in cities or suburbs may take different things into consideration when deciding whether to report a crime to the police.

There are many limitations to this study. First, non-random sampling was used because of the time and money available to the researcher. Second, the sample used in this study was very small and not very diverse. Third, the study examined what participants believed that they would do in the future rather than what they had actually done in the past. There may be differences between what participants say they would do in a situation and what they actually do when they find themselves in that situation. All of these issues severely limit the generalizability of the study. Lastly, as in all survey research, there may be validity issues with this study

since the survey questions are only approximate indicators of the ideas that the researcher had in his mind.

Future studies should examine a larger and more diverse sample than the one examined in this study. Different results may be found if participants are examined from different cities, states, and nations. There is also a need to understand what factors specifically influence people's confidence in the police. Discovering practical ways to increase confidence in the police may be crucial to increasing crime reporting rates. In addition, there is need to discover how people's perceptions of reporting change over time. Specifically there is a need to compare people's perceptions of how likely they are report a crime to whether they actually report the crime when they encounter it. Lastly, there is need to examine other factors that may influence crime reporting which were not included in this study such as employment status, type of employment, socioeconomic status, level of education, and offender age.

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Tables

Table 1: Means for Reporting if the Victim

Crime	**Likelihood of Reporting if Victim**	**SD**
Theft	6.30	3.239
Vandalism	6.45	3.374
Aggravated Assault	8.79	2.199
Burglary	8.85	2.017
Arson	9.28	1.471
Total	*7.93*	*1.815*

Table 2: Means for Reporting if a Family Member or Friend

Crime	**Likelihood of Reporting if Family Member/Friend**	**SD**
Underage Smoking	0.88	1.952
Underage Drinking	1.01	2.051
Underage Gambling	1.07	1.967

Prostitution	2.03	2.614
Theft	7.01	3.002
Vandalism	7.52	2.775
Burglary	8.98	1.847
Aggravated Assault	8.99	1.988
Arson	9.18	1.649
Total	*5.19*	*1.138*

Table 3: Means for Reporting if a Witness or Bystander

Crime	**Likelihood of Reporting if Witness/Bystander**	**SD**
Underage Smoking	1.08	1.974
Underage Gambling	1.72	2.495
Underage Drinking	1.74	2.536
Prostitution	2.41	2.868
Vandalism	5.64	3.331
Theft	6.30	3.271
Burglary	8.41	2.401

Aggravated Assault	8.50	2.169
Arson	8.85	1.952
Total	*5.13*	*2.679*

Table 4: Means for Anticipated Police Effort

Crime	**Anticipated Police Effort**	**SD**
Underage Smoking	2.96	2.645
Underage Gambling	4.61	2.698
Underage Drinking	5.44	2.736
Theft	6.83	2.068
Vandalism	6.90	2.070
Prostitution	6.95	2.483
Suicidal Ideation	7.91	1.946
Burglary	8.13	1.797
Domestic Violence	8.28	1.574
Arson	8.46	1.719
Aggravated Assault	8.47	1.602
Child Abuse	8.70	1.501
Rape	9.12	1.536

Murder	9.52	1.037
Total	*7.31*	*1.251*

Table 5: Means for Anticipated Police Helpfulness by Crime Severity

Crime Severity	**Anticipated Police Helpfulness**	**SD**
Status Offenses	5.73	2.139
Misdemeanors	4.98	2.015
Felonies	7.83	1.806
Total	*6.19*	*1.574*

Table 6: Multiple Regression Model Summaries (Special Offenses)

Crime	**R**	**R^2**	**Model Sig.**
Murder as family member	.383	.147	.001*
Murder as stranger	.372	.138	.002*
Rape by friend	.248	.061	.100
Rape by family member	.181	.033	.350
Rape by stranger	.367	.135	.003*
Domestic violence as victim	.242	.058	.113
Domestic violence as a family member	.232	.054	.138

