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Offenders and Enforcers: Women in Criminal Justice

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ABSTRACT: *Women's representation in the U.S. criminal justice system can take many forms. Women are offenders and victims. Women are also present in all areas of law enforcement consisting of local police officers, deputies, various state law enforcement, Coast Guard, military personnel and federal officers. Women encompass all aspects of the court system ranging from defense attorneys to prosecutors, municipal court judges to county court judges, district court judges to federal judges, as well as the Supreme Court of the United States. Women also work in the prison system as correctional officers and wardens. The focus of this article is women as offenders as well as enforcers of the law.*

When most people in the United States think of criminal offenders, the first image that comes to mind is usually not a woman. Unless a case is sensationalized such as a female high school teacher sleeping with a student, most crimes committed by women go relatively unnoticed by the public. Despite the general lack of awareness, female offenders do exist and have been on the rise in the past few decades. From 1990 to 1999, for example, women's felony convictions increased at twice the rate of men's (Sandler & Freeman, 2011). In 2006 women in U.S. prisons had an incarceration rate of 123 per 100,000 of the female population. In 2007 women composed 12.9% of the jail population, an increase from 10.8% in 1996 (Weiss, Hawkins, & Despinos, 2010). However, despite the increase in overall convictions of female offenders, the gender gap in arrests and convictions for violent crimes and rape remained unchanged from 1980 to 2003, where 90% of all arrests were male (Sandler & Freeman, 2011).

Research over the past 30 years has found gender to be more influential in disposition and sentencing decisions than any other factor such as race, age, or ethnicity (Sandler & Freeman, 2011). "Consistently, these studies have shown that female offenders are less likely than male counterparts to be arrested and convicted of offences, and once convicted, female offenders receive a milder sentence than male offenders" (Sandler & Freeman, 2011, p. 62). A popular theory to explain why women receive differential treatment by the criminal justice system is paternalistic chivalry. According to this theory, men have a desire to protect women and as such, are unwilling to inflict harm upon them. "Traditional stereotypes portray women as passive, weak, childlike and fickle and,

therefore, less culpable than men and less responsible for their behavior" (Sandler & Freeman, 2011, p. 63). Several separate studies in the late 1980s found that female offenders were treated more harshly than male offenders only when their offences violated traditional gender role expectations such as fondling a child and child abduction (Sandler & Freeman, 2011). However, the most recent study conducted by Sandler and Freeman (2011) found that female sex offenders still receive more lenient sentences than male sex offenders. A possible explanation is that recent research has shown that female sex offenders have significantly lower recidivism rates than their male counterparts. Perhaps because judges and prosecutors intuitively grasp this finding, they may often treat female sex offenders as posing a lower risk to society and recommend or give more lenient sentences (Ahola, Christianson, & Hellström, 2009).

The type of woman usually sentenced to prison is of concern. The majority are young, minority, single, and unemployed. They have used drugs or alcohol regularly before their arrest and have histories of physical and sexual abuse (Weiss et al., 2010). A great deal of research on female offenders shows that childhood trauma is often the first important marker of both substance abuse and crime (Caputo, 2009). While childhood trauma is also a factor in male offenders, female offenders tend to suffer higher rates of abuse, especially sexual abuse. "Over half of all women prisoners have experienced some form of abuse; more than one-third experienced sexual abuse" (Shelden, Brown, Miller, & Fritzler, 2008, p. 383). In 1999 the Bureau of Justice estimated that child sexual abuse for female offenders was between 23–37%, while abuse among male

offenders ranged from 6–15%. According to G. A. Caputo (2009), a national study conducted in 2000 found that girls who used drugs more often reported histories of physical and sexual abuse more than other girls, suggesting drugs are used as a coping mechanism for the abused. A separate study found that female substance abusers were much more likely to have been emotionally, physically, and sexually abused than male substance abusers (Caputo, 2009). In addition to being abused as children, women who witnessed their mothers victimized by domestic violence were also found to have a higher risk of substance abuse. “Research has effectively made the case that trauma during childhood places girls at risk for delinquency, drug use, and criminality later in life. Women in crime have higher rates of trauma than do other women” (Caputo, 2009, p. 17). Childhood sexual abuse is a significant contributing factor among female sex workers. A study conducted in San Francisco in 1982 found that 61% of the female sex workers had experienced childhood sexual abuse (Caputo, 2009). Caputo (2009) compared the types of abuse for women convicted of sex work and those convicted of shoplifting. She found that although shoplifters and sex workers share some similarities in their early life experiences, such as living in homes with alcohol abuse, there were some major differences. Sex workers reported higher rates of co-occurring traumas, such as violence between caretakers, drug and alcohol abuse among caretakers, and childhood sexual abuse. Shoplifters experienced far less life trauma than sex workers. Another pathway into the criminal justice system for many women involves the men in their lives. The majority of women who commit murder kill someone they know intimately. Several studies have shown that anywhere from 40% to 78% of women convicted of murder had experienced abuse and fit the battered woman syndrome (Shelden et al., 2008). A relatively new and controversial concept, battered woman syndrome describes a woman who was the victim of multiple cycles of battering, experienced significant psychological abuse, was unable to place responsibility on anyone but herself, and eventually responds violently, perhaps in defense, at her former abuser or a would be abuser (Walker, 2006). Researchers coined the term “double victim” to describe women who have been victimized by their partners but then who are subject to the criminal justice system that excludes evidence of this past victimization, forcing juries to convict the woman (Liotta, 2011).

Under these conditions there are few, if any, counselors to assist these women who lack education and work skills; thus, many women released from jail return to communities that are not able to address their needs. As the

women return to their communities, they are likely to return to activities that prompted their incarceration and thus are at an increased risk of returning to jail or prison (Weiss et al., 2010). The majority of women in prison are mothers with two or more children; about two thirds of women living with their children at the time of arrest were single parents. “Incarcerating a mother is significantly more likely to disrupt the children’s lives than the incarceration of a father. Children with incarcerated mothers, far more so than those with incarcerated fathers, are likely to be sent to live with another relative, to live alone, or to enter the foster system” (Liotta, 2011, p. 259). A focus group study of both men and women found that the most significant factors that facilitated or blocked successful reintegration into communities consisted of substance use, employment, and housing (Weiss et al., 2010). Due to the high cost of reincarceration, investigation into what works in preventing it among women is important. One such study found that state-sponsored support to address short term needs, such as housing, reduced the odds of recidivism by 83% (Weiss et al., 2010). Implementation of proven services that prevent recidivism is necessary to decrease the steady rise in incarceration rates among women.

Some researchers have argued that increased rates of female incarceration are not related to increases in criminality among women but the changes in various criminal justice policies. For example, Shelden, Brown, Miller, and Fritzler (2008) argue that a 713% increase in arrests from 1965 to 2005 comes from the war on drugs as well as police paying greater attention to domestic violence. Over the past several years the significant increase in the prosecution and incarceration of all people for using illegal drugs has significantly increased the number of women incarcerated. Shelden et al. (2008) argue further that the incarceration rate of women for assault and aggravated assault has increased because of the attention law enforcement has given to domestic violence; the very laws that were created to protect women are also being used to arrest, prosecute, and imprison women.

In law enforcement, the demographics of American police departments have changed dramatically over the past few decades in regard to race and gender. In the 1960s the vast majority of all police officers were white, working-class men. Although the majority of police officers today are still white men, more and more minorities and women are becoming police officers (Sklansky, 2006). After the 1972 amendment to the 1964 Civil Rights Act, discrimination based on race, color, sex, religion, and national origin in both public and private work places was no longer

allowed. The amendment allowed more and more women to enter policing. Their entry did not come without some resentment. The general agreement for denying women entry into policing was the belief that women possessed inherent physical and emotional weaknesses. "The greatest resistance came not from police administrators, but from the male street officer for whom the prospect of having a female partner was especially offensive" (Seklecki & Paynich, 2007, p. 19). The viewpoints held by many male police officers when women first started entering law enforcement have since changed dramatically. A recent national study by Seklecki & Paynich (2007) in the perceptions held by women police officers found that the majority of respondents felt they were treated equally compared to their male counterparts. However, 32% indicated they were treated worse than male officers when they first began their law enforcement career. The study also found that "the perception of working conditions has clearly improved as agencies have become more conscious of harassment, while remaining undeniably male influenced" (Seklecki & Paynich, 2007, p. 18). The respondents of the study confirmed the continued presence of traditional "male behaviors" such as sexually-based humor which is endemic to the profession of policing, yet the female respondents showed little to no offense to such conduct. The research suggests that female officers entered the profession of policing expecting to encounter these behaviors and consider them normal in the work setting (Seklecki & Paynich, 2007). From local police officers, sheriffs, federal law enforcement officers, and correctional officers, women function in various positions in the criminal justice system. In the past three decades, there have been dramatic increases in the number of female police officers, with tremendous variation between departments. Of women in policing, three categories of possible effects have been found to which women in the field have contributed. These include competency, community, and organizational effects. Competency effects are a distinctive set of skills and abilities that female officers bring to work which male officers often lack. Community effects are the relationships a female officer can bring to a portion of the community that was originally not represented by male counterparts. Organizational effects are the ways the addition of female officers change police in response to and treatment of the community they serve.

Advocates of increasing hiring and promotion of women claim that "women are, in fact, better officers in a range of respects: less prone to use excessive force, more skillful at defusing and de-escalating potentially violent confrontations, better at securing cooperation and trust,

and more effective in responding to incidents of domestic violence" (Sklansky, 2006, p. 1227). However, many of these arguments can be debated as quantitative evidence found that male and female officers behave in roughly similar ways (Sklansky, 2006). According to Sklansky (2006), several studies comparing performance found that female officers are slightly less proactive than male officers but substantially the same, while other studies have found no differences whatsoever. Some studies have found that female officers are less likely to use deadly or excessive force than their male counterparts, while others have found female officers may be more likely to use deadly force (Sklansky, 2006). When comparing all the research, it appears that women police officers are no better and also no worse than the male police officers; thus, the decision to hire a specific applicant should be based solely on the qualifications of the individual without taking sex into consideration. The research also indicates that the continued training of individual officers should be geared toward their specific needs. Some female officers are good at defusing potentially violent situations; others are not. Some female officers are not very capable of self-defense and appropriate levels of use of force; other female officers are exceptional at use of force and become excellent instructors to both male and female officers. Just like male officers, female officers should be scrutinized based on their individual level of expertise and not generalizations based on their sex.

As of 2002, women comprised 12% of all sworn law enforcement positions in the United States (Archbold, Hassell, & Stichman, 2010). The amount of women in upper management in law enforcement is considerably less than the overall percentage of women in law enforcement. The National Center for Women and Policing reported that in large police agencies, women hold 7.3% of top command positions, such as chief, commanders, and captains; 9.6% of supervisory positions, such as lieutenants and sergeants; and 13.5% of line operation positions. Women also represent 1% of chief of police positions across the United States (Archbold et al., 2010). At first glance, it could appear that the lack of women in the top command or supervisory level within law enforcement positions is related to discrimination, but this does not take all the facts into account. Most municipal police agencies that have 100 or more officers fall under some form of civil service law. While civil service law varies from state to state, it determines the specific rules for hiring, firing, and promoting police personnel. In Texas, municipalities under civil service law are required to promote based on a promotional test only: those who score

the highest on the test are promoted; those who fail the test are not. This is arguably not the best way to promote an officer; however, it can be argued as being the most fair. Granted that the top police positions are by appointment from the mayor or city council, the lack of women in supervisory roles within police agencies can be attributed, at least in part, to the lack of aspiration among women to seek promotion. Archbold, Hassell, and Stichman (2010) examined the promotion aspirations of female police officers. Much of the research relates to tokenism, which is described as a group that represents less than 15% of an organization's population. Research into the effects of tokenism have found that those who represent less than 15% of an organization and are termed tokens have more negative workplace experiences than those who represent 85%. A few negative effects of tokenism include feelings of isolation and polarization from the rest of the group. A study found that issues related to tokenism did influence female police officers' decisions not to participate in the promotion process (Archbold et al., 2010). One of the main reasons found for female police officers not pursuing promotion was that they were actually strongly encouraged to seek promotion by their male supervisors. Some of the female officers felt that the encouragement by their male supervisors created a perception in the organization that a woman would be promoted regardless of her competency. "The idea that any female officer would get promoted just because she was a woman further highlighted the token status of women in the police agency and, as a result, many female police officers chose not to pursue promotion" (Archbold et al., 2010, p.289).

Due to the small number of women being promoted to upper level police supervisors, Archbold et al. (2010) conducted a study of the promotional aspirations among female and male police officers to identify differences, if any, to the perceptions held by female and male police officers to seek promotion. Both male and female officers reported their reasons to seek promotion as greater career opportunities, salary increase, reaching a personal goal, and wanting to be in a leadership role. The main reasons why women chose not to participate in the promotion process were because they were happy with their current assignment, fear of interference with child and family, bias by administration, lack of interest, and a potential salary reduction. The main reasons why male officers chose not to seek promotion were because they were happy with their current assignment, fear of interference with child and family activity, salary reduction, lack of interest, and few promotion openings. The main difference in factors was that only women cited administrative bias as a factor not

to participate in the promotion process. The overall findings of the study were that female officers were less likely to aspire to promote than men. The study also showed that the perception of the officers played a role in women's aspirations to seek promotion. The perception that women receive preferential treatment in the promotion process, and the attempts by some departments to promote female officers who may not be the best candidates, can cause women to choose not to seek promotion (Archbold et al., 2010).

With the aspiration of some female police officers to become police managers, research has been conducted into the differences, if any, between male and female police managers. Andreescu and Vito (2010) examined the ideal leadership behavior of American police managers, based on a survey of 126 police managers throughout 23 states in the United States. The participants of the survey felt that the ideal leaders should "primarily be able to reconcile conflicting demands and reduce disorder in the system. Leaders should be persuasive, convincing and able to set the vision for the organization" (Andreescu & Vito, 2010, p. 579). A comparison of the type of leadership style of female and male officers found little difference in their preferences for a predominantly task-centered and structured leadership. A major difference was that female officers favored more than male officers a transformational leadership style, a more democratic, worker-oriented leader who would allow subordinates freedom of action and would respond well to the followers' concerns (Andreescu & Vito, 2010).

There is not a single aspect of the criminal justice system in which women do not play a role. Women are the victims of crime and the perpetrators of crime. Women can be addicted to narcotics and involved in petty crime to pay for their addiction. Women can also be psychopathic killers or, more likely, abused spouses who feel they are forced to kill their partner. Women incorporate all forms of law enforcement officials: defense attorneys, prosecutors, and judges. Women also encompass roles in the prison system. This article gives a brief glimpse at a few of the roles women play in the criminal justice industrial complex. Much further study is necessary in order to gain a full appreciation of what women's complete role is as compared to what it was just a few short decades ago.

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The Role of Race in the Criminal Justice System

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ABSTRACT: *This essay examines the studied effects of race in several areas within the criminal justice system. It seeks to understand how disproportionate representation of minorities at every level can affect outcomes of trials, what happens in the appeals process, and opportunities for employment upon release. The essay uses existing research, which is at times sparse, to determine the role of race on outcomes. An attempt to determine what steps need to be taken, if any, in diversifying judicial, prosecutorial, or correction officers' representation is discussed. This study also provides suggestions for future research that may allow for more effective and concrete conclusions. Ultimately, the essay explains observances made by several studies regarding the role of race in the criminal justice system and attempts to provide insight into the possible future of the relationship between diverse representation and trial outcomes.*

Race and racism in the United States are at one time many things to different people. There are those who argue that racism and disparate treatment of racial minorities exist only in the minds of some. Ann Coulter, for example, infamously declared that racism is only a problem because politicians and the media focus on it. On the July 21, 2010 episode of the Fox News show *Hannity*, she said, "We're talking about, you know, 70 million people and they can't find one genuine act of racism. . . . It shows you that we don't have racism in America any more. So just knock it off with the charges of racism." Others believe the election of President Obama in 2008 demonstrates how far America has progressed from the days of chattel slavery. Still others maintain racism has not disappeared and that the United States remains a country deeply divided along racial lines (Bonilla-Silva, 2014; Olson, 2008). Arguments supporting the claim of progress away from racism and arguments claiming that American society has a systemic racial problem are both supported and refuted by scholarly studies. Yet, according to the United States Department of Justice Bureau of Justice Statistics (2004), more than 40% of prisoners incarcerated in the United States are non-Hispanic African Americans even though African Americans comprise less than 13% of the total population in the United States. This might seem to provide definitive evidence of a racial bias in the criminal justice system. Assuming that there is a significant racial bias based solely on this comparison, however, is superficial and inaccurate. In reality, the scholarship on the subject, while at times quite limited in breadth, yields inconsistent, inconclusive, and often wildly different conclusions.

Court Actors Play a Significant Role

Much research exists detailing the racial makeup of prison populations, defendant-victim incidents, and harshness of sentencing, but many studies have inconclusive results due to the lack of sufficient research material on the subject of race and racial bias in the criminal justice system or the reliance on "small, biased, and/or unrepresentative samples" (Stroshine & Brandl, 2011, p. 361). There are several methods for attempting to fill the holes in current research, but none of them can promise accurate or meaningful results. Until the research is more complete, a true picture or clear answer to questions about racial bias may not be available. Additionally, most studies only look at things like the race of defendants and victims. Very few studies include details about the race of jurors or judge, and fewer still include data about the race of the other court actors such as prosecutors, defense attorneys, etc. (Ward, Farrell, & Rousseau, 2009). According to Ward, Farrell, and Rousseau (2009), the race of the prosecutor had a significant impact on the likelihood of incarceration among all defendants, of any race, even more so than did the race of the judges. Under-representation of African Americans in active roles in courts is pervasive throughout the United States, with many federal districts having no representation at all. Even though there is a relationship between the race of the prosecutor and the severity of the sentence, specifically the adherence to federal sentencing guidelines, not enough African American prosecutors exist to have a widespread and constant effect.

African American representation among police officers, judges, prosecutors, and other actors within the criminal justice system are well below the average of the

general population (Stroshine & Brandl, 2011; Ward et al., 2009; Crutchfield, Fernandes, & Martinez, 2010). For example, federal prosecutors range from 0–24% of districts' prosecutors with a national average of 8% (Ward et al., 2009). This is below the average general African American population, but the results are also skewed by districts with nearly no African American residents to districts with a more than 35% African American population (Ward et al., 2009). In almost every district, it seems, there are fewer African American prosecutors as a proportion to all prosecutors than there are African Americans in the district. The districts that have the highest representation of close to 24% also have African American populations over 30%. Federal judges are more in line with minority populations, but minorities are still often under-represented.

Diversification among the judiciary has the appearance of being farther along than it may actually be. High profile nominations and the presence of minorities on some of the most esteemed benches seem to imply that diversity already exists. However, 19 states have yet to seat their first African American to their highest court, according to Goelzhauser (2011). While every state has seated at least one woman to the highest state courts, even that process spanned 80 years. When federal courts seat minorities, this can pressure states to follow suit. For example, Goelzhauser (2011) has shown that states are up to 4.6 times more likely to seat a minority or female justice when one of these high-profile nominations occur. This same effect was not as noticeable when neighboring states chose to seat women and minorities, however. In the same study, Goelzhauser (2011) found that neighboring states show no effect when a female justice is seated and are actually less likely to seat an African American when a neighbor seats an African American justice. This helps explain why so many states have not yet seated an African American justice. Evidence shows that even when an African American judge is presiding, sentencing and likelihood of incarceration among African American defendants is not significantly different than when a Caucasian judge is presiding. Why, then, is it important to have judicial diversity?

