

**FREE INQUIRY IN CREATIVE SOCIOLOGY**

Volume 35 Number 1, May 2007

SN 0736-9182

Cover design: Hobart Jackson, University of Kansas School of Architecture

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**PUBLISHED:** May and November by the Oklahoma Sociology Association and the Consortium of University Sociology Departments and Programs in the State of Oklahoma.

## ARE SOCIAL IDENTITY MARKERS RELATED TO THE UTILIZATION OF HIP-HOP PEDAGOGY?

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### ABSTRACT

This research examines whether social identity markers (e.g., the age, gender) of faculty members are related to teaching rap and hip-hop within academia. It is argued that hip-hop pedagogy is not yet widely utilized within academia because of cultural hegemony. Two methods were used to produce the data: 1) a literary analyses and 2) a survey of 107 faculty members. Our principal finding was that nearly 80 percent of the faculty surveyed indicated a willingness to utilize hip-hop texts and media in their classrooms. While social identity markers appear to influence one's willingness to utilize hip-hop pedagogy, the findings did not indicate that any one social identity marker negates one's willingness to utilize such pedagogy. Furthermore, we speculate that hip-hop pedagogy will likely support diversity within the academy when used in the classroom by faculty.

The origin of the study can be traced to an undergraduate class where it was stated that the American Dream is a reality that is "alive and well," welfare is not necessary, teen mothers deserve what they get, poverty is a personal choice, and not attending college is an act of laziness. These claims prompted us to query whether it is possible to reach across differences and to give life to the statistics and theories that are taught within academia? If it is possible, how might the academy begin to tap into unacknowledged privilege when this privilege has become ingrained in our culture and been made invisible through the function of hegemony?

The previous assertions reflect the hegemonic system that Antonio Gramsci (1971) describes. Within this system, hegemony is invisible to those who benefit from it: those who occupy privileged positions. The function of hegemony as a system of oppression relies upon its invisibility. Furthermore, the privileged often unconsciously express hegemony in their use of language and in the social construction of their worldviews.

Theoretically the university classroom is a place where students become critically engaged with what they are learning. However, hegemony functions to determine what is taught within the university, what texts are required reading, and who becomes a member of the professorate. Hegemonic oppression also informs which students are able to attend institutions of higher education. Unacknowledged hegemony is debilitating to critical engagement. Thus, when hegemony is at work, opportunities for criticism of the

hegemonic system are diminished.

Within academia, scholars are able to expand their worldviews and knowledge bases through accessing disciplines that focus upon the personal voice of the author along with the message of the text. Hip-hop pedagogy, specifically pedagogy related to rap music, provides access to the voices of marginalized youth because rap music is a medium through which poor mostly African American<sup>1</sup> youth voice their concerns about modern society. As Bakari Kitwana observes, hip-hop music

isn't entertainment alone; it's also a voice to the voiceless. More than just a new genre of music, hip-hop since its inception has provided young Blacks a public platform in a society that rendered them mute. It has done the same for youth of other cultures as well. (2005 xiii)

In the thirty-plus years that have passed since its inception, rap music has become part of a global dialogue undertaken by youth from varying socio-economic backgrounds. Globalization lies at the heart of this dialogue, for the global dialogue would not exist if hip-hop had not emerged during a "global information-age" (Kitwana 2005). Thru globalization, the voices of rap artists have become

vastly more accessible to oppressed and sympathetic groups around the world and contribute to developing cultural bridges among such groups. (Rose 1994 101)

These cultural bridges include the shared experience of social inequalities that have resulted from globalization – such as rising unemployment, the prevalence of the underground economy, and steadily increasing disparities between the have and the have-nots (Kitwana 2002). Essentially, rap music has become, in the words of Rose, “a contemporary stage for the theater of the powerless” (1994 101).

The existence of this “theater of the powerless” – which encompasses stages, studios, and street corners – is vital because it is within this theater that the voices of the oppressed are able to resonate with empowerment, to speak their realities, and to echo resistance to the hegemonic discourse. Thus, even though their voices may be silenced within hegemonic social institutions, rap artists have booked a thriving venue within mainstream society.

As hip-hop became a prominent venue, or “mainstreamed,” within America and the larger global arena, it has taken on a dual existence - that of a

highly commercialized, corporate-sponsored venture as well as an indigenous art form that reflects (on) the brutal realities of black youth culture. (Dyson 2001a 137)

Although in its commercial existence, hip-hop is a multimillion dollar industry controlled by white elites, its message has not been diluted or mitigated; rather, the ever evolving spirit of hip-hop has created

a critical and conscientious forum for visiting social criticism upon various forms of social injustice, especially racial and class oppression. (Dyson 2001b 152)

Thus, we are asserting that the voices of rap artists need to be widely taught since they shed light on the experiences of people who have been systematically oppressed and marginalized within contemporary societies.

#### **HEGEMONY AND ACADEMIA**

One of the orienting ideas for this study is the theory of hegemony proposed by Antonio Gramsci (1971), who contends that hegemony is invisible; it is the centralized power in a society, labeling itself ideal and all else inferior. The hegemonic aspects of American society are white, upper class, educated,

male, and able-bodied. Hegemony functions through the use of systematic and systemic oppression. These systematic oppressions are interlocking and include race, class, and gender (Collins 1990). Hegemony pervades existing social institutions such as the criminal justice system, education system, political arena, and social programs.

At the institutional level, hegemony is not readily taught or challenged. Because it is invisible, hegemony has a history of being ingrained within academia's codes and pedagogy. Those who benefit from pedagogy, those who are afforded privileged positions in society, do not question their privilege because they are unaware of it. As a result of the pervasiveness of the hegemonic ideology, and the subsequent status and position in society that the oppressed are afforded, the oppressed are not seen as credible when they question hegemonic privilege and power (Freire 1973).

Within academia, the written word of the educated white male is privileged. The oral transmission of knowledge has been suppressed and seen as an inferior mode of communication. It has traditionally been associated with women and oppressed groups. Rap music emerged from the oral traditions of African American culture. Historically, African Americans have been excluded from academia (Feagin 2001). The exclusion has, to a large extent, been a result of racism, hegemonic oppression, and institutional barriers. The barriers have included slavery, legal and “customary” segregation, and other forms of discrimination. This discrimination includes the absence of African American writers from academic publications, the canon of literature, and ranking as seminal theorists; it also includes the denial of equal educational and employment opportunities.

When African Americans are included in the academy, they are often given token positions – such as being the one African American writer listed in an anthology or text. Cornell West was the victim of such discrimination in 2001. West left his position at Harvard University's African-American Studies Department after the academic value of the work he produced while on sabbatical - a rap album titled *Sketches of My Culture* (2001) - was questioned by incoming president, Lawrence Summers. Cornell West challenged Summers' assumption that a rap CD

did not hold academic value (Orland 2001 1-4).

The censorship of the voices of rap artists and hip-hop scholars within academia is a reflection of the hegemony that exists within society at large. As Watkins contends,

the evolving crusade against hard-core rap emboldens a larger campaign directed against the cultural practices popularized by black youth and the creative confidence they now exude in the face of immense social, economic, and political transition. (1998 240)

Censorship is a tool used by those who benefit from hegemony to silence dissident voices that name hegemony and question its power. Rap artists are subject to such censorship because they name hegemony within the work they produce. As scholar Tricia Rose, observes,

rappers act out inversions of status hierarchies, tell alternative stories of contact with police and the education process, and draw portraits of contact with dominant groups in which the hidden transcript [that is present within rap] inverts/subverts the public, dominant transcript. (1994 101)

In recent years, universities within the United States have claimed to desire greater diversity – including intellectual and cultural diversity. As bell hooks<sup>2</sup> maintains,

The call for the recognition of cultural diversity, a rethinking of ways of knowing, a deconstruction of old epistemologies, and the concomitant demand that there be a transformation in our classrooms, in how we teach and what we teach, has been a necessary revolution—one that seeks to restore life to a corrupt and dying academy. (1994 29-30)

Therefore, some educators have been exploring the benefits of hip-hop pedagogy (Kitwana 2005; the Hiphop Archive 2006a) to continue the so-called academic interest in expanding intellectual and cultural diversity.<sup>3</sup>

#### **HIP-HOP PEDAGOGY IN ACADEMIA**

In 1997, Arvand Elihu, an undergraduate at the University of California at Berkeley, taught a course titled *History 98: The Poetry*

*and History of Tupac Shakur* under the guidance of the late professor Robert Brentano. As reported in *Jef* in 1997, the course would be taking

a look at the life and death of Shakur with an emphasis on his works... [Arvand Elihu] will make connections between Shakur and politics, society, history, and the soul of the artist. The course will look at the late controversial rapper as a modern contemporary historian of this time. (1997 22)

The course inspired additional instances of hip-hop pedagogy as Leila Steinberg, Tupac Shakur's former manager and guest lecturer for the course, observed

students and universities throughout the country have requested the teaching materials that Arvand compiled to initiate their own Tupac curriculum. Tupac was finally being recognized in academia. (Shakur 1999 xxi)

James E. Newton began teaching an experimental hip-hop course at the University of Delaware in 1999. The course was titled "Hip-Hop Cultural in American Society" and enrolled undergraduate and graduate students. Pamela Weiger reports that

the hodge-podge knowledge inventory Newton created covers the gamut of hip-hop: history, music, players and slang. In addition, Newton quizzes students on their ability to visually identify 50 to 75 slides of hip-hop's big wigs. (2000 2)

As Weiger observes,

while there is still some bias in the academic community about the scholarly value of such studies—as there once was with nascent Black History courses, for sure—hip-hop classes are starting to catch on. (2000 2)

In the fall of 1993, Allen Carey-Webb at Western Michigan University decided to reformulate one of his literature classes

to explore and address America's criminal justice crisis. In doing so, [he] redesigned a conventional 200-level Black American Literature Survey course, restructuring its

curriculum and organization and dedicating it to the theme of 'Prison, Race, and Social Justice'. (Carey-Webb 1995 2)

The syllabus for the course included texts such as Richard Wright's *Native Son* (1940), Malcolm X's, *The Autobiography of Malcom X* (1965), and Martin Luther King Jr.'s, *Where Do We Go from Here: Chaos or Community?* (1967). The course also addressed rap lyrics- including "Trapped" by Tupac Shakur and "Welcome to the Ghetto" by Spice 1. According to Carey-Webb

Considering the biting social critique made by many rap artists, it isn't surprising that powerful groups have made such efforts to suppress it.... Examining these and other rap lyrics showed that the issues that we had been examining from the sixties have by no means gone away, and that the analysis of King, Malcom X, Davis, and others has more relevance than ever. (1995 15)

Widener University began offering "Freshman Seminar 101: *Hip-hop*" in the fall of 2002. *Hip-hop* was a one credit course that

explores the intricacies of hip-hop on an aesthetic level and examines how it has evolved from an underground sound to a multi-billion dollar industry. (Widener University 2002 1)

Throughout the course, students were asked

to critique and evaluate songs and contemporary movies, as well as track trends that are currently being marketed to the hip-hop generation through the print and broadcast media, as well as those societal values and morals that fuel hip-hop fashion and lifestyle, and must acknowledge corporate America's influence on hip-hop taste. (Widener University 2002 1)

The course also analyzed the surfacing of hip-hop culture and its sociological and historical components of spoken word, graffiti, music, and break dancing. The university planned to expand the freshman seminar into an undergraduate level, three-credit course.

Currently, at the University of Delaware, Shuaib Meacham is researching the use of hip-hop and education. His interest in apply-

ing hip-hop pedagogy within education began once he joined the Colorado Hip-hop Coalition while a professor at the University of Colorado at Boulder. Meacham is currently working with youth who aspire to be hip-hop stars, by assisting them with the recognition of their writing and language abilities. As Meacham contends,

If you listen to a lot of the lyrics, it's really about people telling the stories of their lives. Because hip-hop is a norm, at least among young people, in order to teach young people effectively, teachers are going to have to not only understand what hip-hop is all about but also use it effectively to teach young people. (U Daily Archive 2003 1)

As the aforementioned examples demonstrate, the inclusion of hip-hop pedagogy within academia has the potential to challenge hegemony and to create a space for critical engagement. The professoriate is in a unique position: one that has the access and the status that allows for the opportunity to challenge hegemony through the utilization of hip-hop pedagogy.

## METHODS

The purpose of this study is to answer the question: Are social identity markers of faculty members related to utilization of hip-hop pedagogy within academia? Originally a survey packet was distributed to all faculty members in the disciplines of English, Sociology, Music, and Criminology,<sup>4</sup> at two public universities and one public college (N = 428). The participants were provided with a pre-addressed stamped envelope so that handwriting would not be identifiable; 107 respondents or 25 percent of the original population returned the survey. The respondents were asked questions about their demographics, family structure, level of education, as well as their knowledge of, interest in, and willingness to utilize hip-hop/rap music and texts in their classrooms. The variable, *race*, was not used in the regression model because the total number of respondents who self-identified as people of color ( $n = 10$ ) was not sufficient for performing any statistically meaningful analysis. The survey results were aggregated so that confidentiality would be maintained.

**Table 1 - Regression Coefficients of Independent Variables on the Willingness To Integrate Hip-hop/Rap into the Classroom**

	Unstandardized Coefficients	Standard Error	t-value	Significance t
(constant)	1.042	0.347	3.004	0.003
Age 25 and under (a)	0.173	0.175	0.986	0.327
Age 26-35 (a)	0.272	0.113	2.405	0.018
Age 46-55 (a)	0.150	0.108	1.386	0.169
Age 56 and over (a)	0.081	0.111	0.733	0.466
Sex (b)	0.019	0.076	0.252	0.802
Social class	-0.132	0.050	-2.637	0.010
Educational level	-0.066	0.074	-0.889	0.376
1st generation college (c)	0.036	0.076	0.475	0.636
Interest in hip-hop	0.182	0.055	3.332	0.001
Knowledge of hip-hop	-0.124	0.067	-1.852	0.067

R squared = .32

Adjusted R squared = .25

(a) Ages 36-45 are reference group

(b) Women are reference group

(c) 1st generation to attend college reference group

### The Variables

Eight variables were used to examine whether social markers of faculty members are related to the teaching of rap and hip-hop within academia. The dependent variable was "willingness to utilize material from rap/hip-hop culture in the classroom." The seven independent variables were: age, class, education level, sex, interest in hip-hop culture, knowledge of hip-hop culture, and whether one was a first-generation college student.

- 1. Willingness:** Willingness to teach/integrate material from rap/hip-hop culture was measured in terms of "yes" which indicated "willing" and "no" which indicated "not willing." This variable was recoded for the analysis as 1 = willing ( $n=81$ ) and 0 = not willing ( $n=22$ ) in order to make the discussion of the variables more intuitive. Four respondents did not answer this question.
- 2. Age:** Age of the respondent was coded as a nominal variable with five categories: under 25 years ( $n=8$ ), 26-35 years ( $n=28$ ), 36-45 years ( $n=27$ ), 46-55 years ( $n=22$ ), and age 56 and above ( $n=22$ ).
- 3. Sex:** The respondent's sex was coded as 1 = female ( $n=58$ ) and 2 = male ( $n=49$ ).
- 4. Class:** Social class was coded on a scale of 1 through 5, with 1 = lower ( $n=1$ ), 2 = lower middle (working class) ( $n=18$ ), 3 = middle ( $n=49$ ), 4 = upper middle ( $n=34$ ), and 5 = upper ( $n=5$ ).
- 5. Education Level:** The education variable described the highest level of education attained by the respondents. It was coded on a scale ranging from 1 to 4, where 1 = associate of arts or equivalent ( $n=0$ ), 2 = bachelors of arts or science ( $n=9$ ), 3 = masters of arts or science [including MFA or MBA] ( $n=36$ ), and 4 = doctorate of science [including Ph.D., J.D., M.D., Ed.D., or other doctorate] ( $n=62$ ).
- 6. First Generation to College:** This variable assessed whether the respondent was a first generation college student. The variable was coded as 1 = yes, meaning that the respondent was a first generation college student ( $n=38$ ), and 2 = no, meaning that the respondent was not a first generation college student ( $n=68$ ).
- 7. Interest in Hip-Hop Culture:** This variable measured the participants' level of interest in hip-hop culture. This variable was coded on a scale of 1 to 5 with 1 = no interest ( $n=12$ ), 2 = minimal interest ( $n=50$ ), 3 = moderate interest ( $n=25$ ), 4 = some interest ( $n=13$ ), and 5 = very interested ( $n=7$ ).
- 8. Knowledge of Hip-Hop Culture:** This variable provided a gauge of the participants' level of knowledge of hip-hop culture. The variable was coded on a scale ranging from 1 to 5, with 1 = no knowledge ( $n=13$ ), 2 = minimal knowledge ( $n=58$ ), 3 = moderate knowledge ( $n=27$ ),

4 = good knowledge ( $n=5$ ), and 5 = excellent knowledge ( $n=4$ ).

### ANALYSIS AND RESULTS

The dependent variable in the study was "willingness to utilize texts from rap/hip-hop culture in the classroom." This variable was regressed onto age, class, education level, interest in hip-hop culture, knowledge of hip-hop culture, sex, and whether the respondent was a first generation college student. The regression coefficients for this model are shown in Table 1.

The Multiple  $R$  squared for this analysis was .32. The analysis revealed no relationship between the dependent variable and a respondent's sex, level of education, nor whether they were a first generation college student. When examining the coefficients for age, some of the anticipated effects were observed. In general, one might expect younger individuals as compared to older individuals to be more willing to integrate hip-hop/rap into their teaching since this is a relatively young musical genre. However, the only cohort significantly more willing to integrate the material into their classes than the comparison age cohort<sup>5</sup> was the age group, 26-35 ( $p = .018$ ). One explanation for why the youngest age group, those 25 and younger, did not have significantly different levels of willingness to utilize this material is the relatively small number of respondents in this category ( $n=8$ ).

Upon examining the coefficients for social class the anticipated relationship was observed. As the respondent's social class increased they were less willing to integrate hip-hop/rap into their classes ( $p = .01$ ). Also, as predicted, as the respondents' level of interest in hip-hop culture increased, so did their willingness to use hip-hop/rap in the classroom ( $p = .001$ ). The final variable that approached significance was level of knowledge of hip-hop culture ( $p = .067$ ). However, the direction of this relationship was in the *opposite* direction than would be anticipated. The coefficient for this variable suggests that as one's knowledge of hip-hop culture increases, they are *less* likely to integrate the material into their classes.<sup>6</sup> (This unanticipated finding is discussed below.)

### DISCUSSION

The social identity markers that influence the utilization of hip-hop pedagogy are inter-

related and build upon one another. As the findings indicate, when the respondent's social class increased they were less willing to integrate hip-hop/rap material. This is consistent with the origins and much of the content of hip-hop culture. Hip-hop culture arose from the African American community—specifically the youth—born of their experiences in American inner-cities such as the Bronx and Compton. Rap music is a medium through which poor, mostly African American youth, voice their concerns about social inequalities and systematic oppression. Thus, the correlation between social class and one's willingness to utilize hip-hop pedagogy may be due to the resonance, or lack thereof, that hip-hop culture has with a person's experiences and cultural background. An alternative explanation for this relationship is that those in the upper classes are distancing and differentiating themselves from an art-form, lifestyle, and culture intricately tied to the lower classes (Bourdieu 2002).

Our findings also indicate that age is a significant social identity marker. Of interest is that the two age groups that were composed of respondents under age 36, tended to more highly rate their level of exposure to hip-hop culture, knowledge of hip-hop culture, and interest in rap music than did members of the other age groups. These ages correspond with the general definition of the Hip-Hop Generation (Generation X) – the generation that came of age when hip-hop and rap were becoming prominent forces of social critique (Kitwana 2002; Chang 2005). If the faculty that are currently teaching, especially those from the baby-boomer generation (1946-1964) are willing to set the ground work for the inclusion of hip-hop pedagogy in academia, then as more members of the Hip-Hop Generation attain their doctorate degrees and become professors, the inclusion of this pedagogy may be well underway. Furthermore, a generation of students will not miss the potential opportunity for critical engagement in higher education through hip-hop pedagogy.

Most of the respondents (nearly 80%) indicated that they would choose to teach/integrate hip-hop texts into their courses in some manner, the most common of which was through class discussion topics or through film or music. If one has minimal knowledge of hip-hop culture, intuitively it makes sense



to integrate/teach hip-hop through the utilization of class discussion topics. This method would encourage students to become critically engaged with what they are learning, while the professor would not have to be "the expert" in the setting of a classroom discussion.

The utilization of class discussion topics could be beneficial if students were asked to critically look at what the artists are addressing within the lyrics they are producing. Hip-hop pedagogy has the potential to engage students with what is being taught and to provide validity for what the faculty are teaching. As Meacham puts it,

without engagement, you can't connect students to skills in a way that will make them want to learn... Hip-hop grabs them right off the bat. (U Daily Archive 2004 1)

The by-product of critical engagement is the formation of a critical worldview which ultimately leads to the exposure of hegemony and makes its effects less detrimental.

Conversely, the utilization of class discussion topics could be potentially dangerous if the function of the hegemonic ideology pervaded the classroom. As hooks states,

If we examine critically the traditional role of the university in the pursuit of truth and the sharing of knowledge and information, it is painfully clear that biases that uphold and maintain white supremacy, imperialism, sexism, and racism have distorted education so that it is no longer about the practice of freedom. (1994 29)

Given the current demographics of academia, both of students and faculty, elements of voyeurism and Orientalism (Said 1979) could pervade the discussion. Taking rap lyrics out of the context of the cultural and social issues that the rap artists are addressing has the potential to lead to the formation, or reaffirmation of hegemonic stereotypes.

This relates to one of the study's more interesting findings: as noted earlier, as one's level of knowledge of hip-hop culture increases one is *less* likely to integrate hip-hop texts into their classroom. This counter-intuitive finding may be due to the particular *sources* from which this knowledge about hip-hop culture was attained. If one's primary exposure to hip-hop culture has been

through the media, then one's knowledge of hip-hop culture has very likely been influenced by hegemonic media portrayals of this culture: depictions or assertions concerning the inherently misogynistic and violent nature of rap music and the artists producing it (Dyson 2001a; Chang 2005). As Dyson observes,

early seeds of suspicion have often bloomed into outright rejection of hip-hop as a vital source of art and imagination for black youth. (2001a 110)

This could account for the prior finding since most respondents (66%) indicated that their primary source of exposure to hip-hop culture was via the media.

## CONCLUSION

In an age where the disparity between the have and the have-nots is steadily increasing (Kitwana 2005), when youth who are working class, first generation, and/or from various under-represented racial/ethnic backgrounds are being locked out of higher education, something needs to be done. The potential contributions that the aforementioned youth could bring to the academic discourse are being wasted. Thousands of young men and women are in dead-end jobs that barely allow them to make ends meet, thousands more are confined in over-crowded prisons, and still others are engaged in the under-ground economy. How is the academic discourse going to address the absence of the voices of these marginalized, disenfranchised, and disaffected youth? How can the pertinent social issues and crises that America is facing be addressed, if the voices of those most adversely affected are absent?

The academy, in theory, is an institution that provides for critical engagement and the generation of knowledge. College graduates make up less than 5 percent of the world's population and are granted the greatest access to positions of social and economic power. Thus, we find it extremely discouraging that students can graduate from college firmly believing hegemonic stereotypes.

Humanity pervades the intellectual work that scholars are engaged in. The theories, statistical analyses, and research that are undertaken within academia occur within specific social and cultural contexts. It is im-

perative that scholars are aware of the social and cultural contexts that inform the intellectual work they are undertaking. For instance, discussions of statistics that do not emphasize that the numbers being cited represent men and women, flesh and blood, sever the connection between the statistics and humanity. When the connection to humanity is not acknowledged within academic discourse, the theories, statistics, and research become meaningless.

Currently, there is a class of rap artists – Gramsci's Organic Intellectuals (1971) – who are engaged in the production of intellectual work. The voices of these organic intellectuals give life to the statistics – making them harder to ignore – providing depth and understanding of poor, African American youth and the current criminal justice system. The personal experiences that rap artists, such as Tupac Shakur, document within their lyrics and texts provide tangible illustrations of the lived realities of systematic oppression and social inequality. Therefore, the inclusion of the voices of rap artists within the academic discourse is vital - their voices must be heard, listened to, and taught if social change is going to occur.

Our findings suggest a strong willingness among faculty to look at a form of teaching that offers a direct critique to the hegemonic forces that are ingrained within the institutional structure of academia. While social identity markers do appear to influence one's willingness to utilize hip-hop pedagogy, the findings did not indicate that any specific social identity marker negates one's willingness to utilize such pedagogy. More importantly, hip-hop pedagogy has the potential to instill diversity within the academy that extends beyond a theoretical ideology and becomes practice. If our goal is for academia to be an accessible, inclusive environment that provides a space for critical engagement and actively practices diversity, we must make sure that what is included within the curriculum reflects these goals.

#### ENDNOTES

<sup>1</sup> As Bakari Kitwana (2005) and Raquel Z. Rivera (2003) have written, youth from various racial/ethnic backgrounds have contributed to hip-hop. For example, Kitwana (2005 126) notes that whites and hip-hop enthusiasts in countries such as Japan, Brazil, Indonesia, and Israel have been creating their own "interpretations" of hip-hop, and Rivera (2003) observes

that the contributions "New York Ricans" have made to hip-hop culture since its inception, have gone largely unacknowledged.

<sup>2</sup> Feminist theorist bell hooks contentiously chooses to spell her name in lower case letters.

<sup>3</sup> Over 100 college level courses have utilized hip-hop pedagogy at institutions such as the University of Pennsylvania, the University of California – Berkeley, Davis, Los Angeles, Irvine, and Riverside, Harvard University, and the University of Chicago (Hiphop Archive 2006a). Furthermore, critical engagement with hip-hop has also begun to take place during professional conferences and symposiums (Hiphop Archive 2006b). Additional information on hip-hop courses and conferences can be accessed through the Hiphop Archive.

<sup>4</sup> These departments were selected because the study is cross-disciplinary, drawing on both Sociology and English texts and theories (Criminology departments were included since Criminology is a sub-discipline of Sociology). The inclusion of the Department of Music was necessary because hip-hop culture originated with a musical style.

<sup>5</sup> The age group 36-45 was selected as the comparison group because they were the *least* likely to integrate hip-hop material into their classes, thus, the direction of all the age comparisons in the final analysis were in the same direction.

<sup>6</sup> A second regression was performed, in part because of the unexpected direction of the relationship as well as the small number of respondents (n=9) that reported good or excellent knowledge of hip-hop culture. This variable was transformed into a dichotomous variable with the 9 subjects reporting good or excellent knowledge of hip-hop culture in one category and the rest of the subjects in the other. The results were nearly identical to what was originally reported. Subjects with good to excellent knowledge were less willing to integrate rap/hip-hop material into their teaching ( $p = .03$ ). The  $R$ -squared for this model increased slightly from the one reported in the paper ( $R^2 = .33$ ).

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#### ACKNOWLEDGEMENTS

The authors would like to thank the following members of the University of Colorado community: Mark Winokur of the English Department for his many helpful suggestions, the Undergraduate Research Opportunity Program for its financial support, and the staff of the Ronald E. McNair Post-baccalaureate Achievement Program for their encouragement, guidance, and assistance.

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## AN ANALYSIS OF MAJOR AND MINOR LEAGUE SPORTS: THE DUAL LABOR MARKET THEORY AND ITS CONTRIBUTIONS

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### INTRODUCTION

Sport is an important institution within the United States. To say that sport constitutes a major part of the economy is an understatement. In 1998 alone, commercial sport expenditures exceeded \$17 billion and another \$21.4 was spent on recreational sports (Washington & Karen 2001). Every year more money is spent on sporting events (Washington & Karen 2001). In conjunction with sports, however, the topic of inequality, whether socioeconomic, racial, gender, or class, is equally pervasive within our society (Upthegrove, Rosicigno, & Zubrinsky 1999).

The purpose of this research is to look at the unequal coverage of minor league sport via mass media coverage of sport organizations' events. Using the Dual Labor Market Theory as a theoretical framework, this research attempts to analyze mass media coverage as it occurred in three American newspapers serving large minor league sport markets and to discuss the unequal coverage as examples of primary and secondary labor market boundaries. The research is relevant because it will address labor market dynamics, such as inequality and discrimination, as highlighted within print media coverage. Specifically, the amount and type of media coverage represents whether a sport is in the primary or secondary labor markets. As a result, inequality of coverage is a byproduct of labor market status. Before discussing the sport industry and the labor markets contained within it, however, the theoretical framework must be established.

### DUAL LABOR MARKET THEORY

The research links the Dual Labor Market Theory to sport in society. In a general sense, this means that labor is broken into two sectors: the primary sector and the secondary sector. Doeringer and Piore (1970) have provided several characteristics of both sectors. The primary sector is composed of jobs that are characterized by high wages, good working conditions, career advancement opportunities, equity in administration of work

rules, and employment stability. The secondary sector is composed of jobs that are characterized by low wages, poor working conditions, little advancement opportunities, favoritism, and worker instability.

Cross and Johnson (2000) note that this theory helps to explain how class, racial, and gender stratification operate within the labor market. The primary sector is composed of privileged workers who come from dominant groups in society, such as white males. Harrison (1972) shows that there can also be more than one tier within the primary sector. For example, an upper tier could consist of managers and administrators while a lower tier could consist of sales persons and teachers.

The secondary sector is composed of workers with less skills and control over their workplace, such as women and minorities. Once again, a distinction can be made between workers in the secondary sector. Workers can be semiskilled or unskilled. Semiskilled workers can include operatives while unskilled workers can include those who are farm laborers. Gordon (1972) notes the distinction between the primary and secondary sector is historically based. Further, Wadsworth (2000) warns that this classification system is different from that of the white- and blue-collar worker system. He notes that a blue-collar worker can occupy a skilled position that could be classified in the primary sector based on job characteristics.