Domestic violence as stranger	.143	.020	.562
Suicidal ideation in friend	.242	.058	.112
Suicidal ideation in stranger	.301	.090	.024*
Child abuse as family member	.297	.088	.027*
Child abuse as stranger	.237	.056	.125

* = Significant

Table 7: Multiple Regression Coefficients Table Summaries (Special Offenses)

Crime	**Satisfaction**		**Effort**		**Helpfulness**	
	Beta	*Sig.*	*Beta*	*Sig.*	*Beta*	*Sig.*
Murder as a family member	-.044	.688	.243	.026*	.236	.032*
Murder as stranger	.197	.076	.102	.350	.165	.135
Rape by friend	.040	.736	.259	.026*	-.117	.312
Rape by family member	-.096	.419	.194	.099	.030	.800
Rape by stranger	.040	.720	.327	.004*	.039	.723
DV as victim	-.035	.761	.206	.072	.089	.436
DV as family member	.099	.391	.131	.252	.058	.611
DV as stranger	-.027	.822	.095	.411	.088	.452

Suicidal ideation in friend	.072	.531	.022	.848	.188	.103
Suicidal ideation in stranger	.149	.191	.010	.930	.196	.084
Child abuse as family member	.215	.061	.013	.909	.120	.289
Child abuse as stranger	.183	.115	.067	.558	.029	.801

* = Significant

Table 8: Means for Reporting by Crime Severity Dimensions

Crime Severity	**Likelihood of Reporting**	**SD**
Status Offenses	1.25	1.795
Misdemeanors	5.66	3.141
Felonies	8.87	1.604

Table 9: Means for Reporting by Victim-Offender Relationship Dimensions

Victim-Offender Relationship	**Likelihood of Reporting**	**SD**
Coworker	7.47	2.046
Friend	6.33	2.456

Family Member	5.74	2.813

Table 10: Means for Reporting by Males and Females Shown by Crime Severity

Crime Severity	**Males**	**Females**	**Sig.**
Status Offenses	1.37	1.10	.445
Misdemeanors	5.49	5.87	.547
Felonies	8.58	9.22	.043*

* = Significant

Table 11: Means for Reporting by Males and Females Shown by Reporting Dimensions

Reporting	**Males**	**Females**	**Sig.**
As a Victim	7.60	8.33	.043*
As a Friend	5.00	5.42	.061
As a Witness	5.14	5.12	.979
Total	5.91	6.29	.178

* = Significant

Table 12: Means for Reporting by Males and Females

Crime	Males	Females	Sig.
Underage Drinking as Friend	1.19	.78	.315
Underage Drinking as Stranger	1.98	1.43	.278
Underage Gambling as Friend	1.12	1.00	.754
Underage Gambling as Stranger	1.88	1.52	.475
Underage Smoking as Friend	.88	.89	.971
Underage Smoking as Stranger	1.18	.96	.578
Theft as Victim	6.05	6.61	.392
Theft as Family Member	6.68	7.41	.222
Theft as Stranger	5.80	6.13	.618
Vandalism as Victim	5.96	7.04	.107
Vandalism as Family Member	7.07	8.09	.064
Vandalism as Stranger	5.33	6.02	.299
Prostitution as Friend	1.67	2.48	.118

Prostitution as Stranger	5.44	3.17	.583
Burglary as Victim	8.61	9.15	.179
Burglary as Family Member	8.84	9.15	.400
Burglary as Stranger	8.22	8.63	.393
Arson as Victim	9.16	9.43	.345
Arson as Family Member	9.00	9.41	.208
Arson as Stranger	8.72	9.02	.437
Aggravated Assault as Victim	8.26	9.43	.007*
Aggravated Assault as Family Member	8.53	9.57	.008*
Aggravated Assault as Stranger	7.91	9.22	.002*
Overall	*5.91*	*6.29*	*.178*

* = Significant

Table 13: Means for Reporting by Males and Females (Special Offenses)