Attempting to maintain a diverse bench simply because it is more representative of the population is too simplistic. While it is important to attempt to mirror the population in order to increase the legitimacy of the court, as is the case in other branches of the government, the most important benefit according to Milligan (2006) and others is the increased awareness of different perspectives that comes from having a diverse bench. Milli-

gan (2006) argues that judicial diversity is beneficial not because of the decisions of a single judge, but because "a diverse judiciary is more likely to comprehend and grapple with the full range of potential resolutions, and thus arrive at better legal answers about political morality" (p. 1210). She argues that when taken in aggregate, judicial diversity leads to a better understanding of multiple facets of political morality and a greater ability to understand multiple viewpoints, not just their own. Diversity can create this effect through panels of judges, but also through interactions among and between individual judges. This will lead to better judicial results, according to Milligan. Evidence from other studies seems to support Milligan's claims, as well (Cox & Miles, 2008; Sisk, Heise, & Morriss 1998). Again, the individual decisions of each judge are not significantly biased, as detailed in Ward et al. (2009) and Goelzhauser's (2011) separate studies, but the decisions in aggregate can benefit from added diversity. The same cannot be said for the decisions of those making the arrests, however.

Taking It to the Streets

One difficult aspect of dealing with the impact of race within the criminal justice system is that there are many opportunities for racial bias to have an impact. Sometimes, the simple act of deciding whether or not to stop a motorist or otherwise to interact with the public can lead to a number of other interactions within the system. That initial decision by an officer, whether or not based on a racial bias, essentially introduces that person into the system. The officer, then, has a significant role in this system as well. Whether it is simply deciding to make a traffic stop, arresting someone in violation of a particular crime while letting an accomplice get away, or choosing to let one adolescent get by with a transgression while arresting another for a similar crime, these officers are the impetus for any courtroom actions that follow. Without the arrest, the actions and biases of the judges and prosecutors that would follow are irrelevant. How does the officer's race affect that initial decision?

Brown and Frank (2007) detail in their research the impetus and results of diversification among police officers. As with judgeships and other areas of the political sphere, diversification was seen as a way to legitimize the police force and perhaps improve relations between police and minority groups. However, the scholarship refutes this idea (Brown & Frank, 2007). Several reasons for this might exist. Some research shows that the types

of people who enter into law enforcement, regardless of race, are not necessarily representative of the minority groups they serve (Smith, 2003). Smith (2003) posits that even though African American officers are thought of as being more knowledgeable of minority communities in general, this is not always the case. Additionally, while many assume that an African American officer will be more lenient on a suspect of the same race, the research shows that the officer is more aggressive and more likely to make an arrest (Brown & Frank, 2007). African American officers are less likely to make an arrest overall, but that is not the case when the suspect is also a minority (Brown & Frank, 2007). Again, multiple reasons could exist for this behavior. One widely held view is that African American officers are more aggressive with regards to confronting and seeking out minority suspects and more likely to arrest or treat a minority suspect harshly in order to keep their loyalty to the establishment intact (Stroshine & Brandl, 2011; Brown & Frank, 2007; Smith, 2003). While some studies (Smith, 2003; Walker & Katz, 2002) show that an officer's behaviors do not depend heavily on race, Brown and Frank (2003) show that there is some significance regarding arrest rates and race.

Making an arrest is the beginning of a potentially long process within the criminal justice system. A much shorter process is based on officer-involved homicides. Smith (2003) details how race may or may not play a role in these fatal encounters. There is a significant gap in available data regarding officer-involved shootings and homicides. There is no national database, and many departments report no data whatsoever to the Bureau of Justice Statistics regarding officer-involved shootings and homicides. While race could very well play a role in officer-involved homicides, the limited research available does not necessarily indicate such bias. Smith's (2003) study shows, in fact, that officer race is essentially unrelated to officer-involved homicides. The more important factors in some instances are officer gender, specifically in cities with populations between 100,000 and 250,000 people, and the proportion of minority citizens within any city (Smith, 2003). In medium-sized cities, female officers are actually more likely to be involved in a homicide, which is the opposite of what Smith (2003) expected. The more African Americans or Blacks there were in any given population, the higher the incidence of officer-involved homicide. It is not the officer's race, then, that might determine the likelihood of homicide, but race does have a significant effect on officer-involved homicide.

Another long-lasting effect, which sometimes takes a tremendous amount of time to complete, is the execution of suspects convicted of heinous crimes and sentenced to death. Petrie and Coverdill (2010) explore the effect of race on death row inmates in terms of their likelihood of actually being executed or being granted sentence relief. Other studies have sought to determine if race is a determinant of being sentenced to death, but most don't include the potential for sentence relief, whereby a prisoner might be allowed to leave death row while still carrying out a life sentence or some other alternative (Petrie & Coverdill, 2010). Race of the victim is important, as well, as suspects convicted of murder are more likely to receive the death penalty if their victim is White (Petrie & Coverdill, 2010). The authors hypothesize that an African American or Hispanic convict is less likely to receive sentence relief and more likely to be executed. However, other studies show that because the death penalty is pursued more often in cases involving a minority suspect (e.g., the death penalty is pursued in one case of a particular crime with a Black suspect whereas a similar case with a White suspect is only tried with the potential for life in prison), there is a greater opportunity for minorities to win in an appeals process (Paternoster, Brame, & Bacon, 2008). Petrie and Coverdill (2010) understand that potential, and their findings were somewhat split. While race did not have a significant impact on who was actually executed, their results did support the idea that minorities were less likely to receive sentence relief (Petrie & Coverdill, 2010). They found also that minorities have a lower likelihood of execution altogether, but this is due to longer stays on death row rather than sentence relief. The end result was usually the same as other death row inmates, in that execution was more likely than sentence relief. The longer periods on death row could be a function of quality or lack of quality of representation throughout the appeals process. The results of their research indicate that the appeals process could take longer for those cases involving minorities.

Jury of Peers

There is one role in the criminal justice system that has a profound impact in the system, but is perhaps the most inexperienced group in it. Juries are comprised of citizens within a county, precinct, or district who are often uninvolved in the legal system otherwise. However, this group of "everyday" men and women can very of-

ten have a significant and lasting impact on the lives of many. Juries are the subject of much research but oftentimes for the purpose of providing advice and options to trial counsel during jury selection (Ashton, 2012). The studies done to determine how the jury responds to race and what racial biases they may have are somewhat limited. Brewer (2004) and Levinson (2007) provide insight into the impact of the race of each juror or the racial makeup of the jury together. Levinson finds that racial biases are often present, albeit in the subconscious. A juror might explicitly state that he is for equal treatment regardless of race, but his actions or decisions implicitly show that bias exists (Levinson, 2007). Brewer (2004) shows that race has a significant impact on a juror's receptivity to mitigating factors within a case. For example, if a person has been convicted of a crime, and is awaiting a sentence of either life in prison or the death penalty, minority jurors are more likely to consider mitigating factors and treat them with some importance. That is not to say, however, that African American jurors are less likely to favor the death penalty, but research shows that they do so having given more consideration to the mitigating evidence (Brewer, 2004). Caucasian jurors, according to research, are less likely to give merit to mitigating evidence. Regardless of race, it seems that many jurors have a predisposition to a certain verdict that they choose very early on, and even in circumstances where there are opportunities to change their opinion, most jurors do not.

Levinson's (2007) research on bias of jurors shows that regardless of race, most people adhere to certain implicit biases. For example, a juror might misremember a certain fact about a case in a way that lends itself to a bias such as source attribution errors in which an aggressive act is attributed to an African American rather than a Caucasian suspect (Levinson, 2007). This may happen even when the juror is African American himself. How does this happen? What can be done to combat implicit bias? Levinson (2007) argues that trying to control and change implicit bias is extremely difficult, and sometimes impossible. Levinson's study demonstrated that when the same story involving an altercation is told in multiple ways with the only change being the race of the main character, it was easier for all participants, regardless of race, to successfully remember aggressive actions when they were performed by an African American character (Levinson, 2007). This indicates that people on a diverse jury may misremember things in specific, systematic ways. If the jury is to be charged with deciding the accused's fate, and they do so with a litany of incorrect information, how can

justice be served? Levinson (2007) also shows that group decision-making processes do not necessarily change individual decisions, but he does contend that a diverse jury is more likely to overcome implicit memory biases than homogeneous juries. Levinson (2007) cites research that shows in mock juries, heterogeneous juries are more likely to remember facts correctly, and they are also more willing to correct errors than homogeneous juries. Levinson (2007) argues that "so long as implicit biases go unchecked in legal decisionmaking, it is hard to be confident that social justice is at hand" (p. 421). His point is supported by research, but his research offers no real solution.

Perhaps one solution is working harder to understand from where the implicit biases come. What is the origin of such biases, and can understanding that origin improve the likelihood of eliminating them? Saperstein and Penner (2010) address the issue of race as a changeable state. They claim that incarceration in or interaction with the criminal justice system can color race and alter it, changing even one's own self-perception. The authors assert that African Americans have been wildly overrepresented in prison populations for more than a century, and Crutchfield, Fernandes, and Martinez (2010) imply in their research that this could be based on the absence of slavery post-bellum. Especially in the South, it is absolutely the case that African Americans were incarcerated at a much higher rate after the Civil War (Crutchfield et al., 2010). During slavery, most Blacks were slaves, and to incarcerate a slave was to punish his master by removing his property. For this reason, most punishment of slaves was left up to their masters. After the Civil War and the Emancipation Proclamation, the southern economy needed a way to replace the incredible amount of free labor they lost. One way to do this was to incarcerate African Americans and force them to work on the same plantations that were worked by slaves. The state justified this action by creating leases for plantation owners to purchase in order to farm out this prison workforce. According to Saperstein and Penner (2010), this early incarceration could lend itself to future racial biases and the "darkening" of a specific group of people. Tying this to Levinson's (2007) research, then, it is understandable that implicit biases exist to support the societal hierarchy of today.

The War on Blacks?

The existing societal hierarchy lends itself to continued overrepresentation of African Americans in prisons today. Crutchfield et al. (2010) find that in every single

state, African Americans are grossly overrepresented in penitentiaries. Studies cited by Crutchfield et al. (2010) and their own research confirm that 80% of this overrepresentation seems to be justified due to a greater likelihood of African Americans' participation in criminal acts, although the reasons for this increased likelihood is not discussed in detail. However, there are some exceptions. The war on drugs is cited as one potential avenue for extreme disparity due to race. Both Latinos and African Americans are 50% more likely to be searched for contraband without having any greater likelihood of actually having contraband compared to Whites (Crutchfield et al., 2010, p. 921). Fellner (2009) focuses on the effects of the war on drugs and the disparity of arrests by race. He shows that although African Americans are estimated to account for 13–20% of drug offenders, they are three to five times more likely to be arrested for drug charges than their White counterparts.

As the other studies showed, once stopped, once searched, minorities are also at a higher probability of being arrested. In prison, the disproportionate representation seems only to be within the prison population. Only 13% of prison wardens are African American, nationwide, which is actually fairly representative of the general population, but it is well below the representation of minorities within the prison system (Hickman & Reaves, 2006). Prison guards are also less likely to be fairly represented. However, this varies heavily depending on the location of the facility. The variation is heavily dependent on the number of African American residents as a percentage of the total population. In areas where there is a greater representation of African American officers, guards, judges, and wardens, there is usually a significantly higher representation of African Americans within the total population of those areas. The effect of this is that even in communities with a large number of African American residents, there is still underrepresentation in key roles within the criminal justice system (Stroshine & Brandl, 2011; Crutchfield et al., 2010; Farrell et al., 2009; Hickman & Reaves, 2006). Overall, with both corrections officers and police officers, women and minorities are underrepresented in most populations. Nationwide averages are around 15% representation by

racial and ethnic minorities and 15% by women (Hickman & Reaves, 2006). Diversification in guards or wardens, however, will not alleviate the problem of implicit bias or erase the 20% of overrepresentation that cannot be justified by increased participation in crime by African Americans or other minorities.

Going Forward

As studies show, diversity within the courtroom, be it judges, attorneys, or jurors, can provide decision makers with a greater opportunity to make good decisions with more facts relevant to cases (Hirschman & Greeley, 2009). Implicit biases still exist though, and other research confirms that even when juries are given a chance to change their opinions, they often do not change them (Levinson 2007). Perhaps the best way to work toward eliminating implicit biases is to work more closely with ethnic and racial minorities and work to understand them and their perspectives better. As Levinson (2007) shows in his research, working to understand the “out-group members” will lead to less prejudice overall, and this is not a temporary effect. When working with people from backgrounds and perspectives unfamiliar to your own, a greater understanding will occur. According to Levinson (2007), “this work reaffirms that exposure to people across groups acts to reduce biases, particularly under optimal conditions” (p. 416). Human nature is impossible to change, and for centuries, part of that nature was the subjugation and mistreatment of minorities, including women. The only way to truly eliminate that implicit bias is to continue to work to better understand every group on earth, no matter how different they are. Perhaps at that point, we can check those implicit biases in legal decision-making and be confident that social justice is at hand.

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Prison Labor

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ABSTRACT: *Inmate work has been an important feature of prison systems in the United States since the colonial period, and work has been seen as a method to accomplish several correctional objectives. Prison labor was initiated for disciplinary reasons and retribution in the seventeenth and eighteenth centuries, extended and expanded for financial profit with the development of the industrial prison in the nineteenth, and maintained for its alleged therapeutic and educational value as a part of rehabilitation in the twentieth and twenty-first centuries.*

Introduction

The Department [of Criminal Justice] shall *require* [emphasis added] each inmate . . . to work in an agricultural, industrial, or other work program to the extent that the inmate . . . is physically and mentally capable of working.
(Participation in work program required, 1999)

Work programs are ubiquitous in prisons and jails across the nation. Such programs are popular with policymakers and the public alike. Governors and legislators favor work programs as sound economics because offenders' work offsets the cost of their incarceration, which, in turn, pleases taxpayers. Prison wardens and the public endorse work for inmates as a method of avoiding idleness. The security of the institutions is enhanced by reducing inactivity and keeping the offenders occupied. Rehabilitation is also bolstered by work programs. Just as offenders deal with addictions, anger, and ignorance through treatment programs, they must also develop a work ethic. This positive work ethic is essential to successful offender rehabilitation (Johnson, Bennett, & Flanagan, 1977). "A constructive member of a community is, by definition, a working member" (Hawkins, 1976, p. 115). Successful offender reintegration into society, therefore, requires that he or she must not only possess but illustrate a good work ethic (Hawkins, 1976). Those offenders who are employed have fewer disciplinary infractions in prison, obtain better jobs when released, and recidivate less than do unemployed prisoners (Johnson et al., 1997).

Forcing criminals to atone for their misdeeds through labor is a practice that dates back many centuries (Gaes, Flanagan, Motiuk, & Stewart, 1999). Religious explanations encompassed every facet of human existence prior to the Age of Enlightenment in the West, and the "lawbreaker" was viewed as a sinner fallen from the grace of God. Hard labor was seen as an agent of change for both this life and the hereafter. A sentence to labor enabled offenders to earn back the grace of God and forgiveness for their sins. Slavery and servitude were considered forms of restitution; the offender was required to work in order to restore the balance of society that was disrupted by the person's misdeeds. Although no longer the dominant motivation, religious beliefs were the bedrock of the institutionalized inmates' work in prison, although other justifications were eventually grafted onto or replaced the original premise (Johnstone, 1992).

Confluence of Work and Imprisonment

Work in and of itself is viewed by modern societies as valuable because it is a primary source of identity, status, and access to goods. It is even recognized as a right under the United Nations' Universal Declaration of Human Rights (United Nations, 1948). The work individuals perform focuses their attention and energies, gives their lives structure, meaning, and direction, and situates them in social relations with other individuals. The character and quality of work that individuals have access to and perform, perhaps more than anything else, determine how they are perceived by others and how they perceive

themselves (Lippke, 1998). This is no less true of prisoners than those in the outside world, although courts have consistently stated that there is no constitutional right to prison employment for either federal or state prisoners, much less a right to a specific type of work (*Inmates of Occoquan v. Barry*, 1988; *Carter v. Tucker*, 2003; *Shabazz v. Cole*, 1999). Conversely, the majority of courts have held that requiring inmates to work does not violate the Eighth Amendment prohibition against cruel and unusual punishment (even when the sentence does not include either the word, “labor,” or the phrase, “hard labor,”) or the Thirteenth Amendment prohibition against involuntary servitude by the federal government (*Fallis v. United States*, 1967), by states (*Lymon v. Aramark Corp.*, 2010), by counties (*Canell v. Multnomah County*, 2001), or by cities (*City of Topeka v. Boutwell*, 1894).

Those who violate society’s rules have been dealt with in many ways. Until fairly recently, punishment was harsh; criminals were exiled, enslaved, tortured, mutilated, or executed. Public humiliation was also a common form of punishment. The use of the stocks, the pillory, and the ducking stool are examples of this form of punishment. Public humiliation is still used in some parts of the world today (Flanders, 2007). The use of imprisonment for the purpose of offender treatment is relatively new, dating back no further than the last quarter of the eighteenth century. The use of incarceration is thought to be a more humane form of punishment when compared to the aforementioned methods. Of course, jails and prisons of various kinds have been in existence for hundreds of years, but it was only 200 years ago that they were used for anything other than places of detention for debtors, religious or political offenders, and those awaiting trial and other, often harsher punishment (Barnes, 1921). Of even more recent vintage is the concept of incarceration as an element of rehabilitation (Hawkins, 1976).

Critical to the philosophy of imprisonment as treatment is implementation of the “work” element. Work has been an important feature of prison systems in the United States since the colonial period (Conley, 2001). American prisoners have always worked, and forcing them to work has been a way to accomplish several correctional objectives. Historically, labor was a central part of punishment. It was even a popular belief at one time that prisoners’ labor was legally forfeited as a result of their criminality and that the state could expect to profit from their incarceration (Hawkins, 1976). Historians have documented that prison labor was initiated for disciplinary reasons in the seventeenth and eighteenth centuries, extended and expanded for financial profit with the development of the

industrial prison in the nineteenth, and maintained for its alleged therapeutic and educational value in the twentieth and twenty-first centuries (Conley, 2001).

In addition to the other benefits, work in prison is a management tool. It alleviates the tedium and boredom of prison and reduces the amount of idle time that inmates may use counterproductively (Potuto, 1986).

As a group, prisoners lack many essential abilities that produce success in the workplace. Therefore, work programs must impart meaningful employment skills and habits to prisoners. . . . Besides acquiring skills and habits that increase chances for future employment, working inmates acquire social and personal competence. Released prisoners must believe that they can be good workers and must have the ability to interact with fellow workers. Work programs help cultivate these abilities. (Phelan, 1997, p. 5)

A Federal Bureau of Prisons study shows that employed inmates have fewer disciplinary infractions in prison, get better jobs when released, and stay out of trouble with the law longer than do unemployed prisoners (Saylor & Gaes, 1992). Research has also consistently shown that if parolees can find decent jobs as soon as possible after release, they are less likely to return to crime and to prison (Petersilia, 2003). Other studies have also supported that the prison work experience reduces recidivism (McHutchison, 1995; Saylor & Gaes, 1992/1997). Investments in prison industries can lower expenditures of day-to-day prison operations and decrease the likelihood of having to expend resources to quell disturbances (Roberts, 1996). Moreover, prison work programs enable inmates to produce items of value for the government. Sale of these products, in turn, generates revenue that can be used to offset expenses that would otherwise have to be met through appropriated funds. Above all, they provide offenders with the skills necessary to remain free from crime upon release. With prison populations continually on the rise, any solution that has the potential to decrease levels of recidivism is an appealing one. Something, however, must also be in place within the prison to accommodate the surge of an increasing percentage of inmates with histories of violence. Prison work programs are just such the accommodation; they have helped ease tensions and avert volatile situations. Prisons without meaningful activities for inmates are dangerous prisons, and dangerous prisons are expensive prisons. The work and education programs that are incorporated into prison industries have played an essential role in protecting lives, preserving stability, and saving money in America’s prisons (Phelan, 1997).

Ultimately, the incorporation of labor into the prison system seems only logical since work is seen as having many therapeutic qualities. Whether it is used as a remedy for idleness, to shift the inmate's world view, or just simply to generate revenue, work within prisons programs have broad appeal, yet at the same time, the programs are seen as controversial if they displace workers in the free world. In order to truly understand the nature of prison industries, attention must be devoted to the concept of labor and the philosophy of its application in the criminal justice system.