Dual Labor Market Theory began as an economic model to describe discrimination in labor markets within specific cities (Ferman 1967; Baron & Hymer 1968; Vietorisz & Harrison 1970; Horn 1980). Over the years, the theory has branched out to help explain other general labor markets such as education and crime. For examples, Wadsworth (2000) found a significant relationship between parents' job characteristics and delinquent behavior among adolescents. His work was an extension of studies that have shown that market stratification is related to criminal activity (Wilson 1987; Crutchfield &

Pitchford 1997). Cross and Johnson (2000) expand the Dual Labor Market Theory to examine illegal drug dealers. Rosenblum and Rosenblum (1990) also expand the theory to examine college and university teaching. They make a distinction between the external labor market, which is composed of those who teach outside of tenure or tenure-track positions, and the internal labor market.

### **SPORT LABOR MARKET**

The relationship between sport, industry, labor markets, and business is complicated, at best. Businesses exist to generate revenue for owners and stockholders (Howard & Crompton 2004). This includes both non-profit organizations that generate revenue for their specific causes and diverse for-profit sport related organizations, such as sport organizations, leagues, and teams.

Kahn (2000) illustrates how sport can easily be linked with market structures and labor market or economic theories. In addition, Li, Hofacre, and Mahoney (2001 1) note that an industry can be defined "according to one of two criteria: similarity of products and similarity of economic activities." Shim and Siegel (1995) illustrate the first point of this definition of industry by stating that an industry is composed of a group of firms that provide a similar product. Most industries in the US are constructed in this manner (Li et al 2001). To expand on this idea, Coakley (2004) states that sport is divided into two types of orientations: heroic (more power and performance based sports, such as football or basketball) and aesthetic (sports based upon beauty and grace, such as diving and the floor routine in gymnastics). These types of sport, however, produce the same product; that is, they both focus on entertainment and enjoyment.

To address the second part concerning the similarity of economic activities as related to sport, we need to focus on which part of the sport industry is considered for this analysis. Meek (1997) provides a model of the sport industry that is composed of sport entertainment, sport products, and sport support organizations. While Meek's model is extremely useful for a comprehensive examination of sport economic-related activities in North America, this research focuses upon the sport entertainment sector. Specifically, the sport entertainment sector includes "pro-

fessional and amateur sports teams, sports events, sport media, and sport tourism-related businesses" (Li et al 2001 4).

### **SPORT AND THE DUAL LABOR MARKET THEORY**

The current research applies the Dual Labor Market Theory to labor markets in the sport entertainment industry. It has been noted that the Dual Labor Market Theory aids in explaining the existence and persistence of class, racial, and gender stratification (Cross & Johnson 2000) by providing a simpler explanation for these phenomena (Hodson & Kaufman 1982). Dualists believe that the barriers of mobility between the two labor markets are strong enough that once one is labeled as being in the secondary market, the chances of breaking through the barriers to the primary are very difficult, thereby severely limiting social mobility (Hodson & Kaufman 1982). As a result, discrimination or inequality is present (Cross & Johnson 2000).

As previously noted, Doeringer and Piore (1970) have provided several characteristics of both sectors of the labor market. Within the sport entertainment industry, examples of the primary labor market include major league sports, which meet the criteria of primary labor markets. For example, workers in major league sports have better contracts that often times have guaranteed money available (i.e., signing bonuses with "up-front" money), better working conditions (such as multi-million dollar training and playing facilities), more career advancement opportunities (such as free agency after contracts have been fulfilled), and employment stability, such as longer contracts (i.e. Brett Favre's lifetime contract with the Green Bay Packers in the NFL).<sup>1</sup>

One criterion that Li et al (2001) established for major league sports was that the best available players were involved with the teams in a major league. If one looks presently at the NBA, this premise can easily be seen. With foreign-born players now commonly playing within the league, the league has taken on a much more "global" look by accepting many of the best players available from around the world, thereby expanding the sport entertainment labor market (Howard & Crompton 2004).

The secondary sector is composed of jobs that are characterized by low wages, poor working conditions, little advancement

opportunities, favoritism, and worker instability. Within sport, this would include minor league sports. Coakley notes that

unlike male professional athletes in top revenue producing leagues, athletes in most minor leagues and low-revenue sports have few rights and control over their careers. (2004 395)

In keeping with secondary labor market characteristics, minor league sports are composed of individuals with less skills and control over their workplace.

An example within minor league baseball involving umpires illustrates the difference between primary and secondary labor markets. Specifically, Berardino (2006) notes minor league umpires (at the AAA level) make \$17,000 per year, while umpires at the lower levels (below AAA) can make between \$1,500 and \$1,800 per month, which is substantially lower when compared to major league umpires. In addition, Dimeglio (2001) identifies stark differences between major league and minor league amenities while profiling St. Louis Cardinal's first baseman Albert Pujols:

Pujols is the first to tell you that the majors is night-and-day different from the minors. In the minors, you stay at a Red Roof Inn or a Motel 6. There are agonizingly long bus rides and monthly paychecks of \$1,100. With daily meal money under \$20, there are daily visits to Taco Bell, McDonald's or Pizza Hut. The clubhouse buffet table has peanut butter and jelly sandwiches, apples and oranges.

In the majors, it's all planes and luxury hotels such as the Ritz-Carlton, the Sheraton Bal Harbor and the Westin Galleria. The rooms are so nice it's hard to leave them, which prompts many a player to order in room service and grab the remote. Meal money is \$73.50 per day. The postgame spread features chicken, ribs or steak. (Dimeglio 2001).

Further evidence in the disparity between major league and minor league baseball rests with players' salaries. A player can make \$75,000 a year playing in the minors and winter baseball, which stands in stark contrast to major league salaries (Ulmer

2006). The average salary for Major League Baseball players in 2006 was nearly \$2.7 million (Associated Press 2006).

Mobility within the minor leagues itself is common, but movement between the major and minor league is more difficult. Specifically:

Those who can't find the right deal with an affiliated baseball club may also take a season in independent baseball before returning to the farm system of another major league club. This is done because players, in the world of free agency and high-dollar salaries, often find their careers "stuck." Major league clubs will often trade for a big dollar position player rather than call someone up from the minor leagues. This can leave position players in the Triple-A and Double-A levels of the farm system with no ability to move up. They become 'spare parts' players unless they can find a new club that views their skills differently. (Wikipedia 2006)

In addition to the concept of mobility, the mass media is influential in covering certain sports. The decision to cover or not to cover a sport, either in print, television, or electronically, is crucial to generating fan enthusiasm, revenue, and excitement (Li et al 2001). The enthusiasm for a sport, resulting from media coverage, is posited to impact whether the sport is considered as a minor league or a major league sport.

#### **MASS MEDIA AND NEWS VALUE DECISIONS**

News editors, directors and reporters regularly make judgments regarding which organizations and events will receive news coverage and which will not. Accordingly, these mass media professionals are often referred to as "gatekeepers" (White 1964). The function is of critical importance in cultures that value the free and open exchange of information because it has been estimated that only 10 percent of the information of available news stories actually receive coverage (Black & Bryant 1995). This results in a competitive environment where individual and organizational representatives, e.g., media relations officials, vie with others for time and space in the mass media.

In their role as gatekeepers, mass media professionals attempt to maintain a standard of neutrality by applying a set of commonly

Figure 1.

$$\text{Perceptions of Sports} = \frac{\text{media} \times (\text{culture} + \text{political economy/power})}{\text{Time}}$$

(as major or minor)

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held news values when making coverage decisions. These news values typically include the following (Lanson & Stephens 1994; Thompson 1996).

- **Timeliness:** The more recent the news, the more likely it is to receive coverage.
- **Proximity:** News that is closer to consumers (e.g., community, state, and nation) is more likely to receive coverage than news from more distant locales.
- **Impact:** News that has relevance in the way consumers live is more likely to receive coverage than news without such relevance.
- **Conflict/Controversy:** News regarding fighting, debates and other forms of competition is more likely to receive coverage than news without such elements.
- **Prominence:** News that involves well known organizations or individuals is more likely to receive coverage than news that does not have elements of renown.
- **Oddity:** News about unusual or strange occurrences is more likely to receive coverage than news about the common.
- **Emotion:** News that is likely to resonate with people's attitudes or feelings is more likely to receive coverage.
- **Educational value:** News with the potential to assist people to live in a more informed fashion has more value than news without such qualities.

News does need to possess all of these qualities in order to receive coverage. Depending on the circumstances, some weigh more heavily than others. But more often than not, gatekeepers will apply the values in a way that "serve the public with thoroughness and honesty" (*Society of Professional Journalists* 1996).

Newspaper coverage is utilized as source of data for this research project because the aforementioned values and news coverage decisions are easily identified and measured within newspapers. Additionally, to adequately compare and contrast major league and minor league sports, we needed a data source that regularly covered minor league sports. Traditionally, newspapers

have been sources that provide more coverage of minor league sports.

#### DATA AND RESEARCH QUESTIONS

In order to locate how micro-level media coverage connects with macro-level labor market discussions, a rationalization for variable selection and methodology used is provided. This connection can be made by utilizing and reworking Barak's (1995) conceptual equation for perceptions of crime. Once modified to include how the media influences the general public's view of sport status, the equation is in Figure 1. While the above "equation" is hypothetical, it is grounded in theoretical ideas. Specifically, Jerin and Fields (1995) note the media's influence upon the public's perception of many events. Additionally, the mass media is one of the most prevalent forms of social or cultural power, because the media informs consumers of what is occurring in their social worlds, and how to interpret these occurrences (McShane & Williams 1995). Moreover, Barak (1995) illustrates the dialectical relationship between the media and public consumers by noting the media can either *follow* social trends (via their coverage patterns) and dictate how those trends are viewed to their audience, or they can *create* social trends (via their coverage patterns) and influence their audiences' perceptions of these trends. The dictation of social trends, whether they are following social trends or creating social trends, is specific in time and place.

Regarding the sport-media connection explicitly, Rowe (2004) states the media is crucial for the consumption of commercialized goods, such as elite sports. Additionally, he notes the media is usually elite owned and, therefore, has the cultural power to represent dominant ideologies and values of the elite population in their coverage patterns. This is evident in the media's relationship and dependence upon corporate advertising (Coakley 2004). The media covers elite, popular, and commercialized sports, thus reinforcing their cultural dominance (and popularity) with sheer amounts of coverage; you cannot escape major, professional sporting events in sport-based media reports (i.e.

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Superbowl coverage and the media blitz leading up the actual game). This media coverage, in its various form and function, reinforces the impermeability of the mobility barriers present within the Dual Labor Market theoretical model. The inequality of coverage (both frequency and space) therefore, is a byproduct of a sport being labeled as: 1) a major league or minor league sport; 2) a "more important" sport or "less important" sport; or 3) a primary labor market versus a secondary labor market. Again, once a sport is labeled by the media (via its coverage patterns) as a major league or minor league sport, it has difficulty transcending the mobility barriers and achieving a major league sport status (as compared to a minor league sport or a "niche" sport).

The popularity of sport, as a major league sport, is heavily dependent upon media coverage (Li et al 2001). Rowe (2004) notes sport media coverage represents a "symbolic level" of control and illustrates how power is distributed within the sport-media complex. The amount and type of coverage an element or sport receives indicates, symbolically, its popularity, which is tied to the level or labor market the sport in question resides within. For example, Coakley (2004) notes the media has increasingly emphasized elite sport coverage throughout the 20<sup>th</sup> century. During this timeframe, professional, commercialized sports have increased in popularity. In addition, Coakley (2004) identifies the increasing interdependence of shared economics and politics in the sport-media relationship. As a result, sport sections of local newspapers, in an effort to decrease cost, may cover many more events via the Associated Press and focus in-house resources on more "local" sports news, such as highlighting individual athletes and their heroics or increasing the focus on amateur sports. These amateur sports, however, are primarily male, revenue generating sports, such as football and men's basketball (Coakley 2004).

Newspaper coverage is chosen as a source of data for several reasons: 1) there is a large literature base of how to content analyze newspaper coverage; 2) to illustrate the differences between major league and minor league sports, we needed a source of information that would provide some coverage of minor league sports; 3) it serves as a convenience sample for the researchers, i.e.,

it was more easily accessible as compared to other types of media reports; and 4) these newspaper accounts specifically represent minor league communities. The overrepresentation, or purposive sample, will provide a large enough pool of minor league sports and events, which can be analyzed. Additionally, if major league sports are overrepresented in minor league sports communities, this will provide useful information about how the media perceives minor league sports. More importantly, however, we argue that media coverage, as exemplified in newspaper coverage, is a strong contributor to the status minor league sports has in the dual labor market. That is, we argue that sports which receive less media attention through, for instance, less frequent coverage, contribute to minor league members receiving fewer benefits such as lower wages and less job satisfaction. More specifically, we argue that more media coverage, or publicity, leads to more fan support, which then results in better working conditions (in the form of salaries, job stability, contracts, etc.) for employees, or in this case, athletes.

Newspaper coverage, both frequency and space, is an important micro-level source of data that illustrates specific macro-level dynamics operating within the sport-media relationship. In an effort to develop a template for the content analysis of the newspaper coverage, every attempt was made to use a previously established categorization system as a way of ensuring the reliability of the analysis. As a result, the categories used include: 1) which sport; 2) sport level (e.g. major, minor, collegiate, etc); 3) sport settings (e.g. national, regional, local, etc.); 4) sport type (e.g. results, opinion columns, features, etc); and 5) source of the story. These categories fully describe each news element's content and provide useful information to help describe the coverage as representing coverage (or lack thereof) typical of primary or secondary sport labor markets. Additionally, the categories are based off of the previous work of Stoldt, Vermillion, Ross, and Dittmore (2004) regarding mass media coverage patterns and have shown to be useful categorization tools.

### Research Questions

News values decisions within the mass media identify how sport coverage can be determined. Additionally, the labor markets

within sport have been examined utilizing the Dual Labor Market perspective, which attempts to illustrate how inequality and discrimination can be results of labor market positions. As a result, the following research questions were to be analyzed:

- 1) Which sports are the most frequently covered major league sports? Which sports are the most frequently covered minor league sports?
- 2) What is the relationship of an element's setting, source, and type of coverage to major and minor league sports?
- 3) Is there a statistically significant difference in the amount of space (in square inches) devoted to major league and minor league sports in minor league sports markets?

#### METHODOLOGY

The purpose of this research was to examine the unequal coverage of major and minor leagues sports via mass media coverage according to the Dual Labor Market Theory. This particular framework was used to illustrate the differences between primary and secondary labor markets and the resulting inequality in coverage. In order to accomplish this task, mass media coverage was analyzed by frequency and amount of space as it occurred in three American newspapers serving large, minor league markets.

The data for this research were drawn from the sports sections of three daily newspapers over separate one-week periods during the summer months. Each newspaper served a market in the central region of the US without a major league franchise (i.e., MLB, NBA, NFL, and NHL). These regions, however, did contain multiple minor league franchises and collegiate athletic programs. The elements, which included both stories and photographs appeared in each newspaper's sports section and were categorized among five previously mentioned dimensions. These categories include: 1) sport, 2) sport level, 3) sport settings, 4) sport type, and 5) source of the story.

Content analysis of the newspaper's sports section was utilized as the major form of data collection and methodology. Babbie notes that content analysis is

particularly well suited to the study of communications and the answering the classic

question of communications research: 'Who says what, to whom, why, how, and with what effect?' (2002 312)

As previously mentioned, the units of analyses to be content analyzed include both the stories/articles and photographs of elements within sports sections of the designated newspapers. The categories were developed *a priori* of the analysis and were based primarily off of the previous research of Stoldt, Vermillion, Ross, and Dittmore (2004) concerning mass media coverage patterns.

Two coders, working independently, categorized 473 elements within the sport sections. The inter-coder agreement rate for the independent coding process was 97.4 percent. Consensus coding procedures (Hawkins & Powers 1999; Stoldt, Smetana, & Miller 2000) were utilized to resolve differences that occurred in the independent coding stage. In the end, consensus coding resulted in 100 percent agreement on all coding of all elements. Each element was also measured, so the investigations could specify how much newspaper space (in square inches) was allocated by category throughout the sports sections.

#### ANALYSES AND RESULTS

Within the analyses, both univariate and bivariate analyses were executed. When dealing with how to measure the amount of coverage within the newspaper's sports sections, elements (including articles and photographs) were measured as the number of times- or frequency- occurring for univariate analyses; that is, coverage in this case refers explicitly to the number of elements (i.e. stories or pictures) out of the total number of sport news elements that were analyzed. The number of square inches, referred to as space, is useful for determining bivariate analyses. By developing a continuous or interval level variable (square inches) on the bivariate level more useful statistics are generated (Triola 2003) to investigate whether a significant relationship exists between minor league and major league coverage patterns. That is, square inches and the relationship between categories of source, type, and setting, are good representations of the amount of space dedicated to specific sport coverage and measure the "quality" of coverage.

**Table 1: Percent (%) of Newspaper Coverage by Sport (N=473)**

Variables	Frequency	Percent (%)
<b>Total</b>	<b>473</b>	<b>100.0</b>
Football	152	32.1
Baseball	80	16.9
Men's Basketball	39	8.2
Auto Racing	34	7.2
Men's Golf	26	5.5
Hockey	14	3.0
Men's Soccer	11	2.3
Men's Tennis	10	2.1
Women's Basketball	8	1.7
Outdoor Sports	8	1.7
Women's Tennis	6	1.3
Women's Golf	6	1.3
Women's Soccer	6	1.3
Men's Track & Field	5	1.1
Other	34	7.2
Multiple Sports	18	3.8
Boxing, Olympics, Mixed Tennis, Women's Track & Field, Mixed Track & Field	16	3.0

Regarding descriptive analyses, results indicate that four sports occurred the most frequently within the three sports sections. These sports were football (32.1% of coverage); baseball (16.9% of coverage), men's basketball (8.2% of coverage) and auto racing (7.2% of coverage) (See Table 1).

In relationship to which level of sport was the most frequently covered, the number of major-league professional sport news elements dominated the sports sections in comparison to minor leagues sports elements (51.0% vs. 6.3%). Collegiate sports were second (19.2%) followed by scholastic sports (7.6%). National-level coverage dominated the sports sections (45.2%) followed by state (20.9%), local (17.1%), regional (5.3%) and international elements (11.2%) (See Table 2).

Regarding the first research question: Which sports are represented by the most media coverage in major league and minor league sports? Results indicate football was the most frequently covered sport (28.2% of elements) of major league sports. Football was followed by baseball (19.1%), auto racing (11.6%), and men's golf (7.1%) respectively. Men's basketball accounted for 5.8 percent of the elements mentioned while hockey included 4.1 percent. There were numerous other sports within the major league category that accounted for anywhere between

**Table 2: Percent (%) of Newspaper Coverage by Level Setting, Type, and Source (N=473)**

Variables	Frequency	Percent (%)
<b>Level</b>		
Major	241	51.0
Minor	30	6.3
Collegiate	91	19.2
Scholastic	36	7.6
Amateur	49	10.4
Not Applicable	12	2.5
Multiple	14	3.0
<b>Setting</b>		
National	214	45.2
State	99	20.9
Local	81	17.1
Regional	25	5.3
International	53	11.2
Multiple	1	0.2
<b>Type</b>		
Game Advance	21	4.4
Results	161	34.0
Managerial	29	6.1
Season Preview	19	4.0
Other Hard News	62	13.1
Notes	57	12.1
Feature	71	15.0
Opinion	17	3.6
Jurisprudence	35	7.4
Reader Feedback	1	0.2
<b>Source</b>		
In-House	168	35.5
Wire	204	43.1
Could Not Tell	25	5.3
Both	76	16.1

0.4 percent and 3.7 percent, including women's basketball, both men's and women's tennis, track and field, soccer, and women's golf. The top five most represented sports within major league coverage, including football, baseball, auto racing, men's golf and men's basketball, account for over 70 percent of the major league elements given media coverage (Table 3).

In contrast to coverage patterns within major league sports, minor league sports coverage is dominated by only three sports, including baseball (66.7% of the elements), which garners most of the attention, football (13.3%), and hockey (10%). These three sports account for 90 percent of the elements categorized as minor league sports (Table 4).

The second research question investigated the relationship of the setting, source, and type of coverage of both major league and minor league sports. Specifically, to measure this relationship, cross-tabular

Table 3: Top Five Sports and Percent (%) Covered Within Major League Sports (N=241)

Sports	Frequency	Percent (%)	Cumulative %
Football	68	28.2	28.2
Baseball	46	19.1	47.3
Auto Racing	28	11.6	58.9
Men's Golf	17	7.1	66.0
Men's Basketball	14	5.8	71.8

Table 4: Top Sports and Percent (%) Covered Within Minor League Sports (N=30)

Sports	Frequency	Percent (%)	Cumulative %
Baseball	20	66.7	66.7
Football	4	13.3	80.0
Hockey	3	10.0	90.0

analyses were performed in conjunction with Chi-Square statistics as an effective way to analyze nominal data (Triola 2003). Regarding the relationship between major leagues and sport coverage, results indicate 73.8 percent of national sports elements were categorized as major league sports ( $X^2=326.149$ ,  $df=30$ ,  $p<.001$ ). In sharp contrast, minor league sports were only 1.9 percent of the elements covered, which was significant,  $p<.001$ , with the local level providing the most coverage to minor league sports (32.1% of elements covered).

In relationship to the amount of sport coverage to source, results indicate that a great disparity exists between elements categorized as "Associated Press" (wire). Specifically, minor league sports only receive about 2.5 percent of the wire coverage published as compared to 70.1 percent of coverage to major leagues. A vast majority of minor league coverage, about 70 percent, comes from in-house writers that write regularly for local newspapers. The majority of in-house coverage, however, is devoted to major league sports (29.2% vs. 12.5%), not minor leagues ( $X^2=114.036$ ,  $df=18$ ,  $p<.001$ ).

The relationship of the amount of sport elements with the type of coverage has also yielded expected results. Specifically, results indicate that over half (57%) of the coverage of minor league sports were simply labeled as "results" that provide the reader with basic coverage of the sports event, such as final scores and player statistics. Only 9.5 percent of minor league coverage is going towards elements noted as "game advance" (previews an upcoming sporting event), and only 5.6 percent of the elements being considered as "features" (detailed articles on teams, players, relationships, or recent

events). These results illustrate a low quality of sport coverage, that is, there are not a large percentage of stories in sport sections about minor league sports.

Major leagues, however, received 66.7 percent of the total "game advance" news and 54.9 percent of "features". Other categories that major league sport coverage dominated minor league coverage includes: "results" (55.3% vs. 10.6%), "managerial" elements, which detail discussion concerning sport strategies or possible plans of action (65.5% vs. 6.9%), "notes", which provided other interesting facts of games or events (63.2% vs. 3.5%), and "opinion" elements, which are opinion columns usually provided by editors or opinion writers (58.8% vs. 0%) ( $X^2=301.533$ ,  $df=54$ ,  $p<.001$ ). These results, however, illustrate a greater quality of coverage for major league sports and help to influence the general public's perceptions regarding major league and minor league sports.

The final research question focused on space. Specifically, this question focused on whether a statistically significant difference existed between the number of square inches devoted to sports coverage of major league and minor league sports, which is in contrast to previous research questions that focus on the percentage of elements that are associated with specific categories. To analyze the difference of mean averages of square inches in news space, an analysis of variance (ANOVA) was conducted with the interval level variable of square inches among the categories of level of sport. The "level" of sport variable has possible values of: 1) major league sports; 2) minor league sports; 3) collegiate sports; 4) scholastic sports; 5) amateur sports; or 6) multiple

**Table 5: Means of Newspaper Coverage in Square Inches Between Levels of Sport**

Level of Sport	Mean	N	SD
Total	56.97	473	52.25
Major League	52.93	241	43.39
Minor League	54.29	30	47.40
Collegiate	62.13	91	59.42
Scholastic	88.52	36	80.26
Amateur	45.97	49	47.39
Multiple	47.47	14	50.04
NA	66.90	12	58.03

sports.

Results indicate that there is a statistically significant difference ( $p < .05$ ,  $F = 3.188$ ,  $df = 6$ ) between the square inches, or space, between the categories of major, minor, collegiate, scholastic, amateur, and multiple within the "level" variable. In order to locate where these differences specifically occur, a Scheffe post hoc test was conducted. The results of the Scheffe test, which compensates for smaller categorical sizes by utilizing the harmonic mean (SPSS 11.0 Syntax Reference Guide, Volume II, 2002 230), indicate that significant differences in square inches were not located between major league and minor league. Although the ANOVA revealed significant differences, the post hoc statistical test did not significantly locate those differences exclusively between major league and minor league sports ( $p < .15$ ). Moreover, the average amount of square inches devoted to major league sports was 52.93 inches as compared to 54.29 inches for minor league sports (see Table 5). We discuss this unexpected finding below.

#### DISCUSSION AND CONCLUSION

The sport elements from the newspapers were analyzed to present both descriptive (univariate) and bivariate findings. To answer the first two research questions, elements were presented in percentages, which expressed the number of elements, out of the total number of elements categorized, that were to be located within each descriptive category. The third research question attempts to focus more on the "quality" of coverage by focusing on various dimensions of sport coverage and the amount of space, in square inches, given to each news element. The "quality" of coverage, such as news elements as diverse as opinion columns, special features, managerial strategies, and/or game advance items, identifies ways that major league sports are favored over minor

league sports. This inequality in coverage patterns are important, because they advantage major league sports by informing potential sport consumers, which generates increased fan enthusiasm for these sports as compared to minor league sports and sporting events. Minor league coverage, while similar in square inches is not represented well in the variety of "quality" coverage (e.g. game advance items, opinion columns or discussions of managerial strategies) and appears mostly as "results" that provide simple statistics and minimal analysis. Other important interpretations of statistical results are further provided.

After analyzing the statistical results some interesting findings were discovered. Specifically, Table 1 indicates that almost 1/3 of all newspaper coverage was devoted to football. The research was done, however, during the summer months. Football, excluding minor league football such as the Arena Football League (AFL) or NFL Europe, does not take place during the summertime, yet it dominated the number of news elements. The first research question dealt with which sports garnered the most attention within both major league and minor league sports. Within major league sports, football was the most frequently covered sport (see Table 3) and garnered more news elements than baseball (28.2% vs. 19.1%), which plays the majority of its season during the summer months.

Within minor league sports, as expected, minor league baseball received most of the coverage with 66.7 percent of the categorized elements (see Table 4). What is surprising, however, is that football received 13.3 percent of the coverage as compared to only 10 percent of the coverage for minor league hockey. While hockey has a well-developed minor league system, minor league football, such as the AFL or other semi-professional leagues, received slightly more news ele-

ments devoted to their sport. This result helps to lend credence to the popular notion that football is the most popular sport in the US. Additionally, in keeping with previous ideas and scholarships, major league sports, especially football, dominated the coverage in these sources of data by representing a large percentage of the elements categorized.

The second research question focused on the differences between major league and minor league sports in reference to the setting of the sport, the type of sport, and source of coverage. Since results indicated that an overwhelming majority of national coverage (73.8% vs. 1.9%) was given to major league sports over minor league sports, we are able to see some of the major differences between primary and secondary labor markets within sports. Mass media coverage generates profitable enthusiasm, such as psychic income<sup>2</sup> (Li et al 2001), and increases attendance levels, which in turn can greatly affect players' salaries and profits to sport organizations. The inequality of newspaper coverage has the ability to illustrate possible disparities between sports, thereby reflecting their classification as in the primary or secondary sector. Howard and Crompton (2004) note the importance of the media in helping fledgling sports, such as the XGames, develop, expand, and ultimately prosper. The results illustrate some divisions between primary and secondary sectors. Media coverage, it was surmised, is a characteristic of sports in the primary sector.

The same trend is echoed in the number of elements from the "Associated Press" (wire) elements. Specifically, 70.1 percent (as compared to 2.5%) of wire coverage was devoted to the major league sports. What we are able to see is the power of the large, nationally based news organizations on local newspapers and the emphasis on major league sports over other sports. Even within the local newspapers in the minor league cities, more coverage was given to major league sports (29.2% vs. 12.5%) over local minor league sports. When coverage was given to minor league sports, most of the coverage tended to be in the form of game results and individual player statistics- a low quality of coverage. Additionally, with newspapers wanting to keep production costs to a minimum, more "Associated Press" stories are probably used. The "Associated

Press" elements are almost exclusively devoted to major league elements. Thus, coverage content is an important contributor.

Another telling example of how secondary labor market characteristics permeate minor league sports can be seen in opinion columns. Major league sports received 58.8 percent of the opinion elements, while minor league sports received zero percent. Not a single opinion or editorial column was devoted to minor league sports, illustrating how the media helps to not only promote minor league sports as secondary, but also in maintaining the dual labor market structure. Once a sport is labeled as a secondary sector sport, either implicitly or explicitly, the mass media will cover the sport accordingly; that is, minor league sports receive less coverage. Less coverage means, theoretically, less support from the general public, which manifests itself in more modest training and playing facilities because of a lack of local support (and the tax revenue that the local public generates).

The final research question focused on whether a statistically significant difference exists between the number of square inches of space devoted to major league and minor league sports. Interestingly enough, minor league sports actually had a larger mean average of area space covered (54.29 square inches vs. 52.39 square inches) as compared to major league sports (see Table 5). This finding, however, illustrates two things: 1) this statistic should be taken with caution because of the larger disparity in number of elements covered (241 major league elements vs. 30 minor league elements); and 2) that once local coverage was given, a good amount of space was devoted to the news element. The inability of the Scheffe test (post hoc ANOVA test) to significantly identify the differences between major league and minor league coverage (in square inches) helps to illustrate that while inequality exists between the number of elements in newspaper sports section devoted to minor league sports, the relative size and space (square inches) of the elements do not seem to be statistically different. The size and space of the news elements, however, are not the only way to measure "quality" coverage, as previously stated.

This finding also speaks to the dynamics of news value application. Since very little space was devoted to minor league sports

coverage from the national level, it was minor league sports at the local or regional level that drew coverage. More specifically, minor league organizations with the status of hometown teams received significant coverage. However, they do not necessarily have the prominence necessary to receive coverage in markets outside their local community. It is the organizations in primary markets, i.e., major league organizations, which enjoy enough prominence to warrant coverage, proximity notwithstanding.