Crime	**Males**	**Females**	**Sig.**
Murder as a family member	9.51	9.91	.127
Murder as a stranger	9.30	9.83	.109

Rape by friend	6.59	8.43	.002*
Rape by family member	8.00	8.67	.199
Rape by stranger	8.48	9.28	.068
Domestic violence as victim	7.72	8.37	.200
Domestic violence as family member	7.70	8.72	.035*
Domestic violence as stranger	7.61	7.91	.583
Suicidal ideation as friend	8.21	7.98	.623
Suicidal ideation as stranger	7.79	7.70	.861
Child abuse as family member	8.49	9.30	.045*
Child abuse as stranger	8.16	8.98	.109

* = Significant

Table 14: Confidence in the Police for Males and Females by Dimension

Confidence in the Police	**Males**	**Females**	**Sig.**
Satisfaction	6.54	6.78	.623
Effort	7.27	7.35	.736
Helpfulness	6.22	6.14	.806
Overall	*6.68*	*6.76*	*.771*

* = Significant

Table 15: Means for Reporting by Age Shown by Crime Severity

Crime Severity	Under 21	21 and Over	Sig.
Status Offenses	.94	1.50	.119
Misdemeanors	6.01	5.38	.319
Felonies	9.22	8.59	.046*

* = Significant

Table 16: Means for Reporting by Age Shown by Reporting Dimensions

Reporting	Under 21	21 and Over	Sig.
As a Victim	8.10	7.80	.404
As a Friend	5.24	5.14	.648
As a Witness	5.43	4.89	.314
Total	6.26	5.94	.264

* = Significant

Table 17: Means for Reporting by Age

Crime	Under 21	21 and Over	Sig.
Underage Drinking as Friend	.65	1.30	.112
Underage Drinking as Stranger	1.54	1.89	.487
Underage Gambling as Friend	.78	1.30	.187
Underage Gambling as Stranger	1.48	1.91	.383
Underage Smoking as Friend	.41	1.26	.027*
Underage Smoking as Stranger	.78	1.32	.174
Theft as Victim	6.37	6.25	.854
Theft as Family Member	7.37	6.72	.277
Theft as Stranger	5.87	6.02	.821
Vandalism as Victim	6.24	6.61	.578
Vandalism as Family Member	7.85	7.26	.290
Vandalism as Stranger	5.50	5.75	.702
Prostitution as Friend	1.74	2.26	.314

Prostitution as Stranger	2.59	2.26	.571
Burglary as Victim	9.15	8.61	.179
Burglary as Family Member	9.30	8.72	.110
Burglary as Stranger	8.58	8.27	.522
Arson as Victim	9.61	9.02	.042*
Arson as Family Member	9.61	8.84	.018*
Arson as Stranger	9.17	8.60	.136
Aggravated Assault as Victim	9.13	8.51	.155
Aggravated Assault as Family Member	9.48	8.60	.024*
Aggravated Assault as Stranger	8.91	8.16	.079
Overall	*6.26*	*5.94*	*.264*

* = Significant

Table 18: Means for Reporting by Age (Special Offenses)

Crime	**Under 21**	**21 and Over**	**Sig.**
Murder as a family member	10.00	9.44	.033*
Murder as a stranger	9.72	9.39	.317
Rape by friend	7.53	7.33	.744

Rape by family member	8.31	8.30	.981
Rape by stranger	9.07	8.67	.366
Domestic violence as victim	8.15	7.89	.613
Domestic violence as family member	8.48	7.89	.229
Domestic violence as stranger	7.80	7.70	.851
Suicidal ideation as friend	7.78	8.37	.214
Suicidal ideation as stranger	7.59	7.88	.587
Child abuse as family member	8.87	8.84	.947
Child abuse as stranger	8.46	8.58	.812