Justification for Labor

Historically, prisons have been perceived as solitary fortresses kept separate from the regular society. The day-to-day operations that take place behind their vast walls traditionally have been shielded from the public eye. Prisons have been characterized as total institutions unaffected by the events that occur outside their walls. In reality, nothing could be further from the truth. The same social forces that have influenced change throughout history have also had a substantial impact within prison walls, particularly concerning elements of punishment. Ideally, punishment is to accomplish multiple objectives, although exactly what constitutes those objectives has fluctuated in relation to outside social forces such as the civil rights movement or economics. Almost from the very beginning of the history of punishment by organized societies, and still prominent today, is the incorporation of labor in the punishment phase, especially for those who are imprisoned. Although the underlying philosophy for its use has changed, its role in the process has remained stable. Traditionally, the incorporation of labor in incarceration has been based on three primary reasons or rationalizations—religion, administrative, and practicality or some meld thereof. All employ some variation of practicality that labor is a functional component that works to benefit a larger group as opposed to just the benefit of the individual.

Initially, the inclusion of labor as punishment was based in religion. Prior to the Age of Enlightenment, religion and religious explanation encompassed every facet of human existence. Laws were considered to be ordained by God. They were essentially codes of conduct by which to live. The "law-breaker" was a sinner fallen from the grace of God. To restore the community that was affected by the sinner's actions, leaders sought guidance from the Bible.

Punishment was corporal in nature and encompassed a myriad of actions including dismemberment or death.

After the Age of Enlightenment, religion, while less important overall in the secular realm, still maintained an influential presence in the criminal justice system. While the criminal was no longer primarily viewed as directly disobeying the word of God, he or she was viewed as falling victim to the "sins" of society. The result of this victimization meant fewer contributions on the part of the criminal to society as a whole, and in an era marked by extreme economic growth, any reduction in individual industriousness or contribution was seen as a major threat to progress. Thus, in the eyes of leaders, waste of time was viewed as the first and the deadliest of sins. Loss of time through socializing, idle talk, or even more sleep than is necessary for health was worthy of absolute moral condemnation (Anderson, Logio, & Taylor, 2001). This perception was the basis for the old adage, "idle hands are the devil's tools." To remedy such idleness, criminals were sentenced to work in conjunction with solitary confinement to encourage personal reflection and penance.

Labor was seen as an agent of change, or at the very minimum, it would occupy the prisoner's time and prevent idleness. Ultimately, the reward for consistent industriousness would be the grace of God and the promise of everlasting rest in the Hereafter. This belief was bolstered by Calvinistic Theology that was so dear to the hearts of the Puritans. At the center of Calvinism is the concept and goal of the glory of God; that is, everything that everyone does should somehow add to God's glory. An additional element of Calvinistic theology that provided the foundation for the Protestant ethic is the concept of the "calling" or using one's secular occupation—farmer, merchant, soldier, king, or housewife—to glorify God. This taught people not to despise or belittle their job or role in life but instead to see their labor as a "calling" by God. This belief resulted in what Weber called "ascetic Protestantism" or a life of strict discipline (Johnstone, 1992).

Work was not only the best protection against an evil, immoral life but also the best means for glorifying God, and hard work in one's calling evidenced discipline and devotion. Calvinism heavily influenced the objectives of punishment. For the offender, work was seen as having several benefits. A sentence to labor would enable offenders to earn back the grace of God and forgiveness for their sins, and in doing so, they are also being equipped with the skills to be contributing members of society. Although no longer the dominant justification, religious beliefs imprinted their essence in the institutionalization of work in prison.

Over time, religious justifications gave way to emerging social and economic forces. Before there were prisons, reformatories, or penitentiaries in the forms known today, there were workhouses or houses of correction, found primarily in Northern Europe and the Germanic states, that were designed to help the poor; these were separate and apart from the places of detention or prisons such as the Bastille in France and the Tower of London that held political or religious offenders (Jackson, 1927).

In the view of society and those in authority, the majority of those in the workhouses had proven themselves to be parasites who stole and begged from others because they were too lazy or otherwise unwilling to earn an honest wage to support themselves. Imprisonment was meant to correct their wrongful ideas through a regime of forced labor that would inculcate the virtues of industriousness, obedience, and punctuality and also train offenders in a particular occupation in order that they could find work following release (Constantine, 2006). Thus, work was considered an effective and economical rehabilitation tool.

European workhouses were never really accepted in the United States. Religiously-inspired reformers sought a more humanitarian approach to imprisonment. They believed that criminals lacked respect for authority and proper work habits and that changing these criminals could be accomplished only through a system of penal discipline emphasizing penance through solitary confinement and labor (Shelden & Brown, 2003). The belief in the positive benefits of work for both individual and society also reflected a more deep-set and widespread belief in the positive value of industriousness. Industriousness was not only the main indicator of health, but the means to cure; just as the indolence of beggars and vagrants could be associated with mental illness, so industriousness was a sign of mental well-being (Constantine, 2006).

Penal institutions were no different; however, by providing the offender with his or her basic needs such as food, shelter, and clothing, it was believed the institution was only reinforcing the offender's negative perceptions of work. The solution was simple: require them to work. This mandate would instill proper work habits and could possibly prove profitable for the prison. At this time, agricultural work was not only favored because it appeared to offer the best hope of rehabilitating offenders, but also because it made financial sense (Constantine, 2006). Farming on site meant inmates could grow their own food and produce surplus to sell, further lowering the cost of their imprisonment.

With the rise of the city, the once dominant agrarian society gave way to the industrial age. Cities provided tremendous markets for manufactured goods and spurred the need for labor. Punishment of criminals changed to meet the demands created by these social conditions. Poor laws, developed at the end of the sixteenth century, required that the poor, vagrants, and vagabonds be put to work in public or private enterprise (Mumford, 1961).

Institutions adopting this ideology attempted to produce ideal workers for the factory system. As a method of punishment, these protocols were ideally suited for an emerging capitalist society because they attempted to inculcate habits of hard work, punctuality, and obedience (Shelden & Brown, 2003). It was argued that because criminals gain from their misdeeds, it was both fair and just to demand that they reimburse society for its loss caused by their crimes and thus restore the social balance (Hawkins, 1976). To help meet these goals, the courts levy fines against offenders and require restitution to victims. The revenue from prisoner-produced goods and services could be used to meet these financial responsibilities (Reynolds, 2001). Besides financial practicality, making labor a stipulation of punishment was believed to possess deterrent effects. The argument states that "hard labor while wearing stripes" is an efficient means of deterring future crime or of balancing the scales of retribution by imposing work as punishment (Johnson, 1972).

Shortly after the first penitentiaries appeared, prison administrators realized that inmates needed some way to productively occupy their time. The prolonged idleness and minimal contact with other people reputedly caused many prisoners to suffer mental breakdowns. To make the isolation less severe and to help convicts prepare for honest employment after release, officials permitted inmates to work by themselves at various occupations such as shoemaking, weaving, tailoring, and polishing marble in their individual cells (Roberts, 1996).

Unlike the workhouse, the penitentiary initially called for solitary confinement without work. It was believed that this method (known as the Pennsylvania System) would result in a quick reformation or penance. The effects of this isolation instead produced severe physical and psychological trauma. To remedy this situation moral and religious instruction was provided to the prisoner. Work was also scheduled for eight to ten hours a day. The prisoner remained in isolation but worked on piecework or handicrafts in his cell. The Auburn System of solitary confinement was developed in New York. This system housed prisoners in single cells but forced them to work in a large area for group labor while in a condition of enforced silence

(Johnston, 2004). This system offered the ability to organize prison labor much like an industrial factory. Prison officials anticipated that they could show that government agencies could be self-supporting and, in some cases, even earn a profit. Officials believed that the prisoners could and would work for the benefit of the state. Utilizing this prison industry model, the inmates would first construct the prison itself and would then work in prison factories to pay for the cost of their incarceration (Conley, 2001).

Several attempts were made to make prison labor profitable, but the programs failed to generate enough revenue to offset costs. Despite this failure, labor within the prison remained standard operating procedure. Prison industry programs had proven that they were capable of generating revenue to reduce the cost of incarceration, but they remained subject to strict scrutiny and regulation that significantly impaired their ability to be cost effective. Above all, labor had remained a static element in the prison system because meaningful work programs were the most powerful tool prison administrators had to manage the inmate population (Roberts, 2005). Absence of work leads to moral and physical degradation and corrupts institutional order (Johnson, 1972).

Administrators have reported many times that large groups of idle prisoners create a constantly hazardous situation. The destructive effect of long periods of idleness in prison is in turn one of the major causes of the unrest and tensions underlying costly and destructive outbreaks of violence and destruction (Roberts, 1996). Prison officials have attested that prisoners who work behave better. A federal Post Release Employment Project (PREP) study confirms that employed prisoners do better both inside and outside of prison than those who do not work (Reynolds, 2001). The common theme present in most administrative justifications is that work is a valuable and effective management tool that is critical for institutional order.

Labor has been and is seen as both a punishment and as an obligation imposed on the prisoner. The opportunity to work was advocated in the spirit of charity to help the prisoner avoid the moral and physical degradation of idleness (Johnson, 1972). Whatever the source of their beliefs, the public believes that prisoners should work (Hawkins, 1976). During periods of unemployment, however, the public resists prisoners taking jobs from law-abiding citizens (Fox, 1983). Work with the prison should be productive, but not in competition with free-enterprise outside. For this reason, prison industry has come under constant fire throughout history. This criticism has continually forced prison industry programs to review and revise their missions and objectives over the years.

Work In Prisons

The task of tracing the historical roots of penology can be a daunting one. Although the concept of imprisonment is considered a relatively modern invention, the use of labor as punishment is not. Forcing criminals to atone for their misdeeds through labor is a practice that dates back many centuries to “the dawn of civilization” when the pharaohs, the Chinese, and the Romans forced their criminals into slavery in iron and salt mines, and Athenian convicts labored in mines, on galleys, and in building fortifications (Jackson, 1927, p. 219).

Slavery and servitude were considered forms of retribution. The offender was required to work in order to restore the balance of society that was disrupted by his or her misdeeds. Furthermore, servitude was much more appealing than some of the other alternatives historically practiced, including imprisonment. The penal institutions at this time were foul places devoid of proper care, food, or medical treatment. The jailer, usually a “shire reeve,” ran the jail under the “fee system.” This system required inmates to pay for their own food and services, and those who could not pay were fed scraps until they literally starved to death. The following excerpt provides a description of the typical experience in one of these institutions:

Admission to Southwork prison was eleven shillings and four pence. Having got in, the prisoner had to pay for having him put in irons, for his bed, for his room if he was able to afford a separate room. He had to pay for his food, and when he had paid his debts and was ready to go out, he had to pay for having his irons struck off, and a discharge fee.
(Wilson, 1934, p. 186)

Thus, a sentence to servitude was a more preferred disposition than the possible alternative. Each of the punishments involved labor; however, imprisonment had a higher likelihood of death.

Over time, the potential profitability of convict labor was realized. The seeds of labor were sown in the creation of the workhouses or “bridewells,” named after England’s Bridewell Prison, opened in 1557 as a workhouse. Work was institutionalized for minor offenders in order to, as a Dutch proverb often quoted by noted penologist John Howard stated, “Make men diligent, and you will make them honest” (Wines, 1919, p. 115). Convict labor became a very lucrative commodity when European colonies experienced a constant shortage of labor that prompted authorities to transport convicts overseas in an

effort to fill the void. In England, an Order in Council of 1617 granted a reprieve and stay of execution to people convicted of robbery and other felonies who were strong enough to be employed overseas (Ignatieff, 1981). Shipments of convicts to the American colonies began in 1618, spurred by legislation that granted land to colonists who imported convicts (Orland, 1975).

Transporting convicts to the colonies became popular; the practice supplied labor, cost little, and was actually profitable for the government because manufacturers, farmers, and plantation owners paid for convicts' services (Sellin, 1976). By custom, the convict, upon his or her arrival, assumed the status of indentured servant rather than convict. The terms of penal indenture, ranging from one to five years, were fixed by the colonial legislatures. At the conclusion of the bondage term, the servant was customarily freed and supplied with tools and, occasionally, with land (Orland, 1975). Besides being profitable for the government, this practice showed rehabilitative potential. By employing convict labor to help establish the foundations of a new society, it also insured the offender would possess a more substantial stake in the community. Overall, the practice was very successful and continued for nearly 150 years. Criminals were removed from Europe while aiding in the development of North America. When the colonies won their independence, however, this method of European aid was severed.

The Revolution ended the transportation of felons to the United States. As a result, the Founding Fathers were forced to develop a system of justice including methods of punishment. Although the precursors of the modern prisons with separation of prisoners into cells, with labor by the inmates as the rule, and with reformation as a chief aim of the incarceration existed at the papal prison of San Michele in Rome, established approximately in 1703, and the Belgian prison at Ghent, established in 1773, imprisonment itself was rarely employed as a method of punishment (Barnes, 1921). Incarceration, in the tradition of the English workhouse, developed in the immediate aftermath of the Revolution. A group of prominent Pennsylvania citizens including Benjamin Franklin, Dr. Benjamin Rush, and William Bradford came together to update the state's very harsh Criminal Code of 1718 including punishment (Shelden & Brown, 2003). The new statutes authorized a penalty of hard labor to be "publicly and disgracefully imposed" for certain crimes. Prisoners were sentenced to perform hard labor in the "streets of cities and towns, and upon the highways of the open country and other public works" (Statutes at Large of Pennsylvania, 1786). It was believed that humil-

iation through public degradation would act as a rather convincing deterrent to criminal behavior as well as to provide for "benefit of the public and the reparation of injuries done to private persons" (Statutes at Large of Pennsylvania, 1786).

The punishment, however, had unintended consequences; convicts began to draw crowds of jeering but sympathetic people (Shelden & Brown, 2003). In response, a group led by Benjamin Franklin and Dr. Benjamin Rush organized the Philadelphia Society for Alleviating the Miseries of Public Prisoners. The Society's first action was to petition the Pennsylvania Executive Council to declare that the only desirable method of penal reform was "solitary confinement at hard labor" (Fox, 1972, p. 141). The Pennsylvania legislature responded, in 1789, by designating the Walnut Street Jail as a place for the reception of serious offenders from all parts of the Commonwealth (Orland, 1975). In addition, a revised Pennsylvania criminal code incorporated the principles established by William Penn in 1682 that forbade torture, the capricious use of mutilation, and physical punishment (Hay, 1980). These penalties were replaced with imprisonment at hard labor, moderate flogging, fines, and forfeiture of property. All lands and goods belonging to felons were to be used to make restitution to the victims of crimes, with restitution being limited to twice the value of the damages (Lewis, 1967).

Felons who owned no property were required by law to work in the prison workhouse until the victim was compensated. The Pennsylvania criminal codes also placed a strong emphasis on accountability and restitution. Reformers believed the prisoner should be rehabilitated and re-educated and should be allowed to earn his or her freedom while learning a specific trade (Shelden & Brown, 2003). Society was holding the offender accountable for his or her crimes. He or she alone would be responsible for the reformation of his or her character through a regime of hard labor. In order to gain freedom from imprisonment, the person would have to demonstrate a devotion to law-abiding life through hard work that, in turn, would generate revenue to compensate the victims. Being allowed to work was a reward for cooperative offenders. It also aided in breaking the boredom of isolation (Quinn, 2003). In advocating the adoption of labor in penal methods, it was argued that the financial and disciplinary advantages go hand in hand (Hiller, 1915).

The subsequent penal institutes were conceived as places where criminal offenders would be isolated from the bad influences of society and from one another so that, while engaged in productive labor, they could reflect

on their past misdeeds, repent, and be reformed (Shelden & Brown, 2003). After reformation occurred, the offender would re-enter the community as a useful and productive citizen. Prominent leaders of the time were in complete agreement that reformation was the key to discouraging criminal behavior.

A division, however, occurred among reformers as to the way in which reformation was to be accomplished. Proponents of the Auburn System that emphasized work in association with other prisoners maintained that inmates first had to be “broken” and then socialized by means of a rigid discipline of congregate, but silent, labor. They argued that the silent system cost less, efficiently tapped convict labor, and developed individuals who eventually would be able to return to the community with the discipline necessary for the industrial age. The Pennsylvanians responded that New York had sacrificed the principal goal of the penitentiary (reformation) to the accessory goal (cost-effectiveness) and contended that exploiting inmates through large-scale industry failed to promote the work ethic and instead merely embittered the prisoners (Fox, 1972).

Eventually, the solitary labor system set up under the Pennsylvania System was seen as antiquated because it was not as efficient as the contrasting congregate labor utilized in the Auburn System (Fox, 1972).

Prison factories during the nineteenth century produced shoes, barrels, carpets, engines, boilers, harnesses, clothing, and furniture—goods that could not be produced at all under the solitary system or not in quantities sufficient to generate significant revenue (Roberts, 1996). The congregate system became the model for the American penitentiary at least partially because workers were in short supply, and the Auburn System fit nicely within the larger structure of capitalism, characterized as it was by the need for cheap labor (Shelden & Brown, 2003; Johnson, 2002).

Much of the history of work by prisoners revolves around the search for suitable ways to occupy inmates’ time while also serving the financial interests of forces outside the walls. The term “prison industry” conjures up images of factory assembly-line production, stoop labor in fields, or chain gangs working on roads; however, inmate work encompasses much more than that. Two programs implemented in California illustrate the variety of the nature of work behind walls, although other states’ programs incorporate innovative approaches as well. The Department of Forestry and Fire Protection utilizes inmate crews who respond to all types of emergencies including wildfires, floods, search and rescue, and earth-

quakes (California Department of Forestry and Fire Protection, 2010; Brooks, 2010). At the other end of the spectrum was the Arts-in-Corrections Program, a victim of the state’s recent budget crisis. This program aimed to cut recidivism for creative inmates who produced literary and artistic works. The inmates’ work products were marketed within the walls and in the free world. Prisoners also labor for nonprofit organizations and charities to better the communities in which they are incarcerated (Johnson, 2002).

The organizational structures for the prison work force are myriad, but there are six traditionally established models: the public account system; the contract system and its variant; the piece-price system; the lease system; the state use system; and the works and ways system (Jackson, 1927). “The dimensions that distinguish one organizational form from another are (1) the locus of control over the production process (state control or private control) and (2) the market within which prison-made goods can be sold (state market or open market)” (Garvey, 1998, pp. 343–344).

In the public account system that has been operational since the beginning of prisons in this nation, the state is the manufacturer of the goods and sells its products on the open market while remaining responsible for the custody, care, and discipline of the inmates (Garvey, 1998). In other words, there is no nexus with private entities in either the production or the sale of the produced goods on the open market. The advantage is that the prison receives all the profits, and there is complete unbroken state control of the inmate, but there are disadvantages in that the goods are often of inferior quality and sold for less-than-market value that negatively impacts the wages of free labor and cuts into the profits of companies producing similar items (Jackson, 1927).

The contract system peaked during 1790-1865 with the invention of machinery and the desire for cheap labor that accompanied the rise of the merchant-capitalists in the United States (Fox, 1972). The state housed, fed, clothed, and guarded the prisoner while the private party employed him or her; that is, the contractor directed the labor while the discipline remained with the prison officials (Jackson, 1927). Generally, this was the most profitable system for the state, but it also maximized competition with free labor, and the reformatory aspect of labor was lost to the profit motive. In addition, while the prison officials were nominally in control of the inmates, the officials often were the tools of the contractors and took bribes for the agreements or turned blind eyes to safety and health issues. In a variation—the

piece-price system—that was primarily employed during the 1880s and 1890s, although it had emerged earlier in Pennsylvania and New Jersey, the entrepreneur furnished the raw material and took the finished product at an agreed-upon rate. The inmate was not directly employed by the contractor, and both the prisoner and the work flow remained under the control of the prison, but there was often friction between the contractors and the prison officials, especially the guards. Revelations about the abuse of inmates, the competition with free labor, and profiteering by dishonest administrators and businesses led to a societal demand for reform (Jackson, 1927).