Using the Dual Labor Market Theory as a framework, these findings help to flesh out possible explanations. While minor league sports do not receive as much coverage as others (because of their lower status in the secondary sector) these sports do provide an opportunity for individuals to acquire extra skills necessary for them to be successful in major league sports. Other characteristics of minor league sports indicate their place within secondary labor markets. Ron Young (2005), who writes for *Minor League News*, identifies the problem of getting Latin players the proper visas and work permits. Specifically, in a post 9-11 country increased restrictions upon workers entering the US have lead to many minor league baseball teams (especially in the Rookie/Pony Leagues and A or AA baseball) having trouble fielding teams (Young 2005). This example illustrates the idea that workers within secondary labor markets may not possess the necessary characteristics (i.e. proper working status) necessary for advancement to the primary sector.

### Limitations

While the authors believe that the Dual Labor Market Theory helps to both inform discussions regarding major and minor league sports coverage and aids in furthering this theory as a suitable labor market framework, there are some issues that future researchers in this area should be aware of. Specifically, the definition of what constitutes a "minor" league sport is crucial. This particular project adheres more to the definition provided by Li et al (2001) that provides two criteria: 1) minor league sports decide not to compete economically against other larger and more established leagues, and 2) the league operates in a limited geographical region, and

it becomes inherently noncompetitive in both the sporting and economic senses to the league playing at the major level. (Li et al 2001 10)

Coakley (2004), however, posits the idea that major league sports are not "major" in the professional sense, but that the "major" appears to refer to cultural power and acceptance mechanisms. Specifically, Coakley states that

unlike male professional athletes in top revenue producing leagues, athletes in most minor leagues and low-revenue sports have few rights and control over their careers. (2004 395)

This concept of a "major" league sport seems based on access to power structures, and incorporates non-revenue generating sports, women's sports, and other alternative sports into the moniker of "minor" league sports.

The finding that major league sports are dominated by male, revenue generating sports is in keeping with the previous literature (i.e. Sperber 2000). Also, results of the analyses indicate that Coakley's (2004) idea of what constitutes a "major" league sport might be the best way of conceptualizing the difference between "major" league and "minor" league sports. In particular, if this definition of a "minor" league sport was used, then there would have been more "minor" league sports, which would have altered the statistics and could impact future findings.

Overall findings indicate major league sports garner a vast majority of sports coverage, even in minor league sports cities. While there is not a significant difference in space (based upon square inches) between major league and minor league sports, there are significant differences between major and minor league sports in reference to the setting, type, and source of the coverage; major league sports dominate news media coverage in most categories, thus representing that the quality of media coverage appears more important as compared to the space, measured in square inches. The difference in media coverage between major league and minor league sports illustrates the inequality in sport media coverage. The coverage is skewed toward major league sports in all aspects, such as the frequency of coverage and the amount of space used to cover

the sport. These inequalities highlight and reaffirm differences between the primary and secondary labor markets within the sport entertainment industry.

#### END NOTES

- <sup>1</sup> Employment stability could, however, be called into question especially in the NFL where many contracts have very little money guaranteed, relatively speaking, and the life of the contract can be terminated by the team at any moment.
- <sup>2</sup> Psychic income can be thought of as the money that is generated by a sport organization as a result of the local community's emotional or psychological attachment to the organization.

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## TEACHING STATISTICAL INTERACTION IN ANOVA AND OLS REGRESSION IN THE CONTEXT OF IDEOLOGY IN CRIMINAL JUSTICE PROCESSING

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### ABSTRACT

In the social world we often come across circumstances where the effect of one variable on another variable varies depends on different levels of a third variable. In statistical terms this is known as Interaction. The concept of interaction can often be confusing to students, who tend to think in terms of straight linear relationships. The present study offers a simple and effective way to teach this complex concept in the context of sociopolitical ideology. We examine the role of ideology in determining the sentencing recommendations of probation officers using ANOVA and OLS regression and contend that interaction terms can be presented to students in an easily understandable manner. Our approach helps integrate substantive theory with statistics to the benefit of both.

### INTRODUCTION

A recent paper addressing the quantitative literacy gap among social science students calls for integrating data analysis (IDA) into the general curriculum (Howery & Rodriguez 2006). The basic idea of IDA is that teaching quantitative and qualitative material simultaneously (as is typically the case in the physical and natural sciences) increases the understanding of both. Howery and Rodriguez are positive about IDA and conclude that:

The IDA project has shown that introducing data analysis early, frequently, and sequentially throughout the curriculum can have a major impact on students' professional development and in developing hands-on experiences that will enhance their technical and methodological skills and allows for a better understanding of the substantive and theoretical applications of the discipline. (2006 37)

It is well known that quantitative skills among sociology majors are not on par with students of most other majors (Bushway & Flowers 2002; Proctor 2002, 2005). This may be a function of the discipline being attractive to students with poor quantitative skills, or a function of the paucity of classes in which quantitative materials are used. Proctor's (2006) recent paper is concerned with integrating computer software into statistics classes to enhance student interest and understanding. Howery and Rodriguez (2006) are primarily concerned with using quantitative methods to enhance students'

grasp of substantive and theoretical concepts. The present paper combines the concerns of both, but focuses on using substantive and theoretical concepts to enhance understanding of the basic concept of statistical interaction.

### STATISTICAL INTERACTION

Teaching the concept statistical interaction in introductory statistics courses is perhaps the most challenging component. There are other more familiar meanings to the term *interaction* that may act as roadblocks to understanding its use in statistics (Aiken & West 1991). For instance, in sociology we learn that interaction refers to mutual or reciprocal actions of individuals in groups and in chemistry we learn that it means the transfer of energy between elementary particles. These usages connote situations in which two or more objects have reciprocal effects on one another and their relationship is easily grasped intuitively.

Likewise, students have little problem understanding so-called "main effects" because such effects are linear; i.e., the independent variable X has averaged constant effects on dependent variable Y. Positive linear relationships such as "the more one studies the better the grades one gets," or negative linear relationships such as "the lower the social class the greater the number of medical problems," put little strain on students' intuitive skills. If we add a third variable to a model such as "the more one studies and the higher one's IQ the better grades one will get," we are still in the realm of linear relationships in the sense that both *time*

spent studying ( $X_1$ ) and IQ ( $X_2$ ) are assumed to be interpretable alone and to have simple additive effects.

If the magnitude of the effect of one independent variable ( $X_1$ ) on the dependent variable ( $Y$ ) varies as a function of the values of a second independent variable ( $X_2$ ), we say that the effect of  $X_1$  on  $Y$  is conditional upon the value of  $X_2$ . This is known as an interaction effect. Whenever we examine the effects of two or more independent variables on a dependent variable we must be alert to the possibility of interaction effects. However, we tend to ignore interaction effects, usually because we are unaware of them because the only frequently used technique that uncovers and reports them is the analysis of variance (ANOVA) (Curran, Bauer, & Willoughby 2004). If interaction effects exist and we do not account for them in our model estimations we have committed any number of specification errors. This paper attempts to provide a simplified account of how this important concept can be presented to statistics students in a relatively painless way for students and professors alike.

#### TWO EXAMPLES OF STATISTICAL INTERACTION FROM SENTENCING DATA

The two examples we use to illustrate interaction pertain to the relationship between political ideology and the dispensing of justice in the form of sentencing recommendations that probation officers make to the courts for offenders convicted of felony sex crimes. Students understand technical information more readily in the context of examples that are both inherently interesting and pertinent to their field of study. The concepts of justice and ideology are dear to most social scientists' hearts, so our examples should strike a responsive chord with all social science students.

Decisions about the sentencing of criminal defendants are made within the boundaries of the law, but within those boundaries there is ample opportunity for extralegal considerations (Roberts & Stalens 2000). Although judges make the final decision regarding the fate of convicted felons, according to Kaplan and Skolnick:

The modern day sentencing judge is like the 17<sup>th</sup> century monarch, who possessed absolute power in theory but in practice was frequently manipulated by the ministers who

stood quietly behind the throne and controlled the flow of information to him. (1982 567)

Probation officers (POs) are the modern judges' "ministers" controlling the flow of information to them via presentence reports (PSI) and sentencing recommendations. Officers are somewhat constrained in their sentencing recommendations in some jurisdictions by sentencing guidelines that instruct them to assign scores to relevant elements of the offense before the bench and the offender's criminal record. These scores assign offenders to a particular presumptive sentencing category.

The operationalization of legally relevant variables is intended to render justice objectively in that similarly situated offenders are treated similarly (Lauen 1997). However, the guidelines used by the courts from which our data come contain sections in which an officer can impose his or her subjective interpretation. This is most strongly so in the offense section, which contains subsections for aggravating circumstances, for which points are added to an offender's score, and mitigating circumstances, for which points are deducted. For example, one of the three aggravating circumstances is: "Offender was engaging in continuing criminal activity as a source of income or livelihood." An example of one of the four mitigating circumstance is: "There was substantial provocation, justification, or excuse for the offense." Even in the putatively more objective areas of the guideline there are grey areas where some officers may add points to an offender's score while others will not.

It is reasonable to assume that officers' causal attributions will bias (consciously or not) their scoring of the guidelines. According to Sims (2003), people who attribute criminal behavior to the free choice of individuals lacking in moral character and short on self-control demand swift and severe punishment of miscreants, while those who view it as a result of forces external to the individual such as poverty and discrimination will advocate for rehabilitation. These two positions reflect the conservative and liberal view of crime and punishment, respectively (Walsh & Ellis 2004). Conservative officers are thus more likely to recommend harsher sentences than liberal officers and to justify them with higher guideline scores for offenders pro-

**Table 1: Mean Recommendations of Liberal and Conservative Probation Officers for Categories of Victim-Offenders Relationship: Main and Interaction Effects**

Grand Mean	555.5	n=413				
	<b>Victim Offender Relationship</b>		<b>Probation Officer Ideology</b>			
Family	286.1	n=104	Liberal	399.5	n=242	
Acquaintance	409.7	n=196	Conservative	711.4	n=171	
Stranger	970.7	n=113				
	<b>Probation Officer Ideology / Victim Offender Relationship Interaction</b>					
	<b>Liberal</b>		<b>Conservative</b>			
Family	243.6	n= 61		328.5	n=43	
Acquaintance	290.9	n=124		528.6	n=72	
Stranger	664.2	n= 57		1277.2	n=56	
	<b>Sum of Squares</b>	<b>df</b>	<b>Mean Square</b>	<b>F</b>	<b>Sig.</b>	<b>Partial Eta</b>
Vic/Off Relationship	30557384.5	2	15278692.2	38.0	.000	.396
P.O. Ideology	9022838.7	1	9022838.7	22.5	.000	.228
Two-Way Interaction	4108756.1	2	2054378.1	5.1	.006	.158

cessed by them.

## METHODS

Because this article is concerned with pedagogy and not a research piece, we briefly describe the sample and operationalization of the variables. The dependent variable is sentencing recommendations (Porec) made by POs. Porec was operationalized by asking all 31 probation officers in this study to assess the relative severity of a number of sentencing options given a base value of 10 severity points for each year of probation. The results, averaged and rounded, were as follows:

Each year of probation	10.0 points
Each \$25 of a fine	1.0 point
Each day in county jail	1.0 point
Each two days in work release	1.0 point
Each day in state prison	1.1 points

For instance, a sentence of three years probation, 60 days in jail, and a \$250 fine would translate in a Porec score of  $30 + 60 + 10 = 100$ , or two years imprisonment and a \$1,000 fine would equal  $365 \times 2 \times 1.1 + 40 = 843$  points.

The first independent variable is victim/offender relationship (V/Orel) divided into three categories (1=family, 2=acquaintance, and 3=stranger) according to information contained in case records. Probation officer ideology (Pold) is divided into two categories (1=liberal; 2=conservative) determined by officers' scores on our criminal justice ide-

ology scale, which is presented in the appendix. We obtained an alpha reliability coefficient of 0.71 for this instrument.

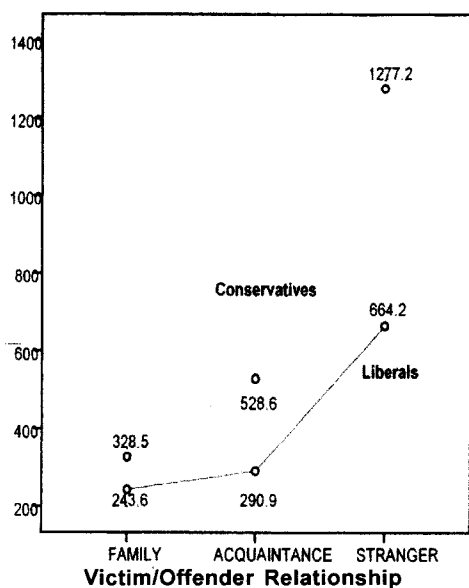
The ideology scale has a possible range from zero to 40, with the actual range based on the scores of 31 probation officers being 14 through 28. Officers scoring 14 through 20 were considered conservatives (n=14), and those scoring 21 through 28 were considered liberals (n=17). Eleven of the 14 conservative officers (78.6%) considered their role to be primarily law enforcement while 11 of the 17 liberal officers (64.7%) considered their role to be primarily social work. These differing role descriptors further underline the punitive versus rehabilitative differences between liberal and conservative officers.

An additional independent variable used in our OLS example is crime seriousness (Crser). This variable and its operationalization was discussed earlier, and had scores ranging from zero (in rare cases in which aggravating factors were canceled by mitigating factors) to 10, with a mean of 3.4.

## ANOVA AND INTERACTION

Our first task is to illustrate interaction in a 2-way ANOVA. In our statistics classes we first present an overhead of Table 1 showing the results of a 2-way ANOVA printout condensed to provide the most relevant information. We have the grand mean PO sentencing recommendation and those recommendations broken down by 1) victim/offender relationship, 2) PO ideology, and 3) broken down by PO ideology and victim/of-

**Figure 1: Sentence Recommendation Means by Victim/Offender Relationship and Probation Officers Ideology**



fender relationship simultaneously. We note that there are large jumps in recommendation severity as we move from the family to the acquaintance to the stranger condition. This is a good point to ask students why this might be. Point out that while it is especially true for conservative officers it is true for liberal officers also. The primary reason is that mean guideline crime seriousness scores significantly increase from family to acquaintance to stranger for both liberals ( $F=29.7$ ,  $p < .0001$ ) and conservatives ( $F=31.3$ ,  $p < .0001$ ). Why this is so should also lead to a lively discussion (it has mostly to do with strangers inflicting greater physical harm on their victims).

We next explain that the concept of interaction can be seen as analogous with parallelism explaining that if no interaction exists, lines drawn between the means of the dependent variable (Porec) for each category of the first independent variable (V/Orel) will be parallel for each of the categories of the second independent variable (Pold). Figure 1 shows that this is plainly not the case. Although we see that there is a linear relationship between sentencing recommendations and categories of victim-offender relationship in the same direction for both sets of offic-

ers, the lines connecting the means are far from parallel. We have found that presenting a figure such as this is an excellent aid for student understanding. Graphic displays such as this are excellent pedagogical tools to help students to grasp somewhat troubling statistical concepts such as interaction.

### INTERACTION AND OLS REGRESSION

Our second example involves the inclusion of an interaction term in an OLS regression to show how including interactions helps to get a better understanding of the data. As previously noted, many interactions in a data set go unnoticed and unanalyzed in our haste to enter the relevant variables into multivariate models (Curran, Bauer, & Willoughby 2004). If preliminary analysis or theoretical knowledge of the subject matter under investigation leads us to suspect significant interaction we must deal with it in our multivariate models or risk misspecification. We now illustrate the usefulness in terms of garnering additional understanding of the data gained by including interaction terms in multivariate OLS regression. Again, we wish to illustrate interaction using the impact of ideology on probation officers' sentencing recommendations for convicted felons. In this case we use crime seriousness as our interaction term.

We have seen that theory informs us that conservative officers will be more punitive than liberal officers and that they may attempt to justify their greater punitive recommendations by assigning higher guideline scores. As expected, the mean crime seriousness score assigned by conservative officers is significantly greater than the mean score assigned by liberal officers ( $t=3.5$ ,  $p < .001$ ). This can just as easily be interpreted as liberals underscoring the guideline as conservatives overscoring them (probably a bit of both), but the fact remains that the mean scores are significantly different. This difference cannot be interpreted as officers retrospectively identified as conservatives getting the most serious cases, or vice versa, because cases are assigned to officers on a strictly rotational basis and is thus random assignment. Mean prior record scores did not differ between conservatives and liberals, primarily because there is far less room in this portion of the guideline to exercise subjective judgments.

Table 2: Illustrating Interaction Effects in OLS Regression

<b>(A) Standard Model</b>					
Variable	b	s.e.	beta	t	Sig.
Crime Seriousness	239.51	37.83	.687	23.95	.0000
PO Ideology	161.97	40.20	.116	4.03	.0001
(Y-intercept)	320.80	37.83		-8.48	.0000
Adjusted r-squared = .505					
<b>(B) Liberal Officers Only</b>					
Variable	b	s.e.	beta	t	Sig.
Crime Seriousness	178.50	13.16	.582	13.52	.0000
(Y-intercept)	-151.20	42.98		-3.52	.0000
Adjusted r-squared = .338					
<b>(C) Conservative Officers Only</b>					
Variable	b	s.e.	beta	t	Sig.
Crime Seriousness	288.57	14.76	.776	19.55	.0000
(Y-intercept)	-322.16	59.45		-5.42	.0000
Adjusted r-squared = .600					
<b>(D) Liberal and Conservative Officers and Crime Seriousness X Ideology Interaction</b>					
Variable	b	s.e.	beta	t	Sig.
Interaction Term	110.06	19.34	.350	5.60	.0000
Crime Seriousness	178.50	14.62	.512	12.21	.0000
PO Ideology	-170.96	71.84	-.122	-2.40	.0170
(Y-intercept)	-151.19	47.74		-3.18	.0020
Adjusted r-squared = .531					

The issue we wish to examine in the context of OLS regression is the effect of crime seriousness and PO ideology on sentencing recommendations. If the two variables have only additive effects the regression equation predicting those effects is:

$$Y' = b_0 + b_1 X_1 + b_2 X_2 + e$$

If significant interaction exists, this additive model is inadequate to describe the relationship. The OLS equation required to analyze a 2-way interaction is:

$$Y' = b_0 + b_1 X_1 + b_2 X_2 + b_3 (X_1 X_2) + e$$

where  $b_3 (X_1 X_2)$  is the interaction between crime seriousness and probation officer ideology. It is a product or constituent term obtained by multiplying the two interacting variables together.

Table 2 presents four separate regression models. Model A is a standard model examining the effects of Pold and crime seriousness on Porec. As expected, with crime seriousness in the model conservative officers still recommend significantly more serious sentences ( $b=161.97$ ,  $\beta = .116$ ,  $p<.001$ ). If this model were our only concern we would feel satisfied, but we need to go further.

Models B and C are simple bivariate models for the effects of crime seriousness for

liberal and conservative officers, respectively. The adjusted r squared values for liberals (0.338) and conservatives (0.600) support the contention that the seriousness of the crime has a greater impact on the recommendations made by conservatives, and that liberals take factors other than crime seriousness more into consideration than conservatives when making their sentencing recommendations. For conservatives, the impact of each additional crime seriousness point is 288.57 sentencing recommendation points whereas for liberals it is only associated with an additional 178.50 points. The substantive difference between the slopes is 110.06 recommendation points. Crime seriousness accounts for 26.2 percent more of the variance in recommendation for conservatives than for liberals, which emphasizes the more single-minded approach to justice held by conservatives (the punishment must fit the crime, with little else being of major importance).

Model D is a multiple regression model that includes crime seriousness, PO ideology, and the interaction term. The important point to note in the context of teaching statistical interaction is that the value of the slope for the interaction term is 110.06. This is the value we got from subtracting the liberal slope in model B from the conservative slope in model C. The test of statistical significance

for the difference between slopes B and C is simply the t value (5.60) for the interaction effect.

Note that probation officer ideology remains a significant predictor of the dependent variable. However, also note that the coefficients are negative, indicating that liberal officers recommend *harsher* sentences after the effects of the interaction term and crime seriousness have been accounted for. Although the standardized beta is very weak it is a statistically significant finding which would not have been uncovered without including the interaction term. Given that the direction of the relationship is reversed in model C from what it was in model A, the researcher is now confronted with the task of delving deeper into his or her data to discover why, although this is beyond the purpose of this paper. This opportunity to more fully understand the nature of the data would not have been available without due attention being paid to the possibility of interaction.<sup>1</sup>

## CONCLUSION

We hope that this simplified example of how the concept of interaction can be meaningfully explained to beginning statistics students proves as useful to others as it has over the years to us. As previously mentioned, students always find technical concepts easier to grasp if such concepts are presented in tandem with examples taken from their fields of interest (Gregory & O'Toole 1987). Both examples presented here are relatively straightforward with mean recommendation values presented in both tabular and graphic form and should be easily understood.

We believe that it is particularly important to present interaction in the context of OLS regression, primarily because interaction effects tend to go unanalyzed when multivariate regression models are used (Curran, Bauer, & Willoughby 2004). Our demonstration showed how the interaction term is simply the difference between the unstandardized betas for separate models for a dichotomized independent variable. It also demonstrated analyzing interactions can uncover unexpected and challenging findings in the data. Further discussion of the unexpected finding presented in this paper is beyond the purpose of this pedagogical piece, however.

The major limitation in terms of pedagogy

is the lack of a method of assessing the efficacy of our learning strategy. That is, we have no comparison between students exposed to it and those not exposed to it in terms of their understanding of the concept of interaction. Such a strategy would require random assignment to different statistics classes in which one class was exposed to this material and one class not, which is plainly impossible. However, because the strategy of integrating data analysis with the teaching of substantive material has a long history of positive outcomes in the hard sciences and because the IDA project has proven successful in sociology (Howery & Rodriguez 2006), we see no reason why our method should not enhance students' understanding of a difficult statistical concept and an important substantive concept in criminal justice.

## ENDNOTE

<sup>1</sup>This anomalous finding does not appear to be a function of collinearity. The collinearity diagnostics reveal a tolerance of .298 for PO ideology and .425 for crime seriousness in the final model (C) and variance inflation factors of 3.35 and 2.35, for PO ideology and crime seriousness, respectively.

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5. Crime is best attacked by dealing with offenders in a firm, decisive, and forceful way.
  6. Crime is best attacked by concentrating not on the individual offender but on efforts to meliorate the source of crime: malignant environments.
  7. Prison regimens should involve hard work and strict discipline in order to instill in offenders good work habits and moral fiber.
  8. Only the most dangerous offenders should be incarcerated. Maximum use should be made of community-based programs.
  9. Punishment should fit the offender and be appropriate to rehabilitation, with the nature of the crime being a secondary consideration.
  10. Individuals are responsible for their own behavior. Since they have the capacity to choose between right and wrong, it makes no sense to explain criminal behavior in terms of "bad environments."

#### Appendix

##### The Liberal/Conservative Scale\*

1. Those who commit the common forms of street crimes are essentially forced into such behavior by destructive social conditions.
2. The root cause of crime is the erosion of the moral values that have traditionally deterred criminality.
3. Most people whom we label criminals are victims of racism, discrimination, class bias, and poverty.
4. The bulk of serious crime is committed by individuals with limited self-control who are oriented to the present, and who have underdeveloped moral consciences.

\*Items are scored in Likert fashion ranging from "strongly agree" to "strongly disagree."

Alpha reliability = .71



## CEASE-AND-DESIST REGULATION AND REINTEGRATIVE SHAMING: THE CASE OF THE DIRECT-TO-CONSUMER ADVERTISING OF PRESCRIPTION DRUGS

Adam Rafalovich, Pacific University, and  
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### ABSTRACT

Adopting aspects of John Braithwaite's "reintegrative shaming" theoretical framework, the authors evaluate the effectiveness of the Food and Drug Administration's (FDA's) "cease-and-desist" regulation of the Direct-to-Consumer Advertising (DTCA) of prescription drugs in the United States. This is accomplished in two ways: First, the authors examine the legislative record concerning drug marketing in the United States, drawing attention to how the inception of the FDA and the mode of "cease-and-desist" regulation predict many of the agency's problems in regulating DTCA. Second, the authors analyze the regulatory practices of the Division of Drug Marketing and Communications (DDMAC)—the division of the FDA that is responsible for DTCA oversight. Drawing attention to the ways in which pharmaceutical companies repeatedly violate FDA policy, the authors conclude that "cease-and-desist" regulation severely limits DDMAC's ability to enforce compliance. Indeed, the examples of repeated violations of FDA policy may imply that such violations are an expected part of DTCA campaigns. The authors conclude with a model that outlines how reintegrative shaming may be applied to DTCA regulation.

### INTRODUCTION

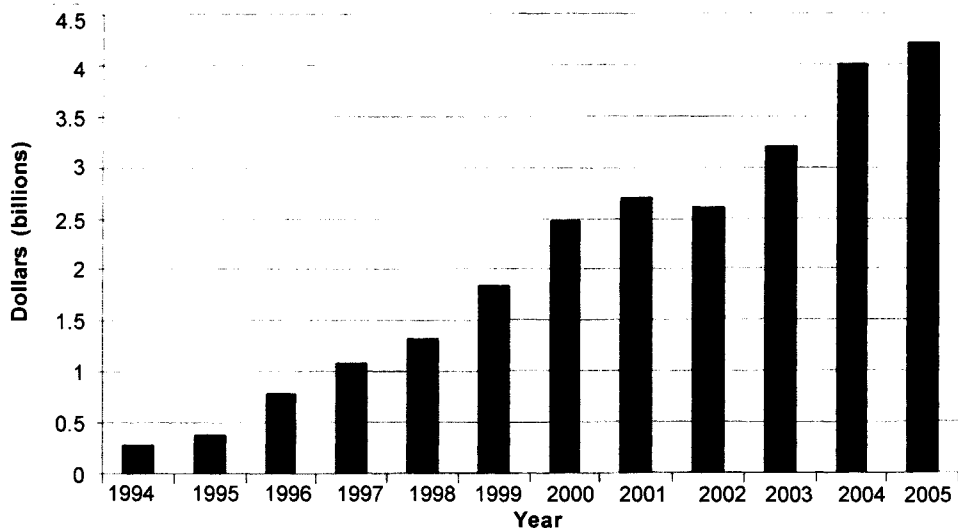
In his analysis of how firms respond to regulatory measures in the marketplace, John Braithwaite (2002 19) states: "The hard question is how do we decide when to punish and when to persuade." To understand how truly daunting this question is, one may look to the current regulation of broadcast advertising in the United States—a regulation structure that has been described as "industry-friendly" (Batra, Myers, & Aaker 1996). Commercial interests in the marketplace have consistently been favored over consumer interests through the successful legal defense of First Amendment rights (Beales & Muris 1993; Gartner 1989). This is exemplified by the U.S. government's 1997 allowance of the Direct-to-Consumer Advertising (DTCA) of prescription medications. Policy discussions have shifted from the feasibility of DTCA to how the Food and Drug Administration (FDA) can control DTCA content. In short, the FDA asserts this control by responding to DTCA violations that have been discovered in the marketplace with a "cease-and-desist" order to a pharmaceutical company. A few scholars have argued that "cease-and-desist" regulation has limited effectiveness. Gilmore (1991) argues that much of the FDA's authority over direct-to-consumer marketers is illusory, and the U.S. General Accounting Office (GAO) (2002) concludes that the FDA's regulatory power is weakened by a variety of organizational shortcomings.

Adopting a "reintegrative shaming" frame-

work (Braithwaite 1989, 2000, 2002), we evaluate the effectiveness of the FDA's regulation of DTCA content. There are two principles of reintegrative shaming that are integral to our analysis: 1) the effective communication of shame between a regulatory body and an offender; and 2) the proscription for methods by which the offender can reintegrate into social life and "make amends" to those who have been harmed. In order to show the many social problems associated with DTCA we explore its history in the United States and then list several examples of how pharmaceutical companies subvert federal DTCA guidelines. First, we investigate key aspects of the legislative record concerning drug marketing in the United States, highlighting how the federal government conceded to the interests of the drug industry. We draw particular attention to the inception of the FDA and how its mode of "cease-and-desist" regulation predicts many of the agency's current regulatory shortcomings. In the second section, we focus on the Division of Drug Marketing and Communications (DDMAC)—the division of the FDA that is responsible for the oversight of DTCA. Through examining how pharmaceutical companies violate federal drug advertising policy and the ways in which DDMAC responds to such violations, we argue for the employment of the above reintegrative shaming concepts into the DTCA regulation process.

In order to illustrate the importance of analyzing the regulation of DTCA, it is crucial to

Figure 1: Direct-to-Consumer Advertising Expenditures for Prescription Drugs, 1994-2005



**Notes:** DTCA expenditures from 1994-1997 primarily include print advertisements, as the initial Draft Guidance allowing broadcast media to provide adequate provision for the brief summary requirement was not released until August 1997.

**Sources:** Henry J. Kaiser Family Foundation and the Sonderegger Research Center, 2002. "Trends and indicators in the changing health care marketplace, 2002." Menlo Park, CA.

Kalorama Information, Inc. 2005. "Direct-to-consumer pharmaceutical marketing 2005: controversies continue." April. 114 pps. (<http://www.kaloramainformation.com>)

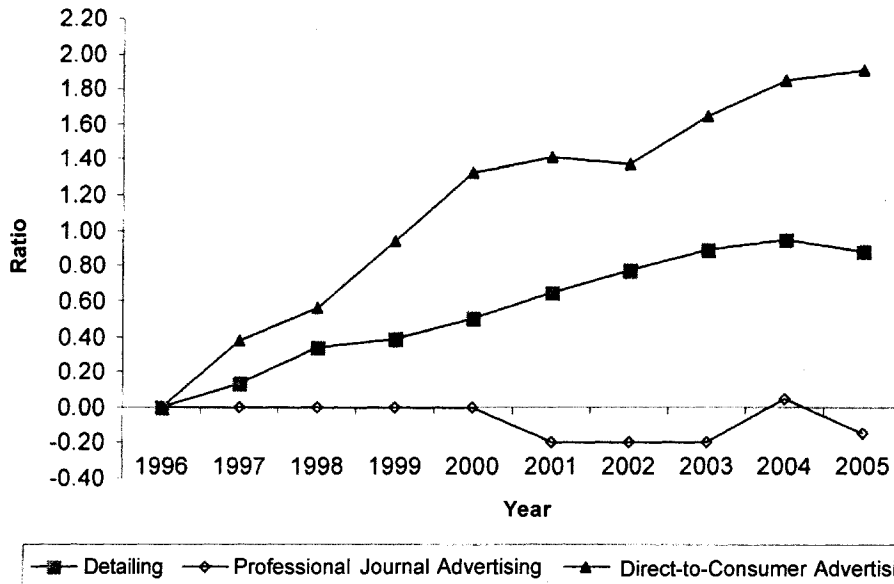
first discuss the prevalence of DTCA in the United States since 1997.