* = Significant

Table 19: Confidence in the Police by Age

Confidence in the Police	**Under 21**	**21 and Over**	**Sig.**
Satisfaction	6.26	6.96	.146
Effort	7.27	7.34	.779
Helpfulness	5.96	6.37	.182
Overall	*6.49*	*6.89*	*.156*

* = Significant

Table 20: Means for Reporting by Race Shown by Crime Severity

Crime Severity	Caucasians	Minorities	Sig.
Status Offenses	1.12	1.65	.197
Misdemeanors	5.70	5.55	.841
Felonies	9.05	8.29	.039*

* = Significant

Table 21: Means for Reporting by Race Shown by Reporting Dimensions

Reporting	Caucasians	Minorities	Sig.
As a Victim	8.22	7.02	.004*
As a Friend	5.26	4.97	.274
As a Witness	5.03	5.43	.522
Total	6.17	5.81	.265

* = Significant

Table 22: Means for Reporting by Race

Crime	Caucasians	Minorities	Sig.
Underage Drinking as Friend	.78	1.72	.046*
Underage Drinking as Stranger	1.63	2.08	.441
Underage Gambling as Friend	.83	1.80	.032*
Underage Gambling as Stranger	1.73	1.68	.930
Underage Smoking as Friend	.78	1.20	.354
Underage Smoking as Stranger	.96	1.44	.294
Theft as Victim	6.84	4.64	.003*
Theft as Family Member	7.55	5.32	.001*
Theft as Stranger	6.52	4.20	.002*
Vandalism as Victim	6.83	5.24	.039*
Vandalism as Family Member	7.78	6.72	.096
Vandalism as Stranger	5.91	4.80	.148
Prostitution as Friend	1.90	2.44	.369

Prostitution as Stranger	2.31	2.72	.534
Burglary as Victim	8.97	8.48	.288
Burglary as Family Member	9.13	8.52	.153
Burglary as Stranger	8.53	8.00	.345
Arson as Victim	9.35	9.08	.434
Arson as Family Member	9.31	8.80	.182
Arson as Stranger	8.95	8.56	.389
Aggravated Assault as Victim	9.14	7.68	.003*
Aggravated Assault as Family Member	9.24	8.20	.022*
Aggravated Assault as Stranger	8.85	7.40	.003*
Overall	*6.17*	*5.81*	*.265*

* = Significant

Table 23: Means for Reporting by Race (Special Offenses)

Crime	**Caucasians**	**Minorities**	**Sig.**
Murder as a family member	9.69	9.68	.968
Murder as a stranger	9.55	9.48	.853

Rape by friend	7.71	6.52	.089
Rape by family member	8.73	7.00	.004*
Rape by stranger	9.08	8.12	.059
Domestic violence as victim	8.23	7.32	.121
Domestic violence as family member	8.38	7.44	.092
Domestic violence as stranger	8.09	6.68	.024*
Suicidal ideation as friend	8.26	7.64	.259
Suicidal ideation as stranger	7.91	7.24	.279
Child abuse as family member	8.85	8.88	.943
Child abuse as stranger	8.47	8.68	.731

* = Significant

Table 24: Confidence in the Police by Race

Confidence in the Police	**Caucasians**	**Minorities**	**Sig.**
Satisfaction	6.41	7.40	.077
Effort	7.26	7.43	.558
Helpfulness	6.05	6.61	.121

Overall	*6.58*	*7.15*	*.076*

* = Significant

Table 25: Means for Reporting by Neighborhood Shown by Crime Severity

Crime Severity	**Urban**	**Suburban/Rural**	**Sig.**
Status Offenses	1.14	1.19	.582
Misdemeanors	5.56	5.70	.848
Felonies	7.95	9.20	.000*

* = Significant

Table 26: Means for Reporting by Neighborhood Shown by Reporting Dimensions

Reporting	**Urban**	**Suburban/Rural**	**Sig.**
As a Victim	7.02	8.26	.002*
As a Friend	4.82	5.32	.053
As a Witness	5.09	5.15	.921
Total	5.64	6.24	.060