Under the convict-lease system, the state transferred its prisoners to a contractor or lessee for a fixed annual fee and relinquished supervision, control, and care of the inmates to the contractor. From the authorities and taxpayers' view, leasing inmates for labor was rather advantageous. Prisons shifted the costs for the upkeep of the prisoners, which effectively lowered their operating budgets as well as generating an income—either earning a percentage of the profits from the sale of prisoner-produced goods or as rent for the inmates themselves. The lease system, however, was extremely exploitive (Jackson, 1927). Convicts were deemed as “being a slave, in a condition of penal servitude to the State” (*Ruffin v. Commonwealth*, 1871, p. 798) in the eyes of businesses, government, and the public. The inmates were viewed as less than human even to the point that their lives were considered of little value in comparison to the profits to be earned. Inmates were forced to work in intolerable conditions, isolated in turpentine camps in the swamps and in lumber camps as well as mines and quarries, and subjected to incredibly brutal living conditions and punishments that including flogging, hanging by the thumbs, and the water cure where water was forced into the prisoner's mouth through the use of a funnel while the prisoner was held on his back (Jackson, 1927). Clearly, these operations were outside the Eighth Amendment's prohibition of cruel and unusual punishment. “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards” (*Trop v. Dulles*, 1958, at 100). Either little or no litigation about the treatment of these individuals under the lease convict system was brought forward in most states or in the federal courts. Public outrage and political pressure contributed to the abolition of the convict lease system; it was only when accompanied by economic pressures that made convict-leasing unprofitable that the practice ended (Mancini, 1996).

While the lease system was less objectionable initially to the labor unions and trade associations because the convicts did work in very dangerous conditions that other workers did not want to do, capitalists and labor were united in their opposition to the other schemes of using inmate labor to produce goods for the competitive market, especially during the depressions of the 1870s and 1890s when efforts to shut down prison work programs intensified. Not wanting to lose the income brought in by various prison work programs nor willing to oppose the growing union power, many state legislatures turned to a state-use system in which prisoners produce goods and services used only in state institutions and agencies as a compromise. The public works and ways system and the state-use system are variants of the same theme. In the first, prisoners work on public projects such as construction and repair of bridges, roads, and state buildings, although the skilled labor is often done by free-world employees (Jackson, 1927). For example, inmates at the federal penitentiary at Leavenworth, Kansas and at New York's Sing Sing State Penitentiary helped construct the very walls of their place of confinement (Roberts, 1996). The state-use plans in the different regions of the nation took very different shapes. In the North, inmates often remained sequestered behind the walls to manufacture goods for sale to the state while in the more agricultural areas, farm colonies dominated. Southern states were the first to purchase substantial tracts for this purpose in the 1880s and 1890s, but substantial prison farms were established in Ohio, Illinois, Iowa and Indiana, to name only a few, during the first part of the twentieth century (Jackson, 1927; Garvey, 1998).

In both the state-use plan and the public works and ways system, the state retains control over the inmates and the production processes, and the financial benefits to the state are clear with both. There are two primary disadvantages; the first is that prisoners are located at the work site and lose access to many treatment programs, and the second is that the general public prefers that prisoners remain in the shadows and dislikes seeing men in chains, or today's modern version, unique garb under heavy guard in the open as those in Massachusetts found in the late eighteenth century. Again, the question is the proper balance to be maintained with the competition of free labor and capital. Labor organizations never opposed all convict labor but instead insisted that employment of inmates should be for the purpose of reformation of the prisoner, not for the profit of the state or in lieu of free market's opportunities (Jackson, 1927).

By the end of the 1930s and with the collapse of the economy during the Great Depression, idealism was set aside and commitment to prison labor as a tool of reform fell precipitously; Congress had passed laws banning prisoner-made products from interstate commerce (Hawes-Cooper Act, 1929; Ashurst-Sumners Act, 1935; Walsh-Healey Act, 1936). Although, exceptions were made during World War I when President Woodrow Wilson's 1918 executive order allowed contracts for war supplies to be made directly with prisons and provided for the compensation of the inmates and during World War II when President Franklin Roosevelt ordered the government to procure goods for the military effort from state and federal prisoners (Jackson, 1927; Hawkins, 1983).

By 1940, every state had passed some sort of limitation on prison-made items in direct competition with free-market products. Despite its hostility toward items produced within state prisons, the national government followed a different pattern for its own institutions. For instance, Congress authorized the Attorney General in 1918 to establish a factory at the Atlanta prison to manufacture cotton fabrics for tents for the military and for mail sacks for the Post Office (Act of July 10, 1918). This was expanded in 1930 to all prisons for all physically fit inmates to work in various public ways and works programs and to produce articles for consumption within prisons and authorizing various government departments to buy available prison goods at current market prices (Act of May 27, 1930). Four years later, Congress authorized the creation of the Federal Prison Industries (FPI), a corporation with a five-member (now six-member) board composed of representatives from industry, labor, agriculture, retailers and consumers, and designees of the Attorney General and the Secretary of Defense and charged with two sometimes contradictory goals—employment of inmates and diversification “so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops” (Act of June 23, 1934). The accompanying Executive Order 6917 issued by President Franklin Roosevelt in December iterated that various government agencies were to buy the goods or services but not for more than the fair market price (Roosevelt, 1934). The salient features of the Federal Prison Industries, Inc., program are the following: (1) that inmates are paid for their work (from \$.23 to \$1.25 per hour in 2009) and must make restitution to their victims up to one-half of their income and that the work must be “meaningful,” (2) that the program must be self-supporting; and (3) that the

program is essentially a state-use system (Federal Prison Industries, 2009)

In 1977, FPI adopted the trade name of UNICOR. UNICOR industries are situated within various prisons but operate independently from the prison. Federal agencies, with the exception of the Department of Defense and the Central Intelligence Agency, must procure products offered by UNICOR, unless authorized by UNICOR to solicit bids from the private sector, and waivers may be granted by UNICOR if its price exceeds the current market price for comparable products, but federal agencies are not required to procure services provided by UNICOR but are encouraged to do so (James, 2007; Federal Procurement Policy Act, 1974; Federal Acquisition Regulation System, 2010). Throughout its history, FPI has adapted and upgraded its product lines in response to changing customer demands; the canvas feed bags for horses and wicker settees it produced in the 1930s, for example, have been supplanted by automated data processing services, recycling, modular office furniture, and electronic cables for defense systems (Roberts, 1996).

Furthermore, in 1979 Congress lifted restrictions on the interstate sale of products made in state prisons and urged correctional administrators to explore private-sector ways to improve prison industry under the Private Sector/Prison Industry Enhancement Certification (PIE) program; PIE permits prisons to contract with private firms to either hire offenders to work directly for the company or to buy goods from prison-run operations (Justice System Improvement Act of 1979; Hauck, 2000). It partially negates prior legislation and permits the movement of state prison-made products in interstate commerce if the prison program pays offenders either the prevailing wage in the free market or minimum wage, whichever is higher, contributes to the victim's compensation or victim's assistance program, consults with organized labor and local businesses that might be affected by the program as well as insuring that offender labor will not displace workers in the free world, and involves the private sector (Misrahi, 1996). More recently, the U.S. Army in 2005 established guidelines for the employment of civilian inmate populations on military installations (U.S. Army Regulation 210-35).

Though national and state governments attempt to mute criticism through the implementation of the state-use system, the allegations continue that such programs that compete with private businesses undercut both labor and private enterprise, and the debate rages on between the correct equilibrium of two social goods—the employment and rehabilitation of offenders

and the need to protect the jobs of law-abiding citizens, especially in troubled economic times (James, 2007). Support for self-sustaining prisons and employment of prisoners unite both liberals and conservatives in maintaining the programs.

Conclusion

Today's renewed interest in prison work stems from the tremendous increases in the prisoner population, the diminished belief that prisons can reform prisoners, and an American business community unafraid of competition. Over the years, federal and state laws, often to appease those opposed to competition from prison-made goods or for jobs, have denied convicts opportunities for productive employment. While halting steps have been taken to allow the sale of prison-made goods and to create private sector jobs for prisoners, legal restrictions, aided by bureaucratic inertia and labor union sensitivities, continue to hamper progress (Reynolds, 2001).

In a society emphasizing work as the major status determinant, prison work has important potentialities for making the correctional institution a means of rehabilitation.

Discussions between free-world manufacturers and prison work program supervisors appear to offer new opportunities for inmate workers. These discussions should lead to a reduction in the discrepancies between prison and outside worker. This will allow the inmate worker to make an easy transition from the prison factory to the outside job. In turn, rehabilitation will be further enhanced (Johnson, 1972).

Above all, work programs should seek to correct certain basic aspects of imprisonment. First, prisons still engage in training prisoners for release. The men and women behind bars are more than just convicts who overwhelmingly come from disenfranchised communities and have few employable skills (Roberts, 2005).

"At least 95% off all State prisoners" (Gideon, 2011, p. 1) and 98% of federal prisoners will be released to our

communities in the future (Federal Prison Industries Inc., 2009). They greatly need basic education, training, and social assistance. If society chooses to turn a blind eye to the plight of the prisoner, then that society has no one to blame but itself when he or she is released and returns to a life of crime. Or, as the late Chief Justice Warren Burger colorfully and bluntly stated, "We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits — winning the battles while losing the war. It is wrong. It is expensive. It is stupid." (Petersilia, 2003, p. 93)

In addition to preparing inmates for life outside the walls, work in the prison should alleviate the unremitting and incessant tediousness of "doing time." It should improve discipline by keeping inmates occupied and by raising their morale. Prisons without meaningful activities for inmates are more dangerous. The programs that are incorporated in prison work play an essential role in protecting lives, preserving stability, and saving money in the nation's prisons (Roberts, 1996).

For external constituencies, investments in prison work can lower expenditures for day-to-day prison operations and thus free resources that can then be appropriated to other rehabilitation programs (Roberts, 1996). Despite the abuses and controversies that have swirled around various programs, no one has proposed an absolute prohibition of inmate work. It is in the best interest of the inmate and society that the prisoners are not idle and that their work results in rehabilitation for the individuals and in benefits, both direct and indirect, for society as a whole (Garvey, 1998). Inmates "sentenced to work" accomplish all of these goals.

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Snack Pak 4 Kids—Hereford, Texas

Evaluation Report

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ABSTRACT: *Snack Pak 4 Kids—Hereford models itself after the Feeding America program that tackles hunger among vulnerable groups: children, working poor, rural residents, and the elderly. Known as Food Every Day (FED) before joining the regional organization, SP4K focuses upon hunger among school-aged children in Hereford, Texas. This report outlines the history of that local program. The report analyzes the food distribution system, the organizational structure, and budget. An analysis of teacher, student, and parent surveys demonstrates the overall impact of the program in the classroom and on the families of the recipient children. The report concludes with recommendations for the organization based upon these combined analyses.*

Introduction

The origin of children's anti-hunger programs known nationally as the Backpack Program is linked to a Little Rock, Arkansas elementary school. In 1995, a principal contacted the Arkansas Rice Depot requesting food assistance for children who had complained of headaches, stomach pain, and various other health problems. Upon examination, the principal had determined the children received little or no food to eat at home over the weekend. The school counselor also noted that these same students were inattentive, disruptive, and lethargic, especially on Monday mornings. These health and behavioral problems were caused by one situation—hunger. This one phone call by the school principal to the Rice Depot led to the beginning of Arkansas's Food for Kids program (Arkansas Rice Depot, 2010). Over the next 17 years, the program was replicated into communities located throughout all 50 states, many of their school systems, and local food banks.

Located in a rural county in the Texas Panhandle, Hereford is one of the few rural Texas municipalities to provide snack packs to all Pre-K to fifth grade students and their siblings living in the home that qualify. This essay outlines the history of the snack pack program in Hereford, its distribution system and organizational structure, budget, and reports an analysis of the end-of-year surveys completed by parents, students, and teachers who participated in the program in its first 30 months. The essay concludes with program recommendations for its continuation that will assist other school-based, anti-hunger programs located in rural communities.

History

Hereford's Snack Pak 4 Kids (SP4K) program began in January 2010 with a radio announcement. National Public Radio's *Morning Edition* announced that one of its corporate sponsors was Feeding America, the national sponsor for Backpack Programs. Krista Lee, one of Hereford Independent School District's (HISD) kindergarten teachers, previously worked in Iowa and Nebraska school districts with similar programs. At the time, Lee thought the Backpack Program was a local initiative. Aware of the effect this program had on her former students, Lee approached Linda Gonzales, her principal at Bluebonnet Elementary School, about starting a program at their school. Their conversation grew to include other teachers at the K-5 school (L. Gonzales, personal interview, March 12, 2010; K. Lee, personal interview, February 08, 2010).

All of the teachers discussed their experiences and personal attempts to feed these hungry children. Several teachers stated they stored non-perishable food items like dry cereal, cheese crackers, and juice boxes in their classroom specifically to feed children who arrived at school hungry. The problem was so widespread that the teachers revealed they included food items for their students on their personal grocery lists each week. The reasons for their students' hunger varied, but knowing that feeding these children might not have been appropriate, the teachers were caught in a conundrum.

Their students arrived at school too late to eat free breakfasts, or it was simply not enough for them to concentrate. These children acted out, complained, and even cried from stomachaches, headaches, or sleepiness caused

by hunger. Many of them lived in single-parent households where the parent, usually a mother, worked two or three minimum-wage jobs, thereby leaving her children with an older child or elderly person to care for them. Many students were either too young to know how to cook or lived with someone who was too old to have the energy to do more than guarantee the child's safety. Several of these parents, many of whom these teachers knew were under 20, might also have been attending vocational training at local community colleges. They had few resources and little, if any, family support. Then there were those who talked about teenage mothers who, in some cases, seemed to view their child more as a fashion accessory than a responsibility. These children were not well socialized to work with their fellow students and caused more classroom disruptions. Some of the children's parents or caregivers were known to be addicted to alcohol, drugs, or participated in illegal activities. The teachers were frustrated by the inaction of the state's Child Protective Services Department (CPS) who did nothing despite their many reports. In most cases, the family situation did not require CPS involvement. These were single parents who were doing the best they could with the limited resources they had. The children and the parents were not bad. They were just poor.

The family's poverty still forced teachers to make difficult choices. They could either feed the child so they could learn and behave or deal with behavioral problems that spilled over onto other students until lunchtime. Feed the child, and all the students might learn; let the child go hungry, and all of the students will learn less because of the disruption that hungry students can bring to a classroom. The teachers' conversation expanded to include the amount each spends on school supplies, finding coats and shoes for their students, and soliciting help from area thrift stores. Furthermore, the teachers were spending a portion of their own salaries to provide for their students at the expense of their own children and financial needs. At times, the teachers said they felt more like social workers who taught than teachers who encourage socially-appropriate behaviors (K. Lee, personal interview, February 08, 2010).

Whatever the situation may be that led to the children's hunger, teachers noticed that they came to school with little or no academic skills or ability to act in an age-appropriate manner. All of them agreed that Monday morning was the worst time for these students. Even worse, Hereford prides itself on being part of America's network of breadbasket communities. Hereford is one of the main agricultural centers of the Texas Panhandle

where much of the nation's beef supply originates (Deaf Smith County Chamber of Commerce, n.d.). The teachers wondered if the community would believe them because the region produced so much food that no one would believe anyone would go hungry there. The teachers realized something had to be done but had no idea how to start such a program. As Lee said in a television interview, "I'm just some kindergarten teacher trying to feed her kids," (Bennett, 2011).

Well aware of the student and teacher needs, Gonzales faced the same situation every time students were sent to her office for behavioral problems caused by hunger. She too paid for school-related items and student needs. Like her teachers, Gonzales had supported outside organizations that met students' basic needs, but more was required. Gonzales asked Lee to investigate further how to establish the program since the latter had worked in school districts where the program existed. Lee agreed and the other teachers gave their support.

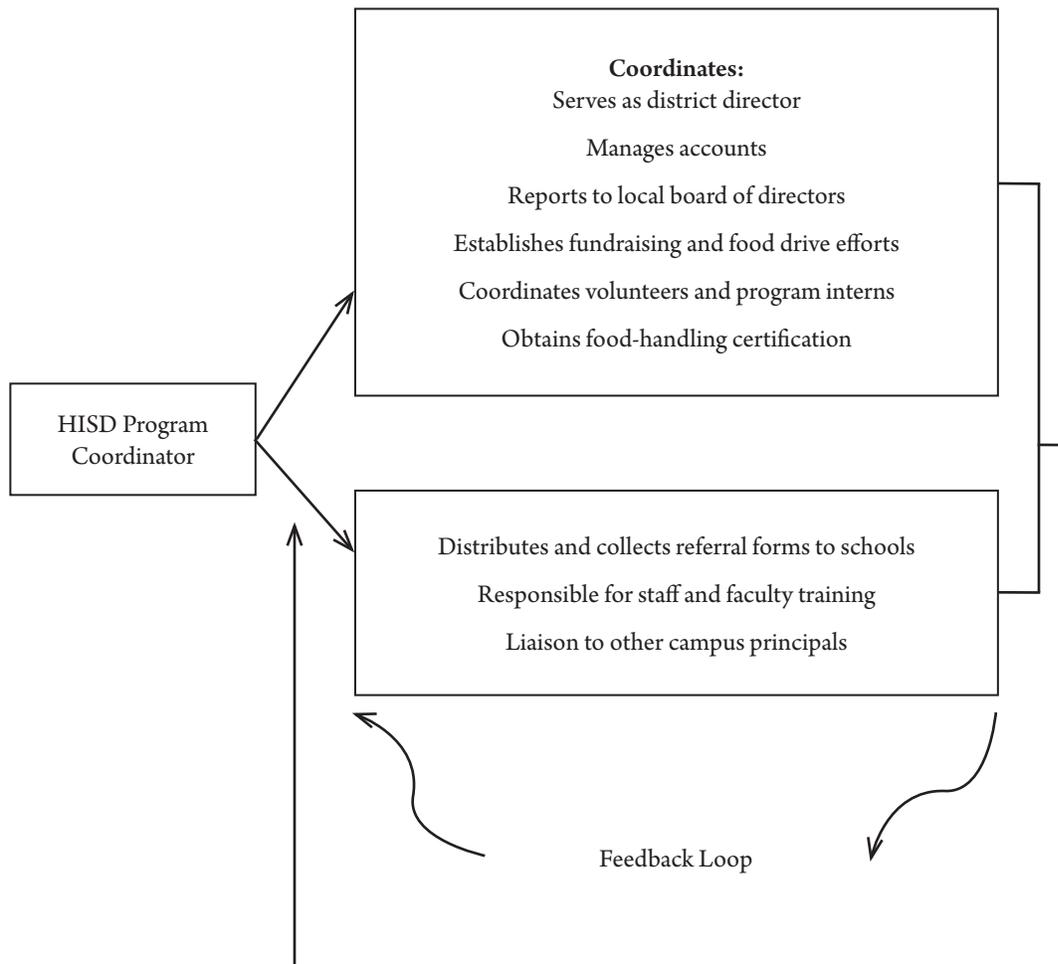
Distribution System and Organizational Structure

Led by both Gonzales and Lee, SP4K developed both an external and internal organizational structure that allowed it to join a loosely-formed conglomeration of other SP4K programs located throughout the Texas Panhandle. The structure allows for food purchase and transportation to their regional distribution in downtown Amarillo, Texas, the largest metropolitan area within the Texas Panhandle. Volunteer coordinators and community members sort bulk and individual orders for each school district. These orders consist of kid-friendly, nonperishable foodstuffs for children living in food-insecure households each Friday afternoon of the academic year. The next section outlines the internal organizational structure that allows SP4K staff members to order and transport the food to their distribution facility. The following section outlines the external structure that provides campus coordinators to assemble bags and anonymously distribute them to their students.