#### DIRECT-TO-CONSUMER ADVERTISING

The United States is one of only two countries<sup>1</sup> in the world to allow DTCA. As it has become a multi-billion dollar annual expenditure for the pharmaceutical industry, it is largely believed that DTCA will remain a permanent fixture in American life. Since the early 1980s, pharmaceutical companies have been keenly interested in advertising prescription drugs through television, radio, and telecommunications. Up until 1997, FDA regulations had made such broadcast marketing infeasible. Though the FDA did not specifically outlaw the direct-to-consumer marketing of prescription drugs, the administration's guidelines required such stringent disclosure of risk information that expenditures on broadcast advertising were financially impossible. This changed in 1997 when the FDA lessened its standards of risk disclosure, making broadcast DTCA a legitimate marketing option for the pharmaceutical industry. Relaxing its restrictions on drug information disclosure, the FDA issued the

Draft Guidance for Industry in August of 1997, which provided a preliminary federal statement about the parameters within which pharmaceutical companies could conduct DTCA through broadcast media. The Draft Guidance was revised slightly in August 1999 into a Final Guidance for Industry and remains the FDA's regulatory framework for DTCA. The relaxation of federal guidelines for DTCA as described in the Final Guidance has been a catalyst for a new era in how prescription drugs are advertised in the United States and has greatly affected doctor/patient relationships.

Prior to the 1997 Draft Guidance, DTCA comprised only a small percentage of prescription drug advertising and was done primarily through print advertisements, where costs were marginal in comparison to broadcast media. As it provided an unprecedented marketing opportunity for the pharmaceutical industry, the publication of the Draft Guidance had an immediate impact on drug advertising expenditures. Figure 1 illustrates how annual DTCA advertising expenditures jumped 1600 percent from \$266 million in 1994 to \$4.25 billion in 2005 (Levitt 2001;

**Figure 2: Proportional Change in Prescription Drug Expenditures by Promotion Type, 1996-2005**

**Sources:** Henry J. Kaiser Family Foundation and the Sonderegger Research Center, 2002. "Trends and indicators in the changing health care marketplace, 2002." Menlo Park, CA.  
IMS Health, Integrated Promotional Services and CMR. 2004. "Top-Line Industry Data." (<http://www.imshealth.com>).

NIHCM Foundation 2002; Kalorama Information 2005).

In the early 1990s, DTCA represented less than 5 percent of total drug company promotional spending in the United States, but represented 31.8 percent of such expenditures in 2003 (Toop et al 2003). As Figure 2 illustrates, DTCA is the fastest growing promotional expenditure category for the pharmaceutical industry. Five of the top 50 corporations with the highest advertising expenditures for 2004 are pharmaceutical corporations (TNS Media Intelligence 2004). For example, GlaxoSmithKline, which spent slightly more than \$825 million on advertising in 2004, had advertising expenditures larger than AT&T (\$291 million), Campbell's Soup Company (\$274 million), and Coca Cola (\$254 million) combined. In 2002, the German pharmaceutical corporation, Merck and Co., spent \$160 million advertising its now recalled anti-inflammatory drug, Vioxx®—an expenditure that was \$35 million more than PepsiCo spent advertising its namesake soft drink, and more than double what Nike Corporation spent marketing its range of top end shoes (NIHCM

Foundation 2002; TNS Media Intelligence 2004).

Recent studies demonstrate that the expansion of DTCA has had a profound impact upon consumer behavior and doctor/patient relationships. A 1993 consumer awareness survey suggested that 39 percent of Americans had "seen or heard" an ad for prescription medication (Alperstein & Peyrot 1993). By 2000, that number had skyrocketed to ninety-one percent (Henry J. Kaiser Family Foundation and Harvard School of Public Health 2000). Illustrating how increased consumer awareness of prescription drugs impacts interactions between physicians and their patients, Gottlieb (2002) argues that DTCA explains why one-fifth of Americans now ask their doctor about medications they had specifically seen advertised on television. A study by Zachry et al (2002) concludes that the amount of prescriptions written for the antihistamine, Claritin®, and the cholesterol drug, Zocor®—drugs with DTCA expenditures that ranked 3<sup>rd</sup> and 5<sup>th</sup> respectively in 2001—was positively related to these drugs' advertising expenditures. Such conclusions support the assertion that DTCA, as it pro-

Table 1: DDMAC Letter Correspondence to Companies Violating DTCA Regulations

Year	Advertisement Type			Letter Type		Total Letters
	Broadcast	Print	Print & Broadcast	Regulatory	Warning	
1997	9	5	0	13	1	14
1998	9	11	4	24	0	24
1999	5	7	1	11	2	13
2000	12	7	1	19	1	20
2001	7	4	3	13	1	14
2002	5	2	2	9	0	9
2003	3	3	2	6	2	8
2004	5	4	0	7	2	9
2005	2	4	2	5	3	8

Source: U.S. Food and Drug Administration, Center for Drug Evaluation and Research (2005). "Index of Notices of Violation and Warning Letters to Pharmaceutical Companies." (Available at <http://www.fda.gov/cder/warn/>).

motes the awareness of certain illnesses, increases the market for drugs that are designed to treat such ailments. As Conrad and Leiter (2004) discuss, Viagra®, which is used for the treatment of "Erectile Dysfunction," and Paxil®, which is primarily marketed for the treatment of "Social Anxiety Disorder," are two drugs that have become synonymous with the ailments they are marketed to treat.

Interpreting whether or not the impact of DTCA constitutes a burgeoning social problem clearly depends upon perspective. For those sympathetic to the pharmaceutical industry, DTCA is an "opportunity" for consumers to know more about certain drugs and make more informed choices about the medications they take. A 1999 industry "Market Profile" of DTCA, for example, contends that a

survey of consumer attitudes reveals that people appreciate the ability to make their own informed choices, rather than leaving all decision making to institutions and professionals. (Magazine Publishers of America 1999 20)

While confirming that, indeed, DTCA has increased consumer awareness of prescription drugs and their uses, other studies argue that such awareness adversely affects how and what types of drugs physicians prescribe (Perri, Shinde, & Banavali 1999; Steinman 2000). This debate regarding the impact of DTCA upon consumers and the doctor/patient relationship is perhaps best summarized by a February 2002 issue of the *New England Journal of Medicine* which of-

fers two opposing editorials on the subject. The first, written by a member of the Public Citizen Health Research Group contends that

The education of patients—or physicians—is too important to be left to the pharmaceutical industry, with its pseudoeducational campaigns designed, first and foremost, to promote drugs. (Wolfe 2002 526)

Whereas the second, written by a representative of the pharmaceutical industry, argues that

Direct-to-consumer advertising does not replace the physician—patient relationship; its purpose is rather to encourage an informed discussion between patient and physician. (Holmer 2002 528)

While there has been considerable discussion about how DTCA raises, for better or worse, the awareness consumers have about prescription drugs, little has been said about how the federal guidelines for DTCA are enforced.

## THEORY AND METHOD

This study uses two data sources. First, using the historical record of DTCA as data, we chronicle the development of FDA advertising guidelines. Second, in order to supplement our examination of the many ways in which pharmaceutical companies violate DTCA guidelines in the United States, we sample the correspondence (in the form of regulatory letters) between DDMAC and phar-

**Table 2: Ranking of Top Violators of DTCA Regulations, 1997-2005**

Ranking	Pharmaceutical Company	Number of Letters Sent
1	GlaxoSmithKline	17
2	Schering Corporation	9
3	Pfizer Pharmaceuticals	8
4	Zeneca Pharmaceuticals	7
5	Bristol-Myers Squibb Company	6
6	Eli Lilly Company	5
7	Novartis	4
	Johnson & Johnson Consumer Companies	4
	Hoffman-La Roche Inc.	4
8	Merck & Co.	3
	G.D. Searle & Co.	3
	Vivus, Inc.	3
	Alza Corp.	3
	Boehringer Ingelheim Pharmaceuticals, Inc.	3

**Source:** U.S. Food and Drug Administration, Center for Drug Evaluation and Research, 2005. "Index of Notices of Violation and Warning Letters to Pharmaceutical Companies." Available at <http://www.fda.gov/cder/warn/>.

maceutical companies who have violated Final Guidance recommendations. Our approach to this study is detailed below.

Understanding public institutions such as the FDA benefit greatly from placing such institutions' history within a contemporary context (Aminzade 1992; Mahoney 2000). A comprehensive understanding of an institution's behavior must include a historical account that reveals an institution's impact upon the greater social world over time (Lieberman 2001; Rueschemeyer & Stephens 1997; Skocpol & Somers 1980). This impact may best be understood as a process of interaction between an institution's social organizations and events the institution is designed to oversee (Hironaka 2002). We believe that a sociological understanding of the federal regulation of DTCA must begin at the historical level. As the development of formal public institutions emanates from legislative processes, we treat the legislative record with respect to the regulation of DTCA as a significant data source. Our examination of this record begins with an analysis of *The Pure Food and Drugs Act* (better known as *The Wiley Act*) of 1906 up to the publication of the FDA's Final Guidance to Industry in 1999.

Our second data source will be used to investigate how the federal government communicates with industry violators. Black (2002, 2003) argues that government regulation is a "communicative process" which demonstrates protocol effectiveness. Here we examine the regulatory correspondence

between DDMAC and pharmaceutical companies whose advertisements are found to violate the Final Guidance. Two types of correspondence are sent by DDMAC: Notices of Violation that are sent to companies for lesser DTCA regulation offenses and Warning Letters that address more serious violations. These letters are indexed at the Food and Drug Administration's Freedom of Information Office (<http://www.fda.gov/cder/warn/>). We consulted this index by first counting the number and types of letters that were sent to industry violators between 1997 and 2005 (see Table 1) and second, by ranking the corporations who received the most letters and therefore violated DDMAC policy most frequently (see Table 2).

Table 1 provides a 9-year summary of DDMAC's regulatory correspondence with DTCA violators, whereas Table 2 illustrates corporate behavior. The frequency with which corporations violate DTCA policy will be used, in part, to evaluate DDMAC's regulatory effectiveness.

Our discussion of these data sources illustrates the use-value of a reintegrative shaming framework (Braithwaite 1989, 2000, 2002). As evidenced by the work of Ayers and Braithwaite (1992) and the legal analyses of Ayers (1990), this perspective has been usefully adopted in the analysis of micro- and macro-economic behavior, especially those exhibited in the marketplace. We try to explain the shortcomings of DTCA regulation by analyzing what aspects of reintegrative

shaming are missing from the FDA's stance toward this type of advertising. To this aim, we argue that the regulation of pharmaceutical advertising has never been equipped with an effective "shame mechanism" that would make industry accountable for the information they provide to consumers. Concomitant with the absence of this shame mechanism, we argue that the FDA and DDMAC provide no specific ways in which pharmaceutical companies can acknowledge their transgressions to consumers, and effectively "reintegrate" into a non-violator status. To set up this analysis we will now discuss the historical development of DTCA in the United States.

#### THE LEGISLATIVE HISTORY OF "CEASE-AND-DESIST" REGULATION

The history of the federal regulation of food and drug production and marketing illustrates the antagonism between public-centered and industry-centered policy advocates. Central to this antagonism is the issue of government intrusion into the marketplace. Although politicians repeatedly expressed an unwavering commitment to consumers, the consumer protections that were enacted since the late 19<sup>th</sup> century demonstrated marked compromises between public interests and those of big business (Palumbo & Mullins 2002). Since the inception of the FDA in 1906, the passing of the *Wheeler-Lea Act* in 1938, and the current era of DTCA, the federal government has had the burden of monitoring the marketplace in order to prove corporate negligence. Since the issue of mass marketing drugs came to the political forefront in the 1930s, drug companies have never needed government pre-approval for the contents of their advertisements. Regulatory agencies such as the FDA mandate that drug companies comply with federal standards only after a negligent advertisement is discovered.

#### The Wiley Act of 1906

In the late 19<sup>th</sup> century Harvey Wiley, head of the U.S. Department of Agriculture, sought to regulate domestic food and drug industries by revamping the *Drug Importation Act* of 1848 (Young 1961, 1989). Wiley's efforts were met with stern opposition from drug manufacturers and their political backers (FDA 1981). Despite industry opposition, Wiley's efforts were bolstered in two ways:

first, by the publication of Upton Sinclair's *The Jungle* (1906)—a damning critique of the meat packing industry which was widely read by policy makers and the general public (Kantor 1976) and second, by the policy ambitions of President Theodore Roosevelt, who had read *The Jungle* and was seeking to increase industry accountability (Young 1961). The public's explosive response to *The Jungle* combined with the support of President Roosevelt meant success for food and drug law proponents. The *Pure Food and Drugs Act*, or *Wiley Act*, became law on June 30<sup>th</sup>, 1906. Primarily targeting the information on product labels, the *Wiley Act* prohibited any false statements about the ingredients in a particular medication. This and other provisions would be enforced through the development of a new regulatory body: the Food and Drug Administration.

Consumer rights advocates appeared to achieve a victory with the *Wiley Act* and the inception of the FDA. However, outside of its product labeling requirements, *Wiley* had little regulatory impact. In fact, industry representatives supported the passage of *Wiley*, which had far weaker standards than were initially proposed. Trade magazines that strongly opposed food and drug regulation such as the *National Druggist* acknowledged the drug industry's role in ensuring the passage of a weakened version of *Wiley*:

[it is] not such a terrible thing after all. But let it not be supposed that the law would have been enacted in its present rather innocuous form but for hard, intelligent and most tactful work on the part of the representatives of the interests it is intended to regulate. (Young 1961 8)

The shortcomings of the *Wiley Act* were visible immediately. Of particular concern was the enforcement capability of the FDA, which was designed to monitor for and respond to violations it found in the marketplace. Because the FDA's mode of regulation was reactive rather than proactive, consumer rights groups claimed that the act failed to prevent drug misbranding. Furthermore, drug manufacturers were particularly relieved by the *Wiley Act's* failure to ban false therapeutic claims (Miller 1999). The Sherley Amendment of 1912 remedied this by disallowing false therapeutic claims of any kind; however, the burden again lay on the federal



government to not only detect false claims, but to verify whether or not such claims were intentionally deceptive (Miller 1999). Drug manufacturers could no longer legally make misleading claims about their products' effectiveness, but the regulatory power of the federal government remained weakened by the "cease-and-desist" capacity of its agencies.

### Passing the Wheeler-Lea Act of 1938

The shortcomings of the *Wiley Act* were exacerbated by the increasing role of advertising in the development of medication markets. Along with organizations pressing for uncompromising, public-centered legislation to control food and drug advertising practices was Assistant Secretary of Agriculture Rexford G. Tugwell, who in 1933, gained President Franklin D. Roosevelt's support for his proposed Congressional bill, S. 1944 (Palambo & Mullins 2002; Stole 2000). Among the implications of S. 1944 (known as the Tugwell Bill) for the drug industry were broader definitions of the terms "drug" and "adulteration," more detailed ingredient disclosure on the product label, and removal of the requirement that the government must prove a drug maker intended to deceive the public in making false product claims (Young 1961). The bill also proposed that the FDA be granted authority to take legal action against drug manufacturers as well as media outlets (i.e.-magazines, radio, trade journals, etc.) for false advertising. In support of the Tugwell Bill, in early 1933 the FDA displayed to U.S. Senators the "Chamber of Horrors," an exhibit of hazardous medicines, fraudulent labels, and quack devices. The exhibit, which was supported by the Roosevelt administration, attempted to expose Congress and the public to a new era of drug industry fraud.

The Tugwell Bill remained in committee for almost four years until the Elixir Sulfanilamide tragedy of 1937. In an effort to tap into the children's market for the Sulfanilamide, chemists at S.E. Massengill Co. discovered that the drug, a popular anti-bacterial, could be dispensed in liquid form if combined with diethylene glycol (DEG). As a precursor to antifreeze, DEG is highly toxic and at least one-hundred-seven deaths (mostly children) were attributed to it (Young 2003). Fearing that a consumer-friendly version of the Tugwell Bill would be passed in response to

this tragedy, industry lobbyists worked vehemently to see that no new legislation would be passed without the inclusion of several industry-friendly amendments (Pines 1999). Industry representatives were particularly concerned that the FDA's "cease-and-desist" powers might be revamped (Pines 1999). The years following the 1937 tragedy saw revisions of the Tugwell Bill that presented a veneer of consumer concern, but gave significant concessions to big business. By the end of 1937 the Tugwell Bill was practically unrecognizable in its revised form, S. 1077.

After the Sulfanilamide tragedy politicians hurried S. 1077 to the House Interstate and Foreign Commerce Committee. In this committee hearing Representative Virgil Chapman of Kentucky questioned the potential of S. 1077 to thwart deceptive advertising through the use of "cease-and-desist" orders:

By the time a cease-and-desist order...becomes effective the advertiser, as a matter of course, will change his copy. He can continue this process indefinitely without running any risk whatever of penalty, and when he has run the gamut of all the claims he can plausibly make for his product, he can then change its composition, as patent-medicine manufacturers have so frequently done, and repeat the process over and over again. (*Congressional Record* 1938)

However, despite lawmaker concerns and the sensationalism of the "Chamber of Horrors," S. 1077 was passed as the *Wheeler-Lea Act* on March 21<sup>st</sup>, 1938. Inserted into *Wheeler-Lea* was amendment S. 5 that removed Tugwell's requirements for full ingredient disclosure and strictly held advertisers, not media outlets, responsible for false advertisements. As with previous legislation governing the food and drug industries, the government was held responsible for detecting advertising infractions and taking action against violators: "cease-and-desist" remained policy (Richards 1998).

### Parameters of DTCA Regulation

In 1979, the FDA responded to the pharmaceutical industry's increasing interest in the use of popular media for the expansion of professional (i.e.-researcher, pharmacist, clinician) markets by creating two requirements that all advertisements must meet: a

"brief summary" of side effects, contraindications, and effectiveness (21 U.S.C. § 352(n) (1979)) and the "fair balance" doctrine, which states that a drug's risk information be presented in a fashion comparable to statements of the drug's effectiveness (21 C.F.R. § 202.1(e) (1979)). These new FDA standards were first tested on a consumer audience in 1982 when Boots Pharmaceuticals released a series of print and television broadcast advertisements promoting its brand of ibuprofen, Rufen® (Snedden 2002). Concerned that it would be unprepared to monitor an onslaught of consumer-directed advertisements, the FDA issued a voluntary moratorium on all DTCA in September of 1982. In 1985 the FDA deemed DTCA acceptable, concluding that the current drug advertising standards for professional markets were also appropriate for consumers. Because meeting the "brief summary" and "fair balance" requirements through broadcast media were onerous and financially infeasible for pharmaceutical companies, DTCA did not immediately grow after the moratorium was lifted (Desselle 2004; Pines 1999). However, pharmaceutical companies quickly implemented marketing strategies that avoided FDA requirements.

In August 1995 the FDA responded to a steady increase in direct-to-consumer advertisements that subverted "brief summary" and "fair balance" requirements. Such advertisements described disease symptoms and urged viewers to seek their doctor's advice, but never mentioned a specific drug. Because such advertisements were not formally defined, the FDA created a typology of three types of prescription drug advertisements: reminder advertisements, help-seeking advertisements, and product claim advertisements. Reminder advertisements only call attention to the name of the drug product, while help-seeking advertisements encourage viewers to refer to a health professional for treatment options for particular symptoms. Only product-claim advertisements, that is those naming a drug and making claims about its effectiveness to treat specific diseases, must meet the FDA "brief summary" and "fair balance" standards (Palumbo & Mullins 2002).

In October 1995 the FDA held a public hearing to discuss the issue of DTCA with pharmaceutical industry representatives, clinicians, researchers, and drug consumer ad-

vocates (Nordenberg 1998). In August 1997 the FDA took formal regulatory action by releasing the "Draft Guidance for Industry: Consumer-Directed Broadcast Advertisements" which was slightly revised in August 1999 as the "Final Guidance for Industry: Consumer-Directed Broadcast Advertisements" (Intra-Agency Group on Advertising & Promotion 1999). Swayed by industry representatives who felt that DTCA would provide much needed information to consumers, the FDA added an "adequate provision" clause to the guidance. In order to meet "adequate provision" requirements, consumer-directed advertisements must provide: 1) a toll-free telephone number that consumers can call to listen to a reading of the brief summary; 2) a web page address where product information can be accessed; and 3) a statement that encourages consumers to consult a healthcare professional for more information, or refers them to an "alternative mechanism," such as a print resource, to access the brief summary of the drug product (Intra-Agency Group on Advertising & Promotion 1999).

Today, the FDA regulates DTCA through the Division of Drug Marketing, Advertising, and Communications (DDMAC)—a subdivision of the FDA's Center for Drug Evaluation and Research. Following the same regulatory approach established in 1906, DDMAC detects non-compliant advertisements by monitoring print materials and broadcast media, and dispenses either Notices of Violation or Warning Letters, both of which call for an ad's alteration or cessation. The mode of cease-and-desist has been preserved in the FDA's "postmarketing reporting" requirements (21 C.F.R. § 314.81(b)(3)(i) (2003)) which require that pharmaceutical companies submit their consumer-directed advertisements at the time that such ads are broadcast. Such reporting has been at the root of a host of DTCA guideline violations.

Current Department of Health and Human Services (HHS)—the department that oversees the FDA and DDMAC) policy supports the notion that violating the Final Guidance benefits pharmaceutical companies and, indeed, may be a common part of DTCA campaigns. In January 2002 the Bush administration mandated that all NOV and Warning Letters be sent to the HHS's Office of the Chief Counsel (OCC) for "legal review" prior to being sent to industry. In what may be

construed as a federal giveaway to the pharmaceutical industry, this policy entitles the OCC to take up to 45 working days—slightly more than two months—to review regulatory correspondence before they are approved for dissemination. As the GAO (U.S. General Accounting Office 2002) points out, about one-third of DTCA campaigns remain on the air for less than two months. By the time OCC approval has been given, DDMAC's admonitions may be irrelevant because a new advertising campaign has already begun. We recall here the prophetic concerns of Kentucky Congressman Virgil Chapman. This new policy may partially explain the decrease in regulatory letters sent by DDMAC since 2001 (see Table 1). As DDMAC is now required to legally review every piece of regulatory correspondence it sends to industry, the burden of demonstrating non-compliance has shifted even more toward the FDA. As non-compliant advertisements can be ran for extended periods of time, it is clear that DDMAC's "cease-and-desist" admonishments are less effective today than ever before.

#### Media Outlet Immunity

The elimination of the Tugwell Bill's provision that media outlets (i.e. magazines, newspapers, professional journals, radio stations) be held legally responsible for fraudulent drug ads was a significant blow to federal authority. Since the passage of *Wheeler-Lea* media outlets can take in advertising revenues for virtually any product regardless of its use value. Media outlets can profit from misleading or blatantly fraudulent claims of their advertisers, but cannot be held accountable for them. DDMAC is limited to the monitoring of DTCA content, evaluating its compliance, and redressing complaints with the companies that fund such advertisements.

Part of DDMAC's approach to monitoring DTCA involves the use of a commercial service that monitors six cable television networks<sup>2</sup> and "the New York City affiliates of the four major networks and PBS" (U.S. General Accounting Office 2002 22). Smaller affiliates—which comprise up to 50 percent of the media for consumer marketing campaigns (Hoskins 2004)—are ignored in this monitoring process, effectively making many drug ads undetectable. There is evidence that local broadcasts of prescription drug

campaigns have become part of a marketing strategy for the drug industry. In 1999, for example, a misleading ad was broadcast in Puerto Rico for two years before the FDA became aware of it (Wilkes, Bell, & Kravitz 2000).

In addition to this routine surveillance, DDMAC relies heavily upon the pharmaceutical industry itself to draw attention to advertisements that may not be FDA compliant. Indeed, the bulk of complaints that DDMAC receives about non-compliant ads do not come from government officials or consumer awareness groups, but from pharmaceutical companies who are concerned about rival advertising campaigns (Bureau of Consumer Protection, Bureau of Economics, & Office of Policy Planning of the Federal Trade Commission 2003).

Relying heavily upon industry self-regulation, DDMAC's organizational structure does not anticipate changes in pharmaceutical company advertising expenditures. Despite the fact that DTCA is the fastest growing expenditure priority for the drug industry, DDMAC remains grossly understaffed to adequately monitor direct-to-consumer drug campaigns. At the time of this writing, DDMAC dedicated only four of their 39 staff members to monitoring direct-to-consumer advertisements with their remaining staff assigned to survey those advertisements that are directed at physicians (conversation with DDMAC's director of DTCA affairs, April, 2005). It is a matter of course that four staff, regardless of competence or dedication, who are assigned to monitor a multi-market, \$4.25 billion per year advertising strategy are going to be overwhelmed.

Despite DDMAC's monitoring process, pharmaceutical companies are still able to subvert Final Guidance requirements through the use of "help-seeking" and "reminder" advertisements, neither of which are required to follow "adequate provision" guidelines. Help-seeking advertisements, also known as "disease awareness campaigns," remind the viewer about a particular illness and implore medical consultation. One of the most famous of these campaigns was created in the 1980s by Upjohn Inc. (manufacturer of Rogaine) which sparked a tremendous amount of public awareness about male pattern baldness. Reminder advertisements, on the other hand, promote public awareness of a pharmaceutical company

and avoid mentioning any specific illness or medication. Bristol-Meyers, for example, has run numerous campaigns that tout the company's research prowess and corporate citizenship. One of their recent advertisements offers a cameo appearance by world-class cyclist and cancer survivor, Lance Armstrong, but omits any direct mention of Bristol-Meyers' cancer medications.

Though both of these types of advertisements are designed to cultivate a market for prescription drugs, neither is defined as direct-to-consumer advertising according to DDMAC. Pharmaceutical companies quickly learned that complimentary help-seeking and reminder advertisements could have the same effect as a DTCA campaign, but would not have to abide by Final Guidance regulations. For example, in an effort to promote its obesity medication Xenical®, Roche Pharmaceuticals began a national campaign in which a 30-second help-seeking add about obesity was broadcast almost immediately before a 30-second reminder advertisement. Between these two advertisements was a minute-long spot for an unrelated product. Within a two-minute period Roche had promoted awareness of a health condition and linked its company name to its treatment—all without mentioning a specific drug or abiding by federal guidelines (Adams 2001). DDMAC issued a "cease-and-desist" order to Roche, but not until the campaign had been nationally broadcast for over two months.

#### THE LIMITED EFFECTIVENESS OF NOTICES OF VIOLATION AND WARNING LETTERS

The *Wheeler-Lea Act* provided no protocols for regulatory action beyond "cease-and-desist"—a shortcoming that is preserved in DDMAC's Notices of Violation (NOVs) and Warning Letters. As the modern form of "cease-and-desist" regulation, NOVs and Warning Letters may implore companies to cease advertisements that violate the Final Guidance, but current marketing strategies greatly lessen such letters' impact.

DDMAC threatens enforcement of the Final Guidance by sending either NOVs or Warning Letters to non-compliant corporations. However, neither HHS nor FDA operating procedures clearly specify which violations warrant the sending of an NOV or a Warning Letter.

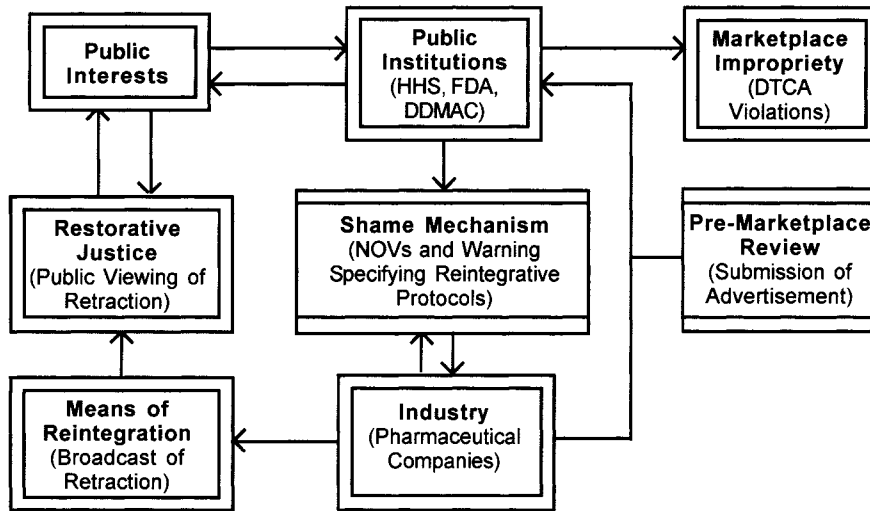
What is striking is that HHS does not out-

line any specific penalties that can be levied against industry beyond the message of "cease-and-desist." Although HHS may act on the FDA's behalf and file federal lawsuits against non-compliant pharmaceutical companies, this has *never* happened since the Draft Guidance of 1997.<sup>3</sup> Further, there are no protocols in the Final Guidance that specify the leveling of fines for industry violators, nor are there any provisions that suspend a company's DTCA privileges. Although the language of NOVs and Warning Letters appears very stern, and implores a company to cease its violations, such language never precedes regulatory action. Beyond these written warnings, there are no protocols determining what steps must be taken against repeat violators. The behavior of Schering Corporation and GlaxoSmithKline serves as two important examples.

Between 1997 and 2000, Schering Corporation received six NOVs for its marketing of Claritin®, the world's top-selling allergy medication. These NOVs explained that Schering had violated numerous Draft Guidance and Final Guidance recommendations. The letters (faxed between August 19, 1997 and August 18, 2000) demonstrate how Schering violated DTCA regulations in myriad ways and with impunity. In 1997, for example, Schering failed to insert a fair balance statement into their television promotion of Claritin® Tablets, fraudulently asked customers who called the mandatory "1-800-CLARITIN" number to respond to a marketing survey, and sent out a telephone script advertisement for the drug that touted the benefits of Claritin®, but failed to insert "adequate provision" or mention any of the drug's major side-effects. Schering's pattern of behavior continued with subsequent marketing of Claritin®, typified by a 1998 print advertisement that lacked both "fair balance" and "brief summary" requirements, and two television ads for the drug: one, a false "reminder ad" that specifically talked about the benefits of Claritin®, the other, back-to-back "reminder" and "help-seeking" ads similar to the previous example of Roche's Xenical® campaign.