* = Significant

Table 27: Means for Reporting by Neighborhood

Crime	Urban	Suburban/Rural	Sig.
Underage Drinking as Friend	1.37	.88	.290
Underage Drinking as Stranger	1.74	1.74	.995
Underage Gambling as Friend	1.26	1.00	.559
Underage Gambling as Stranger	1.44	1.82	.509
Underage Smoking as Friend	1.44	.68	.082
Underage Smoking as Stranger	1.22	1.03	.660
Theft as Victim	5.52	6.59	.143
Theft as Family Member	6.19	7.30	.097
Theft as Stranger	4.67	6.41	.017*
Vandalism as Victim	5.19	6.89	.023*
Vandalism as Family Member	6.56	7.87	.034*
Vandalism as Stranger	4.59	6.01	.057
Prostitution as Friend	1.96	2.05	.879

Prostitution as Stranger	2.11	2.51	.534
Burglary as Victim	7.96	9.17	.007*
Burglary as Family Member	8.04	9.32	.002*
Burglary as Stranger	7.31	8.79	.006*
Arson as Victim	8.81	9.45	.055
Arson as Family Member	8.52	9.42	.014*
Arson as Stranger	8.11	9.12	.021*
Aggravated Assault as Victim	7.63	9.20	.001*
Aggravated Assault as Family Member	8.07	9.32	.005*
Aggravated Assault as Stranger	7.15	8.97	.000*
Overall	*5.64*	*6.24*	*.060*

* = Significant

Table 28: Means for Reporting by Neighborhood (Special Offenses)

Crime	**Urban**	**Suburban/Rural**	**Sig.**
Murder as a family member	9.30	9.83	.075
Murder as a stranger	8.81	9.79	.008*
Rape by friend	5.44	8.13	.000*

Rape by family member	6.37	9.00	.000*
Rape by stranger	7.48	9.33	.000*
Domestic violence as victim	6.41	8.58	.000*
Domestic violence as family member	6.63	8.70	.000*
Domestic violence as stranger	6.26	8.28	.001*
Suicidal ideation as friend	7.33	8.38	.048*
Suicidal ideation as stranger	6.52	8.18	.005*
Child abuse as family member	8.22	9.08	.062
Child abuse as stranger	7.44	8.91	.011*

* = Significant

Table 29: Confidence in the Police by Neighborhood

Confidence in the Police	**Urban**	**Suburban/Rural**	**Sig.**
Satisfaction	6.22	6.80	.290
Effort	6.97	7.42	.108
Helpfulness	6.23	6.17	.858
Overall	*6.48*	*6.80*	*.309*

* = Significant

Survey Consent Form

My name is Frank Presutti. I am a criminal justice student at Monmouth University. I am conducting a survey as part of the requirements for my Honors Thesis.

The survey involves answering questions on the topic of crime reporting. The purpose of the survey is to better understand the factors that influence citizens' decisions to report crimes to the police.

Your participation in this survey is completely voluntary, and your identity will remain anonymous. You do not have to answer any questions you do not wish to answer, and there are no consequences if you decide not to complete the survey.

If you agree to participate in the survey, please provide your initials below. Do not write your name anywhere on the survey.

After the survey is completed, please return it to the survey administrator.

If you do not want to complete the survey, simply return the blank survey to the survey administrator.

This project is being supervised by Dr. Marie Mele and Dr. Peter Liu. If you have any questions about this project or your rights as a research participant, please contact Dr. Mele at mmele@monmouth.edu or Dr. Liu at pliu@monmouth.edu.

Thank you for your time.

Initials: _____ Date: _____

Please read the following questions and circle the number that best fits your answer.

(1) How satisfied are you with the police services in the areas where you live and frequent?

