A

ANIMALS IN CRIMINAL JUSTICE

Throughout history, animals have been part of the criminal justice system as victims, perpetrators, executioners, evidence, weapons, and detectors of crime. In addition considerable research now exists which indicates that cruelty to animals in childhood is an important predictor of violent behavior in adolescence and adulthood. Nonetheless, the role of animals in criminal justice has not been a major interest of either historians or criminologists and although the protection of animals and animal rights draws much attention in American and other societies, there is no national database in the United States that provides information about the number of animal cruelty cases prosecuted each year.

Animals as "Offenders"

Although it seems rather strange to actually prosecute and punish animals for criminal offenses, during the Middle Ages in Western Europe animals were often placed on trial. These trials were held in the secular courts for individual animals that had typically caused a person's injury or death. Most often, the accused were pigs (for it seems they frequently ran free in medieval European villages, and had a tendency to trample infants); however, there are also records of trials involving cows, horses, oxen, mules, sheep, dogs, and other species.

In spite of their nontraditional defendants, the courts took these trials very seriously and strictly adhered to the formal procedural rules governing the court. The animals were even assigned counsel to aid in their defense. Very often, trials ended with guilty verdicts and the animals were executed. Although the formal animal trials of the Middle Ages have ended, the informal prosecution and punishment of errant animals has not. Instead of the formal trial, offending animals may now be summarily executed at the scene of the offense, or perhaps impounded and then euthanized in an animal shelter. Local and state governments have also responded to modern animal offenders through "vicious dog laws," which allow for the killing of a potentially dangerous or vicious dog.

Animals as Weapons

In Roald Dahl's fictional short story *Lamb to the Slaughter* (1953), a housewife hits her husband ovder the back of his head swith a large frozen leg of lamb, killing him, after he tells her that he is leaving her. While this tale is fiction, there is much evidence that animals are used as weapons and some criminals have been cfreative in their use of animals as the "perfect weapon." Drug dealers and gang members have turned to pit bulls and other "vicious" dogs to protect their illicit interests. It has been reported that in domestic violence situations, the abused partners who have pets have had their pets harmed or threatened to be harmed, and perpetrators use dogs to attack their victims. Animals have even been used by child molesters to "bait" their victims, as was the case in the July 1994 crime that inspired "Megan's Law" (requiring community notification of sex offenders living in the neighborhood). Jesse Timmendequas, the convicted pedophile who raped and killed 7-year-old Megan Kanka lured the young girl to his house by telling her that she could see his puppy.

THE DEATH ROW DOG

One of the most famous animal criminals of modern times was Taro, the "death row dog." In 1991, Taro had been condemned to death under New Jersey's vicious dog law for allegedly attacking a ten-year-old girl (who, it is believed, had provoked the dog with a drumstick). The case was as expensive as it was time-consuming. Taro was kept incarcerated in the Bergen County Jail Annex at a cost to the county of $18,000. The borough of Haworth spent about $60,000 in legal fees, and Taro's owners spent approximately $25,000 for their own legal defense. Finally, three years after state authorities had seized the dog, New Jersey's newly elected governor issued an executive order effectively granting executive clemency and sparing Taro his life. In exchange for clemency, however, the dog was permanently banished from the state.

Animals in Law Enforcement

Although much of animal legislation views animals as potential lawbreakers, it is equally common to find animals employed to help enforce the law. Since the late 1800s, dogs have been specifically trained for work in law enforcement. They are especially effective at patrol work because of their acute hearing, a sense of smell that is at least 200 times that of humans, and a bite that can exceed a pressure of 600 pounds. K-9 units are trained for general patrol, narcotics detection, bomb detection, arson investigation, search and rescue, tracking of suspects, guarding prisons, crowd control, and crime prevention and public relations. Today, there are more than 2,500 K-9 units in the United States and Canada. During a nine-month period in 1988 and 1989, thirteen drug-sniffing dogs belonging to the U.S. Border Patrol in El Paso, Texas, detected $100 million in narcotics.