GlaxoSmithKline has been served with almost double the amount of NOVs and Warning Letters of any other pharmaceutical company (see Table 2). Similar to Schering Corporation, many of the company's repeated violations occurred through the direct-to-consumer marketing of only one drug,

Figure 3: Model for Reintegrative Shaming and Direct-to-Consumer Advertising



the nasal spray Flonase®. Beginning in September 1997, DDMAC sent GlaxoSmithKline several NOVs for its marketing of Flonase®. The first concerned the company's failure to send consumers warning information about Flonase® in a timely manner (letter faxed on September 1997). In August 1999 DDMAC sent GlaxoSmithKline a Warning Letter regarding an advertisement that the company did not submit to the FDA at the time of its broadcast (in violation of the requirements for "postmarketing reporting") that had "misleading and incomplete" information about Flonase®. The Warning Letter sternly admonishes GlaxoSmithKline to

assure the FDA that similar advertisements are not being disseminated anywhere in the United States or its territories and possessions.

Such admonishment apparently had little effect. GlaxoSmithKline would receive three more NOVs for violations regarding the marketing of Flonase. These included: 1) a television advertisement that misrepresented the overall effectiveness of the nasal spray (letter faxed on September 1999) (DDMAC 1999); 2) misrepresenting doctors' favorable opinions about Flonase® in a newspaper advertisement (DDMAC 2000); and 3) a television advertisement that claimed Flonase® relieved post nasal drip, but provided no clinical

evidence for this. Between September 1997 and March 2000, DDMAC sent a total of five notices (including one Warning Letter) to GlaxoSmithKline about its direct-to-consumer marketing of Flonase®, but no action was ever taken against the company. Due to a lack of protocols for legal action against repeat violators (especially where such repeat violations are for the marketing of only one drug), corporations such as GlaxoSmithKline apparently violate with impunity.

## DISCUSSION

The legislative history of DTCA and the current environment of this form of advertising demonstrate a repeated pattern of federal concession to industry at the expense of consumer interests. As institutions that represent a public voice, HHS, the FDA, and DDMAC are supposed to function in ways that protect consumers from misinformation and from advertising campaigns that run counter to the public good. It should be expected, then, that such institutions transmit the voice of the public but also, mediate the conversation between public and industry interests. Borrowing from Braithwaite (1989, 2000, 2002), the public voice in this conversation may be best seen through a process of shaming noncompliant corporations, letting corporations know, just like any offender, that their behavior is as visible as it is unacceptable.

### The Absence of, and Necessity for, Reintegrative Shaming

As the current regulatory shortcomings and repeated violation of DTCA guidelines illustrate, there is no adequate "shaming mechanism" (Braithwaite 1989, 2000, 2002) in place that forces corporations to "listen to" the public. Indeed, the current mode of "cease-and-desist" regulation impedes a dialogue between industry and the public. Below, we outline three ways that the federal regulation of DTCA lacks both an adequate shaming mechanism and an appropriate means by which violating companies may acknowledge their transgressions and "re-integrate" into mainstream society. Figure 3 is a proposed model for the inclusion of reintegrative shaming mechanisms into the regulation of DTCA.

First, as an offender's awareness of public sentiment may be one of the most crucial aspects of reintegrative shaming, it is important that such sentiment be made clear through the regulatory process. Acting as monitors of the marketplace, DDMAC fails to protect the public from the presence of misinformation in DTCA campaigns. By only requiring that companies remove ads once they have proven to violate federal standards, DDMAC operates from an entirely reactive stance, which transmits no gesture of public concern. A more proactive stance, by contrast, would make public expectations known to corporations before they use media vehicles to economically benefit from the dissemination of ads in the marketplace. Such public expectations could be made clearer by hastening or removing HHS's legal review process for each advertisement, and/or reviewing each DTCA advertisement *before* it is broadcast or printed. Rapidly responding to DTCA violators and making them produce ads that are compliant before being disseminated would reduce much of the "gamesmanship" that currently plagues DTCA regulation.

Second, effective shaming is daunted unless the actions of an offender are acknowledged on a more accessible, public stage. The fact that NOV's and Warning letters are indexed on the Worldwide Web and made available to the public demonstrates a limited commitment to shame, but this is not the kind of conversation that makes shame truly effective. Anyone with access to this record could indeed view those corporations that

violate DDMAC policy. However, indexing DDMAC's admonishments within the recesses of an obscure government website hardly constitutes transparency when it comes to the public understanding of DTCA. The dialogue between industry and public institutions may be made more publicly-visible in a variety of ways—for example, broadcasting the presence of DTCA violations to a national audience, or directing people to a website that is *specifically* designed to list these violations and the companies who committed them.

Third, as Braithwaite (1989) implies, public scorn without some form of substantive penalty weakens the impact of shame. Specific disciplinary protocols for DTCA violations, of which there are currently none, may be established in order to make the shame process effective. As the current regulatory structure allows a tremendous amount of "self-regulation" from the pharmaceutical industry, there are few incentives (outside the vacant threat of more government intervention) for corporations to abide by federal guidelines. Whatever shame may be instilled through NOV's or Warning Letters is trumped by the larger goals of marketing.

Though the specifics of these disciplinary protocols may vary widely, they must allow for the violating company to play their part in "restorative justice" (Braithwaite 2000 292), which may be summarized as the process by which an offender reestablishes basic trust with the public. In the same way that newspapers print retractions when their facts are wrong—a gesture of credibility and public service—it makes sense that corporations who violate DTCA guidelines should also be compelled to broadcast a retraction to the public that acknowledges their transgressions. Both the damage to public relations and the expense of producing and broadcasting such a retraction may be an especially effective way of making the resolution of shame unpalatable and, hence, a deterrent. As exemplified by the broadcasting of mandatory retractions, this mechanism of restorative justice performs two major tasks that are highly relevant to the regulation of DTCA. First, by complying with a publicly-mandated protocol to acknowledge an offense, the needs of the public are given a necessary credibility. Second, the embarrassment associated with going through the "restoration process" acts as a strong deter-

rent to future violations. For U.S. corporations, which are held civilly, rather than criminally negligent, this embarrassment translates to a loss of revenue.

### CONCLUSION

The process of reintegrative shaming is not, in our opinion, just for the cessation of unlawful behavior and the reduction of recidivism. It is also a way of empowering the public to feel as though the dialogue between them and corporations is productive and effective. The public good, as expressed through federal government authority, is threatened by the current DTCA regulatory structure.

Illustrated by DDMAC's reliance upon the self-regulation of the pharmaceutical industry and sub-contracting to the private sector for the monitoring of DTCA content, regulatory authority does not emanate from one central, state-sponsored location but rather, from multiple locations. The allowance of self-determination by organizations that are subject to government sanctions illustrates the power of the marketplace in shaping federal regulation policy. As policy has become a product of compromises between government agencies and free-market interests, regulation adopts a negotiable form. The passage of the *Wheeler-Lea Act* in 1938 exemplifies a victory for this mode of regulation.

The weakening of the Tugwell Bill and the consequent passage of *Wheeler-Lea* demonstrates the point at which the federal government adopted a reactive rather proactive stance toward fraudulent advertising. *Wheeler-Lea* necessitated that the federal government react to conditions already present in the marketplace, rather than place the burden of proving compliance upon industry before advertisements were disseminated to the public. Such a cease-and-desist policy places regulatory bodies in an unavoidable dialogue with industry, where the marketplace has become a "proving ground" for industry compliance. Rather than telling industry which advertising practices are acceptable, the federal government must "listen" to industry by monitoring the marketplace and then either respond with approving silence or disapproving admonishment.

The establishment of the "adequate provision" clause in 1999 and the lessening of "brief summary" and "fair balance" standards drastically reduced how prescription drug

consumers were protected. Part of this public exposure involves the lack of an effective reintegrative shaming strategy. Rather than change its mode of regulation—for example, by requiring that drug companies gain pre-approval of their advertising campaigns and establish a set of protocols through which DTCA violators must publicly-acknowledge their transgressions—the FDA has effectively stated that it sees no difference between prescription drugs and other consumer items. Instead of doing away with "cease-and-desist" in cases of DTCA, the FDA adopted a policy of sending regulatory correspondence to companies who violate "adequate provision" requirements. NOV and Warning Letters would have more regulatory impact if they were backed by appropriate reintegrative shaming protocols. As FDA policy currently stands, the difference between an NOV and a Warning Letter is subjective, and there is no provision of specific punishments for industry violators. It is also clear that the 45-day "legal review" delay in sending an NOV or Warning Letter further weakens the "cease-and-desist" approach. Unless DDMAC can support NOV and Warning Letters with specific reintegrative shaming measures, its authority will remain symbolic.

### END NOTES

1. New Zealand is the only other country that currently allows DTCA.
2. These networks are CNBC, CNN, CSPAN, CSPAN2, MSNBC, and CNNFN. We find it interesting that CSPAN and CSPAN2 are on that list as commercials on those networks are extremely limited. Other cable networks, such as Disney, ESPN, Nickelodeon, Discovery, and so on, are conspicuously absent from this list.
3. This information comes from a phone conversation with DDMAC's director of DTCA affairs, April, 2005

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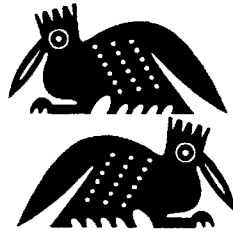
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## POPULATION DECLINE AND CONTEMPORARY DURKHEIMIAN THEORY\*

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### ABSTRACT

Of the "classic" sociological theorists, it was Durkheim who established as a central concern the challenge of moral development in the face of rapid modernization. In traditional societies, characterized by mechanical solidarity, Durkheim saw religion constructing the basis for collective representations. The moral dimension of traditional societies was centralized and enforced with repressive laws. With the transition to organic solidarity, as a result of Durkheim's largely unstated assumption of the changes brought on by population growth—which he equated with 'moral density'—the centrality of religious beliefs declined. From religion to law to social contracts, the foundations on which societies rest shifted dramatically. In postmodern societies, with declining populations and rapidly-evolving technological capabilities, the relationship between moral development and the basis for organic solidarity becomes less clear. Population growth and an increasing division of labor no longer foster the type of social integration and moral density that Durkheim posited. The shifting modalities of moral development that are emerging in postmodern societies were, however, anticipated by Durkheimian theory, and out of this several propositions for further investigation are outlined.

'Things fall apart; the center cannot hold' —  
Yeats

### DURKHEIM'S LEGACY

Beyond the honorific of being designated as one of the "masters" of sociological thought,<sup>1</sup> Emile Durkheim has also become, in Foucault's words, a "founder of discourse."<sup>2</sup> Of the great ideas in classical sociological theory, Durkheim's formulations stand alone in several respects. It was the intellectual trajectory of Durkheim's 'positivistic organicism'<sup>3</sup> that allowed him to develop entirely new conceptual approaches for understanding the modern social world. For example, despite the incorporation of data into their analyses, Marx and Weber accomplished this only sporadically in their writings and data were largely treated as anecdotal support for theoretical conclusions reached in advance. Durkheim's positivistic organicism—reflected, for example, in his masterful analysis in *Suicide*—constituted a revolutionary shift in social thought and sociological method. Van Poppel and Day have asserted that

...the analytical rigor and theoretical underpinning of *Suicide* have made it the most influential of works. It is the customary starting point for both the sociological and the epistemological analysis of suicide. (1996 501)

Cuzzort has remarked that:

Durkheim's influence on the methods of modern social science was extensive. He moved social philosophy in the direction of a concern with facts. (1989 28)

Alexander has raised the estimation of Durkheim's contribution yet higher:

...the modern theory of social change as differentiation begins with Durkheim. (Alexander 1986 3)

With these distinctive accomplishments, the question must then be asked why Durkheim has been praised so highly, often above the other "masters," yet the implications of his substantive thought have yet to be fully explored and extended. When the sociological problem to be addressed is one of moral development, many of Durkheim's ideas retain their capacity to inform contemporary sociological investigations and to provide a unique modernist perspective on contemporary moral development in society. Emirbayer has recently remarked that:

[Durkheim's] writings all take on the task of thinking through the significance for modern social life of the moral integration and regulation of the individual and of the deleterious impact, in particular, of modern tendencies towards egoism and anomie. (2003 52)

However, much of the discourse surround-

ing Durkheim has been limited to descriptive narrative, from the outset of the wider reception of his works (cf. Merton 1934). In point of fact, Durkheim's own ideas seem to be increasingly buried under increasing layers of secondary interpretive literature, however well intended these efforts may have been. In her masterful translator's introduction to *The Elementary Forms*, Karen E. Fields remarks that

...*Formes* is widely mentioned and characterized, if not so widely read. Like broccoli, classics are said to be good for one, even if swallowed unwillingly. (1995 xxii-xxiii)

The result is that some rather less than satisfying portions of Durkheim have been served up, thus lacking the elegance of his reasoning and the potential of his ideas to inform subsequent efforts.

There have been notable exceptions: Swanson's (1960) *The Birth of the Gods* leads the list of seminal post-Durkheimian investigations. Shils and Young's (1956) exposition of charisma, sacred meaning, and ritual (see their article "The Meaning of the Coronation")

redeemed Durkheim's claim that a theory developed in relation to Aboriginal totemism was still relevant. (Smith & Alexander 1996 588)

Additionally, several efforts have been made by those following a theory constructionist approach (e.g., Gibbs 2003), who have attempted to refine Durkheim's concepts by developing out of his division of labor thesis a series of empirically testable propositions. Van Poppel and Day (1996), utilizing historical documents, and following earlier critics of Durkheim's methodological approach (e.g., Pope 1976; Pope & Danigelis 1981; Stark, Doyle, & Rushing 1983; Day 1987), found little evidence for Durkheim's thesis regarding the societally-engendered sources of suicide. Similarly, an extensive content analysis of wills and beneficiaries found little evidence for a shift from purely familial to organizational ties as Durkheim posited (Schwartz 1996). Again, however, Fields' cautionary note is in effect: It is not necessarily the answers obtained by a great classic mind, but the questions generated that retain their relevance. Increasingly, it appears that quite inno-

vative interpretations of current developments in society have been made by utilizing a Durkheimian framework. Recently, TenHouton's (1995) reexamination of Durkheim's explication of interaction rituals in *Elementary Forms* produced a new conceptual framework for a structural analysis of primary emotions. Similarly, Alexander (1988) provided a penetrating illustration of the power of Durkheimian thought with his depiction of the American collective conscience and the reaction to moral transgression, symbolic transformation, and political crisis through his analysis of the Watergate scandal. The fact remains, however, that the vast majority of writings have unfortunately been *about* Durkheim and his thought, rather than attempting to apply his often seminal ideas.<sup>4</sup>

#### MORAL DEVELOPMENT AND THE COMING OF THE MODERN WORLD

However his works have been treated, the inescapable fact remains that Durkheim's conceptual approach to sociological questions—with the *Leitmotiv* being the existence of the social fact—was revolutionary and remains a driving force that distinguishes sociology from other disciplines. These social facts, for Durkheim, did not exist as static or purely analytical structural entities, divorced from the moral development of societies. Durkheim's linkage of moral development to the social facts that were emerging in modern societies was not unique, however. The tradition of considering the consequences of modernization on moral development in societies was taken up in various and often theoretically productive ways by all the thinkers now defined as 'classical.' Weber (1904/1958) predicted—in a somewhat contradictory nondeterministic and yet morally condemning light—the rise of 'specialists without spirit; sensualists without heart' as a result of a 'spirit' of capitalism emerging from and then reducing to a utilitarian shell the societal power of religious belief. Even the strong sense of the 'goodness' of reason contained within the Enlightenment, the 'laughing heir' to these beliefs, Weber saw as 'irretrievably fading.'<sup>5</sup> Marx saw one outcome of capitalistic development the social and moral isolation of self from others, in which

...the limits within every man can move without *harming* [italics in original] others are

determined by the law, just as the boundary between two fields is determined by a fence-post. This is the liberty of man as an isolated monad drawn into himself."<sup>6</sup>

For Durkheim, by contrast, the possibilities for moral development in the emerging world of modernity appeared uncertain and perhaps dangerous, but certainly open. The thread of this theme repeats through his early works (*The Division of Labor*, 1883; *Suicide*, 1897) to his final major work (*Elementary Forms of the Religious Life*, 1912).

Perhaps the clearest expression of Durkheim's organicist orientation toward moral development appears in two works that were published posthumously: *Sociologie et Philosophie* (1924/1974) and *L' Education Morale* (1925/1973). In these essays, Durkheim's belief in the primacy of structure over agency is firmly established, and represents one of his fundamental assumptions when attempting to account for the moral development of societies, whatever their stage of development.<sup>7</sup> In *Moral Education*, Durkheim states this forcefully:

...[I]t is certainly true that the individual will seems to be controlled by a law not of its own making. The morality of our time is fixed in its essentials from the moment of our birth; the changes it undergoes during the course of an individual's life—those in which we can share—are infinitely limited. (1925/1973 106)

Durkheim does acknowledge the "conflict" between the demands of the changing nature of the collective 'moral conscience' and individual action, however, and his observations on this score indicate the beginnings of his own struggle to comprehend the more rapid transformations of moral action and belief demanded by the modern world. The individual actor in the modern world, according to Durkheim, may only understand his or her actions as being fully 'moral' if they are perceived to be autonomously expressed *apart* from the dictates of the collective moral will. As Isambert has observed, this echoes the Kantian position concern that

...the genuinely moral act must be performed through the *autonomy of the will* [italics in original]. (1993 205)

In this way, Durkheim distanced his theoretical position on morality from structural determinism and acknowledging the importance of agency:

Only an act we have performed in total freedom, without any kind of coercion, do we regard as wholly moral. But we are not free if the law by which we regulate our behavior is imposed upon us, if we have not freely desired it. (Durkheim 1925/1973 128)

This is the 'egoism' that Durkheim ascribed to modernity not only asserting itself, but legitimating its independent moral action. Thus, additional criteria for moral action are introduced in modern societies: An action is fully 'moral' if and only if the individual perceives other possibilities for action, yet acts against this in a way that he or she defines as 'moral.'

It is, of course, the basis for morality that Durkheim, during the rapid social changes that were just beginning during his time, saw as increasingly problematic. The emergence of alternative moral possibilities in itself constitutes a significant departure from earlier, less differentiated, less 'modern' societies, in which the collective moral action and that of the individual were essentially isomorphic.<sup>8</sup> In *Sociology and Philosophy*, Durkheim began to speak of two

divergent moralities, the one now existing and the one in the process of becoming. (Durkheim 1974 59)

It is science (specifically, sociology), that can determine the nature and trajectory of these emerging 'moral facts,' and it is perhaps Durkheim's confidence in this ambitious sociological program to understand these facts that leads him to a normative stance:

Our science may help us to render these ideas more precise *and to direct them*. [italics added] (Durkheim 1974 59)

This normative tone is echoed in the final stages of *Suicide*, as Durkheim (1897/1951 391-392) exclaimed:

Once the existence of evil is proved, its nature and its source, and we consequently know the general features of the remedy and its point of application, the important

thing...is to set resolutely to work."<sup>9</sup>

It is somewhat ironic, however, that Durkheim's corpus reads "backwards" in his description of societal and moral development. His earliest work, *The Division of Labor*, is primarily concerned with the conditions for social integration and the resultant course of moral development in modern, "advanced" societies (cf. Morrison 1995). *Elementary Forms*, published nearly twenty years later, attempts to achieve an understanding of the basis for social order in what Durkheim termed the most 'primitive' of societies. As a result, there has been little agreement regarding the continuity of Durkheim's argument with respect to the relationship of social structure and individual moral development and action. Giddens (1971) has maintained that there was a logical progression in the ordering of Durkheim's ideas throughout the development of his works. Alexander (1989), in contrast, has observed that Durkheim's earliest work was concerned with technological developments coupled with an expanding division of labor that was productive of a certain form of social order. However, Alexander sees Durkheim's later thought shifting to more subjective, internal forces objectifying differing forms of social order. Nevertheless, what is clear is that Durkheim's last major work, *Elementary Forms*, addresses the moral foundation of less differentiated societies that possessed the character of "mechanical" solidarity. In these sorts of societies, moral conscience is collective and is founded in religious beliefs that are represented both in abstract and concrete forms by the totem.<sup>10</sup> In his analysis of Australian aboriginal religion, Durkheim pointed out that this collective morality, or collective conscience, is represented quite clearly through the society's totemic images:

In other words, totemism is not the religion of certain animals, certain men, or certain images; it is the religion of a kind of anonymous and impersonal force that is identifiable in each of these beings but identical to none of them...The individuals die; the generations pass on and are replaced by others; but this force remains always present, alive, and the same. (1912/1995 5)

Durkheim suggested that this "force" is a moral one, and manifests a reality so pow-

erful that its effects are tangible in the everyday lives of individuals, including their beliefs and actions. In this way, the totem organizes the community, imbuing it with a distinctive and stable identity:

All the beings that participate in the same totemic principle consider themselves, by that very fact, to be morally bound to one another; they have definite obligations of assistance, vengeance, and so on toward each other, and it is these that constitute kinship. (Durkheim 1912/1995 5)

The analysis of this type of society enabled Durkheim to formulate his reductive structural argument: In its most "primitive" form, society functions very much like a simple organism. The bonds between the relatively undifferentiated elements of the social organism are held fast by a moral sentiment that manifests as a powerful force within the religious institution, which is perceived as permanent, uniting the community and defining its core identity; the conscience is thus truly collective. This is, in fact, a theme Durkheim first began to articulate in *The Division of Labor*:

The more primitive societies are, the more resemblances there are among the individuals who compose them. (1893/1964 133)

Social contracts among individuals are clearly defined: both linkages and hierarchies among individuals are determined, as Durkheim states in *The Division of Labor* as well as in *Forms*, in a purely fixed, "mechanical" way. The tacit assumption is made in Durkheim's argument that this mechanical nature involves action and thought that are reflexive—the authority and means for social action have been predetermined (similar to Weber's more poetic reference to the traditional authoritative guiding hand of the 'eternal yesterday') and operate in a relatively automatic and nonreflective manner that is seen to be immutable.

#### POPULATION INCREASE, MORAL DEVELOPMENT, AND THE SOCIAL CONTRACT

With the organic metaphor at the center of Durkheim's theory of social development, his subsequent task was to articulate the change from largely undifferentiated to highly differentiated, complex societies. How, given the

fact that a society is undifferentiated and the individuals in the collectivity see the traditional social order as unchanging (it is precisely change that can trigger the execution of often violent repressive law), can a society undergo transformation from 'simple' to 'complex'? And if a society changes, what are the subsequent changes in its moral development? These are first-order questions<sup>11</sup> that Durkheim is willing to confront squarely. Beginning with Australian aborigines, an undifferentiated, "primitive" society, he proceeded (in an essay written with Marcel Mauss) in a manner that proceeds along standard anthropological lines:

The most widespread form of social organization among these societies is well known. Each tribe is divided into two large fundamental sections, which we shall call moieties. Each society, in turn, comprises a certain number of clans...*the classification of things reproduces this classification of men*". [italics in original] (Durkheim & Mauss 1903/1963 10)

Not only is this a "classification of men," but it represents the moral basis for the foundation of social contracts between individuals. The social contract here is clearly non-utilitarian, and Durkheim argued forcefully against the utilitarian perspective even as societies transformed to modern forms of economic activity (cf. Rueshemeyer 1982).<sup>12</sup>

What serves as the primary mechanism of social transformation from mechanical societies to organic societies, from 'primitive' to 'modern,' was once again rooted in Durkheim's understanding of the organic nature of societies themselves:

The recent speculation in the philosophy of biology has ended by making us see in the division of labor a fact of a very general nature which the economists who first proposed it, never suspected. (1893/1964 40-41)

Relying on a Darwinian biological model for his explanation of social change, Durkheim incorporated, significantly, demographic and ecological factors to explain social change. In a very real sense, he was employing the same deductive strategy as Marx in explaining fundamental change—that significant quantitative change necessarily leads to

changes that are *qualitatively* different from their antecedents.

For Durkheim as for Marx, this qualitative change does not usually occur over short periods of time, and this is true for any population increase. As societies become more populous and concentrated (or, as Durkheim described it, "voluminous and condensed"), there is a greater chance for competition, and possibly, for conflict:

Darwin says that in a small area, opened to immigration, and where, consequently, the conflict of individuals must be acute, there is always to be seen a very great diversity in the species inhabiting it. (Durkheim 1893/1964 266)

If the species are of different types, then survival without conflict is possible—each develops a special niche which, beyond eliminating conflict over the same resources, also can produce symbiotic relationships benefiting each type. Thus, differentiation is the key to continued survival in an increasingly complex environment. This, according to Durkheim, is what will produce change in human populations as well:

Men must submit to the same law. In the same city, different occupations can co-exist without being obliged mutually to destroy one another, for they pursue different objects. (1893/1964 267)

Herein lies the survival mechanism that an increasing division of labor provides. However, if the occupations are similar in function (Durkheim supplied as an illustration the brewer and the wine-grower), then the possibility for destructive conflict obtains once again. One solution to this, however, brought Durkheim somewhat closer to considering the human condition as possessing a quality distinct from a purely automatic biological process: the development of communication. By this, he closely equated "communication" with commerce and improved transportation. If, for example, the wine-grower and the brewer are able to exploit new markets, this in turn will lead to the productive enhancement of both, reducing the potential for tension and conflict. It may, of course, also cause the division of labor to become further differentiated by requiring transportation, distribution, and marketing of

the product. This rationale for increase in the division of labor also marked his departure from the economists' perspective of his day:

The division of labor appears to us otherwise than it does to economists. For them, it essentially consists in greater production. For us, this greater productivity is only a necessary consequence, a repercussion of the phenomenon. (Durkheim 1893/1964 275)

As Durkheim described the process:

The division of labor is, then, a result of the struggle for existence, but it is a mellowed *denouement*. Thanks to it, opponents are not obliged to fight to a finish, but can exist one beside the other. Also...it furnishes the means of maintenance and survival to a greater number of individuals who, in more homogeneous societies, would be condemned to extinction. (1893/1964 260)

Durkheim's notion of how societies develop remained, in this passage, close to the distant, impersonal description of a biologist describing an organic process of growth. His thinking was, however, both more subtle and complex than this: Durkheim, through his engagement with the minds of his intellectual predecessors, understood the 'qualitative' side of the change as well. The web of social interaction and the form of social contracts required by the modern, highly differentiated social world of Durkheim's time had been irreversibly altered.

Durkheim's thought regarding the changes in the social contract as a result of this accommodation to population growth stemmed from several sources. Hobbes (d. 1679) posited that individuals formed social contracts through free association. The preservation of their 'natural rights,' however, necessitated the restraint that could only be imposed by a sovereign power. Locke (d. 1704) rejected the belief that a superior power which transcended and superseded individual social contracts was essential for the continued existence of a society. Locke also saw societal development being increasingly based on market transactions. Thus, Locke asserted that the civic associations, through the increasing number of market networks, were being increasingly transferred to the national level. Spencer (d. 1903) moved from

a utilitarian to an evolutionary approach to the social contract. With the decline of militaristic or absolute monarchical authority, societal integration was engendered primarily by increasing industrialization. There is an increasing decentralization as social contracts are based more on voluntary associations between individuals. Further, it was Spencer who reacted against Malthus' position that population growth constituted a danger to society. Instead, Spencer postulated that gains in population would actually contribute to social contracts between individuals that were marked by heightened voluntary cooperation and by formal contractual relations.

Durkheim's formulation of his notion of the social contract in the modern world was largely a reaction to these earlier positions. He concurred with Spencer that social contracts engaged in voluntarily by social actors were associated with a rising population and a growing division of labor. However, he disputed the position of Enlightenment thinkers (such as Locke) that social cohesion could be established merely through the willed interactions of individuals, apart from any overriding structural influences. This might occur on occasion, but it could not account for a fully-developed social system. Nor does the modern condition necessarily lead to any sense of personal sense of fulfillment, 'enlightenment,' or happiness (Durkheim 1893/1964 275). Further, Durkheim recognized the existence of 'noncontractual foundations' of the social contract. By this, he meant that though a social contract might *appear* to be engaged in voluntarily and ended in the same manner, this is not the case in modern societies—as evidenced by the emergence of contract and civil law. Thus, the division of labor does not simply signal a transformation of a society from a reliance on the collective to reliance on the individual; in fact it represents a shift—and very possibly a decline—in the collective solidarity of a people, and is the basis on which individual 'autonomy' (or perceived autonomy) rests. A Durkheimian perspective of the world would, at this point, largely abandon an emphasis on the 'collective conscience' so apparent in less differentiated societies. Moral action in these societies was readily known, rooted in religious symbolism which was easily communicated between and across generations, and transgressions against the collective



morality were based on repression rather than restitution. However, in a modern society moral action becomes less transparent, less certain. When moral action remains collective, it is less centered in religion than in law, which becomes increasingly restitutive. Egoism replaces altruism, social solidarity and thus the moral order becomes jeopardized. Thus, the role of the sociologist is not only to understand changes in moral development, to become actively engaged in the debate over its direction, which was once determined but has now become increasingly tenuous.