Internal Distribution System

SP4K is part of a Texas Panhandle-wide consortium of other Backpack Programs that exist in other area school systems. Most programs exist within school districts and schools located in the Amarillo metropolitan area: Amarillo, Bushland, Canyon, and River Road. Five currently exist in rural communities: Dalhart, Fritch, Hereford,

Figure 1. SP4K—Hereford Internal Structure

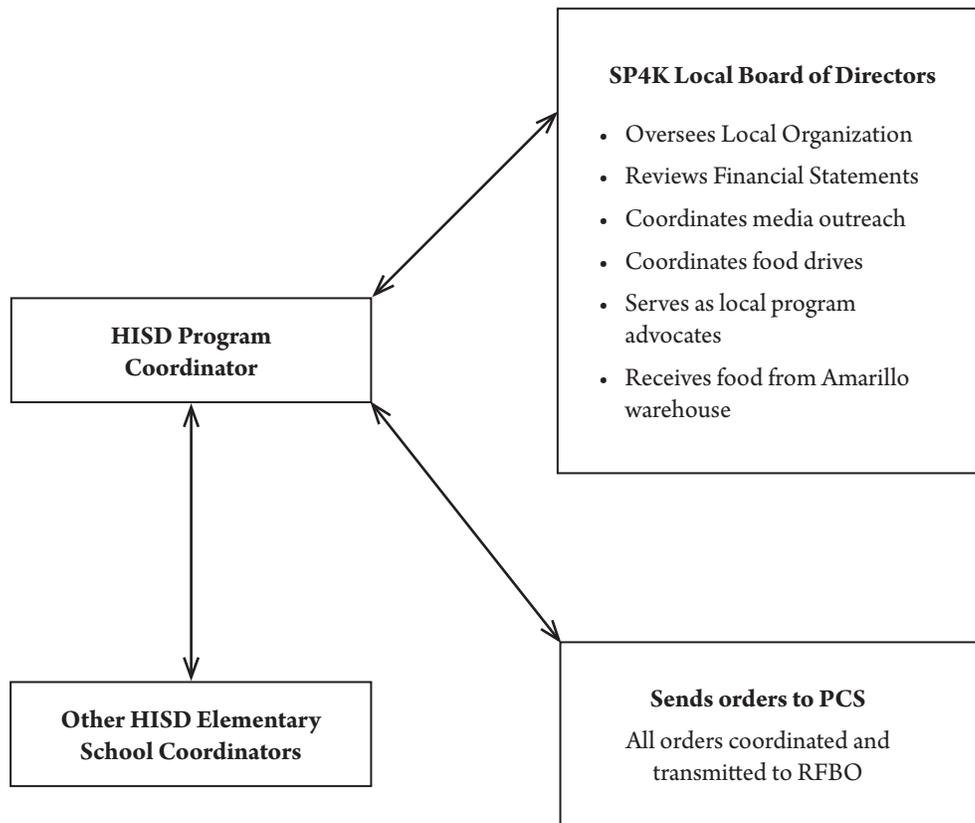


Tulia, and Walcott. Hereford and Walcott exist solely in Deaf Smith County whereas the others are located in multiple counties throughout the 26 counties that comprise the Texas Panhandle (Snack Pak 4 Kids, n.d.a). A regional nonprofit, Panhandle Community Services (PCS), manages accounts. Figure 1 outlines how the coordinators work within the district, place and distribute orders, and work with their local board of directors.

Not only are the district coordinators responsible for food orders and distribution within their district, but they are also responsible for staff training, serving as liaison between the board members and the SP4K staff and volunteers. Each coordinator works with their local board of directors. Their primary responsibility is to review all financial transactions and serve as liaisons to the local community. Board members take responsibility for fun-

draising, media relations, and maintaining community presence through food drives. They submit all donations and receipts to PCS’s accounting office. In turn, PCS provides monthly balance sheets to each of the program coordinators. Furthermore, SP4K directors organize on-site volunteers and train social work and public administration student interns from area colleges.

Under Texas State Code 229.178, the Department of State Health Services requires that all those who serve food to consumers must complete the Food Handler Program. The program reduces the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques (Texas Department of State Health Services, 2012). Krista Lee, HISD’s program coordinator, is the state-trained food handler. The food is stored on shelves or in plastic tubs and placed on wood

Figure 2. External Organizational Structure and Food Distribution System

pallets throughout its warehouse. Lee guarantees all volunteers meet the state's safety standards during the food distribution process. Local community groups volunteer their services bimonthly to pack individual bags for distribution.

Each school and school district located in the SP4K program has a program coordinator. The school coordinators are responsible for the distribution and collection of referral forms that are distributed to teachers, school counselors, nurses, cafeteria workers, and administrators. These forms are collected by the district coordinator and reviewed. Upon approval, the district coordinator informs the campus coordinator to send enrollment and consent forms home with the children for the parents to sign. If the forms are not signed and returned, food will still be given to all the children living in the household every Friday afternoon. The forms are collected and stored in the principal's or counselor's offices in unmarked, locked cabinets on each campus. The campus coordinators pick up the packed items every Thursday afternoon

for distribution on Fridays. The district coordinator has additional responsibilities.

While the district coordinators expand SP4K onto other campuses in their districts, the external organization was created by area philanthropist, Dyron Howell.

External Distribution System

Figure 2 illustrates the linkages between the internal organizational structure of Hereford's SP4K program to its local board of directors, Panhandle Community Services, and food suppliers. Howell was involved with similar programs in East Texas prior to his move to the Panhandle area. However, he focused more upon creating a network of nonprofit organizations, volunteers, corporate sponsors, civic groups, and religious organizations to support the new venture in the Texas Panhandle. His efforts led to obtaining PCS's accounting and website support, thus allowing all program donations to be tax-exempt and online. The organization provided free accounting services to all SP4K members and coordinated

all purchases, thereby decreasing or maintaining food costs (Snack Pak 4 Kids, n.d.b). Monthly accounting and website maintenance is reported to each coordinator and publicly posted on PCS's website. In turn, PCS allocated two full-time employees to work directly with the program, free of charge to SP4K. While Howell was successful in creating a network among the far-flung programs, the organization found it difficult to purchase food at reduced prices (K. Lee, personal communication, February 8, 2011).

The first significant hurdle encountered by SP4K was purchasing foodstuffs from High Plains Food Bank (HPFB) in Amarillo. According to its director, HPFB does not have the additional funding to support SP4K along with its other anti-hunger programs (Z. Wilson, personal communication, June 19, 2012). HPFB staff was supportive of the idea but the program faced an increased demand for foodstuffs caused by the national economic recession. The organization felt that assuming responsibility for SP4K would stretch their budgets and services too much. This could lead to increased hunger among children and adults currently relying upon their services or those who would soon be asking for assistance. Howell's outreach to the Regional Food Bank of Oklahoma (RFBO) in Oklahoma City helped SP4K programs in the Panhandle become sustainable.

Howell asked SP4K coordinators to send orders from their individual programs to PCS. Food was purchased from RFBO in Oklahoma City. Baldwin Distribution, a trucking company in Amarillo, acquired the shipment and transported the goods free of charge to the coordinated warehouse in downtown Amarillo. Howell's volunteer network meets bimonthly to coordinate the community orders. Each organization is responsible for their own order pickup and delivery to their school districts.

SP4K Board Member Jerry O'Connor and area volunteers pick up food following the coordinated distribution effort. The program's individual warehouse is located at HISD's community warehouse. Local volunteers place the order in the facility. Along with other volunteers, they return to coordinate the distribution of foodstuffs to the respective schools.

Community Support

Creating the internal and external structure was less difficult than gaining community support for the new, anti-hunger program. Deaf Smith County residents appear to be philanthropic. They created and sustain community-

based programs like Big Brothers Big Sisters, YMCA, community food pantries, etc. that tend not to be located in cities with more than 15,000 people. According to SP4K board member, Brandi Murillo, a commonly held belief by small town residents throughout the Panhandle is that too much is promised to these communities (B. Murillo, personal communication, September 15, 2011). A larger percentage of people living in the Panhandle's smaller towns donate their time and money to organizations that are believed to benefit the entire region. In the end, however, most of the funds and services remain in Amarillo. While people in the area do the work, little measurable benefit returns to their community. Gonzales and Lee struggled initially to gain awareness about childhood hunger in Hereford. Because of a widely-held view that hunger could not exist in the center of beef production of the world, community members appeared to believe that childhood hunger was not a problem. The county's Chamber of Commerce website confirms this belief with the following statement:

Hereford is number one in the world in beef production. Cattle feeding is our main industry and we boast of being the "Beef Capital of the World." There are more than a million cattle fed within a 50 mile radius of Hereford. We lead the entire area in dairy production. We also are nestled in a large grain producing area where farming is abundant.

(Deaf Smith County Chamber of Commerce, n.d.)

In March and April 2010, several community outreach meetings held at HISD were poorly attended by community members thereby providing further evidence of a lack of understanding about the issue and the presence of hunger among Hereford's youth. Two public meetings were held at HISD's administrative office building to discuss the need in March and April 2010. School teachers who participated in the initial, impromptu meeting were the only community members present at both meetings. Lee and Gonzales determined that to increase community awareness, the program needed a local board of directors and to gain local financial support. Otherwise, the program would end before the pilot project folded into the larger SP4K conglomeration.

Lee and Gonzales agreed to continue the pilot program at Bluebonnet Elementary despite the school-wide need for the program (L. Gonzales, personal communication, April 30, 2010). They agreed the working name of the program would be Food Every Day (FED) until it was viable and could join the loosely-formed Panhandle organization. The following day, Gonzales contacted sev-

eral prominent, local people and asked them to serve on a community board. Their primary goal would be to communicate the need for the program in Hereford schools and direct the program to meet community expectations. The following people were contacted: Carolyn Waters, treasurer of the local Lions Club and vice president of the district's school board; Jerry O'Connor, Deaf Smith County Commissioner; Tom Simons, Deaf Smith County Judge; Debbie Gonzales, an executive at First Financial Bank; and Brandi Murillo, Happy State Bank executive. Community activist, Jannae Parsons, joined later. Gonzales mailed letters to them the following day.

At first, the board members appeared to be uncertain of their duties. Each member agreed that the community had difficulties understanding how someone could face food insecurity in Hereford. At their initial meeting, Lee and Gonzales outlined the board's overall duties. As seen in Figure 2, the board of directors oversees the entire program. Their responsibilities also include a review of all financial transactions for transparency and reporting their findings to the community.

The initial board members agreed that local residents must serve on the board and advocate for the local program. Like many smaller communities in the Texas Panhandle, Hereford residents believe that Amarillo, with its population of nearly 200,000, dominates the area. This is because while smaller towns may donate to organizations that reportedly allocate funds to all residents, the bulk goes to Amarillo. As a result, SP4K had to have local faces advocating for the local program (L. Gonzales, personal interview, November 15, 2010). With information from Lee's presentation and their budgetary oversights, the board members could advocate for the program among the local population. They could serve as those faces. Each member agreed to have their organizations sponsor food drives periodically throughout the year. Also, the members would serve as program advocates by participating in interviews on local radio and television stations, and in newspapers. Also, the board members would oversee all budgetary decisions and provide a sense of transparency to the community. Murillo became the de facto publicity chair, and O'Connor assumed responsibility for fundraising efforts. All members agreed to assist in coordinating annual food drives and fund raising (K. Lee, personal interview, February 10, 2011).

As Lee's supervising principal, Gonzales agreed to provide Lee with some release time to meet with local businesses as well as civic and religious groups to increase awareness and raise funding for the project (L. Gonzales, personal interview, February 12, 2011). Lee presented to

Hereford's Lions Club, Rotary Club, Interfaith Council, and area banking leaders about the need for a Hereford-based Backpack Program.

United States Agency for International Development defines a food-secure household as one in which "all people at all times have both physical and economic access to sufficient food to meet their dietary needs for a productive and healthy life" (USAID, 1992). In her presentations, Lee defined SP4K as the only anti-hunger program that places the solution in the hands of a child. SP4K provides weekend food throughout the school year for children who live in food-insecure households (K. Lee, personal interview, February 12, 2011). Each child takes a bag of snacks home in their backpack each Friday after school (K. Lee, personal communication, February 12, 2011).

Lee stated in her community presentations that, according to Feeding America (2012), 16.8% of all children living in the United States suffer from chronic hunger. Approximately 28.5% of all children living in Texas live in food-insecure households. Texas is ranked fifth with the highest number of hungry children living in the United States. According to Feeding America (2012), 30.8% of all children living in Hereford fall below the national poverty line. For Deaf Smith County and Hereford, U.S. Census data reports that 23.4% of all children under age 18 live under the poverty line in the city. However, 38.2% of families led by a single female live in poverty where one out of every two children in those households lives in poverty. Of all children enrolled in Hereford ISD, 76% receive free or reduced-price lunch. The number of children living in these food-insecure households is 27.5%, an estimated 1,680 children (Feeding America, 2012). "The faces of these children we saw in our classrooms daily validated the numbers that Feeding America and the U.S. Census Bureau provided" (K. Lee, personal communication, February 12, 2011).

While 95% of children at Bluebonnet Elementary School received free breakfast and lunch, an additional 3% participated in the reduced-price lunch program (U.S. Department of Education, 2013). In Hereford, 77% of all children live under the national and state poverty line (U.S. Census, 2012b). Statistically, 15% of all children receiving free or reduced meals at school live in poverty-ridden and food-insecure homes. Therefore, 50 children who are enrolled in the Bluebonnet district live in such households (Feeding America, 2012).

SP4K identifies children in need using the school's teachers, school nurse, cafeteria employees, and school psychologist. Their recommendations come from first-hand knowledge of the home situation as well as training

sessions where the following observed behaviors related to hunger are discussed: extreme hunger on Monday morning, eating other students' food, rushing food lines, consistent complaining of hunger, short attention spans in the classroom, asking cafeteria workers and classmates for "seconds" or leftovers, digging in classroom trash cans for discarded food, and begging teachers for additional food at snack time to take home to share with younger siblings (K. Lee, personal communication, February 12, 2011).

The backpack includes food items that do not require cooking or refrigeration such as: 100% juice boxes, shelf-stable milk, beef stew, Vienna sausage, peanut butter crackers, fruit cups, pretzels or cheese crackers, raisins or dried fruit, cereal bars, and breakfast cereal. Each child receives a 12–16oz. jar of peanut butter and crackers monthly. The weekly, average cost of a backpack is \$3 and one person's individual contribution of \$133 feeds one child for an entire academic year, including holidays.

Bluebonnet teachers recommended 28 children for the program in the first week of the pilot project. To include their siblings, 57 bags were packed and sent home with children weekly. As news of the pilot project spread to other area elementary schools, 186 children were enrolled in the program with a waiting list of an additional 250 students not including their siblings (K. Lee, personal communication, April 10, 2011).

Lee secured support from West Texas A&M University (WTAMU) to serve as the organization's program evaluator and gained support from the Amarillo Unitarian Universalist Fellowship (AUUF). Its approximate 150 active members agreed to bring cans of food that could be distributed to the children. However, one fourth of the donated food required preparation beyond the abilities of most elementary school children. Lee met with the volunteer staff of Hereford's Food Pantry. Open only on Monday and Friday afternoons, the staff understood her concerns and agreed to swap those items that required adults to prepare for child-friendly food items they stocked.

Lee's presentations and Gonzales' outreach to community leaders were successful on several fronts. First, Gonzales solidified program support from her recruitment of local community leaders to serve as SP4K's board members. Her definition of food-insecure households and statistical information from Feeding America and the U.S. Census Bureau, as well as the inclusion of all teachers and staff in FED, later SP4K, spurred community awareness and support. Second, the program began receiving additional financial support because of Lee's community presentations and the increased awareness of hunger

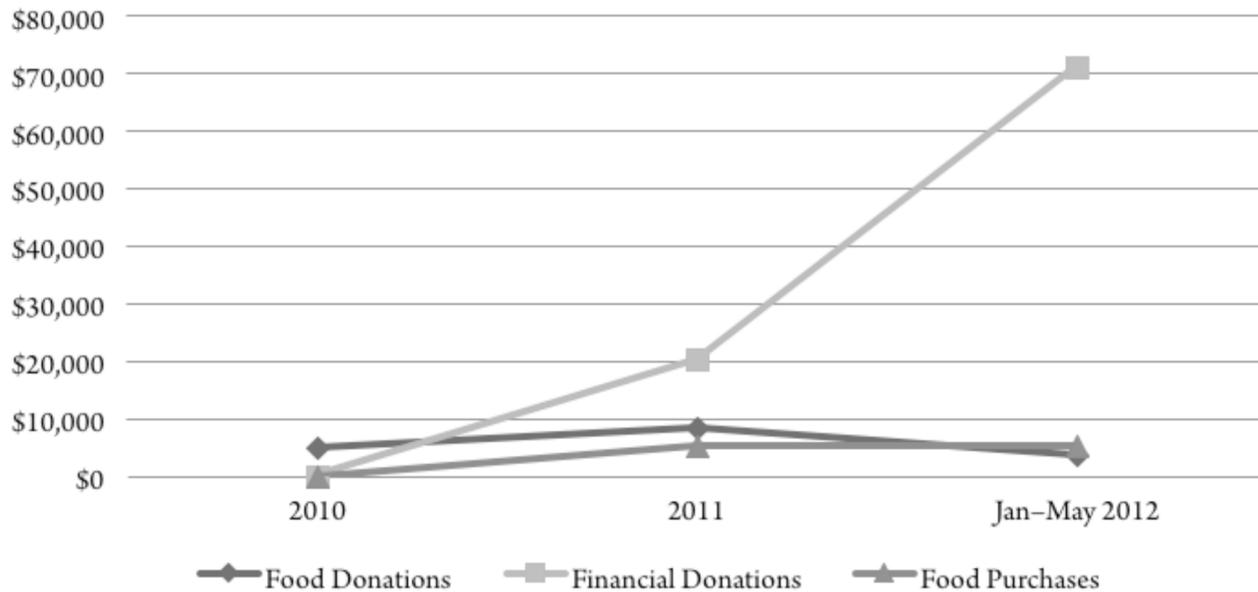
in Hereford. Lastly, the members of these community groups who worked closely with high school and religious organizations encouraged their students and members to select SP4K for their community service project. Working with WTAMU, SP4K provided an undergraduate internship to students interested in working with a grassroots, nonprofit organization.

The board members' tasks include reviewing the organization, and a key component of their responsibilities is program advocacy. At its May meeting, the board requested that Lee, Gonzales, and Aimee Fisher, a WTAMU intern, submit a mission statement as well as program goals and objectives. The mission statement would help all of the organization's members provide a consistent community message. The goals and objectives had to be measurable and obtainable. The board also requested that a fundraising calendar be created so SP4K would remain present in the minds of the community members throughout the year (Lee, 2012, June 25). In September 2011, Lee, Gonzales, and Fisher presented a mission statement to the SP4K board. The board members unanimously accepted it after some minor editing. The approved mission statement for the Hereford SP4K Program is to provide food for the weekend and holidays for children who are at risk for hunger (September 27 board meeting). The board approved three goals:

- Expand the program to Hereford elementary schools, Hereford Junior High School, and Hereford High School by January 2015
- Complete our community networks with all social service agencies, faith-based organizations, civic groups, and businesses in Deaf Smith County by 2015
- Network with community leaders to create a community garden by 2014 (Fisher, 2011, October 15)

As Carolyn Waters, treasurer of the Hereford Lions Club and vice president of the local school board stated in an interview on November 3, 2011 after being involved in the program for six months, "There is no need that any child in Hereford ever goes hungry" (Bennett, 2011). Her statement explains the shift in the Hereford community to realize the presence of hunger in their population and the challenges that teachers faced in the classroom.

SP4K transitioned from its pilot year. It changed its name to SP4K from FED by the end of the 2011–2012 academic year. In addition, it had received enough organizational and financial support to expand into all HISD elementary schools. If the recipients had siblings who were enrolled in junior high, high school or not yet

Figure 3. SP4K Donations and Purchases: 2010–June, 2012

school-aged, SP4K was able to provide them a weekend food supply as well. Board members upheld their responsibilities by connecting the program to area organizations that provided volunteer and financial support. Neither the board members nor SP4K campus coordinators were able to advocate for the establishment of a community garden by June 2012. However, supporters began asking questions about how these children would eat during the summer when they had even fewer food resources available to them. Once the community began to ask themselves this question, the need for community-wide gardens, access to food pantries in the schools, or increased accessibility to the Hereford Food Bank became more apparent (K. Lee, personal interview, April 1, 2012).