In light of the great financial and time costs involved in the procurement and training of police K-9s, it is not surprising that laws exist to protect these dogs. In 1978, the first state law to protect police dogs from physical abuse was passed by Massachusetts. Since then, 40 states have passed similar laws, and, depending on the particular jurisdiction, the maximum punishment imposed for causing the death of a police dog is ten years imprisonment (if the crime is committed in Alabama and Virginia), or (in Arizona) a fine of up to $150,000.

The Treatment of Animals as a Predictor of Crimes by Humans

In John Locke's 1705 essay "Cruelty" the renowned philospher warned that children should be carefully onitored in their behavior toward animals, for "they who delight in the suffering and destruction of inferior creatures, will not be apt to be very compassionate or benign to those of their own kind." Three centuries later, research by psychologists, sociologists, and criminologists shows that, in fact, Locke may have been correct in his prediction, and that violent acts toward animals are closely associated with interpersonal violence by humans. A study by the Massachusetts Society for the Prevention of Cruelty to Animals and Northeastern University found that 70 percent of animal abusers had committed at least one other criminal offense and that almost 40 percent had committed violent crimes against people. Some of the United States' most infamous killers participated in animal torture and mutilation as children or adolescents, including Jeffrey Dahmer, David Berkowitz (the "Son of Sam"), Richard Allen Davis, and Edmund Emil Kemper III. Tragically, most of the recent school mass murderers also abused animals, including Luke Woodham, Kip Kinkel, and Columbine shooters Eric Harris and Dylan Kelbold.

Conclusion

Whether in the capacity of K-9 officer or predictor of crimes against humans, animals havwe made a noteworthy, yet often ignored, contribution to criminal justice, it appears that this trend may be changing. Given the increased recognition of the possible interconnections between violence against animals and violence against people, the complex relationship between humans, animals, and crime requires more careful study in the future.

—Jen Girgen

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E

EUTHANASIA

Euthanasia (literally "good death") refers to several distincgt forms of mercy killing, all involving action or inaction, undertaken for the sake of someone elsde, which is intended to cause that person's death. *Active euthanasia* involves administering lethal drugs, actively asphyxiating the patient or killing them by other invasive means. *Assisted suicide* means helping a patient end their own life by supplying instructions, drugs or other equipment. *Passive euthanasia* involves withholding or withdrawing medical treatment, respiratory assistance, nutrition or water. Although there is no crime called "euthanasia," each of these practices constitutes a criminal act under certain conditions. Euthanasia remains controversial with ethicists, medical professionals and lawmakers, and the law in this area continues to evolve.

History

The Hippocratic Oath, taken by most Wesgtern physicians for over two millenia, states, "Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course" (Clendendig 1960: 14). Nonetheless, some medical historians believe that many Greeks in Hippocrates' day (c. 470 c. 410 BCE) did not view euthanasia as invariably criminal or unethical. By the nineteenth century however, the medical establishment had come to regard as unethical any action or inaction taken by a caregiver that could be reasonably foreseen to result in death, and Anglo-American common law criminalized such actions as homicide and assistance with suicide (which itself was a crime at the time).

In the twentieth century legal developments began to qualify this absolute ban: suicide itself was decriminalized in the United States, and courts began to recognize a general legal right to refuse medical treatment. Eventually, the latter was found to imply a further right to refuse "extraordinary" treatment, such as life support, even when such an action was certain to end the patient's life. Recognized by state and federal courts, including the U.S. Supreme Court, and physician's organizations, such as the American Medical Association (AMA), by the end of the century this right had expanded to include the right to refuse food and water. A physician who fulfills a patient's request to withdraw life support, nutrition, hydration or other treatment has not committed a crime. Individuals can make such requests prospectively, via an advance directive; a living will, for example, specifies conditions under which caregivers are to withhold treatment.

The "Euthanasia Program" in Nazi Germany

For some, the prospect of decriminalizing ehthanasia raises the specter of a dark episode in human history. In the first decades of the twentieth century, when the Germany government became concerned with cutting the costs of operating mental hospitals (known then as "asylums"), some German psychiatrists began to contemplate "eugenic" measures to deal with acute, chronic, untreatable mental patients. When the Nazi party rose to power, the government instituted what was known as "euthanasia program." Many psychiatrists participated, sterilizing mental patients and authorizing the execution of acute, untreatable individuals. Hundreds of thousands of men,

SELECTIONS FROM: OREGON'S DEATH WITH DIGNITY ACT

Written Request for Medication to End One's Life in a Humane and Dignified Manner
Section 2
127.805

s.2.01. Who may initiate a written request for medication.