#### DURKHEIMIAN MODERNITY AND MORALITY IN A POSTMODERN WORLD

Having established that the division of labor now forms the basis for social organization in modern, 'organic' societies, and having acknowledged the problem of maintaining any sense of moral order in modern societies, Durkheim saw that morality would be grounded in new social contracts engendered by the increasing social differentiation. His rhetorical question at the outset of *The Division of Labor*, began his discussion:

Briefly, is the division of labor, at the same time that it is a law of nature, also a moral rule of human conduct; and if it has this latter character, why and in what degree? (Durkheim 1893/1964 41)

Durkheim then came quickly to the point: to be 'moral' in modern society is to conform to the emerging patterns of the social organism. To hearken back to earlier social forms would be, if not 'immoral,' certainly an exercise in futility and ignorance. The day of the 'Renaissance Man' had irrevocably ended:

The time has passed when the perfect man was he who appeared interested in everything without attaching himself exclusively to anything... (Durkheim 1893/1964 42)

Miller (2002 56) has summarized Durkheim's argument: "The division of labor is moral, therefore, if it is a force for solidarity."<sup>13</sup> Durkheim's passionate, harshly critical judgment regarding the uselessness of acting in concert with the dictates of earlier cultural milieu is rooted in his evolutionary, structural organicism. The primacy of structure is evident; it has evolved to a new stage

and it now is the responsibility for individuals to orient themselves with the emerging social developments. Durkheim was emphatic regarding one's duty to face these conditions, eschewing the comfortable but dying society of the past:

We distrust those excessively mobile talents that lead themselves equally to all uses, refusing to choose a special role and keep to it. We disapprove of those men whose unique care is to organize and develop all their faculties, but without making any definite use of them, and without sacrificing any of them, as if each man were sufficient unto himself, and constituted an independent world. *It seems to us that this state of detachment and indetermination has something anti-social about it* [italics added]...The praiseworthy man of former times is only a dilettante to us, and we refuse to give dilettantism any moral value... (Durkheim 1893/1964 42)

Durkheim followed this with what could be an ode to the modern world, or could have just as easily become the theoretical foil to the preface of Whyte's *Organization Man* of the 1950's. Against the individual of the past who was self-contained and a generalist, Durkheim praised the coming of the new, "modern" individual:

...we rather see perfection in the man seeking, not to be complete, to but to produce; who has a restricted task, and devotes himself to it; who does his duty, accomplishes his work. 'To perfect oneself,' says Secretan, 'is to learn one's role, to become capable of fulfilling one's function.' [Thus] the categorical imperative of the moral conscience is assuming the following form: *Make yourself usefully fulfill a determinate function.*" [Italics in original] (Durkheim 1893/1964 42-43)

In this passage written early in his career, Durkheim was bold and confident. The emerging useful members of society will not be Weber's vacuous 'specialists without spirit;' they will find fulfillment in their duty to society, which has lawfully and seemingly naturally developed out of an earlier form. This is in contrast to his somewhat more measured comments of the 'late' Durkheim; for example, only a few years before his

death, he remarked that:

The old ideals and the divinities which incarnate them are dying because they no longer respond sufficiently to the new aspirations of our day; and the new ideals which are necessary to orient our life are not yet born. (Bellah 1973)

Thus the later, 'mature' Durkheim was no less structural in his orientation, but he seemed less certain that the structure provided the clear sense of moral duty that he had earlier proclaimed. This of course was echoed in his concern with the growing anomie and egoism in society that in turn led to the social pathologies that were so masterfully expressed in *Suicide*. Durkheim adhered until the end of his life to the utility of the organic model in describing the development of social life and the resultant shifting moral duties of individuals. If, however, there is a 'postmodern' age that supercedes modernism, of what utility is a metaphor of this sort, that describes moral development in terms of an 'organism' which, if not breaking down, appears to be losing its coherence? Bernstein (1992) and others have identified several themes of postmodernism, all of which appear to run counter to Durkheim's assumptions regarding society. Among the most serious challenges to a purely Durkheimian perspective include: the failure of any overarching metanarrative or 'grand metaphor' to explain social life; the failure of the social sciences to provide solutions—or meaningful analyses—to emerging social problems; and that cultural debates, conflicts, and dissolution are intensifying, rendering any theoretical model based on consensual social contracts improbable. To these must be added three other critical observations regarding his theory. First—and ironically, given Durkheim's emphasis on the structural, organic processes of society—his differentiation theory allows for little conscious control at this level. His treatment of individual social contracts that flow from these, by contrast, can be seen as highly conscious and interactive, though bound within their structural frameworks (cf. Alexander 1986). Second, Durkheim clearly underplayed the importance of technological innovation and diffusion in assessing changes in moral development. Third, mere population growth, considered independently

of other factors such as technological innovation and economic prosperity, loses its utility in leading to differentiation through the increasing division of labor that Durkheim has postulated.

But the relevance of Durkheim's keen sense of social change as described within an organic model of development, his awareness of the linkage between social contracts and social structure and the 'moral density' that can be engendered by shifts in population cannot be eliminated by dismissing him as a 'classical' theorist of a modernity whose relevance has long since passed away. It was Durkheim above all others writing during his time who acknowledged that the ground on which the moral foundations of society rested was shifting in ways that left the future open. In the face of claims that the social sciences cannot adequately assess the moral shifts that are thus engendered, one may offer as a reminder the power of Durkheim's comparative analysis of suicide. Irrespective of its methodological shortcomings, his work revealed an entirely different conceptual landscape that retains its utility in understanding the nature of suicide. The organic metaphor also retains theoretical value, if conjoined with the idea that structures, once created, are in fact the creation of individuals who retain interest in the survival of that structure, often shaping the social and moral development of entire societies as a result. Lyotard's (1984) remarks regarding the perseverance of the state provides a salient example. As social differentiation continues, new patterns of organizational life develop—often driven by technological innovations that in turn accelerate the differentiation process itself—and these developments may create new systems of morality that are either divorced from, or in direct opposition to, the interests of the state. In this case the legitimation of the state is jeopardized, and its adherents must reconstitute new rationales to unify these increasingly disparate entities. Lyotard suggests that the mechanism employed by the state toward this end is to instill in each group—no matter how inherently disaffected or alienated from the state—a sense of fear or terror of external forces, and offer strategies for controlling or eliminating that fear or terror. This line of thought is clearly Durkheimian and modernist in its orientation, as opposed to postmodernist.

Durkheim's thought may in fact form the

intellectual template on which new sociological theories that combine both modernist and postmodernist perspectives of social change and moral development can be formulated.

- As societies shift from a modernist to a postmodernist phase, contracts that were based on earlier traditions will be eclipsed or modified. These will include such 'basic' social contracts such as marital contracts, which will broaden in scope with their terms more negotiable, and contracts within the workplace with both employees and employers engaging in constant shifts in conditions of employment, locations, and requirements regarding skills.
- Population decreases in postmodern societies will lead to new forms of 'moral density' as social contracts become less concrete and more 'virtual.' The importance of face-to-face interactions that were once required to form social contracts and set moral limits to behavior will diminish. This will in turn reshape the developmental trajectories of structural, political, and religious institutions.
- If, as Durkheim posits, the division of labor is the basis for an individual's personal identity and provides the basis for the formation of social contracts, then data showing that individuals change jobs and career tracks become potentially meaningful in new ways. It indicates that not only will identities change with participation in a particular form of labor, but that these identities will become less stable as job and career changes become more frequent. It also means that, as social contracts are rapidly formed and re-formed, increasing flexibility of expectations regarding emerging norms of conduct will be mandated. Positively, this may result in increased tolerance of diverging social values and behaviors; negatively, it can mean that morality (classically conceived) becomes shallowly rooted or replaced by legal mechanisms.

Thus, just as the distinction between 'modernism' and 'postmodernism' is increasingly seen to be artificial, as both forms exist simultaneously in society, the traditional distinction between 'classical' and 'contemporary' theoretical perspectives remains innocent of a useful synergy that can develop new

theoretical perspectives. This is particularly true when analyzing labyrinthine phenomena such as moral development, which is founded on so many complex institutional arrangements that change at differing rates, are subject to widely diverse sets of influences and often not in a linear or progressive fashion (cf. Moore 1979). A Durkheimian perspective, conscious of this increasingly intricate interplay of social factors, and serving constantly to remind us of the power of structural forces surrounding the moral development of societies, will not lose its contribution to contemporary efforts to understand these processes. Durkheim's notions of social contracts and collective solidarity may illuminate an understanding of postmodern society if, true to Durkheim's openness to societal change, we recognize the new forms that social contracts and collective morality can take. However, a Durkheimian perspective would hold that a "global society" would have to achieve a certain degree of moral consensus, and without this a global society would become increasingly pathological and subject to disintegration. The focus of 'new Durkheimians' would thus center on investigations of emerging international institutions and international laws, and the degree of consensus or anomie and conflict these would engender.

#### ENDNOTES

- <sup>1</sup> There are, of course, a plethora of references in which this honorific may be found. However, there are also several excellent publications that convincingly explicate the reasons *why* Durkheim remains a force in sociology. See, for example, Don Martindale's *The Nature and Types of Sociological Theory* (1988); Richard Muench's *Sociological Theory, Volume One: From the 1850's to the 1920's* (1994).
- <sup>2</sup> See especially Foucault's discussion on pp. 108-109 in his 1969 address entitled "What is an Author?" which is included in *Textual Strategies*, edited by Josue V. Harari (1979).
- <sup>3</sup> It was Martindale (1988 99) who locates Durkheim's intellectual development in this genre, along with that of Toennies and Redfield.
- <sup>4</sup> There are, of course, several notable exceptions. For example, Duff and Lawrence's (1995) article, "Age Density, Religiosity, and Death Anxiety in Retirement Communities" found support for Durkheim's assertion that collective ritual reduces anomie within the group and fosters mutual support.
- <sup>5</sup> Despite Weber's commitment to the principle of 'value freedom,' his concluding remarks to *The Protestant Ethic and the Spirit of Capitalism* belie his unequivocal faithfulness to this daunt-

ing standard.

- <sup>6</sup> These were comments made by the "early" Marx, in his *Comment on the Jewish Question* (a somewhat sympathetic critique of Bruno Bauer) in 1844.
- <sup>7</sup> In many respects, Durkheim's position with respect to the 'agency/structure' issue remains less confounding (and conflating) than far more recent efforts. See, for example, Alexander's "Some Remarks on 'Agency' in Recent Sociological Theory" (1992), which also makes this point.
- <sup>8</sup> There is something of a contradiction in Durkheim's thought that has remained largely unexplored here. If, as Durkheim stated, morality is uniformly and universally expressed in societies characterized by mechanical solidarity, the need for repressive laws would be far less acute than he posited.
- <sup>9</sup> Durkheim not only advocated the necessity of providing sociological answers to societal problems, he was actively involved in providing them, perhaps more so than any other sociologist during his time or any other. Giddens (1978 22-23), for example, has remarked that: The convergence between [Durkheim's] sociology and the official ideology of republicanism was so great that some contemporary critics spoke caustically of the pervasive hold of 'State Durkheimianism' in the educational system."
- <sup>10</sup> Durkheim believed that societies with totemic religions were more elementary, more "fundamental" than animistic societies because a comparative analysis demonstrated that totemic societies, no matter where they were practiced, demonstrated highly similar characteristics. This led Durkheim to conclude that an underlying principle of social organization in totemic societies lay at the heart of social organization taken as a whole (Morrison 1995).
- <sup>11</sup> First-order questions are those which do not come with prescribed methods for obtaining an answer. They can, of course, engender highly creative and seminal often explanations by minds willing to take them on after formulating them. See Adler and van Doren's explanation of the role of first-order questions in the chapter entitled "How to Read Philosophy" in their *How to Read a Book* (1972).
- <sup>12</sup> This, of course, is directly antithetical to Weber's thesis that a utilitarian ethic had, long before Durkheim's writing, colored all social contracts in modern societies.
- <sup>13</sup> Even more forcefully, Schmaus (2004 134) has stated that, for Durkheim, "...human society as we know it would not be possible without the idea of moral obligation."

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#### ACKNOWLEDGMENTS

\*An earlier draft of this paper was presented at the 2004 meetings of the Association for the Study of Religion, San Francisco. The authors would like to thank Richard M. Burkey, Professor Emeritus, University of Denver, for his valuable comments and suggestions.

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## START SPREADING THE NEWS: UNDERSTANDING THE DRUG PROBLEM IN THE MID-AMERICAN STATES WITH THE ARRESTEE DRUG ABUSE MONITORING PROGRAM

Kelly R. Damphousse, University of Oklahoma

### ABSTRACT

This paper examines efforts by the National Institute of Justice (NIJ) to expand our understanding of drug use among the arrestee population in largely rural states located the western portion of the country. The model for this new effort was the Drug Use Forecasting (DUF) program that was initiated by NIJ in the late 1980s. This program collected interview and urine data from recent arrestees in 23 large urban cities. The DUF program was enhanced to create a better understanding of the drug problem among arrestees in relatively smaller cities located in theoretically interesting areas. The new program (the Arrestee Drug Abuse Monitoring program [ADAM]) has involved the addition of 15 new sites and changes to the survey instrument, sampling design, and outreach that have helped show more clearly how the drug use patterns among arrestees differ from region to region. In this paper, specific attention is shown to one of the new sites (Oklahoma City) and regional comparisons.

### INTRODUCTION

Before policy makers can institute programs to fix social problems, they need information about the scope and extent of the problem (Rossi, Freeman, and Lipsey 1999). In addition, while programs are being implemented, the policy makers need to know how the problem is changing over time (either on its own accord or in response to the programs that have been put in place). Gaining this important type of information on America's drug problem was the catalyst for the Drug Use Forecasting (DUF) program in the late 1980s. The project was funded by the National Institute of Justice (NIJ). The goal of the program was to gather reliable and valid data from among the arrestee population in large urban cities to identify new drug problems and to monitor the existing situation. The data were collected in the local jails of these large cities on a quarterly basis through a simple 3-page survey and the collection of a urine sample. Additional data were sometimes collected through the use of an addendum instrument. These addenda include specialized drug instruments (cocaine, marijuana, heroin, etc.), gang involvement, and gun procurement surveys. The DUF program has also spawned similar data collection efforts in other settings such as prisons and juvenile detention facilities (Lo and Stephens 2000). The reports that were generated from these data collection efforts informed drug policy at both the national and local level over the course of the following decade.

Unfortunately, there were several problems with the DUF data. First, many research-

ers complained (or at least worried) that the data were flawed by poor collection procedures and practices. There was little effort to standardize data collection practices from site-to-site and some sites were less attuned to the rigor of the scientific process. Also, the protocol of the original DUF sample selection process excluded "drug offenders" from the sample, thereby eliminating an important group from the sample. In addition, most sites were operated by the agencies that administrated the jail. This resulted in ethical problems concerning the confidentiality of the data that were being collected. Perhaps the biggest problem, however, was that even if the data had been perfectly collected, it still failed to represent areas of the United States that were encountering unique drug problems. This was especially the case for the middle of the country and toward the west coast. This area was experiencing a major increase in the use of Methamphetamine during this period, but there were precious few data collection efforts available to learn about the problem.

The solution to this problem began in the late 1990s as researchers and funding agencies attempted to correct these problems with DUF. The resulting program was called the Arrestee Drug Abuse Monitoring program. This paper discusses the change from DUF to ADAM and the impact of the change on efforts to deal with the drug problem in the mid-American states.

### BACKGROUND

The NIJ began collecting data from a random sample of new arrestees using the Drug

Use Forecasting (DUF) program in 1987. For over a decade, the DUF program collected vital information from recent arrestees about the drug use patterns and treatment needs in 23 large jurisdictions located in 17 states. These cities included Atlanta, Miami, New York City, New Orleans, Chicago, Fort Lauderdale, Denver, Cleveland, Philadelphia, Birmingham, Washington, DC, Los Angeles, Houston, Indianapolis, Dallas, Phoenix, San Antonio, Detroit, Portland, Omaha, St. Louis, San Diego, and San Jose. Of these, only Omaha, Denver, and St. Louis marginally represented the mid-American states (the latter two are also major cities), while five of the sites were located on the west coast or in the desert.

The DUF project changed its scope and mission in 1997, when the NIJ announced that DUF would change its name to ADAM and expand to twelve new data collection sites (Samuels 2000). The new sites included Albuquerque, Laredo, Tucson, Seattle, Las Vegas, Minneapolis, Anchorage, Salt Lake City, Spokane, Des Moines, Sacramento, and Oklahoma City. These new sites are all located west of Chicago and represent areas with unique drug problems and populations. Most of the new cities are also relatively smaller than the original DUF cities. The Oklahoma City ADAM (OKC-ADAM) began collecting data from new arrestees at the Oklahoma County Jail in September 1998. The county jail is the intake for all of the arrestees in Oklahoma County. The project staff has since collected data in 14-day periods in each of the successive quarters.

#### **PREVIOUS USE OF DUF DATA**

While millions of federal dollars have been spent collecting DUF/ADAM data since 1987, surprisingly few studies have been published in academic journals using the data. This is not to say that efforts were not made to disseminate the data. On the contrary, the NIJ has steadily published specialized papers and annual reports about the DUF data from the beginning. In addition, the raw data were made available to any researcher who desired access (through ICPSR and then through the Internet). Still, reports written by a funding agency in Washington, DC (NIJ) probably had little impact in the local community. The studies that were published in the past decade can be catego-

rized as 1) reflective of national trends, 2) reporting city specific findings, or 3) methodological in nature.

#### **National Trends**

Several reports and articles have been written about the national trends in drug use by arrestees using the DUF/ADAM data. Most of these reports have been the results of efforts by the NIJ to disseminate their data. Others, however, are traditional research articles that use data from all of the sites to discuss the national picture of drug use or on the national treatment needs. One study, for example, examines the incidence of drug abuse and need for drug treatment among offenders and the extent to which this need is being met by looking at the 1992 DUF data (Falkin, Prendergast, & Anglin 1994). They showed that 50-80 percent of the DUF arrestees tested positive for 1 or more drugs after arrest and that rates of drug use were higher for minorities and women. They suggested that the need for treatment (an effective government response) was not being met.

In a unique study that combined DUF data and city level rates of homicide, robbery, and burglary in the 24 DUF cities, Baumer (1994) found that arrestee cocaine use had a positive and significant effect on city robbery rates, net of other predictors. Cocaine use had a more modest effect on homicide rates and no effect on burglary. The study shows how community-level indicators of drug use can be used in formulating theories to explain inner-city violence.

Other studies have examined changes over time. For example, Wish (1991) used the DUF data to show that while drug use by casual users and those in the middle class had dramatically dropped, a hard core of drug using criminals remained active. He used this finding to suggest that the country needs to seek a humane method of treating users by taking advantage of the access to these persons that the criminal justice system affords to address their drug use and associated problems.

More recently, Golub (2000) showed that marijuana use nationwide had continually dropped from a peak around 1979 until the early 1990s. Specifically, he showed that most of the 23 DUF/ADAM locations had experienced a rapid increase in use among young arrestees from an average percent



positive of 25 percent in 1991 up to 57 percent in 1996. Compared with two other national surveys, this increase was more dramatic and happened two years earlier. The use of marijuana stabilized from 1996 to 1998 at a relatively high rate for young offenders.

### City Specific Studies

Some of the DUF sites (e.g., Denver, New York, Los Angeles, San Diego) were operated by research organizations that have been very active in writing about their specific cities. The New York site (operated by the National Development and Research Institutes, Inc.) has been perhaps the most prolific publisher of findings from the DUF/ADAM data.

Golub and Johnson (1994b), for example, examined youthful drug use by arrestees using Manhattan DUF data, focusing on first use of "gateway" drugs (alcohol, tobacco, and marijuana), age at first use of each, and changes among more recently born individuals. They later identified three inner-city cohorts differing by birth year and preferred drugs that routinely passed through Manhattan's criminal justice system from 1987-1997 (Golub & Johnson 1999). These groups were defined as the Heroin Injection Generation born 1945-1954, the Cocaine/Crack Generation born 1955-1969, and the Blunts (marijuana plus tobacco) Generation born since 1970. Their analysis of the ADAM data suggested that the future prospects for the Blunts Generation might be modestly enhanced by their continued avoidance of the other drugs, despite the fact that many of the arrestees had experienced distressed households and had few job skills.

These researchers also examined the extent to which heroin use increased from 1987 to 1993 in the DUF population (Johnson, Thomas, & Golub 1998). They found no evidence to document increases or sustained upswings in heroin use among booked arrestees in Manhattan, but instead, there were actually substantial declines over this period. This finding was contrary reports by the Drug Enforcement Administration in the supply, availability, and purity of heroin sold on the street during this period. Finally, they showed that cocaine use among arrestees under age 21 declined from 69 percent in 1987 to 17 percent in early 1993 (Golub & Johnson 1994a).

Feucht (1991) used DUF data to examine the drug use patterns among female arrestees in Washington, DC. He found that the rates of recent cocaine use were similar among women arrested for prostitution, drug offenses, and income-generating property crimes. The use of other drugs in addition to cocaine, however, was significantly lower for those arrested for prostitution. Most of the women arrested for prostitution tested positive for recent use of cocaine only. Another study examined a sample of 1,580 St. Louis ADAM subjects to examine the drug-using classifications between criminal and non-criminal populations (Yacoubian 2000).

Data from the Philadelphia site examined the extent to which the use of "gateway" substances, alcohol and tobacco for example, are an early step in a drug-using pathway (Kane & Yacoubian 1999). Their analyses lend support for the controversial finding among non-criminal populations that patterns of drug use tend to display an escalation from "soft," and "alternative," to "hard" central-nervous-system-modifying drugs.

One final study examined the determinants of perceived risk for getting HIV/AIDS of Los Angeles ADAM arrestees who admitted lifetime injection drug use (Henson, Longshore, Kowalewski, Anglin, & Annon 1998). Arrestees reporting celibacy in the past year, having an injection-drug-using sexual partner, having had more than 20 sexual partners, engaging in sex while high, knowing someone with AIDS, and having been tested for HIV were more likely to perceive themselves at greater risk for AIDS. Even though the usefulness of the ADAM data for a serious health issue like HIV had been established by Wish, O'Neil, and Baldaou (1990) a decade earlier, very few studies have investigated this phenomenon.

### Methodological Studies

Many studies rely exclusively on the use of self-report surveys to determine drug use by respondents. This requires the researcher to rely on the truthfulness of the respondents. Social desirability and confidentiality concerns, however, result in a lack of truthfulness by the respondent when discussing deviant behavior (Czaja & Blair 1996). According to this, the more deviant the behavior, the more likely a person is to lie. One way to test the extent to which a person is lying is to measure a concept with a self-report sur-

vey and then confirm the information through another source (Calsyn, Morse, Klinkenberg, & Trusty 1997). The ADAM survey is a natural vehicle for testing the validity for self-report of drug use because the arrestees are asked if they have used drugs recently and then they are drug tested immediately after the survey (Adams 2000).

One early study of the truthfulness of self-reported drug use examined DUF arrestees in Cleveland, OH during 1989-1993 (Stephens & Feucht 1993). The researchers found that self-report data were fairly reliable for most of the 10 drug categories tested, though this was attributed to the low rates of use of these drugs. Of those who tested positive for the most frequently used drugs (cocaine and marijuana), more than half denied any use within the previous 72 hours. They concluded that a substantial number of DUF arrestees lie about drug use, even though they are told the information is confidential and anonymous.

A more recent study of the ADAM data showed that many subjects underreport recent drug use (Wish, Gray, Sushinsky, Yacoubian, & Fitzgerald 2000). The experiment tested whether modifying data collection procedures could enhance self-reporting without adversely affecting study response rates. One experimental condition involved administering either the standard or an enhanced informed consent form. Another condition involved collecting the urine specimen either before or after the interview. The findings suggested that none of the experimental conditions affected the correspondence between interview responses and the urine results. Specifically, the type of informed consent form did not affect the truthfulness of self-reported drug use in any of the sites. When the urine was collected first, the rates of truthful self-reporting increased in only one site.

More recently, researchers have begun to examine the extent to which the data collected by ADAM sites can be used to provide estimates of the numbers of users in the community. Hser (1993), for example, examined ADAM drug treatment data to estimate the number of intravenous drug users in Los Angeles County in 1989. Using the five percent HIV prevalence rate currently found among intravenous drug users, he estimated that number of HIV-infected intravenous drug users approached 9,500. This number dif-

fers from estimates obtained using other techniques currently in use (e.g., county health department self-report monitoring programs).

### **THE CREATION OF ADAM**

The previous brief review suggests that there have been several efforts to report on the findings from the DUF/ADAM data. Still, the relatively insignificant quantity is surprising given the length of time that the data have been collected, the ready availability of the data, and the scope of the data collection sites. More troubling, perhaps, is the lack of local use of the data (except in rare settings).

There were several barriers to local dissemination during the DUF period. One problem, for example, was the fact that the local site directors were not trained in sociological data analysis. Many DUF sites were operated by the local law enforcement agencies that operated the correctional facility. Thus, local agencies relied upon the posting of simple frequency tables that merely described the percent of arrestees who tested positive for drugs in the previous quarter. Little effort was made to pass the information on to local treatment agencies, government officials, or university researchers (except by NIJ).

Another problem was the quality of the data that were collected. During DUF, there was very little consistency between the different sites in how the data were collected. Some sites collected data from certain kinds of inmates while others did not. Some sites collected for 14 days straight, while other collected in a much more erratic manner. Thus, even if someone was willing to use the data to make policy decisions, the validity of the data was always an issue. Even more problematic was the fact that the three-page survey that was used in the interview part of the study was very limited. While arrestees were asked if they felt like they were addicted, there were no scales that allowed social scientists to measure the addiction objectively, such as a recognized addiction severity scale.

In addition, very few resources were expended at the local level to encourage local use of the data. As a result, many local sites without an established research wing collected the data and sent the data to NIJ for the report writing. Finally, because the data were only collected in relatively large cities,

**Table 1: OKC-ADAM Local Coordinating Council (1999-2000)**

Richard Kirby	Deputy General Counsel, Office of the Governor
Ben Brown	State Senator, State of Oklahoma
Darrel Wilkins	Division Director of Criminalistics, Oklahoma State Bureau of Investigation
Marc Pate	Oklahoma County District Attorney Office
Rana Bohan	Office of the Mayor, City of Oklahoma City
David Wright	Director, Oklahoma Statistical Analysis Center
Suzanne McClain Atwood	Executive Coordinator, District Attorney's Council
Sam Davis	Administrator, Oklahoma Office of Juvenile Affairs
Fran Ferrari	Researcher, Oklahoma Department of Corrections
Nancy Galloway	TRIAD Coordinator, Oklahoma County Sheriff's Department
R.A. "Bob" Jones	Deputy Chief, Oklahoma City Police
Dr. Steven Davis	Director of Evaluation and Data Analysis, DMHSAS
Dr. N. Ann Lowrance	Deputy Commissioner, Domestic Violence & Sexual Assault Service
John Walsh Jr.	Executive Director, Oklahoma Sheriff's Association
Jim Cox	Director Oklahoma Association of Chiefs of Police
Robert Surovec	U.S. Drug Enforcement Administration
Major Russell Dear	Jail Administrator, Oklahoma County Sheriff's Department

the information was not very useful for smaller jurisdictions. It was difficult to apply the data collected in New York, Los Angeles, and Chicago to what was going on in Oklahoma City and Salt Lake City. ADAM was designed to overcome many of these problems.

#### **Converting from DUF to ADAM**

Addition of the new sites began in 1998 and changes to how the data were collected were phased in over the next two years. A standardized sampling design was implemented that forced all sites to follow the same procedure to select arrestees into the sample. Each site would now use a probability-based sampling procedure that would allow for greater ability to infer to the population and would eventually be capable of adding the dimension of data weighting to the analyses.

A new 24-page survey was designed and put in the field in 2000. The new survey asks questions that are comparable to other surveys ("crosswalks") like the National Household Survey on Drug Abuse, the Treatment Episodes Data Set, and the Uniform Crime Report. The new survey also allows for more complex data analysis by asking for more detailed information about treatment experience (inpatient, out-patient, and mental health) and the local drug market (Samuels 2000).

New site directors were selected that had experience/interest in analyzing and disseminating the data. In addition, NIJ and its national contractor (Abt Associates) implemented an individualized sampling plan for each site that allows for the selection of a much more

representative sample. The sample also expanded to include the entire county, not just the city. Also, ADAM sites collected data from a sample of all arrestees, instead of only the non-drug offenders as DUF had done previously. The biggest change, perhaps, was the decision to encourage local site directors to create a forum for sharing the data with local agencies and policy makers. The result is the creation of the Local Coordinating Council (LCC) concept.

#### **Local Coordinating Council**

In addition to the reinvigorated data collection practices from the time of DUF, each ADAM site was encouraged to create a Local Coordinating Council (LCC). The goal of the LCC is to generate local research initiatives that can be executed concurrently with the ADAM data collection. The Council is also to play a lead role in the dissemination of the local ADAM findings to policy makers, practitioners, and the general public. The ideal LCC would include members of law enforcement and correctional agencies, state and local treatment agencies, university researchers, and state and local government agencies. One successful example of the LCC concept is the organization that was formed at the Oklahoma City ADAM site.

The Oklahoma City LCC was formed in September 1999. It was relatively small (less than 20 members) and was composed of representatives of federal, state and local government, the Oklahoma Sheriff's Office, the Oklahoma City Police Department, the Department of Mental Health and Substance Abuse Services, and the District Attorney's Council. The current members of the OKC-

ADAM LCC are shown in Table 1. Most of the members of the council were invited directly by the site director, while others heard about the committee by word-of-mouth and requested membership.

The council meets twice per year. At the meetings, findings from the previous 6 months of OKC-ADAM data are presented and current local drug issues are discussed. Comparisons of Oklahoma City to other nearby ADAM sites are also discussed. Special analysis topics are presented by request. For example, because of the increase in the number of Methamphetamine lab seizures in the state, the police agencies requested information about the extent of Methamphetamine use by the arrestees and what the Methamphetamine users looked like (in comparison to other drug users). An interesting aspect of the LCC concept is that the dialogue is not meant to be one-way. That is, the meetings are intended to foster communication between the various agency representatives and the site director (and among the representatives themselves).

During the first meeting, the LCC members were encouraged to consider the kinds of data that they would like to have collected in an addendum project. The committee suggested an interest in domestic violence as a key topic for the community. Additional funds were gained from the NIJ and additional data were collected on this "special topic". This experience shows how uniquely the ADAM project responds to the needs of the local jurisdiction.