Not Satisfied 0 1 2 3 4 5 6 7 8 9 10 Very Satisfied

(2) If you reported underage drinking to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(3) If you reported underage gambling to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(4) If you reported underage smoking to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(5) If you reported a theft to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(6) If you reported an act of vandalism to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(7) If you reported prostitution to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(8) If you reported a burglary to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(9) If you reported arson to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(10) If you reported an aggravated assault to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(11) If you reported a murder to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(12) If you reported a rape to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(13) If you reported domestic violence to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(14) If you reported someone who is contemplating suicide to the police, how much time and resources do you believe the police would devote to the situation?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(15) If you reported child abuse to the police, how much time and resources do you believe the police would devote to catching the offender or preventing the crime from occurring again?

None 0 1 2 3 4 5 6 7 8 9 10 Highest Amount

(16) If you reported a status offense to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

(17) If you reported a misdemeanor to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

(18) If you reported a felony to the police, how beneficial do you think the police response would be?

Not Beneficial 0 1 2 3 4 5 6 7 8 9 10 Extremely Beneficial

Please circle the number that best corresponds to how strongly you agree with each statement.

(1) I would report a friend's underage drinking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(2) I would report a stranger's underage drinking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(3) I would report a friend's underage gambling to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(4) I would report a stranger's underage gambling to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(5) I would report a friend's underage smoking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(6) I would report a stranger's underage smoking to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(7) If someone stole my DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(8) If I witnessed the theft of a family member's DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(9) If I witnessed the theft of a stranger's DVD player, I would report the theft to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(10) If my car was keyed, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(11) If I witnessed the keying of a family member's car, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(12) If I witnessed the keying of a stranger's car, I would report the vandalism to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(13) If I witnessed a friend paying for sex, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(14) If I witnessed a stranger paying for sex, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(15) If I was the victim of a burglary, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(16) If I witnessed the burglary of a family member's home, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(17) If I witnessed the burglary of a stranger's home, I would report the burglary to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(18) If I was the victim of arson, I would report the arson to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(19) If I witnessed the arson of a family member's home, I would report the arson to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(20) If I witnessed the arson of a stranger's home, I would report the arson to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(21) If I was the victim of an aggravated assault, I would report the aggravated assault to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(22) If I witnessed an aggravated assault being committed against a family member, I would report the aggravated assault to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(23) If I witnessed an aggravated assault being committed against a stranger, I would report the aggravated assault to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

Please circle the number that best corresponds to how strongly you agree with each statement.

(1) I would report the murder of a family member to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(2) I would report the murder of a stranger to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(3) If I was forced to have sex by a friend, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(4) If I was forced to have sex by family member, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(5) If I was forced to have sex by a stranger, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(6) If I was the victim of domestic violence, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(7) If I witnessed domestic violence being committed against a family member, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(8) If I witnessed domestic violence being committed against a stranger, I would report the domestic violence to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(9) If a friend told me that they were seriously contemplating suicide, I would notify the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(10) If a stranger told me that they were seriously contemplating suicide, I would notify the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(11) If I witnessed the physical abuse of a family member's child, I would report the child abuse to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(12) If I witnessed the physical abuse of a stranger's child, I would report the child abuse to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

Please circle the number that best corresponds to how strongly you agree with each statement.

(1) If a coworker committed a misdemeanor against me, I would report the crime to the police.

Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(2) If a coworker committed a felony offense against me, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(3) If a friend committed a misdemeanor against me, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(4) If a friend committed a felony offense against me, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(5) If a family member committed a misdemeanor against me, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

(6) If a family member committed a felony offense against me, I would report the crime to the police.
Strongly Disagree 0 1 2 3 4 5 6 7 8 9 10 Strongly Agree

Please answer the following questions.
(1) What is your gender?
1. Male 2. Female
(2) What is your age? _____

(3) What is your race?
1. Caucasian 2. Minority

(4) Which of the following best fits the area in which you live?
1. Working Class Urban 2. Lower Middle Class Urban 3. Upper Middle Class Urban 4. Suburban 5. Rural