Budget

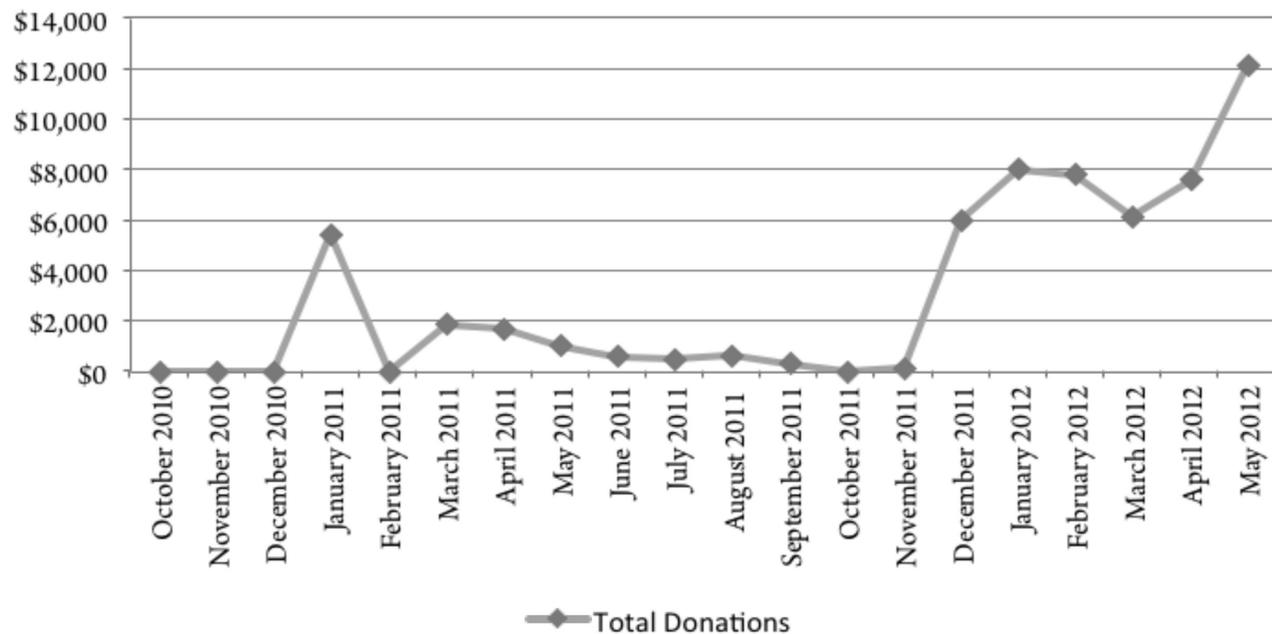
The pilot project began by mid-2010 with no money and no food. The program was funded solely from financial donations provided by Lee and Gonzales and foodstuffs given by the AUUF. Lee unsuccessfully applied for corporate grants to fund the pilot project. These grants required that the organization possess 501(c)3 nonprofit, tax-exempt status issued by the U.S. Internal Revenue Service. While AUUF volunteered its IRS-issued, tax-exempt number, it did not meet grant requirements

because its number applied to religious organizations. Furthermore, the program could not wait to apply for its own tax exemption. The IRS administrative process to review and issue the tax-exempt number would take too long at the risk of losing community-wide support. Gonzales and Lee began searching for organizations with similar objectives that would sponsor the organization and allow its 501(c)3 number to include SP4K.

Lee was refused by several organizations because they believed SP4K was outside the scope of their mission statements. High Plains Food Bank in Amarillo was contacted by Lee for food assistance and program support. Given the national economic downturn at the time and the increased demand for food by all segments of the Panhandle community, HPFB could not provide continuous support to SP4K and meet the increased demand placed upon their anti-hunger programs. One of their program coordinators, Edna Tucker, encouraged Lee to meet with Phyllis Cook, director of Panhandle Community Services (PCS). Howell had worked with them to connect the Amarillo SP4K program with PCS. Since PCS had a branch office in Hereford, the non-profit, social service agency's mission fit within the SP4K's mission and goals.

By November 2010, PCS and FED signed a memorandum of understanding whereby PCS would include the program under its 501(c)3. PCS would provide all accounting services without charge as well as create and

Figure 4. Total Financial Donations



maintain a website exclusively for the Hereford program. While SP4K could join and purchase food from other sources, most orders would be coordinated by Howell, the Panhandle-wide coordinator, and PCS to be sent to RFBO. Their agreement allowed SP4K to enter the Panhandle-wide coalition to purchase their food items, thereby reducing the cost per bag from \$5 to \$3 per person. All donations, unless otherwise specified to be spent on other programs, would go toward the purchase of food. Furthermore, the agreement between PCS and SP4K–Hereford provided legitimacy to Hereford community groups and their members.

Hereford Lions Club saw SP4K as one of their primary community outreach programs. The local United Way asked SP4K to apply for one of its community grants in October 2010. Local banks and HISD high school students held community food drives. WTAMU student groups and classes collected money specifically for the Hereford program. Their financial support, along with AUUF’s food donations, allowed SP4K to become financially solvent during its pilot year, making it possible to join the area-wide consolidated program. Starting December 2011, Caviness Beef Packers began donating \$6,000 to \$8,000 monthly. Terry Caviness, the founder of a long-time, Hereford-based corporation, was contacted by a family friend who worked at the nearby

Walcott School District in Deaf Smith County. A child was found digging in the school cafeteria dumpster for discarded food items that he could eat and take home to his starving siblings. The family friend asked if he could assist the family and wondered if a SP4K program could start at their school. Caviness’s financial support provided immediate legitimacy and funds to expand the program to all elementary schools in the Hereford Independent School District. The Caviness donations also provided SP4K a prudent reserve. As Figure 3 shows, SP4K’s financial reserves increased from \$20,000 at the end of 2011 to \$70,000 in June 2012 because of Caviness as well as other community members’ continued financial support. These donations provided SP4K the financial means to expand into all of Hereford’s elementary schools while SP4K built its reserves. Throughout this period, SP4K’s food donations and purchases remained relatively constant, reaching a high point in 2011.

An analysis of food and monetary donations as well as the combined efforts of Lee and Gonzales to establish the program led to increased community involvement and financial support. As seen in Figure 3, the monetary value of food donations averaged \$577.03 per month over a 30-month period. Financial donations during the same period averaged \$3,339.07 per month. The program’s financial solvency drastically increased from

having a zero balance during the first year of existence to averaging \$1,681.95 during 2011. The 2012 monthly average increased to \$8,335.26. Food purchases remained relatively consistent with donations. SP4K—Hereford depended entirely upon donated food items during the program's first year of existence. The average value of donated food for 2011 and 2012 was \$691.66 and \$577.03. The increased 2011 average is a result of food drives conducted by Deaf Smith County banks that occurred outside of the academic year and anonymous donations given during the summer of 2011.

Figure 4 illustrates financial donations over a 19-month period from October 2010 to May 2012. SP4K's first financial donation occurred in January 2011 and peaked at that time. Between February and December 2011, donations averaged \$603.09. Caviness Beef Company's monthly donations, beginning in December 2011 and continuing through to May 2012, provided SP4K's financial soundness.

From October 2010 to May 2012, SP4K was featured in a local news outlet or community presentations 11 times.¹ On average, for every community presentation and local media coverage that focused on SP4K, the organization either sustained or increased donations in an average of 40 donations after the event. The increased amount of total donations after media coverage varied widely between \$8,120.50 in January 2012 to \$115.69 in February 2012. However, the organization experienced an increase in donations by an average of \$187.40 per community presentation or local media coverage. As seen in Figure 5, a moderate correlation exists between the amount of donations received when compared to the amount of community exposure.

Figure 6 compares the total value of food and financial donations with media exposure to the Hereford community. Food donations started and continued from the program's beginning in January 2010. While there appears to be a moderate correlation between financial donations with media coverage, it also appears that media coverage had, at best, a slight effect on the total dollar amount of food donated to the program when combined with financial donations. The media coverage and community presentations appear to have helped SP4K grow. The steadiest and most consistent growth appears to have occurred starting between December 2010 and January 2011 with the establishment of the local board of directors.

SP4K's Volunteer Involvement

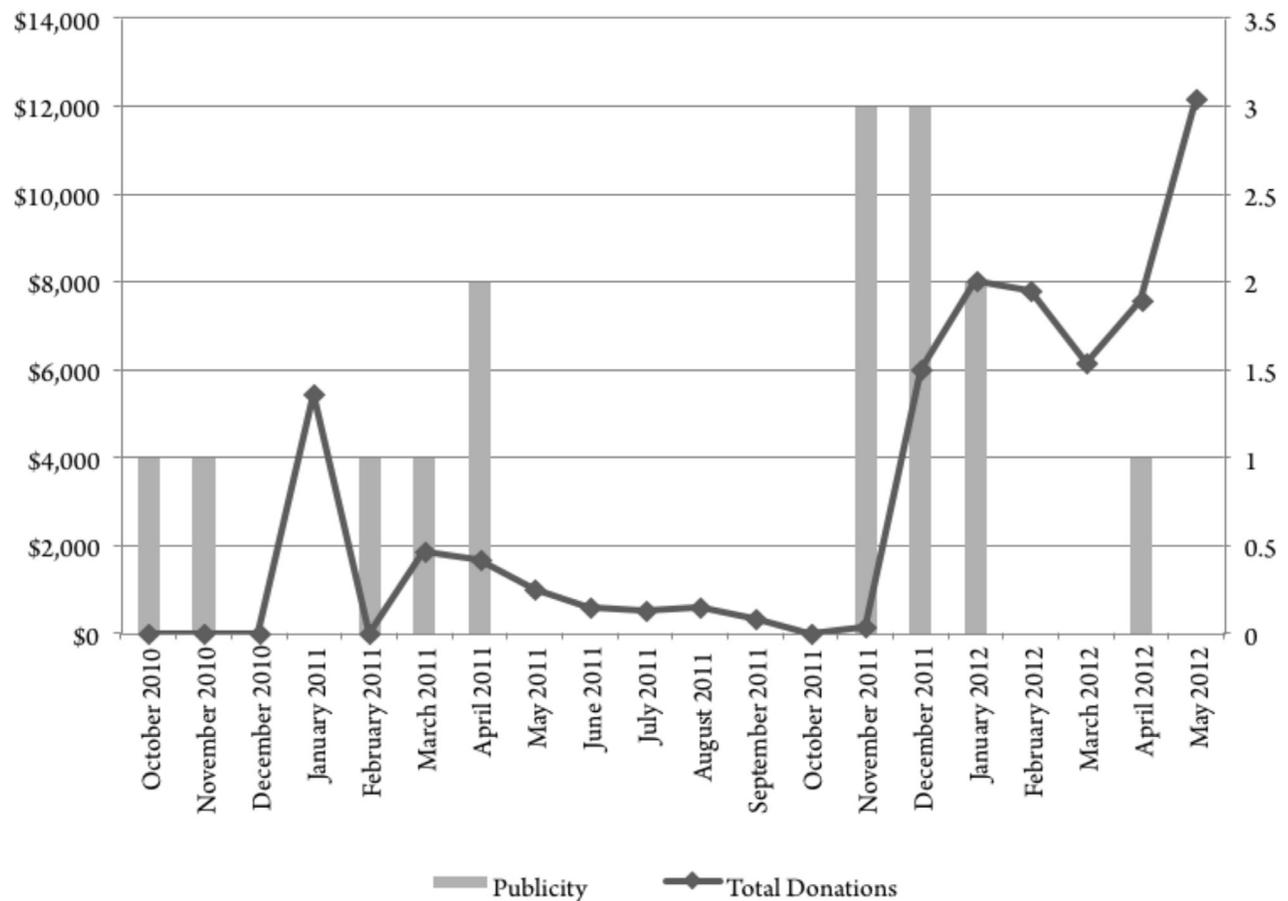
According to Independent Sector (2012), an international coalition for nonprofits, foundations, and cor-

porate giving programs, the dollar value per volunteer hour for the state of Texas is \$21.91. According to 2010 census data provided by the Corporation for National and Community Service (CNCS), an estimated 4.45 million Texans volunteered over 695.2 million hours of service to nonprofit and community organizations. Texans are more likely to volunteer with organizations that involve their neighbors and friends, averaging about 37.6 hours annually per organization. Most of these are related to religious groups, educational organizations, and social service agencies that focus on one of the following four areas: food collection and distribution, fundraising, general labor, and teaching (Corporation for National and Community Service [CNCS], 2011b). How much an individual or community supports area nonprofits depends upon five factors: 1) housing foreclosure rates; 2) the number of nonprofits in a community; 3) level of community attachment; 4) the average educational level of its residents; 5) and poverty rates (CNCS, 2011a).

Deaf Smith County's foreclosure rate is low despite the high rates in nearby Palmer and Potter Counties (RealtyTrac, 2012). According to the 2010 Census, Deaf Smith County has a population of 19,595 people (U.S. Census Bureau, 2012a) with 79% of its residents in Hereford's city limits (U.S. Census Bureau, 2012b). Of all Deaf Smith County residents, 83% have lived in the same house for at least five years. Homeownership is 65%, just 0.2% lower than the state average. Also, the number of available multi-housing units is 12.3%, one half less than the state average for apartment living throughout Texas. The national average of nonprofit organizations per 1,000 people living in a community is 4.55. There are 63 non-governmental, nonprofit organizations located in the county (Manta, 2012). Of these, 49 are religious institutions and the remainder are civil, social service, and business-oriented. Including religious organizations, the people-to-nonprofit ratio is 4.03 per 1,000 residents. This estimate is consistent with the national average for nonprofits in a community and with the type of organization in which Texans volunteer statewide—an educational group that feeds hungry children in their community (CNCS, 2011a).

Despite the potential support for SP4K in the Hereford-Deaf Smith County area, there are contributing social factors that would decrease community backing of any nonprofit organization. Two-thirds of the county's population holds a high school diploma and 13% holds a bachelor's degree or higher (Deaf Smith County, Texas, 2012). The U.S. Census Bureau (2012a) reports that 17.9% of Deaf Smith County residents live

Figure 5. Total Financial Donations Compared to Timing and Frequency of SP4K Publicity in Local News Outlets

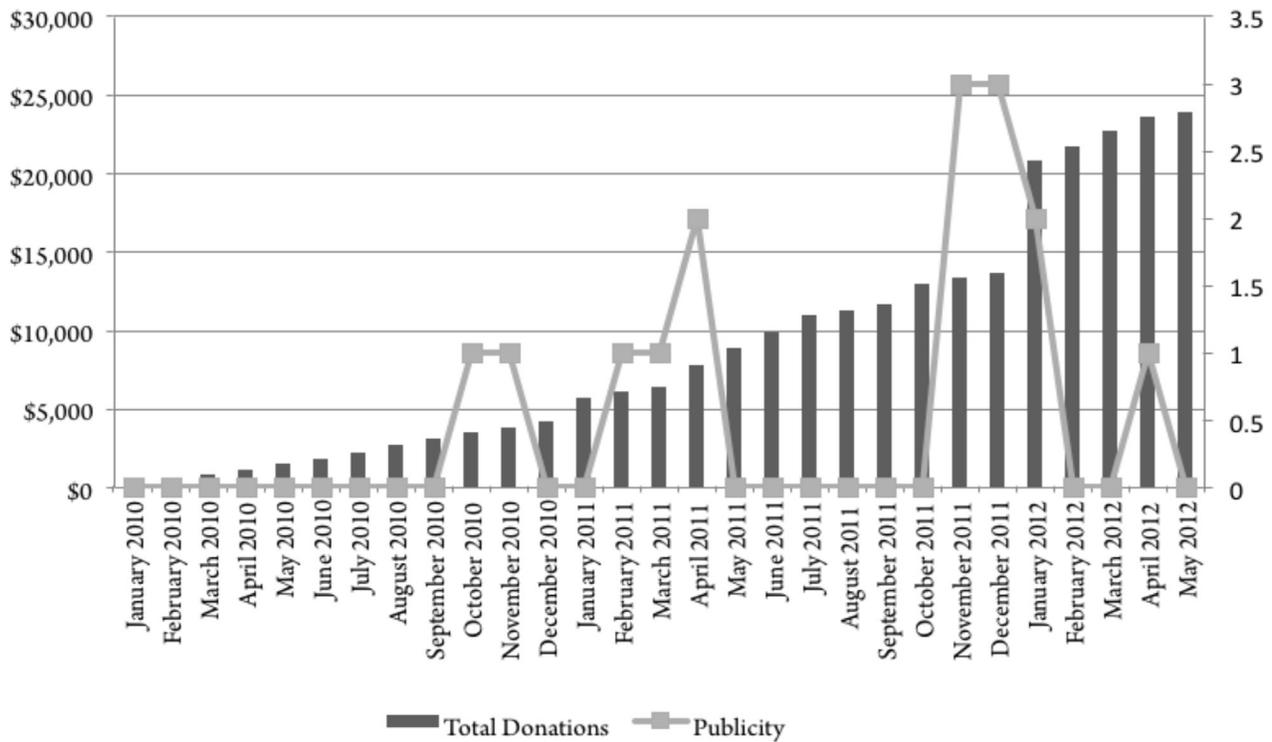


below the national poverty line. Volunteer in America reports that communities where at least 85.3% of residents hold a high school diploma and 27.9% or more earned a college degree are more likely to have higher volunteerism rates (CNCS, 2011b). Approximately 28.5% of all children in Texas live in food-insecure households. While the U.S. Census Bureau (2012a) reports 17.5% of Deaf Smith County residents live under the poverty line, Feeding America estimated the number of children living in poverty and food-insecure households is 30.4%. Both Hereford and Deaf Smith County are above the national and state average for children living in poverty. Over 36% of its workforce is comprised of single women with children (Feeding America, 2012). These women work in one of four areas: agriculture, manufacturing, retail, or social services-education (U.S. Census Bureau, 2012a). As a result of the lower levels of educational attainment

and higher poverty rates, SP4K—Hereford faced an almost double-edged sword.

Residents did not seem to understand the need for an anti-hunger program for children over the weekend and denied that children went hungry in their community. Once this situation was realized, several organizations and individuals who could not donate financially but could donate time did so. Volunteer sign-in sheets were maintained by Lee throughout the history of the organization. At first, most documented hours were those of organizational efforts led by Lee, Gonzales, and Bluebonnet Elementary faculty members and their children. As the organization gained more exposure through local media outlets, community meetings, etc., the number of community and high school volunteers increased. Over the first 30 months of the program’s existence, donated volunteer hours saved the organization \$28,921.20 in program costs.

Figure 6. Total Donations Compared to SP4K’s Community and Media Exposure



The average number of volunteer hours was logged by Lee, Gonzales, and fellow Bluebonnet teachers. Initial publicity in local media or community programs did not affect volunteer hours. An increase in the number of volunteer hours occurred when the local board members and Hereford High School’s Junior Reserve Officer Training Corp (JROTC) began to volunteer consistently each month. However, the greatest number of volunteer hours occurred between August 2011 and April 2012 when Hereford ISD began listing SP4K as one of its students’ community service projects. At this point, between 40 to 60 students volunteered on a bi-weekly basis to unload food shipments, assemble snack packs, and help distribute them to local elementary schools.

There is a moderate link between the amount of media coverage and financial donations provided to the organization. But media coverage did not have an effect on the increased amount of food donated to the program and its monetary value. Furthermore, the number of volunteer hours generated by the community’s commitment to SP4K saved the program almost \$30,000 over a 30-month period, thereby allowing the program to feed

more children without employing a part-time coordinator. Also there appears to be no correlation between the number of hours volunteered and media coverage. The strongest link exists between Hereford High School’s listing SP4K as one of its community service projects for students, JROTC volunteers, and the months in which school is in session.