(1) An adult who is capable, is a resident of Oregon, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication for the purpose of ending his or her life in a humane and dignified manner in accordance with ORS 127.800 to 127.897.
(2) No person shall qualify under the provisions of ORS 127.800 to 127.897 solely because of age or disability.

[1995 c.3 s.2.01; 1999 c.423 s.2] 127.810

Safeguards
Section 3
127.815

s301.Attending physician responsibilities.

(1) The attending physician shall:
- (a) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily;
- (b) Request that the patient demonstrate Oregon residency pursuant to ORS 127.860;
- (c) To ensure that the patient is making an informed decision, inform the patient of:
  - (A) His or her medical diagnosis;
  - (B) His or her prognosis;
  - (C) The potential risks associated with taking the medication to be prescribed;
  - (D) The probable result of taking the medication to be prescribed; and
  - (E) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control;
- (d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is capable and acting voluntarily;
- (e) Refer the patient for counseling if appropriate pursuant to ORS 127.825;
- (f) Recommend that the patient notify next of kin;
- (g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to ORS 127.800 to 127.897 and of not taking the medication in a public place;
- (h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15 day waiting period pursuant to ORS 127.840;
- (i) Verify, immediately prior to writing the prescription for medication under ORS 127.800 to 127.897, that the patient is making an informed decision;
- (j) Fulfill the medical record documentation requirements of ORS 127.855;
- (k) Ensure that all appropriate steps are carried out in accordance with ORS 127.800 to 127.897 prior to writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner;

women, and children were gassed, starved to death or killed by lethal injection.

Opponents of euthanasia, especially Germans, emphasize these horrors. Some find any form of euthanasia reminiscent of the Nazi program. Others fear that legalization would set us on a path that would eventually endanger basic human rights, including the rights of the poor, the disabled and the socially disfavored.

Proponents argue that the right to determine the circumstances of one's own death is itself a basic human right, and that decriminalizing voluntary euthanasia would give the individual the right to end their own life or have it ended at their behest. This, they insist, differs from the genocide perpetrated by the Nazi government, which occurred against the will of its victims.

The Legal Importance of Purpose

The AMA *Code of Ethics* does not forbid a physician from prescribing treatments that are likely to result in death, so long as the doctor's intention is not to cause death, but rather to achiedve some other purpose for the patient's sake such as pain relief. The criminal law takes a similar position, distinguishing between intention and mere "knowledge" or "foresight." For example, a doctor does not commit murder if he or she administers painkillers, even though death is likely to result, so long as they do so for the purpose of relieving the patient's pain, rather than for the purpose of causing the patient's death. When undertaken for the purpose of ending life, by contrast, this same action constitutes active euthanasia, which the AMA vigorously opposes, and which constitutes murder in every state. Consent of the patient is not a defense.

Assisted suicide, by definition, is undertaken for the purpose of bringing about death, and constitutes a statutory or common-law crime (assisting in a suicide or homicide) in all but six U.S. states. Again, consent of the patient is no defense. Withdrawing nutrition, hydration or life support can also constitute a crime under certain conditions. As with active euthanasia, the question is whether the action is taken for the purpose of ending human life, or simply with the knowledge that death may result. If someone withholds or withdraws medical treatment, nutrition or hydration for the purpose of ending life then they commit murder, whereas an attending physician is legally permitted (and typically required) to withdraw treatment when the patient has so requested, because the doctor's purpose in doing so is not to kill the patient, but rather to obey the patient's legally binding instructions.

In the United States a patient has the legal right to terminate life-sustaining treatment, but not to receive a lethal injection, which may permit a quicker and less traumatic death. Some critics deplore this as cruel and arbitrary; other commentators, including the AMA, regard the distinction between intending and merely foreseeing death as being both morally and legally important.