The LCC site is funded by modest support from NIJ and is directed by the local Site Director (a professor at the University of Oklahoma). The Director is responsible for initiating and hosting the meetings, preparing reports, presenting findings, and facilitating the sharing of information. Along with the bi-annual meetings, the data are shared with the LCC by the Site Director in three other ways. First, a quarterly newsletter is published to keep members up-to-date on OKC-ADAM happenings as much as possible. In addition to the quarterly newsletters, OKC-ADAM annual reports are published each year to provide specific local information that is not possible in a national publication. The local report supplements the annual report published by the NIJ each year. Finally, the OKC-ADAM has created a website ([www.ou.edu/soc/okcadam](http://www.ou.edu/soc/okcadam)) that allows access to re-

ports, working papers, site information, and data. This site makes the data available to people outside of the LCC "loop". More information about the national ADAM project is available at the NIJ website ([www.adam-nij.net/adam/](http://www.adam-nij.net/adam/)). In the following section, I present some of the data that are shared with the LCC.

#### **DATA COLLECTION**

The data collection schedule is determined six months in advance by the local Site Director and the Jail Administrator in coordination with Abt Associates. In the weeks before the data are collected, the interviewers are trained (or re-trained), supplies are ordered from Abt Associates, and arrangements are made with the Jail Administrator to provide security and to escort inmates to and from the interview area. Two off-duty detention officers are used each shift. Surveys, fact sheets, bar code stickers, and urine bottles are received from the national contractor (Abt Associates). The interview staff go through two days of training (for new staff) and five hours of refresher training each quarter for the experienced staff. All the interviewers are female. About half of the interviewers are students (graduate and undergraduate) from the University of Oklahoma and the other half are not associated with the university.

Data collection for the OKC-ADAM project began in the third quarter of 1998. Because the ADAM staff was initially denied access to the jail because of internal logistical problems (the State Fair and a computer malfunction), they were only able to collect data for eight days in September. They also only collected data from male arrestees at that time. The data were collected in a gymnasium on the eighth floor of the jail. In December 1998, they collected their first full 14-day sample of males and they added female arrestees starting in February 1999.

During the first four quarters of data collection, OKC-ADAM used four interviewers at a time to collect data from 10 AM to 2 PM, interviewing arrestees who had been booked during the previous 24-hour period. These respondents are termed "stock" arrestees. Unfortunately, many arrestees who had been booked in the previous 24 hours had already been released, resulting in a less than representative sample. Starting in the third quarter of 1999, Abt Associates devised a new sampling plan that was designed to elimi-

**Table 2: Schedule of Data Collection for OKC-ADAM**

Date	# Male Interviews	# Female Interviews	Total # Interviews
September 1998	129	0	129
December 1998	248	0	248
February 1999	264	105	369
June 1999*	255	95	350
September 1999**	198	95	293
November 1999	231	109	340
February 2000***	180	48	228
June 2000	179	85	264
September 2000	178	84	262
December 2000	174	87	261
February 2001	179	107	286
Total	2215	815	3030

\*Pre-tested marijuana addendum

\*\*Moved to booking area and implemented new sampling plan.

\*\*\*Implemented new survey.

nate the bias caused by missing so many arrestees. To facilitate this change, the interview process was moved to the booking area of the jail. Thus, the data from the third quarter of 1999 and following is much more representative than the data collected in the previous four quarters.

The new plan required OKC-ADAM staff to use two interviewers to collect data from a random sample of male and female arrestees who are booked during the interview shift (in addition to a random sample of "stock" arrestees). These new respondents are called "flow" arrestees. Thus, the OKC-ADAM data represents a random sample of stock and flow inmates booked into the Oklahoma County Jail. The data collection time changed to 2:00 PM until 10 PM, the eight-hour period with the greatest number of bookings. The ADAM interviews take place as soon as the jail's booking process is completed.

To facilitate the data collection, the Oklahoma County Jail provides the OKCADAM staff with access to the booking computer system. This allows the ADAM staff to select the appropriate respondents and to locate the respondent in the jail. Some of the respondents are still in the booking area during the survey time while others have already been moved up to a cell. A census of all the people who are booked in the jail (including the OKC-ADAM sample) is also collected and sent to Abt Associates at the end of the data collection period so that the sample can be compared to the population for weighting purposes. The weighting adjustments to the sample are made so that the sample approximates the population as closely as prac-

tical.

With the new sampling plan, the quota of respondents dropped from 250 men and 100 women (once a national standard) to 168 men and 84 women (252 total). The actual number of respondents from whom data are collected, however, varies from quarter to quarter. This is because the new sampling plan requires OKC-ADAM staff to stop collecting "flow" data only when time runs out, not when the quota is met. As a result, data are collected at a rate only slightly less than in previous quarters.

#### PROCEDURES

At the beginning of each day of data collection, the jail staff prepares a list of people who have been booked into the County Jail from 10:00 PM the previous evening to 1:59 PM on the current day. This group of arrestees is called the "stock" population. The on-site coordinator then randomly selects five males and 3 females from this list to be interviewed. The remaining respondents are randomly selected from the people who are booked into the jail from 2:00 PM to 9:59 PM that day (these are called the "flow" arrestees).

One interviewer is assigned to interview male flow inmates and one interviewer is assigned to female flow arrestees and the stock arrestees. When the site coordinator selects an arrestee for an interview, he/she writes the person's name and cell number on a Post-It Note. Then, the on-site coordinator initiates a "face sheet" on the arrestee. This face sheet contains information about the arrestee (race, sex, age, charge, etc.).

The Post-It Note is then given to a security officer who brings the inmate to the inter-

**Table 3: Percent of MALE Arrestees Who Test Positive for Drugs in Oklahoma City**

Type of Drug	1998		1999			
	Q3 N=129	Q4 N=248	Q1 N=264	Q2 N=255	Q3 N=198	Q4 N=232
Any Drug	69.8	70.1	71.2	76.6	67.7	63.4
Multiple Drugs	31.0	29.1	28.4	21.6	29.3	25.4
Marijuana	51.2	54.0	47.0	49.4	47.0	47.8
Methamphetamine	7.8	8.5	5.3	7.5	13.6	9.5
Cocaine	31.8	25.0	29.5	23.5	24.2	23.3
Opiates	2.3	1.6	1.1	1.2	1.0	3.0
Phencyclidine (PCP)	3.1	2.4	6.8	1.6	4.0	4.3
Benzodiazepines (Valium)	9.3	6.9	8.7	7.8	8.6	4.7
<b>Yearly Summary</b>	<b>1988</b>		<b>1999</b>		<b>2000</b>	
Type of Drug	Q3-Q4 N=377		Q1-Q4 N=950		Q1-Q3 N=536	
Any Drug	69.0		72.2		71.6	
Multiple Drugs	26.8		25.9		28.5	
Marijuana	53.1		47.8		55.2	
Methamphetamine	8.0		8.6		11.0	
Cocaine	27.3		25.3		23.1	
Opiates	1.9		1.6		3.5	
Phencyclidine (PCP)	2.7		4.2		4.1	
Benzodiazepines (Valium)	7.6		7.5		9.0	

viewers. When the arrestee arrives at the interview site, the Post-It Note is given to the on-site coordinator, who sticks it back on the face sheet. The interviewer then reads a detailed informed consent form to the respondent. If the arrestee agrees to participate, the interview starts immediately. After the interview, the arrestee is given a plastic bottle and asked to provide a urine sample. After a useable sample is provided, the arrestee is given a chocolate bar. A bar-coded sticker is attached to the urine bottle, the face sheet, and the survey so that they can be matched later on. The completed survey is then edited by the on-site coordinator to assure no errors have been made.

Within two days of data collection, the urine samples are mailed off to Pharm-Chem Laboratories (the national contractor) for the drug screen. The completed surveys and face sheets are mailed to Abt Associates immediately after the last day of data collection. The data are entered by Abt Associates and matched to the urine results via the bar-codes. All the data are then made available for download via the Internet by the Site Director.

#### **STUDY PARTICIPANTS**

The Oklahoma City ADAM project is located at the population center of the state of Oklahoma. The Oklahoma City MSA population was just under one million in 1990, ac-

counting for over 30 percent of the state total. The arrestee sample is ethnically diverse: approximately 38 percent of arrestees are African American, 51 percent are White, five percent are Hispanic, and six percent are Native American.

During data collection, ADAM participants are randomly selected from among eligible arrests. Refusal rates are low: about 90 percent of selected arrestees agree to be interviewed, and about 95 percent of those interviewed agree to provide a urine specimen. Because of the sensitive nature of the data that are collected, the OKCADAM staff goes to great lengths to protect the confidentiality of the participants. Once the arrestee is brought to the interviewer, his/her name is permanently removed from the survey. A unique identifier is assigned to each survey and urine sample so that data can be matched at a later time. Only research personnel at the OKC-ADAM project and others approved by the NIJ have access to the data. The study protocol has been approved by the Institutional Review Board of the University of Oklahoma on the Norman campus as an addendum to the original ADAM protocol.

At the OU IRB's request, the OKC-ADAM staff has created an additional informed consent form unique to their site that further informs the arrestee about his/her rights as a research participant. Each of the arrestees is given a copy of the form. The OU IRB also

**Table 4: Percent of FEMALE Arrestees Who Test Positive for Drugs in Oklahoma City**

Type of Drug	1998		1999			
	Q3 N=0	Q4 N=0	Q1 N=105	Q2 N=95	Q3 N=95	Q4 N=110
Any Drug	N/A	N/A	63.8	81.0	64.2	60.9
Multiple Drugs	N/A	N/A	30.5	28.4	33.7	21.8
Marijuana	N/A	N/A	40.0	43.2	46.3	29.1
Methamphetamine	N/A	N/A	9.5	8.4	10.5	15.5
Cocaine	N/A	N/A	34.3	42.1	32.6	29.1
Opiates	N/A	N/A	2.9	2.1	3.2	4.5
Phencyclidine (PCP)	N/A	N/A	2.9	0.0	7.3	1.8
Benzodiazepines (Valium)	N/A	N/A	9.5	8.4	7.3	10.0
<b>Yearly Summary</b>	<b>1988</b>		<b>1999</b>		<b>2000</b>	
Type of Drug	Q3-Q4 N=0		Q1-Q4 N=405		Q1-Q3 N=216	
Any Drug	N/A		72.2		68.5	
Multiple Drugs	N/A		30.9		33.3	
Marijuana	N/A		39.3		45.8	
Methamphetamine	N/A		11.1		16.7	
Cocaine	N/A		34.3		26.9	
Opiates	N/A		3.2		4.6	
Phencyclidine (PCP)	N/A		3.0		5.1	
Benzodiazepines (Valium)	N/A		8.9		11.1	

requires that each respondent be provided a list of treatment agencies in the Oklahoma City area. They are allowed to keep the list if they desire. There is no other post-survey counseling provided by the OKC-ADAM staff.

#### THE FINDINGS

A unique aspect of the ADAM project is that it allows researchers, the police, and treatment personnel to know what kinds of drugs arrestees in the population are using. Of course, it is tempting to imply that this reflects drug use by criminal offenders in the community as well. It is important to realize, however, that the results of the OKC-ADAM project do not represent drug use patterns by citizens of Oklahoma City. Instead, the data represent information about arrestees. Thus, the results refer to people who have been arrested in Oklahoma County.

Even though the OKC-ADAM staff do not interview every person who is arrested in the county, the sampling procedures allows for relatively confident statements about the level of drug use by criminal offenders in the county (especially since the third quarter of 1999). Another interesting aspect of the data is an ability to compare the findings with other findings in the country. There are 34 other NIJ ADAM sites being guided by the same national contractor (Abt Associates) and collecting the same kind of data throughout the country. This allows us to compare Okla-

homa City findings regionally (e.g., to Dallas, St. Louis, and Omaha) and nationally (e.g., to the Northeast and the West). It is important to keep in mind that these arrestees were randomly selected. That is, while there are some people in the data that were arrested for drug offenses, we did not only select drug offenders. About one-quarter of our participants had been arrested for drug offenses (possession/use or drug sales). Thus, a large majority of our arrestees had been arrested for non-drug offenses.

The data presented in this section include all of the quarters of data, even though data after the second quarter data 1999 are more representative (Table 2). This decision was made because of the relatively short window of data collection with the new sampling plan (only four quarters) and because of the consistency between the data collected under the previous sampling plan and the data collected under the new sampling plan.

Finally, it is important to be aware that not all of the participants were arrested in Oklahoma City. About 75 percent of the sample was arrested by the Oklahoma City Police Department, while the remaining arrestees were brought into the jail by the Oklahoma Sheriff's Department, Midwest City, Edmond, and a variety of other small cities in the metropolitan area. Thus, even though the project refers to Oklahoma City, we are really referring to Oklahoma County.

**Table 5: Comparison of Marijuana Use in Oklahoma City With Other Cities in the National ADAM Project**

City (1999 Data)	% Males Positive for Marijuana	% Females Positive for Marijuana
Omaha*	51	36
Oklahoma City*	48	39.3
Detroit*	48	26
Indianapolis*	48	38
Chicago*	45	27
Tucson	45	24
Minneapolis*	44	29
Sacramento	44	33
Spokane	44	32
Denver	44	34
Atlanta	44	34
Des Moines*	43	34
Cleveland	43	28
Philadelphia	41	26
New York City	41	26
New Orleans	40	25
Fort Lauderdale	39	29
Dallas*	39	27
Birmingham	39	26
Seattle	39	28
Houston*	38	23
Anchorage	38	31
Albuquerque	37	24
San Antonio*	36	16
San Diego	36	29
Phoenix	36	26
Miami	36	--
Washington, D.C.	35	--
Portland	35	23
Salt Lake City	35	23
San Jose	34	26
Laredo*	33	9
Los Angeles	32	21
Las Vegas	28	23
Median not including OKC	39.6	30

\*City located within 200 miles of the I-35 corridor.

Overall, the findings are interesting because they tell, for the first time, what the level of drug use is like for arrestees in Oklahoma County. Among the male arrestees in our sample, shown in Table 3, more than two-thirds tested positive for at least one kind of drug (69% in 1998, 72.2% in 1999, and 71.6% in 2000). Data for the females in our sample are shown in Table 4. Female arrestees appeared to be using at about the same rate as the men in 1999 (72.2%) and 2000 (68.5%). More interesting, perhaps, is the fact that many of the arrestees test positive for multiple drugs. Over one-quarter of male arrestees tested positive for more than one drug over the nine quarters, while al-

**Table 6: Comparison of Cocaine Use in Oklahoma City With Other Cities in the National ADAM Project**

City (1999 Data)	% Males Positive for Cocaine (Crack & powder)	% Females Positive for Cocaine (Crack & powder)
Atlanta	51	62
Miami	49	--
New York City	44	65
New Orleans	44	41
Albuquerque	43	56
Chicago*	42	64
Laredo*	42	21
Fort Lauderdale	41	52
Denver	41	51
Tucson	40	41
Cleveland	40	50
Philadelphia	39	60
Birmingham	39	26
Washington, D.C.	38	--
Los Angeles	36	37
Houston*	36	23
Indianapolis*	34	45
Dallas*	34	40
Seattle	33	48
Phoenix	32	43
Las Vegas	30	50
San Antonio*	29	36
Detroit*	27	46
Minneapolis*	27	29
Anchorage	26	36
Oklahoma City*	25.5	34.5
Portland	23	33
Omaha*	22	32
Salt Lake City	22	26
Spokane	18	31
San Diego	17	23
Des Moines*	16	22
Sacramento	16	30
San Jose	14	20
Median not including OKC	32.9	40

\*City located within 200 miles of the I-35 corridor.

most a third of the female arrestees tested positive for more than one drug. In the following sections, I address the findings for marijuana, cocaine, Methamphetamine, other drugs, treatment, and race for the OKC-ADAM project.

### Marijuana

The most popular drug among the Oklahoma City arrestees is marijuana. This is similar to findings in about half of the other ADAM sites as well. In 1998, 53.1 percent of the OKC male arrestees tested positive for marijuana. In 1999, about 48 percent of the



**Table 7: Comparison of Methamphetamine Use in Oklahoma City With Other Cities in the National ADAM Project**

City (1998 Data)	% Males Positive for Meth	% Females Positive for Meth
Sacramento	28	32
San Diego	26	33
Salt Lake City	25	34
San Jose	24	32
Portland	20	25
Spokane	20	27
Phoenix	17	14
Las Vegas	16	18
Des Moines*	14	22
Los Angeles	9	12
Seattle	9	10
Oklahoma City*	8.7	11.3
Omaha*	8	11
Tucson	6	10
Albuquerque	5	9
Denver	3	2
Dallas*	3	3
San Antonio*	2	1
Indianapolis*	1	1
Minneapolis	1	3
Washington, D.C.	0.9	0
Anchorage	0.5	0
Atlanta	0.4	0.8
Fort Lauderdale	0.4	0
Philadelphia	0.2	0
Laredo*	0.2	0
Houston*	0.1	0.1
New Orleans	0.1	0
Birmingham	0.1	1
Chicago*	0	0
Detroit*	0	0
Miami	0	0
Cleveland	0	0
New York City	0	0
Median not including OKC	7.3	9.7

\*City located within 200 miles of the I-35 corridor.

males tested positive, while 55 percent tested positive in 2000. About 39 percent of the women in our sample tested positive for marijuana in 1999, while 45.8 percent tested positive in 2000.

These numbers are particularly interesting when we note that Oklahoma City led the nation in the percentage of arrestees who tested positive for marijuana in 1998. While the rest of county averaged about 38 percent of male arrestees testing positive for marijuana, Oklahoma City has hovered right around 50 percent from 1997-2000. A comparison of Oklahoma City to other ADAM cities by gender is presented in Table 5. The order is ranked from highest to lowest (for

the male arrestees).

The numbers are even more dramatic for females. While the average ADAM site in the country has about 24 percent testing positive for females, about 40 percent of Oklahoma City female arrestees have tested positive for marijuana. Obviously, Oklahoma City has a unique marijuana situation concerning arrestees.

If you consider Table 5 from a geographical perspective, many of the mid-American sites are very similar to the Oklahoma City site. Consider especially the "percent positive for marijuana" in 1999 for the sites along the I-35 corridor: Laredo (33%), San Antonio (36%), Dallas (39%), Oklahoma City (48%), Omaha (51%), Des Moines (43%), and Minneapolis (44%). There is an almost linear progression from the south to the north, dropping only slightly for the most northern cities. Interestingly, the northern-most cities on this corridor make up one-third of the top twelve ADAM-marijuana cities in the country. Expanding the boundaries of the corridor by 200 miles to the east, we would also pick up the Detroit, Indianapolis, and Chicago sites. Thus, over half of the top twelve ADAM marijuana sites are located along a 200-mile corridor east of I-35. This information will inform scholars interested in the transportation of marijuana from Mexico to the mid-northern states. As an aside, three other new ADAM sites are also represented in the top twelve ADAM marijuana sites.

### Cocaine

About one-quarter of the male arrestees and about one-third of the female arrestees tested positive for cocaine in Oklahoma City. A comparison of cocaine use for men and women arrestees is presented in Table 6. It is important to note that our data do not distinguish between "crack cocaine" and "powder cocaine" use. The NIJ has developed a technique to test for the differences between the two types, but the test is not yet available. Nationally, cocaine use by arrestees tends to be focused in large cities in the North and Southeast. The national average was about 33 percent of men testing positive for cocaine in 1999. This suggests that cocaine use is not as big of a problem among male arrestees in Oklahoma City (at least compared to other cities).

It is interesting to note where cocaine is a problem. Table 6 shows that five of the I-35

Table 8: Treatment Experiences for Participants in OKC-ADAM Project

	Females			Males		
	In Treatment	Past Treatment	Need Treatment	In Treatment	Past Treatment	Need Treatment
Alcohol	3.2	14.1	14.3	3.4	22.2	20.8
Marijuana	1.0	4.9	7.9	1.1	7.4	10.8
Cocaine	0.5	3.5	4.7	0.7	4.4	0.6
Crack	2.0	12.8	14.3	0.6	6.1	7.8
Methamphetamine	0.2	3.7	5.7	0.3	3.6	5.7
Heroin	0.2	2.0	2.5	0.2	2.2	0.7
LSD	0.0	1.0	0.5	0.7	0.9	1.3
Valium	0.2	1.5	1.5	0.2	1.3	2.1

corridor cities are above the median for the country, but only three new sites (Laredo, Albuquerque, and Tucson) are in the top 15 of the list. Their proximity to each other and to the Mexican border have strong implications about the source of cocaine for these respondents.

The national comparison is a similar story for female arrestees in Oklahoma City, except that the OKC women approach the national average. The national average in 1999 of female arrestees testing positive for cocaine was about 40 percent. The OKC-ADAM findings in 1999 show that about 35 percent of female arrestees in Oklahoma City test positive for cocaine, while the percentage dropped to about 27 percent in 2000 (see Table 4).

### Methamphetamine

Oklahomans are very interested in amount of Methamphetamine use in the state due to heavy media coverage of the "Meth labs" throughout the state. This concern is highlighted by the "Meth Summit" hosted by the Governor in November 1999. Tracking changes in Methamphetamine use in Oklahoma using the OKC-ADAM data is difficult because the variation from quarter has been very dramatic. Still, when you look at the data from year to year, there appears to be a relatively consistent rate of between eight and 11 percent testing positive for Methamphetamine.

The ADAM data in Table 7, however, allow us to compare Oklahoma City to other locations. The data suggest that Methamphetamine use by Oklahoma City arrestees is relatively high compared to other cities in the nation. In general, Methamphetamine use is almost non-existent in the Northeast and the Deep South. The highest rate of Methamphetamine use in the country is found in the West. About 28 percent of arrestees in Sacramento,

for example, test positive for Methamphetamine. Other west coast cities hover around 20 percent, while the percentage drops as you move east. The importance of the new ADAM sites is especially illustrated in this table. In fact, ten of the top 14 sites listed here are new ADAM sites while only one of the bottom 12 sites is a new ADAM site. If you eliminate the new ADAM sites from this analysis, the median rate for the sites drops from 7.3 percent to 4.3 percent.

In comparison, about nine percent of male Oklahoma City arrestees test positive for Methamphetamine (about 3 times the rate of Dallas, but about the same as Omaha). This figure has not been stable over the course of data collection. In the first quarter of 1999, only about five percent of the males tested positive for Methamphetamine (Table 3). By the third quarter, that figure more than doubled to 13.6 percent. The percent testing positive was down to about nine percent in the fourth quarter 1999 and has stabilized in 2000 at around 11 percent.

It is difficult to determine if the fluctuations from quarter to quarter represent real changes or if they are a result of sampling error. In addition, data collection process (sampling, time of day, and location) changed almost every quarter until the third quarter of 1999, so some of the fluctuation could have resulted there. Thus, it is important to rely more on the yearly estimates than by the quarter-by-quarter estimates until the data collection had stabilized. Indeed, in the four quarters of 2000, the percent of males testing positive for Methamphetamine were 10.6 percent, 12.9 percent, 9.6 percent, and 9.2 percent. These differences are not statistically significant.

The percent of female Methamphetamine users stayed relatively stable at about 9.5 percent over the first three quarters of 1999, but then increased by more than 50 percent.

**Table 9: Race and Positive Drug Test in 2000 (By Gender)**

<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Indian</b>
Marijuana (N=99)	48.5%	44.4%	0.0%	7.1%
Cocaine (N=58)	36.2%	53.4%	1.7%	8.6%
Methamphetamine (N=36)	94.4%	5.6%	0.0%	0.0%
Heroin (N=10)	80.0%	20.0%	0.0%	0.0%
PCP (N=11)	9.1%	90.9%	0.0%	0.0%
Valium (N=24)	75.0%	20.8%	0.0%	4.2%
<b>Male</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Indian</b>
Marijuana (N=296)	53.4%	38.9%	4.4%	3.4%
Cocaine (N=124)	40.3%	50.0%	8.9%	0.8%
Methamphetamine (N=59)	94.9%	5.1%	0.0%	0.0%
Heroin (N=19)	89.5%	5.3%	5.3%	0.0%
PCP (N=22)	0.0%	90.9%	0.0%	9.1%
Valium (N=48)	81.3%	12.5%	4.2%	2.1%

Over 15.5 percent of the women from whom we received urine samples tested positive for Methamphetamine. For all of 1999, about 11 percent of the sample of female arrestees tested positive for Methamphetamine. Almost 17 percent of the women in the OKC-ADAM sample tested positive for Methamphetamine in 2000. In the four quarters of 2000, the percent of females testing positive for Methamphetamine were 22.9 percent, 17.7 percent, 13.1 percent, and 14.9 percent. Since the sample size was extremely small in the first quarter due to the implementation of the new instrument ( $n=48$ ), these differences are not statistically significant.

### Other Drugs

The other drugs that are tested by the drug screen are listed in Tables 3 and 4. Notice that just a slightly higher percentage of women test positive for Valium (9-11%) compared to male arrestees (8-9%). PCP positive tests are also very similar for males and females (less than five percent for each). There is almost no heroin use by arrestees in Oklahoma City. Less than two percent of the arrestees in our data tested positive for heroin in 1999. This figure significantly increased to about 3.5 percent in 2000 ( $p < .05$ ). Females in OKC-ADAM data test positive at a significantly higher rate for heroin than do men ( $p < .05$ ). This is similar to findings in all but five other ADAM sites nationally (Washington, DC, New Orleans, Miami, Laredo, and Anchorage).

### Treatment

In Table 8, I have presented a brief comparison of treatment experiences (as defined by the respondent) for each gender. The data

reported here are from the old instrument since the survey data from the new instrument are not yet available for analysis. Still, these data suggest the extent to which the arrestees report being in treatment, if they have been involved in treatment in the past, or if they felt like they needed treatment. The questions were asked for alcohol and each of the drugs on the drug panel. Very few of the offenders were currently in treatment, with the greatest proportion being in treatment for alcohol abuse (about three percent). Several of the arrestees had been involved in treatment in the past, again with alcohol being the largest category. Almost 13 percent of the females claimed to have been treated for addiction to crack cocaine. Many of the arrestees claimed to need drug treatment. For women, alcohol treatment was the most desired treatment (14%), followed by crack (14%) and marijuana (8%). For men, alcohol treatment was also the most desired treatment (21%), followed by marijuana (11%) and crack (8%).

### Race

Finally, we examine the relationship between race and testing positive for drugs. There are two ways to address the question. First, we could ask what the racial breakdown was among all the arrestees who tested positive for a specific type of drugs. This is done in Table 9 for each gender. Second, we can examine each race/ethnic group in the sample and measure the percent that test positive for each drug. This is done in Table 10.

In Table 9, we observe fairly similar patterns for both males and females. Among those women who test positive for marijuana

**Table 10: Positive Drug Test and Race in 2000 (By Gender)**

<b>Female</b>	<b>Marijuana</b>	<b>Valium</b>	<b>Cocaine</b>	<b>Meth</b>	<b>Heroin</b>	<b>PCP</b>
White (N=110)	43.6%	16.4%	19.1%	30.9%	7.3%	0.9%
Black (N=86)	51.2%	5.8%	36.0%	2.3%	2.3%	11.6%
Hispanic (N=4)	0.0%	0.0%	25.0%	0.0%	0.0%	0.0%
Indian (N=16)	43.8%	6.3%	31.3%	0.0%	0.0%	0.0%
<b>Male</b>	<b>Marijuana</b>	<b>Valium</b>	<b>Cocaine</b>	<b>Meth</b>	<b>Heroin</b>	<b>PCP</b>
White (N=294)	53.7%	13.3%	17.0%	19.0%	5.8%	0.0%
Black (N=189)	60.8%	3.2%	32.8%	1.6%	0.5%	10.6%
Hispanic (N=26)	50.0%	7.7%	42.3%	0.0%	3.8%	0.0%
Indian (N=27)	37.0%	3.7%	3.7%	0.0%	0.0%	7.4%

(N=99), for example, the majority are white arrestees (49%) followed closely by African-American arrestees (44%). The numbers are a little more stark for males, where a greater proportion of the males who test positive for marijuana are white (53%) compared to only 39 percent who are African-American. This pattern is similar for Methamphetamine, Heroin, and Valium, where whites compose the highest proportion of users. The most dramatic case is Methamphetamine, where almost 95 percent of the women and men arrestees who test positive for Methamphetamine are white. African-Americans, on the other hand, make up the highest proportion of those who test positive for cocaine and PCP. The self-report data (not shown here) suggest that African-Americans in the sample are using crack cocaine more than powder.

In Table 10, we show that white arrestees are dramatically different from African-American arrestees in their drug use patterns. The patterns are fairly similar by gender. Almost half of the white female arrestees and over half of the white male arrestees tested positive for marijuana, while a higher percentage of African-Americans tested positive (females = 51% and males = 61%). White arrestees are also much more likely to test positive for Methamphetamine than are African-Americans. In fact, almost one-third of the white females tested positive for Methamphetamine compared to two percent of the African-American females. About one in five white males tested positive for Methamphetamine compared to two percent of the African-American males. Whites also seem to be more likely to engage in Valium and heroin use than minorities. Hispanics and African-Americans, on the other hand, are more likely to test positive for cocaine. About one in ten African-American arrestees tested positive for PCP.

The data presented here represent only a

small proportion of the types of results that are being made available to local government, treatment, and law enforcement officials through the use of the LCC.

## DISCUSSION

The goals of data collection for public policy evaluations generally can be divided into four categories: assessment of needs, assessment of program process, assessment of impact, and assessment of efficiency (Rossi et al 1999). The ADAM project can be described as a special sort of needs assessment, in that the professed goal is to inform public policy about the drug problem at the local and national level (Samuels 2000). In the real world, unfortunately, decisions about public policy are often made without the benefit of empirical data for support (Weiss 1998). Even more troubling, however, is the situation where the data have been collected, but are ignored by the policy makers. This lack of a reliance on research results is often the result of political context of the policy makers. Still, some responsibility lies on the hands of the researchers themselves (Gredler 1996).

To be sure, most researchers want policy makers to use their data. Writing reports that nobody reads is not what most researchers want to do. On the other hand, much of the work that is done by researchers is located in academic journals that are not read (nor understood) by decision makers (Petersilia 1987). This is not so much the case in situations where an agency funds an assessment of some issue and the product of the research is a report that is provided to the agency at the end of the funding period. Instead, the problem is more evident in the situation where the data could be of interest to more than the funding agency itself. Efforts to "get the word out" in this situation require much more deliberate efforts by the

researcher.

This paper describes a major effort by a federal agency to collect data that can be used to better understand the national drug problem, while at the same time, providing information at the local and regional level to assist in local programming and policy making. The transition from the DUF program to the ADAM program over a two year period has resulted in extremely interesting data that is certain to make an impact if the data are used by policy makers. The LCC portion of the ADAM program is the key ingredient to getting the word out.