Student, Parent, and Teacher Survey Results

At the end of the 2011–2012 academic year, surveys were submitted by WTAMU evaluators to recipients and teachers involved with SP4K in HISD. All students and their parents were asked to complete questions about the program, foods included in the snack pack, and the effect the program had on their lives. Teachers were also interviewed. They were asked if the program appeared to have improved the health of the child and changed classroom behaviors. In addition, teachers were asked about changes in school attendance, academic improvement, and improvement in concentration. The fi-

Figure 7. Total Volunteer Hours

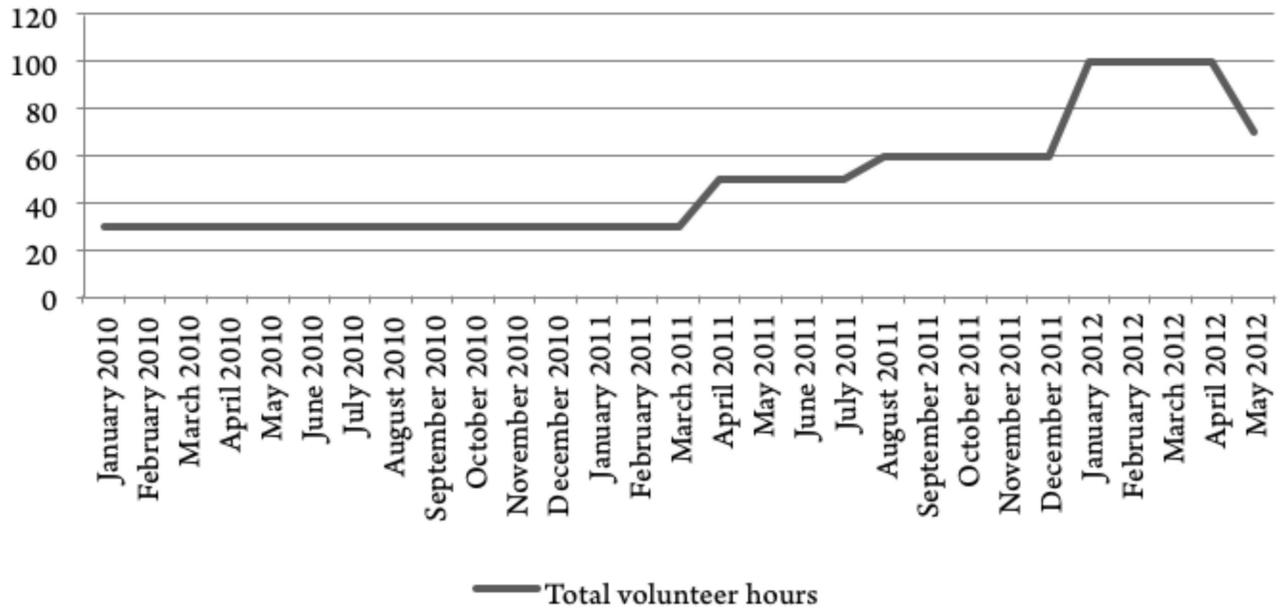
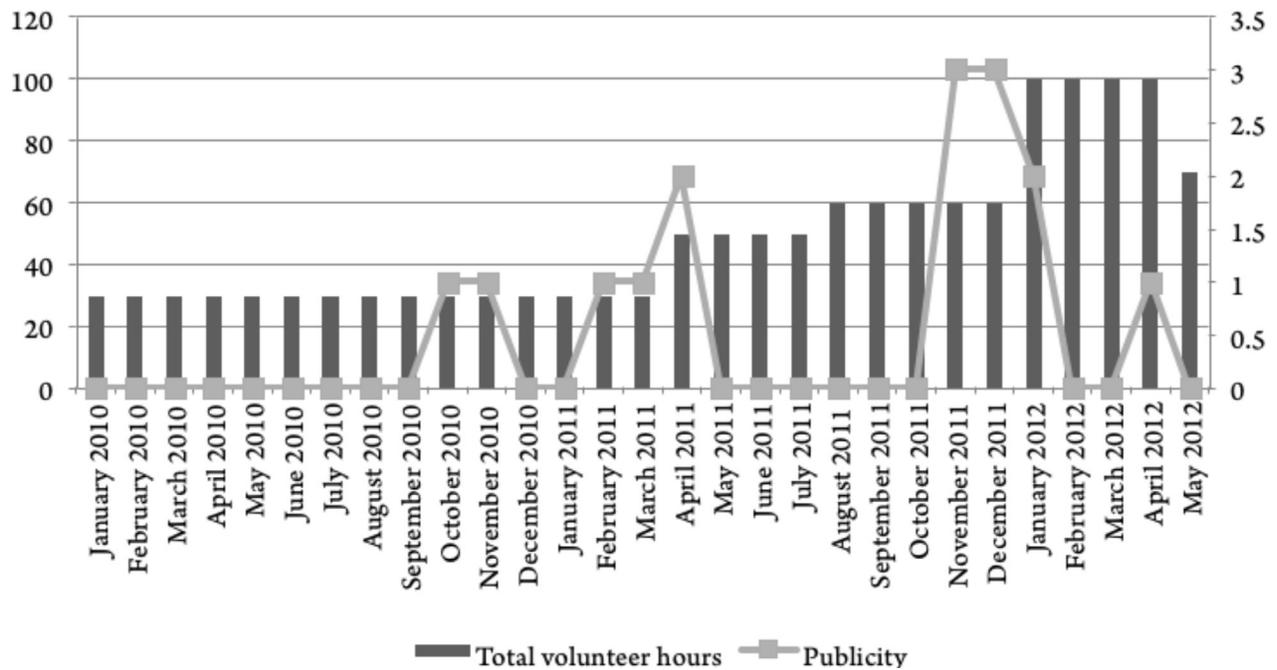


Figure 8. Volunteer Hours and Publicity



nal question asked if the teachers thought the program was beneficial.

Out of approximately 75 parent surveys sent home with students, only three were returned. All of them reported the program decreased their food costs. They reported SP4K lessened their worries about their children. The parents worked two and three minimum wage jobs, and their children were often alone or were not closely supervised by an adult. SP4K provided these children nutritious food that did not require any preparation. For these parents, SP4K's greatest strength was providing food the children could eat without a parent having to worry about them using electricity or gas to cook. As one parent responded, "I don't have to worry about them burning the house down." Even though most parent surveys were not returned, many parents and caregivers came to Bluebonnet Elementary School throughout the year looking for the "Snack Pack Ladies," Lee and Gonzales. Both reported the parents and caregivers thanking them for the food. They repeated how much those items reduced their worries. Most of them offered to work off any debt by cleaning their homes, washing their cars, etc. because they could not pay for the food. Lee and Gonzales reported all of those who visited them were single mothers and sometimes also the recently unemployed. Several cried as they thanked them and offered their services in payment for the food. While the surveys do not provide any statistical significance or reliable descriptive data, the parental visits combined with the written surveys provide limited insight into the parents' thoughts about SP4K and the effect on their lives (L. Gonzales, personal communication, June 25, 2012).

The response rate for the 200 student surveys distributed was 10%. Like their parents, the children's responses throughout the academic year demonstrate their support and need for the program. The children responded that they enjoyed receiving the food and that their participation remained anonymous. The survey asked which one item in the snack pack the student did not like. There was no consistency among the items they most preferred or disliked. Being the "Snack Pack Ladies," Lee, Gonzales, and all of the Bluebonnet teachers were asked the same question by student recipients starting each Wednesday, "Miss, I'm going to get that food on Friday, right Miss?" (K. Lee, personal communication, March 15, 2012). Their teachers always responded affirmatively but this did not stop the children seeking reassurance. They repeatedly asked over the course of the next two days. Upon entering their classrooms, each student unzipped their packs, signed, and relaxed upon seeing the snack

packs inside their backpacks. Many of them would thank and hug their teachers. As Daisha Edwards, a Bluebonnet fifth grade teacher, said during an interview on the local NBC-FOX News affiliate, "I never had a child thank me for food before" (Bennett, 2011).

In 2011, all elementary school teachers with students enrolled in SP4K were asked to complete surveys. In each of the six categories, teachers were given three response choices: much improvement, some improvement, and no improvement. Each response was assigned the numbers 1, 2, and 3 that is consistent with choices. The average response for all categories was 2.06, stating they saw some improvement in the students health, behavior, attendance, and academic abilities. When their responses were separated by school, Bluebonnet teachers' average was 1.73, a difference of .33. The average among all other elementary school teachers was 2.12. All reported the greatest improvement occurred in the student's academic abilities and increased concentration levels, particularly on Monday mornings. As with both parents and children, the teachers' written or verbal responses revealed their support or lack of support for their program.

The results of the teachers' questionnaires indicate that teachers at campuses not involved in the pilot program questioned the necessity and efficacy of SP4K. Like many Hereford residents, they could not believe that children in their community went hungry in the middle of America's beef capital. They questioned if the program encouraged parental helplessness. Some reportedly worried the backpack was filled with non-nutritious food items even though they had not opened any of the bags. Teachers criticized the program because it contained no fresh fruit or vegetables without knowing if the children had adequate refrigeration or someone to prepare the food. Lastly, some of the teachers reported the program encouraged bad parenting and encouraged poor parents to spend more money on "sins" and not on their children.

Outcomes and Recommendations for Hereford SP4K

An audit of PCS by Texas Department of Housing and Community Affairs revealed the agency's utility assistance program had misallocated 1 million dollars through the use of poor accounting practices (Ross, 2012, May 18). PCS agency director, Phyllis Cook, resigned after allegations of backdating invoices were made (Ranaivo, 2012, May 14). SP4K was not implicated in the investigation. However, its members feared the scandal would re-

duce donations and hungry children would pay because of decreased donations. Thus SP4K underwent organizational changes in 2012.

Howell contacted other nonprofit agencies to seek their support. By January, 2013, SP4K's regional system transitioned all accounting and website maintenance to Baptist Community Service (K. Lee, personal interview, September 1, 2012). Furthermore, Howell's work allowed the regional network to join a wider Texas system. This increased the organization's buying power but changed the menu items. One of those items is shelf-stable milk provided by Southwest Dairy Farmers and Elanco Corporation (Wehmhoener, 2012, August 21). The organization's external and internal systems would remain intact. The only thing that would change was the supplier.

At that time, SP4K—Canyon, a sister organization, separated from the regional network. SP4K—Hereford board members also considered becoming an independent agency with its own tax-exempt status because of the PCS scandal and upcoming organizational changes. Lee's investigation determined that leaving the regional SP4K network would force the Hereford program to purchase its food at retail prices or decrease the number of items contained in each bag. The local board decided to remain in the regional coalition.

Both Lee and SP4K board members grew concerned about the Hereford program's organizational structure. Lee was the central figure both in the Hereford program and its link to the regional one. "If I got hit by a bus today, who would feed the kids tomorrow?" Lee asked. In their June 2012 meeting, the board determined they would survive if Lee became ill or left the organization (Lee, 2012, June 25). Cross-training needed to occur so someone would be familiar with daily accounting requirements, obtaining food handling licenses, distribution, and volunteer management. Lee needed to choose between being the Bluebonnet campus coordinator or the district coordinator. She chose to be the district coordinator but also to work closely with campus coordinators so they could assume any responsibility should Lee be unable to do so.

Within 30 months, SP4K—Hereford established itself in the community and obtained seed money that allowed the program to expand and continue. It networked with local businesses, area high school students and organizations, as well as religious groups that provide funds, volunteers, and held community food drives. By joining the regional SP4K group, the Hereford program purchased food at reduced prices. The program's internal

and external organizational structure stabilized itself to a point where it could withstand external program shifts.

SP4K—Hereford established itself in the elementary schools; however, it was not able at the time to expand into the local junior high or high schools. At the school district's 2012 Welcome Back breakfast, the high school football coach, Don Delozier, told the crowd of 800 employees about one of his promising players whose academic and physical abilities started a rapid decline. After several weeks, the player came to him to explain what happened. The working-class family was faced with the choice of housing and feeding everyone or paying for the health care needs of a critically ill family member. They also chose to pay for housing and food for the sick family member. Everyone agreed not to eat at home so every penny could go to saving this family member's life. So, if the player did not eat at school, the student did not eat at all. In the meantime, the player was taking every odd job possible to help pay for unexpected medical needs. School work and football suffered. Junior high and high school teachers were becoming more aware of hunger in their schools because SP4K had increased community awareness and need (K. Lee, personal interview, August 13, 2012).

Until a snack pack program or food pantry is available throughout the Hereford ISD school system, childhood hunger over the weekends will continue unabated. SP4K may not be the appropriate response for upper-level classes because these students are more likely to be embarrassed by receiving SP4K aid. According to Nancy Ramsey (personal interview, February 18, 2012), an Amarillo middle school guidance counselor, once it was perceived that a middle school student was participating in the program, they would often refuse any assistance despite being chronically hungry. The high school football player is one example of how these students may feel about receiving snack packs at school if there was any risk of being seen by their peers. As a result, HISD may open a food pantry in its school that opens after school whereby students can seek assistance during non-school hours. Since these children are older, they would be more mature and capable of cooking simple meals with less risk of hurting themselves or others during preparation. Their anonymity would be protected by having the program open after-hours, and the students would be fed.

SP4K—Hereford should remain in the Panhandle-wide coalition. Their participation with the other groups increases the opportunities to purchase bulk food items from food banks. Moreover, breaking away would result in increased menu changes. To maintain menu and nu-

tritional consistency, SP4K may be required to purchase these items at retail costs. The transition from RFBO to the Texas coalition should not bring substantial change to the local program or the services it provides that it cannot meet its organizational or client needs.

The creation of the locally-controlled board of directors created several long-term benefits. Local board members stated that smaller towns and cities in the Texas Panhandle believe that Amarillo gets all of the attention. Amarillians encourage everyone in their communities to participate so every town benefits. The smaller communities will send their residents to assist. In the end, most of the funds and services remain in Amarillo. The residents believe their efforts to help themselves at home end up helping Amarillo more. The peanut butter drive held at WTAMU along with President Bill Clinton's 2012 visit to campus provide insight. Only four of the 30 volunteers were from Amarillo, yet an estimated 647 jars out of the 870 collected went to Amarillo schools.

Having a Hereford-based board of directors overcomes several obstacles. PCS and Baptist Community Services are based in Amarillo. PCS has a local office in Hereford and there are several Baptist churches in Hereford; therefore, opposition to having the financial accounts operated out of an Amarillo organization decreased because of their presence in Hereford. But the creation of and direct involvement of community members in this community project provided local legitimacy. The director serves at the pleasure of the board. The program director reports and implements all board recommendations and they are largely responsible for directing its school coordinators to train across job duties. In this way, no child goes hungry because of a coordinator's temporary inability to pick up and distribute food.

SP4K-Hereford needs to continue its community outreach and media presence. Volunteers saved the program almost \$30,000 during its first 30 months. Food drives saved an average of \$577.03 in monthly costs to SP4K. A comparison of program donations and publicity shows that every month the organization was featured positively in local or regional news, food and financial donations as well as volunteer hours increased. On average, these donations peaked within 30 days following the coverage. However, donations decreased within 60 to 90 days following the coverage.

Conclusion

SP4K-Hereford, like the national program, started in an elementary school with teachers, parents, and nonprofit organizations working together to solve childhood hunger in their communities. These teachers listening to an NPR broadcast and talking about the problem in their classrooms led to the creation of a pilot program in their school. The project has now expanded into a regional organization that is combatting hunger throughout the Texas Panhandle. The Hereford ISD program serves as a model for rural schools interested in establishing anti-hunger programs in their districts.

The internal and external organizations illustrate how food can be ordered, shipped, and distributed to schools and students every Friday afternoon during the academic year. As the organization gained community awareness, nonprofit organizations and religious groups donated food and money. It was this community support that led to large corporate funding and program stability. While year-end evaluations did not provide parental and student opinions, their expressions of gratitude and worry throughout the program provides supportive data to show how the program positively impacted their lives. Teacher evaluations among schools where the pilot project did not exist suggest that the weakest link between the recipients and supporters were the teachers. Much like the community as a whole prior to the establishment of the program and its media exposure, the teachers thought hunger did not exist in the community or was the result of negligent parents. They also thought the program's food was less-than-nutritious. Additional training programs and the presence of an on-campus coordinator help to eliminate false, preconceived notions about hunger in rural communities. The essay concludes with recommendations for the continuation of the program that will assist other school-based, anti-hunger programs located in rural communities. SP4K-Hereford may not have changed the planet, but it has changed the world for hungry kids attending the Hereford elementary schools.

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Note

1. The occurrences considered a media coverage or a community presentation are: 1) October 2010 presentation to Hereford Lions Club; 2) Gonzales's outreach to create a Hereford-based board of directors; 3) Lee's live interview on KPAN, a Hereford radio station on Tuesday, February 8, 2011; 4) April 2011 food drive hosted by First Federal Bank in Hereford; 5) publication of "Snack Pak 4 Kids program seeks community support" in Hereford Brand on April 8, 2011; 6) Amarillo's KAMR-TV report on Hereford's SP4K program on November 3, 2011; 7) November 2011 food

drive hosted by Happy State Bank; 8) Hereford Brand mentions SP4K as a community group; 9) community outreach to Terry Caviness and Caviness Beef for financial support after school children were found eating out of garbage at nearby Wolcott Elementary School; 10) Hereford Brand article by C. E. Hanna published on December 20, 2011; and 11) WTAMU encourages residents to donate jars of peanut butter to support SP4K region-wide as part of former President Bill Clinton's visit through the university's Distinguished Lecture Series (L. Gonzales, personal communication, October 3, 2012; Hanna, 2011, December 20; K. Lee, personal communication, October 3, 2012; Starling, 2011, April 8).

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The Missed Revolution: How *Twombly* and *Iqbal* Tilted the Legal Playing Field While Political Science Remained Silent

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ABSTRACT: Two recent Supreme Court decisions, *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009), sent shockwaves through legal and academic circles by introducing a plausibility requirement for all pleadings to be sufficient. Because of these decisions, the likelihood of dismissal in all cases through 12(b)(6) and related motions has jumped in the past three years. Consequently, a significant percentage of cases were dismissed before the discovery process could reveal the full facts. Our essay examines these outcomes of this new requirement through an analysis of a large sampling of cases. Specifically, we examine two outcomes of this revolution. First, the heightened pleading standard has severely hindered politically marginal plaintiffs and bolstered the defenses of the politically powerful. Our second observation casts a puzzled look at the political science academy. Significantly, while this judicially imposed revolution has stirred the legal community, no mention of this broad shift in political power in our courts can be found in political science journals. This silence is especially glaring when viewed in light of the repeated calls to make political science, as a discipline, more relevant.

Introduction

Two recent Supreme Court decisions, *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009), sent shockwaves through legal and academic circles by introducing a plausibility requirement for all pleadings to be sufficient (McMahon, 2008). The likelihood of dismissal in all cases through what are known as 12(b)(6) and related motions has jumped in the past three years (Hatamyar, 2010; Steiner, 2009). A significant percentage of cases were dismissed before the discovery process could reveal the full facts. Our essay examines the outcome of this new requirement through an analysis of a large sampling of cases. We specifically examine two outcomes of this revolution. The heightened pleading standard has severely hindered politically marginal plaintiffs and bolstered the defenses of the politically powerful. This result has significant policy implications concerning the perceived fairness and justice provided by our legal system. Our second observation casts a puzzled look at the response of political scientists. While this judicially imposed revolution has stirred the legal community, a search of the leading political science journals revealed no mention of this broad shift in political power in our courts. This silence is especially glaring when viewed in light of the repeated

calls to make political science, as a discipline, more relevant (Jaschik, 2010, p. A1).

The first part of this paper examines the Court's opinions in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* with a focus on the change to pleadings standards in the federal courts. Notice pleading has been under attack for some time. *Bell Atlantic Corp. v. Twombly* signaled the Court was listening. *Ashcroft v. Iqbal* revealed the Court was not only listening but ready to go beyond the suggestions of well-placed defendants. The paper's second part details the empirical analyses conducted to test the impact of the heightened pleadings standards. The most recent empirical studies demonstrate that there has been a statistically significant increase in the percentage of 12(b)(6) motions approved post-*Iqbal*, meaning that a particular type of defendant has seen their success rate increase while a corresponding particular type of plaintiff has been harmed by this alteration. In addition, when we examine the differences across different types of cases, there is again a statistically significant alteration depending on the nature of the case being litigated. Part three discusses the lack of attention within the political science discipline to this change in the federal litigation process. As of this writing, no article has appeared in any of the major political science journals concerning this topic.