Importantly, data that can inform public policy needs to be taken to the policy arena in a format that is easy for policy makers to understand. The use of unique structures like the Local Coordinating Council and the Internet greatly increase the likelihood that a researcher's findings will be implemented. As Cooley and Bickel (1986) suggest, face-to-face interaction between researchers and policy makers may hold more sway than written reports (see also Cronbach, Ambron, Dornbusch, Hess, Hornik, Phillips, Walker, & Weiner 1980). The LCC acts to facilitate the kind of intensive interaction that Weiss (1998) described when she says that successful communication of results depends on 1) including potential users of the data in the research process, 2) making the transfer of information two-way, and 3) sustained interaction over long periods of time.

The Oklahoma City experience is informative. For the first year of data collection, the data were collected and maintained in the office of the Site Director. Efforts to inform the public and policy makers through the use of the media proved futile and frustrating. When the LCC money and motivation evolved in the second year of the project, the Site Director was, for the first time, given an opportunity to directly impact policy formation using the ADAM data. At the first meeting, members of the LCC were presented with information about the ADAM project and told about the changes that were about to take place. Their input on the local process was evident in the beginning, when the council decided to implement a domestic violence addendum into the data collection process. One of the council members was the director of the state domestic violence agency and was instrumental in helping coordinate the addendum selection.

In addition, several other state agencies (e.g., Department of Corrections and the Department of Mental Health and Substance Abuse Services) used the data in annual reports and their needs assessment reports. Another agency, the Statistical Analysis Center is using ADAM data to create a profile of the Oklahoma County offender. In the following meetings, members of the council that represent law enforcement agencies (federal, state, and local) have assisted in the interpretation of findings and have begun to present their own findings at the meeting. The most remarkable outcome so far is that the council is expanding its borders so as to not only become an "ADAM sounding board", but to become the center of the state's understanding of its drug problem. The council decided in its 2001 meeting to use the OKC-LCC concept as the basis for a biannual meeting about "Drugs in Oklahoma".

Thus, it appears that at least one of the goals of the move from DUF to ADAM (informing the local policy makers about drugs in the mid-American states) has been accomplished. The national reports by NIJ have begun to implement the data collected from the new sites as well and, as evidenced in this paper, can begin to tell a more interesting story about drugs in America. At the same time, the survey data appear to be much more representative and will soon be available for much more sophisticated analysis than was possible in the past.

Finally, the findings in this paper have shown how the "drug problem" in America is not monolithic. Specifically, what takes place on the border states in the nation is not very similar at all what takes place in the mid-American states. Our findings suggest that a defined "marijuana corridor" runs north-to-south through the middle of the county along I-35, perhaps signifying for the first time a path from Mexico to the mid-northern states. In addition, we are able to see the extent of Methamphetamine use from the western states to the mid-American states (where it stops its eastern movement). The ADAM data set provides rich information about a particularly interesting population of drug users in the country. Hopefully, this information will be used to inform policy makers and program developers.

#### **ACKNOWLEDGEMENT**

The author expresses appreciation to

the comments of the anonymous reviewers of the paper and to the National Institute of Justice, which funded the research efforts described in this paper.

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## PROTECTING THE CONFIDENTIALITY OF HIV AND AIDS PATIENTS: THE IMPLICATIONS OF THE ELECTRONIC MEDICAL RECORD

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### ABSTRACT

The Electronic Medical Record is fast becoming technologically essential in our increasingly complex and internet based communication society. However, our health care system has an ethical and legal duty to respect and protect patient confidentiality. Health information and the medical record reveal some of the most intimate aspects of an individual's life. The importance of protecting that information in an ever changing technological environment is essential. This overview presents the pros and cons of the Electronic Medical Record (EMR). We have integrated the concerns as they are relevant to HIV/AIDS patients since this illness is so very stigmatized and feared that introducing the EMR into the equation makes patient confidentiality an explosive issue. This is also a very timely synthesis of the issues since the Bush administration is pushing for a rapid switch from paper records to computerized systems. While much present attention is focused on the resources required to make the switch, less attention is paid to the ethical concerns that need to be addressed.

Concern with the social patterns of health services and health care delivery systems is one of the major areas of investigations of medical sociology. Health care involves numerous factors that are social and cultural because a society tends to respond to health problems and to deliver medical care within a cultural context. Health, illness, and the institution of medicine are aspects of society experiencing significant problems, controversies, reforms, as well as unprecedented technological advances. The electronic medical record is one such technological advancement.

Healthcare is constantly changing and technological advances have transformed the institution of medicine to one of high caliber care. However, advancements in technology also have the potential to jeopardize patients' privacy and confidentiality. This article will examine the shift to electronic medical records and how patients who are infected with Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) can be affected by this shift. First, an explanation of the transformation of the paper medical record to the electronic medical record (EMR) will be reviewed. Second, the pros and cons of the EMR will be discussed, and finally the issues of privacy and confidentiality of patients who are coping with HIV and AIDS are presented.

Data are essential for research, education, public health monitoring, and many other activities essential to the provision of health care. The medical record is the primary

source for much of the health care data sought by parties outside the direct health care delivery system; that data helps decisions on an individual's access to credit, admission to educational institutions, as well as their ability to secure employment and obtain insurance. Inaccuracies in the information, or its improper disclosure, may cause one to be denied these basic necessities of life, and can threaten an individual's personal and financial well being (Gillespie 2003).

Healthcare data remain one of the most highly confidential forms of information in today's society. The archaic information systems of our hospitals directly affect the quality of care that patients receive (Gingrich & Kennedy 2004). The sharing of information between healthcare organizations will influence the quality of care that patients receive by decreasing repetition of services. Recently we have seen the benefits of an EMR system with the loss of records in doctors' offices and hospitals that were wrecked by Hurricane Katrina. Only one hospital in New Orleans used electronic medical records which made care of the patients who were evacuated much more efficient and accurate compared to the thousands of others whose records are forever lost and can not be replaced (McGee 2005).

It's estimated that less than 20% of hospitals in the United States, and even fewer doctors' practices, have adopted electronic medical-records systems. (McGee 2005 34)

The latest figures estimate that fewer than half of all U.S. doctors have electronic health records (Heavey 2006). Furthermore, the U.S. ranks lowest in the use of electronic medical records when compared to five other wealthy countries: Germany, Britain, Australia, New Zealand, and Canada (Reuters 2007).

#### **THE TRADITIONAL MEDICAL RECORD**

Medical records have been historically based on paper, a patient's stay in a hospital or office visit is recorded via the medium of paper. Before the development of modern computers, medical personnel documented their patient findings by hand (Freeman 1996). These records were often illegible, and cause many problems including medication, coding, and billing errors. This can cause problems when medical records are subpoenaed in court proceedings. Traditionally, medical records are stored in the hospital and are accessed by hospital personnel who are directly responsible for patient care. These records are kept in a locked department and are released only with the proper consent from the patient. The potential for unauthorized access to the private medical information is not as critical with a paper medical record as it is with an EMR (Electronic Medical Record), since paper medical records are stored in offices and hospitals (Freeman 1996). Today, the EMR allows access from the Internet and from any user throughout the hospital that has the proper password.

In recent years, healthcare providers have moved toward automation of all parts of the medical record (Freeman 1996). The growth of the Internet is also proving to be a factor in healthcare in this century. Eventually, all medical records will be electronic and stored on optical discs. The Bush administration is pushing for a rapid switch from paper records to computerized systems (Lohr 2005). Currently, there is a subcommittee in the U.S. House of Representatives considering legislation to create guidelines that would assist medical personal and the government in sharing patient records (Heavey 2006). However, it is estimated that it would cost an estimated \$400 billion to create a system that would be functional (Have paper records passed their expiry date? 2005).

The EMR would eliminate many of the problems associated with the paper record, but creates additional problems associated

with security of private health information.

#### **THE PROS AND CONS OF THE ELECTRONIC MEDICAL RECORD**

The electronic medical record has both positive and negative attributes. The electronic medical record basically eliminates lost paper records, insures legibility, cross checks medication dosages with physician orders and generates charges automatically. Loose filing, incomplete medical records, and lost records demand a great deal of time in the medical record department and are greatly reduced with EMR. With the elimination of paper based job duties, the clerk could be functional in other areas in the department or with the electronic record. Illegible handwriting from physicians, nurses, and other healthcare professionals is a very serious matter and the implementation of EMR will eliminate a significant part of those errors.

From a legal standpoint, records are often subpoenaed and must be legible. In ICD-9 coding, which is used by hospitals to convert medical diagnosis and procedures to a coding system used in billing, legibility is important for assigning diagnosis and procedure codes. These codes directly affect billing and reimbursement for the hospital. Illegible records can cause other professionals to misinterpret information and could cause errors in treatment.

The effect of crosschecking medication orders and recommended dosages is a significant area that could potentially prevent harm to a patient. When the record is illegible, an order for a medication may be misread and the incorrect dosage may be given to the patient. This error could be detrimental to patients' health. When an electronic medical record is being used, the computer will crosscheck the medications of a patient to prevent a medication reaction.

Billing of patient charges for medical treatment is an area that is affected by the electronic record. Accurate billing will always affect the financial solvency and cost containment of the hospital. Correct billing of hospital services insure proper reimbursement, and help to ensure that the organization remains viable.

Another benefit of the EMR is that data will be more readily available when medical information is easily accessed via the Internet. The EMR is linked between organizations



that are owned by the same corporation which allows them to share data on a patient. Eventually, medical information may be accessed by all health care organizations on a particular patient. This will decrease repetition and save time and money. However, understanding issues of electronic data access are critical to understanding the potential misuse of data.

Medical test results will be available as soon as they are processed via EMR. This will greatly improve the efficiency of care. Specialists will be able to consult online with the attending physician regarding a patient's care. There would be no traveling involved for the consultant, unless the specialist needs to examine the patient (Freeman 1996).

The EMR will save time, money, and paper. With society becoming more technologically advanced, healthcare delivery systems must be current or up to date in addressing the techniques for potential use of EMR. Electronically connecting the healthcare industry by an integrated system of electronic communicating networks will allow any entity within the health care system to exchange information and process transactions with other entities in the industry. As a result of the linkage of computers, patient information will no longer be maintained, accessed, or even necessarily originate with a single institution, but will instead travel among a myriad of facilities (Gillespie 2003). Every part of the institution must be considered in the planning because the facility will undergo vast changes when implementing an EMR system. Training of staff and physicians is very important since everyone involved in patient care is affected. Knowledge about the patient record program helps to insure a smooth transition process.

For example, data captured from HIV/AIDS reporting and other communicable disease must be available for further research for new drugs and a possible cure. Research is important in the search for cures for all diseases, but especially in this area since information is highly guarded by many individuals due to the stigmatized nature of contracting HIV/AIDS.

#### **NEGATIVE ASPECTS OF THE ELECTRONIC MEDICAL RECORD**

The EMR is an added concern for patients because private information could be illegally

accessed. Computer hackers have already found their way into several secure health-care sites. We are increasingly aware of the privacy violations or destruction of patient information that can occur through electronic storage when we hear of a stolen computer server that contained electronic data, including medical records of 930,000 Americans (Popkin, Sandler, and the NBC Investigative Unit 2006). An organization becomes an easy target for hackers when connected to the Internet. According to a recent survey of U.S. corporations, government agencies, financial institutions, medical institutions, and universities by the Computer Security Institute in conjunction with the Federal Bureau of Investigation, 85 percent of these entities detected "cyber attacks" (Sardinas & Muldoon 2001). Several organizations were willing to quantify the financial impact of cyber intrusions, and they indicated more than \$377 million in losses or an average loss of \$2 million per organization (Sardinas & Muldoon 2001). Security breaches included theft of information, financial fraud, system penetration from outsiders, denial of service attacks, and sabotage of data or networks. For physician offices and hospitals, this causes even greater anxiety over the transition to EMR (Sardinas & Muldoon 2001).

#### **THE STIGMA OF HIV AND AIDS**

Illnesses are a personal issue which patients often keep to themselves. Many diseases are stigmatized. To stigmatize a person is to describe or identify them as a public disgrace. HIV and AIDS are two of the most stigmatized of diseases. Often people who live with these diseases keep them confidential. Disclosing HIV or AIDS status to employers, friends, religious affiliations and even some family members can be detrimental to the health of an individual. Ethics and confidentiality come into play because of the competing interests of those infected and those potential others who may become infected. Thus, the issue of HIV and AIDS is an ethically and politically volatile topic.

The severity of HIV and AIDS can vary depending on the stage of the disease. AIDS is considered by many to be the deadliest epidemic in human history (Pozgar 2003). Although a patient can live with HIV for years with little or no symptoms, it will eventually lead to acute illness and premature death (DeMatteo, Wells, Goldie & King 2002). It is

important to remember that being infected with HIV does mean that a person will eventually develop full blown AIDS (Brannigan & Boss 2001). A patient living with AIDS or HIV is not the only person on which the disease has an effect. Family members often suffer along with the infected individual, as they may be the primary care taker of the patient diagnosed with AIDS.

Most individuals express feelings of shame, loss and worthlessness after being diagnosed with HIV or AIDS (Paxton 2002). Acquiring HIV can be a devastating life change with which one must deal. Most people that contract the virus keep it a secret thus creating psychological stress and depression. Rejection is a fear that is associated with disclosure. Furthermore, these patients struggle with whether to conceal or disclose this disease to the public (Allen & Carlson 2003). If the disease is disclosed, the fear is that the public may view this disease as a disability and treat the individual differently.

Having a disability is often seen as a negative trait. The concealment of HIV is a common practice used to avoid the stigma that is associated with the disease. For years, hiding a disease which is stigmatized has been common. Since stigma of HIV/AIDS is also associated closely with the stigma of disability, many individuals choose not to disclose their condition (Allen & Carlson 2003).

From the time that the HIV virus was discovered, there has been public fear and disapproval both of the disease and those afflicted by it. The stigmatization of HIV/AIDS is caused by the fear of the disease and the mystery of it. The disease was originally associated mostly with socially disapproved behaviors, namely homosexuality and drug use (Siegel 1998). After much research, it was discovered that there are other ways of contracting the disease. Public education on the spread of the disease has increased knowledge about it, but the stigma remains.

Introducing the EMR into the equation makes patient confidentiality an explosive issue. Great strides must be taken to insure that changing technology does not jeopardize the trust between patients with communicable disease and the medical establishment. For patients with HIV or AIDS, the possibility of an EMR may be a basis for the decision not to seek care. With the implementation of the EMR and the connection to the

Internet, health care facilities open themselves up to the possibility of confidentiality breaches.

There are several laws in place to decrease the likelihood of this occurring. The exposure of private health information to the public can open the healthcare facility to lawsuits and cause the patient harm by possibly exposing certain diseases. In some cases, if the private health information is released to a patient's employer, he could lose his job or be discriminated against in other ways. Employers may discriminate because of illness because they may fear the employee will miss work due to their illness. Also high insurance coverage costs may occur, or other employee's productivity issues may arise.

### **TRACKING HIV AND AIDS**

One of the biggest challenges in tracking HIV/AIDS is maintaining confidentiality of infected persons while, at the same time, protecting the public. The individuals that have HIV/AIDS have contracted the virus and have the right to privacy concerning their health status. On the other hand, the public has the right to be protected from the spread of disease. AIDS is a reportable communicable disease in every State; a positive result on an HIV test is required to be reported to the State's Health Department. Infectious diseases such as diphtheria and tuberculosis have been reported to State Departments of Health for many years. These diseases are then tracked and used to trace others who may be infected. In the case of HIV and AIDS, these policies have not been consistently followed because of the stigma associated with the disease. This phenomenon is referred to as AIDS exceptionalism (Brannigan & Boss 2001). The protection of the patient and the public must be considered when dealing with the privacy of this disease.

Each state tracks the infection of HIV and AIDS in different ways. There are no federal standards for reporting. Physicians and hospitals must report every case of AIDS to government public health authorities (Pozgar 2003). Cases reported to local health authorities are also reported to the Centers for Disease Control (CDC). The patient's names are encoded by a system known as Soundex (Pozgar 2003). In the United States, thirty five states have name-based reporting, eight states and Washington DC have code-based

reporting, and five states have name-to-code based reporting. There are several HIV Testing Options. Anonymous and Confidential testing is offered in thirty nine states and Washington DC. Eleven states offer confidential testing only (The Henry J. Kaiser Foundation 2004). The State of Texas offers anonymous and confidential testing. This is achieved by a report mechanism where every HIV test is reported to the Texas Department of Health.

The stigma associated with HIV and AIDS and the severity of the disease causes many individuals simply to choose not to be tested. They fear a positive result which will alter their lives forever. According to recent figures from UNAIDS Joint United Nations Program on HIV/AIDS and the World Health Organization, as of December 2002, the total number of people in the United States infected with HIV was over 900,000 (WHO 2002).

For appropriate management of patients with HIV and AIDS, healthcare organizations must have policies that govern disclosure and confidentiality, which in turn is reported to the state agencies. The literature suggests that physicians lack understanding in this area (Rogers 2002). Physicians have a high degree of information about a patient, but often times the physicians are more concerned with the treatment of the patient rather than thinking about the consequences that the disease may have on the patient. Continuing education for physicians should be a focus in medical school and in every practice to avoid disclosure which is unauthorized by the patient.

#### **DISCRIMINATION BECAUSE OF CONFIDENTIALITY VIOLATIONS**

Americans stated in a poll taken by the Wall Street Journal that they were more concerned about the loss of personal privacy in the 21<sup>st</sup> century than they were about the threats of terrorism. The outcome of a breach of confidentiality can alter or even ruin a person's life.

Violations of confidentiality can bring severe consequences in an AIDS patient's life. AIDS cases carry a stigma which could result in social, economic, familial, and professional banishment (Brannigan & Boss 2001). Many people fear the disease and do not fully understand how it is transmitted. Thus the fear of being discriminated against is real. The number of individuals who are

being tested may decrease if their confidentiality is not maintained. This could be a peril to the healthcare system because patients may not seek care. The spread of this disease could, in theory, be increased because of the fear of HIV/AIDS status' being disclosed.

Patients with HIV/AIDS are apprehensive when sharing their personal health data because of the implications if the information is breached. Many times patients do not seek the care they need for this reason. In a survey on policies and procedures regarding confidentiality, 70 percent of people with HIV/AIDS objected to receptionists knowing their HIV status, 48 percent objected to practice managers knowing, 40 percent objected to a consulting or an additional physician knowing, 37 percent objected to counselors and 36 percent objected to practice nurses knowing (Petchey, Farsworth & Heron 2001). For this reason, healthcare workers must be trained in the maintenance of confidentiality as well as of its importance.

#### **PROTECTING ELECTRONIC INFORMATION**

How should the organization protect against breach of information in an electronic environment? Security is an ongoing process. It must evolve and continuously adapt to changing technology. Risk assessment is crucial to the whole process. The privacy officer must stay on top of the latest developments in software to prevent future incidents of hacking (McCormack 2000).

Planners for the computerized medical record systems must consider the effects of the Internet when planning for their hospital's system. Hospitals must consider how the Internet will play a role in their electronic record systems (McCormack 2000). This tremendous change in the every day actions of a hospital will affect all aspects of care. Practitioner's day to day actions will be impacted. This is not something that can be ignored; it must be viewed as an improvement in care.

The healthcare system as a whole will become intertwined via the internet and EMR. The internet plays an important role in the business industry today. It will eventually play a pivotal role in sharing data with all healthcare providers. In an interview with C. Peter Waegemann, executive director of the Medical Records Institute, a Newton, Mass. based association that promotes the use of elec-

tronic medical records, Waegemann advises, "If they are not including the internet, they need a wakeup call, there is a technological revolution going on" (McCormack 2000 1). New developments are occurring every week on the Internet. Chief Information Officer's (CIO) must consider the implications of the new developments to their own electronic systems. According to McCormack (2000) the following questions need to be considered by every healthcare organization:

- ♦ Is it time to use the internet to provide clinicians with remote access to electronic medical records systems from their offices or homes?
- ♦ Is it time to use Internet technologies to help provide access to clinical information from multiple information systems instead of installing a stand-alone electronic records system? Or is it time to use internet technologies to seamlessly present information from various stand-alone information systems, thereby creating a virtual electronic records system?
- ♦ Is it time to enable system users to access electronic medical records via application service providers-software companies that maintain information systems and data at their sites and provide access to the systems via the internet?
- ♦ Is it time to use the internet to provide patients with access to their computerized, official medical records?

Routine use of electronic medical records is becoming more common. Estimates for the time it is expected to become routine range from less than 10 years, by the most optimistic experts, to decades, by those with less optimism (Hagland 2000). As previously stated, eventually, all hospitals and physician offices will share information electronically. President George W. Bush has a goal of 2014 for all Americans to have electronic health records (Heavey 2006). Americans trail Europe in adopting electronic medical records. Twenty five percent of hospitals and health systems in the United States have developed an EMR implementation plan, and another 32 percent have begun to install EMR hardware and software (Hagland 2000). American physicians use the Internet and computers more than European physicians,

but are behind Europe in technology use for patient records. For example, 94 percent of U.S. physicians use computers in their practice, and 79 percent use the Internet or an online network compared to 80 percent as a high and 61 percent as a low for the 15 countries in the European Union. In Finland and the Netherlands 100 percent of physicians use computers and an online network (Chin 2002). American physicians' use of electronic medical records matches Greece (17%), but trails every other European Union country except Portugal (5%), France (6%) and Spain (9%) (Taylor 2002). Throughout the European Union, 29 percent of general practitioners use electronic medical records (Taylor 2002). The major reason why most European countries are ahead of the United States in using electronic medical records is they either have a single-payer system or something close to it that is government owned or administered. If the United States were to implement a government health system, it might be easier to integrate health and financial information.

Obstacles to implementing a computerized record involve complicated technology, costly implementation, security concerns, time in the change over, and resistance from clinicians required to do "clerical" data entry (Briggs 2006). Electronic medical records are very complicated and there are many variables to consider when implementing a system. Environmental factors come into play because of payment, governing organizations, and relationships with other healthcare delivery systems. Sharing of information with physician offices must be considered; are the two compatible? Are we meeting the standard for privacy for the governing agencies? Are data secure? How will it affect patients and their confidentiality?

Recent technological advances have changed the way we provide medical care. The medical record is the foundation by which physicians and other healthcare providers base their plan of care. Changing from a paper record to an electronic one may not only affect the process of providing care to patients, but it may raise the possibility of harming the patient.

#### **SECURITY AND CONFIDENTIALITY**

Why does confidentiality matter? The following are reasons that patients need to be able to trust in the security of their medical

information.

- **Autonomy** - Respecting confidentiality involves respecting the autonomy of the patient. Autonomy is ethically important and is a cornerstone of medical ethics.
- **Privacy** - Respecting confidentiality means protecting the patient's privacy.
- **Trust** - Consultations would soon become dysfunctional if the patient could not rely on the doctor to respect their confidentiality. Patients would not reveal anything embarrassing or intimate. Patients would not seek care if they were not insured confidentiality.
- **Promise Keeping** - There is an implicit and sometimes explicit duty of promise keeping between doctor and patient (Molyneux 2003).

Advances in technology have added a new dimension to an individual's right to seek medical care in a confidential and dignified manner (Freeman 1996). There is a significant risk of compromising patient confidentiality with the advent of the Internet and the EMR. Technology is changing so rapidly that there are opportunities for hackers or even accidents in transmission of data (Setness 2003). The misuse of private personal information is available for those who are intelligent enough to try to obtain it.

If a patient can not trust a provider or a facility to protect his or her medical privacy and keep highly sensitive and personal facts confidential, a crucial foundation in the relationship between patient and provider is undermined. Patients will be less willing to divulge sensitive information about their condition and lives, which will then impede adequate diagnosis and treatment (Alpert 2003). Many individuals have admitted to doing something out of the ordinary to keep personal medical information confidential. These actions include changing physicians, paying cash instead of filing an insurance claim, giving inaccurate or incomplete medical histories, and asking a physician or other healthcare provider to not document or to falsely document information in the medical record (Alpert 2003). The alteration of medical information could get in the way of proper treatment of patients. Therefore, quality of the treatment received by the patient may not be adequate.

## RELEASE OF MEDICAL RECORDS

Medical records may be released to an individual with the proper consent forms completed. In general, with a paper medical record, it is relatively easy to monitor the release of information and to keep track of who is getting this information. Now that the EMR is becoming common place, there are other ways for medical information to be released. Many times medical information is transferred via the Internet to other medical institutions for further patient care, via fax machine or may even be obtained illegally by a hacker. Patient confidentiality and security are considered paramount in healthcare. Maintaining medical information online raises significant issues. Great caution is required when contemplating access to confidential health information. Information stored on a computer is not necessarily easy to access, but the proper security measures should be in place. Technology provides as much as or even more security than paper records. Loss of records and misplaced records has always been a concern. The EMR will eliminate much of this problem.

## THE LAW ON EMR

There are many regulations and statutes which must be followed when maintaining medical records. Each state has its own set of laws as well as federal laws which encompass all states. These rules and regulations generally describe the requirements and standards for maintaining, handling, completing, authenticating, filing, and retaining medical records (Pozgar 2003). These laws which give patients rights to privacy and confidentiality include the Human Rights Act of 1998. It includes article 8 which is the right to respect "private life." This may be overridden for "the protection of the public health." The Data Protection Act of 1998, also accords individuals rights, in terms of access to their data, their right to know how it will be used, and control, in some circumstances, over its dissemination (O'Brein & Chantler 2003). The impact of these laws has improved patients rights concerning their health information.

## HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 was enacted to provide improved portability of health benefits and greater accountability in the area of

healthcare fraud (Regan 2002). This act will impact patients and healthcare operations. It is a step to providing patient privacy and confidentiality and providing a better service for the patient. This act is the most significant healthcare legislation in the United States since the creation of Medicare (Regan 2002). The rule will give patients more control over and access to their health information. It will set boundaries on the use and release of health records and safeguard that information. Healthcare organizations will be held accountable for inappropriate use or release of private health information. The regulations will establish the following:

1. Give consumers control over their health information by informing patients how their health information is being used. This new regulation requires health plans and providers to inform patients about how their information is being utilized and to whom it is disclosed. It gives each individual patient the right to a 'disclosure history,' listing the entities that received information unrelated to treatment or payment, which must be provided within sixty days. It also limits the release of private health information without consent by establishing a new federal requirement for physicians treating patients and hospitals to obtain patients' written consent to use their health information even for routine purposes, such as treatment and payment. Other, non-routine disclosures would require separate, specific patient authorization.
2. Set boundaries on medical record use and release by restricting the amount of information used and disclosed to the minimum necessary. Currently, providers and plans often release a patient's entire health record even if an employer or other entity only needs specific information, such as the information necessary to process a workers compensation claim. This new regulation restricts the information that is used and disclosed to the minimum amount necessary.
3. Ensure the security of personal health information by requiring the establishment of privacy conscious business practices. The regulations require the establishment of internal procedures to protect the privacy of health records.

They include: training employees about privacy considerations in the workplace; receiving complaints from patients on privacy issues; designating a privacy officer to assist patients with complaints; and ensuring that appropriate safeguards are in place for the protection of health information.

4. Establish accountability for medical record use and release by creating new criminal and civil penalties for improper use or disclosure of information. In the past, there often has not been any legal basis to prosecute individuals who inappropriately disclose private medical information. This rule applies the standards included in HIPAA to create new criminal penalties for intentional disclosure; up to \$50,000 and up to a year in prison. Disclosure with intent to sell the data is punishable with a fine of up to \$250,000 and up to 10 years in prison. The regulation also establishes new civil penalties of \$100 per person for unintentional disclosures and other violations. (Regan 2002)

## RECOMMENDATIONS

Below are recommendations that will help in the protection of confidentiality of HIV/AIDS patients. First, the education of future physicians and current physicians is important. In medical schools today, patient confidentiality should be stressed and the consequences of breach of confidentiality should be discussed. Student physicians will have the responsibility in the future of protecting HIV/AIDS patients from unwanted stigma. Physicians want to ensure the highest standards of care and patient confidentiality must be one of them.

Second, the security of the EMR must be a priority in every healthcare organization. The latest Internet technology and software technology should be chosen by the Chief Information Officer to avoid a break down in security. The security of the EMR should be the number one concern for the organization when setting up or improving records systems.

Third, the laws governing HIV/AIDS confidentiality and tracking must be enforced to give patients trust in our healthcare system. Trust must be there for a patient to be tested and seek treatment for the disease. Without trust in the protection of confidentiality, pa-

tients will not seek treatment, thus increasing the spread of the disease.

Finally, as a society, the stigma of HIV/AIDS patients should be acknowledged and hopefully decreased in the future. The education regarding this disease is very thorough and the public should know the specifics of its transmission. We should accept that this disease is widespread and increase the tolerance for those who are unfortunate enough to be infected.

## CONCLUSION

Our health care system has an ethical and legal duty to respect patient confidentiality. Health information and the medical record reveal some of the most intimate aspects of an individual's life, especially those who have a diagnosis of AIDS or HIV. The importance of protecting that information in an ever changing technological environment is essential and may be of more importance to those suffering with HIV/AIDS.

Our health care system must keep up with those in other countries and must continue to provide the highest quality of care. An indication of our need for improvement was stated by President Bush who recently stated, "The 21<sup>st</sup> century health care system is using a 19<sup>th</sup> century paperwork system" (Gingrich & Kennedy 2004 23). Politicians like to say that the United States has the best health-care system in the world, but that is not entirely true when you consider the information infrastructure.

Hospitals must weigh the advantages and disadvantages of the EMR system they are considering. All considerations should be evaluated to distinguish which system is right for a particular hospital or organization. Including input from different types of health-care clinicians will enable the CEO to envision and assemble the appropriate kind of electronic medical record system for his/her organization. The quality of care that results will inevitably be worth the time and effort.

There is a tremendous value in protecting and preserving medical privacy. The social implications of lack of privacy are devastating to an individual with a life threatening disease such as HIV or AIDS. Technology is ever changing and the healthcare industry must keep up with those changes. Considering the implications that the EMR could have on a patient with a disease such as AIDS and all other stigmatized diseases is an im-

portant issue to consider.

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