This may be explained by the time delay for articles to be conceived, written, reviewed and published in mainstream political science journals. However, this seems unlikely for, while the review process for articles in law journals is fundamentally different than mainstream political science journals, the appearance of articles in law journals covering the transition began over three years ago. Certainly there has been enough time for research in political science to be made public. With the robust coverage of this shift in pleading standards in a myriad of legal journals, this suggests it is more than just the process of academic publishing. We suggest that political science as a field has failed in its responsibility to remain relevant in this area of political activity. We argue the field's silence in the face of this revolution speaks directly to the emphasis in the discipline away from relevance and towards minutiae.

What *Twombly* and *Iqbal* mean

In *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009), the Supreme Court radically altered what had been seen as settled litigation practice. The Court dropped the long-accepted procedure for pleadings standards established in *Conley v. Gibson* (1957), "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" (355 U.S. at 45-46). In place of *Conley's* notice pleading standard, the Court adopted a new plausibility standard. To go forward to the discovery stage of the litigation process, a plaintiff must present a complaint that alleges "enough facts to state a claim to relief that is plausible on its face" (*Bell Atlantic Corp. v. Twombly*, 2007). This alteration in pleading standards alters the long-accepted balance of power between plaintiffs and defendants in federal court. Moreover, not only did *Ashcroft* extend *Bell Atlantic Corp.*, it imposed a new two-step approach to determine 12(b)(6) motions to dismiss and other similar legal actions. The Federal Rules of Civil Procedure allow parties to present motions to the court to halt a legal proceeding before the judgment phase of the process begins. The most common of these motions is a 12(b)(6) motion to dismiss the claim for failure to state a claim upon which relief can be granted. This motion is designed to prevent unreasonable claims from forcing litigants to go through the taxing process of a full adjudication. In addition to 12(b)(6) motions, the Federal Rules of Civil Procedure allow for dismissal un-

der a 12(c) Motion for Judgment on the Pleadings. These motions are proper after the pleadings are closed but early enough not to delay trial if the court believes there is no possibility a party could be victorious on a claim.¹ First, district courts are to ignore all conclusions from the plaintiff's complaint that are not entitled to be taken as true for purposes of the motion to dismiss (*Bell Atlantic Corp. v. Twombly*, 2007). In addition, courts should apply the new heightened plausibility standard to the remaining allegations. The true importance of this shift is in how the long-established balance of power between the plaintiff and defendant has been altered. Before we prove this result, we must briefly review the change in pleading requirements.

A. *Conley v. Gibson's* "Notice Pleading"

The Federal Rules of Civil Procedure (FRCP), first adopted in 1938, attempted to make the pleading rules more fair and efficient (Bone, 2009). Over the past seventy years the FRCP have undergone several alterations. However, the pleading requirement established in 1938 has remained consistent in Rule 8(a)(2). It states a complaint (or other pleading seeking relief) requires "a short and plain statement of the claim showing that the pleader is entitled to relief" (FED. R. Civ. P. 8(a)(2)). In a test of the pleading standard initiated in 1938, the Court provided a broad interpretation of Rule 8(a)(2) in *Conley* (1938). The Court wrote:

In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. (45-46)

The Court reiterated the general philosophy of notice pleading:

[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

(*Conley v. Gibson*, 355 U.S. at 47, 1938)

For the past half-century courts reiterated the doctrine established in *Conley*. The "no set of facts" and the "fair notice" phrases from the sections excerpted above

became a mantra to nearly all writings on pleadings (*Leibowitz v. Cornell Univ.*, 2006).

B. Bell Atlantic Corp. v. Twombly's "Plausibility Standard"

The *Bell Atlantic Corp. v. Twombly* (2007) controversy was initiated by the breakup of AT&T. While the facts of the case are intriguing, they are beyond the scope of this research. Instead, we focus on the implication of Justice Souter's majority holding. Justice Souter's opinion reiterated the FRCP on pleading and made reference to *Conley v. Gibson* (*Bell Atlantic Corp. v. Twombly*, 2007). The Court left *Conley v. Gibson's* language half-stated. There was no mention that under a 12(b)(6) motion the plaintiff was to be given the benefit of the doubt. Nor was there mention that all inferences are to be construed in the plaintiff's favor. Instead the Court stated:

[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because plaintiffs here had not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.

(*Bell Atlantic Corp. v. Twombly*, 2007)

The Court explained that the plausibility standard is not a heightened standard but simply "calls for enough fact[s] to raise reasonable expectation that discovery will reveal evidence" of alleged claim (*Bell Atlantic Corp. v. Twombly*, 2007). Adding to the confusion, the majority opinion did not explicate how lower courts were to judge plausibility. Justice Souter suggested "plausibility" is more than "possible" but less than "probable" (*Bell Atlantic Corp. v. Twombly*, 2007). In rendering its decision, the Court subtly switched the burden from the party making the 12(b)(6) motion to the plaintiffs: "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations of the complaint" (*Bell Atlantic Corp. v. Twombly*, 2007). Instead of all reasonable inferences going toward the plaintiff, the Court requires an increased factual specificity before the plaintiff can pass the threshold and enter the discovery phase of litigation. With this assertion, the Court concluded the notice pleading established in *Conley v. Gibson* "ha[d] earned its retirement" (*Bell Atlantic Corp. v. Twombly*, 2007).

C. Ashcroft v. Iqbal's "Plausibility Plus"

Ashcroft took up the assertions of *Bell Atlantic Corp.* and not only reiterated its heightened pleading standard,

but increased the difficulty of plaintiffs to get to discovery even beyond that suggested in the preceding opinion. In a 5-4 decision, with Justice Kennedy writing for the majority, the Court provided a more-than-robust reading of *Bell Atlantic Corp.* (*Ashcroft v. Iqbal*, 2009). Kennedy's opinion moved beyond the standard language long-copied from *Conley v. Gibson* without even a mention of the precedent. Also jettisoned was any mention of giving the plaintiff the benefit of the doubt or that all reasonable inferences should be construed in the plaintiff's favor. Oddly, the Court began, "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense" (*Ashcroft v. Iqbal*, 2009). The Court then rejected the judicial experience and common sense of the Second Circuit in overturning their rejection of a number of 12(b)(6) motions to dismiss. The Court interjected its own judgment, concluding the "complaint fail[ed] to plead sufficient facts to state a claim for purposeful and unlawful discrimination against petitioners" (*Ashcroft v. Iqbal*, 2009).

Justice Souter, the majority's author in *Bell Atlantic Corp.*, wrote a scathing rebuke of the majority in *Ashcroft v. Iqbal* (2009). Souter suggested the majority had misinterpreted *Bell Atlantic Corp.* by creating a heightened pleading standard on steroids, "*Twombly* does not require a court at the motion-to-dismiss stage to consider whether the factual allegations are probably true" (*Ashcroft v. Iqbal*, 2009).

The majority in *Ashcroft v. Iqbal* laid out the new standard:

[A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework for a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should [1] assume their veracity and then [2] determine whether they plausibly give rise to an entitlement for relief. (Ashcroft v. Iqbal, 2009)

Because the Supreme Court places no limit on what a court may or may not accept as true or what it may or may not label as a legal conclusion, *Iqbal* opens the door for much wider rejection of complaints. With *Iqbal*, the Supreme Court implicitly allows reviewing courts to make judgments on the facts prior to the full disclosure of the facts provided for by discovery.

Table 1. Frequency of 12(b)(6) Motions Between May 22, 2005 and December 31, 2010

	Grant w/o Amendment	Grant w/ Amendment	Mixed	Deny	Total
Under <i>Conley</i>	157 (38%)	29 (7%)	103 (25%)	120 (29%)	409
Under <i>Twombly</i>	183 (43%)	45 (10%)	112 (26%)	89 (21%)	429
Under <i>Iqbal</i>	188 (39%)	94 (19%)	118 (24%)	85 (18%)	485
Total	528 (40%)	168 (13%)	333 (25%)	294 (22%)	1323

Assessment of the Alteration of Pleading Standards

Has the shift from notice pleading enshrined in *Conley* to plausibility pleading suggested in *Bell Atlantic Corp.* to plausibility-plus pleading asserted in *Ashcroft* resulted in a statistically significant difference in acceptance of 12(b)(6) motions to dismiss?

We followed the model suggested by Hatamyar (2009–2010) in selecting a random sample of cases from the federal district courts in the three distinct time periods under investigation: two years prior to the *Twombly* decision, the time between the *Twombly* and *Ashcroft*, and the time after *Ashcroft* up to June 30, 2011. We randomly selected 500 of the more than 20,000 cases in these three periods that contained a 12(b)(6) or similar motion. Of this dataset of 1,500 cases, a number were eliminated for lack of procedural safeguards (e.g., sua sponte reviews of prisoners' complaints, etc.) or that were dismissed for other grounds without full consideration of the 12(b)(6) motion or that required a heightened pleading standard (e.g., fraud, etc.). A test of the independence of these selection decisions proved that no statistical bias was identified. Once these reductions were completed our final database consisted of 1,323 decisions.

We categorized cases on a number of variables to assess whether the change in pleadings standards is having a statistically significant effect on the result of motions to dismiss. Aside from a list of control variables, we coded each case by the nature of the suit: contract, torts, civil rights (constitutional violations, Title VII actions, age and disability actions, etc.), labor, intellectual property, and other. In addition, we coded each case based on its

ruling on the dismissal motion: granted without leave to amend, granted with leave to amend, mixed rulings in which the court granted the motion on one or more counts but denied others, and straight denials.

Statistical Results

Table 1 shows the frequency of rulings under 12(b)(6) motions in the database under *Conley v. Gibson*, *Bell Atlantic Corp. v. Twombly*, and *Ashcroft v. Iqbal*. The table is further delineated based on the four ruling categories in the dataset.

Our findings indicate that a significant proportion of 12(b)(6) motions end a cause of action at this early stage of litigation. The traditional belief that 12(b)(6) motions are viewed with disfavor and rarely granted is unjustified. If we combine the frequency of 12(b)(6) motions approved with and without amendment, over half of all of these motions halt (or stall) the proceedings of the plaintiff. A simple examination of those 12(b)(6) motions granted under any of our three guiding cases shows little alteration. While our database displays an increase from 38% to 43% of motions granted without leave from *Conley* to *Twombly*; this percentage reverts to nearly the percentage of notice pleadings (38% to 39%) under *Iqbal*. This suggests that the change in pleading requirement has had little significant impact. However, the main importance of the increased pleading requirements contained in *Twombly* and *Iqbal* are to move a number of cases from the denial of 12(b)(6) motion to granted with allowance for amendment. Prior to *Twombly*, only 7% of the cases in our dataset brought under *Conley* witnessed

Table 2. Frequency by Nature of Suit and Pleading Standard Between May 22, 2005 and December 31, 2010

Nature of Suit	Grant (with or without leave)			Mixed Ruling			Denial		
	<i>Conley</i>	<i>Twombly</i>	<i>Iqbal</i>	<i>Conley</i>	<i>Twombly</i>	<i>Iqbal</i>	<i>Conley</i>	<i>Twombly</i>	<i>Iqbal</i>
Contract	19 (33%)	23 (38%)	24 (39%)	20 (35%)	20 (33%)	19 (31%)	18 (32%)	18 (30%)	19 (31%)
Tort	31 (40%)	34 (48%)	36 (51%)	27 (35%)	25 (35%)	20 (28%)	19 (25%)	12 (17%)	15 (21%)
Civil Rights	89 (45%)	97 (51%)	104 (52%)	66 (34%)	62 (33%)	61 (31%)	41 (21%)	31 (16%)	34 (17%)
Labor	10 (48%)	14 (47%)	14 (48%)	3 (14%)	4 (13%)	4 (14%)	8 (38%)	12 (40%)	11 (38%)
IP	5 (33%)	7 (41%)	8 (40%)	1 (7%)	0	2 (10%)	9 (60%)	10 (59%)	10 (50%)
Other	33 (48%)	28 (42%)	44 (62%)	13 (19%)	15 (22%)	10 (14%)	23 (33%)	24 (36%)	17 (24%)
Total	187 (43%)	203 (47%)	230 (51%)	130 (30%)	126 (29%)	116 (26%)	118 (27%)	107 (25%)	106 (23%)

Percentages represent the percentage of rulings in the database by pleading requirement opinion for a particular type of suit. For example, for civil rights cases, we find an increase in 12(b)(6) motions granted as we move from *Conley* to *Iqbal* from 45% to 52%.

a 12(b)(6) motion granted with leave to amend while 29% of cases during this period saw the motion denied. These percentages changed to 10% and 21% respectively under *Twombly*, and 19% and 18% under *Iqbal*. This obviously places a burden on those facing these motions to recraft their complaint to conform to the directions of courts under the granted 12(b)(6) motion. With limited resources, it is expected that a number of the cases within this category are not amended and end at this step in the process. This is an important avenue for future research.

Turning to Table 2, we can address whether there is a difference in rulings across type of suit by governing pleading requirement.

Beginning with a general assessment, an examination of the totals in Table 2 reveals an increase in 12(b)(6) motions granted as we move from *Conley* to *Twombly* to *Iqbal* from 43% to 51% of cases receiving this ruling in our dataset. A corresponding decrease in denials of 12(b)(6) motions is also witnessed from 27% to 23%. This general finding adds strength to the claim that the pleading change represented by *Twombly-Iqbal* is having an effect on the litigation process.

Of more interest is whether there is a differing effect across type of suit. While the percentage of each of the three broad categories of rulings identified in Table 2 has seen little significant change in the number of types of suits such as contract cases and labor cases, there has been an important shift in those cases most likely to be brought by individuals. For example, in civil rights cases, which were our largest category of cases, we see an in-

crease in the number of 12(b)(6) motions granted and a decrease in the percentage of denials of 12(b)(6) motions. As a result, since the advent of *Twombly's* plausibility pleading and its solidification under *Iqbal*, it has become increasingly difficult for litigants bringing civil rights cases to reach the discovery phase. A similar finding is shown for tort claims. Again, we see an increase in the percentage of suits in which a 12(b)(6) motion is granted and a corresponding decrease in the percentage of denied 12(b)(6) motions. In many of these suits, the ability to get to discovery is essential for harmed plaintiffs to be able to show their injury and the defendant's culpability. For example, in a potential class action, employment discrimination suit, a single plaintiff is unlikely to know the extent of any discrimination beyond their own particular situation until the defending company is forced through discovery to reveal this information.

This quick analysis of the effect of the *Twombly* and *Iqbal* rulings provides evidence that the alteration in pleading requirements these decisions represent is having an impact at the federal district court level. Since *Iqbal*, it is more likely that a 12(b)(6) motion will be granted. This effect is seen in the aggregation of all types of suits but is particularly troubling in those suits that are most likely to be brought by unsophisticated litigants. Consequently, in civil rights and tort actions, the impact of these two decisions seems even more important. This finding has obvious implications for the ability of individuals to achieve justice through our litigation system. Since *Iqbal* made clear that the new pleading standards

are to be adopted across all litigation, all litigants must be cognizant of this change. The implications for our legal system are far-reaching.

Silence from the Political Science Field

The implications are far-reaching for political science as well. Silence on important matters such as *Twombly* and *Iqbal* may be seen as part of the impetus behind critical musings as found, for example, in the New York Times and Inside Higher Ed, “Just How Relevant is Political Science” and Jaschik’s “Should Political Science be Relevant,” respectively (Cohen, October 20, 2009). In each, political science is taken to task, usually by political scientists, for being too concerned with the fight between quantitative and qualitative methods and those types of research questions that promote the novelty of a methodological procedure or gimmick, rather than focusing on research that has an effect directly upon the public. It also seems to drive an editorial contribution in *The Daily Princetonian* by Vinay Sitapati, a graduate student in politics. Echoing the email circulated by “Mr. Perestroika” in the fall of 2000, Sitapati (2011, April 5) voices his concern that political science as it is taught at Princeton, and he can only assume in most other political science departments around the country, is taught in such a way that fetishizes “certain methods” and gives “a cold shoulder to theory and [abandons] reality” (p. 1). Added to this is the “belief that empirical political science must be divorced from normative concerns,” leaving it a purely descriptive endeavor where questions of the good are left to political theory, “a subfield hermetically sealed from the rest of the discipline” (Sitapati, 2011, April 5, p. 1). In the end political science becomes a “combination of model-made abstraction and number-numbing specificity” that makes it “irrelevant to politicians, policy makers, and, lest we forget, the public” (Sitapati, 2011, April 5, p. 1).

Such rumblings have not gone unnoticed by the American Political Science Association (APSA). The primary concern of the organization’s 2011 Task Force report on Political Science in the 21st Century was to take stock of the profession of political science “to determine whether it is living up to its full potential as a scholarly discipline by enriching the discourse, broadening the understanding, and modeling the behavior reflective of vibrant democracy” (p. 1). While the Task Force (2011) claimed that it “is rare for academic disciplines to take stock of the practice of their professions to determine if they are realizing their full potential as effective contributors to soci-

eties” (p. 7), it has in fact been going on for quite some time. As Jaschik (2010), Cohen (2009, October 20), and Sitapati (2011, April 5) all point out, these are not new complaints and all mentioned the Perestroika movement that started in 2000. The Perestroika movement itself was eerily reminiscent of earlier debates. For example, just as Mr. Perestroika’s “East Coast Brahmins” (the very same cast(e) Mr. Sitapati was writing against) were seen as promoting a “narrow parochialism and methodological bias toward the quantitative, behavioral, rational choice, statistical, and formal modeling approaches,” so too had another group of disaffected political scientists in the late 1960s chafed under what they perceived as the heavy-handed and often inept application of behavioral methods to the exclusion of other traditional and politically engaged approaches (Monroe, 2005, p. 1).

The disaffection of this earlier group of dissidents led to the establishment of the Caucus for a New Political Science (CNPS) at APSA’s 1967 annual meeting. The Caucus organized itself around a collective and personal commitment “to make the study of politics relevant to the struggle for a better world” (Barrow, 2008, p. 215). As these different groups of contrarians sought to challenge the discipline’s status quo, whether it was in the 2000s or 1960s, they followed similar paths in their rebellions. Both groups, early on in their respective movements, challenged methodological conventions and then threatened to upend the settled balance of power within the discipline.

What is clear from these past and recent complaints is the perception that political science remains detached from the public’s concerns. An unsystematic review of the association’s premier journal, *American Political Science Review*, shows very little work concerned with big issues concerning the public: war in Iran and Afghanistan; health care; the banking crisis. As Theda Skocpol pointed out in her work on the Task Force, many of the works published in the journal simply do not pass the “explain it to your aunt at Thanksgiving” test. In the words of Sheldon Wolin (1969), who wrote on the heels of the founding of the CNPS, political science has lost its “epicness.” Wolin argued that our methodological practices and the purview of the behavioral revolution essentially accepted the status quo and left the discipline to describe the polity as it had come to be. That status quo has moved beyond just our politics but into the discipline as well. The reward structure for graduates in the discipline favors those with high productivity in the publishing of peer-reviewed journals. This high productivity is aided by those methods that allow for

rapid replication of what already is and not those questions dealing with how things ought to be. In this, Wolin's (1969) work remains germane: political science no longer concerns itself with "epic" political questions: 1) questions that are expansive in scope and challenge the status quo, asking if there is a different and better way of conceiving of a political practice; 2) Wolin notes that all major theorists of the past, those part of the political science canon, all wrote with the public in mind, a quality he noted that wasn't incidental to the practice of political science, but central to it, as concern for health is to the true physician. It is this concern, this "epicness," that

has been pushed out of the discipline and that we can see as the root cause for such major silences when key political decisions like *Twombly* and *Iqbal* occur. Such silence should lead us to question just how relevant our discipline is.

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Note

1. While 12(b)(6) motions are distinct from 12(c) motions, for our research purposes they operate in an identical manner and will be examined in unison. Throughout the essay both these legal actions will be incorrectly but efficiently referred to as "12(b)(6) motions."

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