Courts

Euthanasia raises many legal and constitutional issues. In the United States the first major judicial decision concerning passive euthanasia was the famous 1976 case of Karen Quinlan. Quinlan, a young woman in a persistent vegetative state, had irreversible brain damage and no cognitive or cerebral functioning; nourished and hydrated intravenously, she breathed with the assistance of a respirator. Quinlan's family wanted to disconnect her from the respirator, but hospital officials refused to do so. In a landmark decision, the Supreme Court of New Jersey held that the right to privacy, as developed in U.S. constitutional law, gave Quinlan the legal right to have the respirator disconnected. Moreover, those who disconnected her were immunized from criminal charges and civil liability (i.e., lawsuits for medical malpractice and wrongful death). The ruling in *Quinlan* was followed by many other courts, which began to acknowledge a constitutional right of incompetent patients in persistent vegetative states to have extraordinary means of support withdrawn or withheld.

With a few exceptions, courts have taken a similar approach with respect to the removal of nutrition and hydration. They hold that competent adult patients can refuse any medical treatment for any reason, and classify artificial nutrition and hydration as "medical treatment." Although the U.S. Supreme Court has never squarely confronted this issue, it declared its agreement with lower courts on these points in the 1983 case of Nancy Cruzan —although it should be noted that the Court's statement to this effect was not necessary to the holding, and hence does not constitute binding precedent.

The *Cruzan* case is equally significant for its direct holding on the issue of incompetent patients. Cruzan, too, was a young woman in a persistent vegetative state following a car accident. Her parents sued the hospital to force the removal of the gastronomy tube that provided her nutrition and hydration, and at trial presented testimony that Cruzan herself would have chosen this course of action. The court, however, rejected this testimony as insufficient evidence of Cruzan's intent. On appeal, the U.S. Supreme Court held that although Cruzan would have had the absolute right to have the tube removed had she been competent, the state was entitled (although not obligated) to require "clear and convincing evidence" of that fact. Thereafter, Cruzan's parents presented the trial court with persuasive evidence that she would have wanted the tube removed; it was, and Cruzan died shortly thereafter. The case affirmed an in-

competent patient's right to have nutrition and hydration removed, but also permitted states to require "clear and convincing" evidence of the incompetent's presumed intent.

All states criminalize active euthanasia, and virtually all states criminalize assisted suicide as well. Several states have faced constitutional challenges to these bans. On 26 June 1997, the U.S. Supreme Court issued its first opinions on the subject. In two unanimous decisions the Court, in denying challenges to statutes in New York and Washington, refused to find any constitutional right to assisted suicide, although it left open the door for states to continue experimenting with policies in this area. Some commentators have also highlighted the Court's insistence that states must not impede a patient's right to receive "palliative care" aimed at alleviating pain and physical symptoms.

The first case, *Quill v. Vacco,* concerned a challenge to provisions of the New York Penal Law which state that a person is guilty of second-degree manslaughter when "he intentionally . . . aids another person to commit suicide" and that "a person is guilty of promoting a suicide attempt when he intentionally . . . aids another person to attempt suicide." The plaintiffs three terminally ill, mentally competent adults and three physicians who maintained that doctors should be allowed to participate in a patient's assisted suicide challenged the statute under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution. The Second Circuit Court of Appeals held that the ban on assisted suicide did violate equal protection, but the Supreme Court reversed.

The companion case, *Washington v. Glucksberg,* concerned a challenge to a similar statute in Washington State. The plaintiffs here, patients, physicians and a public-interest organization, alleged that terminally ill, competent adults have a right under the Due Process Clause to receive life-ending medication, and claimed that Washington law denied them this right by criminalizing assisted suicide. They also argued that the law violated the Equal Protection Clause, since it treated the plaintiff patients differently from terminally ill patients who need life support and are able to refuse or withdraw it. The Supreme Court rejected both of these arguments.

Legislative Initiatives

In the early 1990s some western states began to en- tertain the idea of legalizing euthanasia and physician- assisted suicide. In November 1991 voters in Washington defeated, by a margin of 8 percent, a ballot measure called Initiative 119, which would have authorized voluntary active euthanasia by permitting physicians to administer lethal injections to terminally ill patients. It would have required a written request witnessed by two impartial parties, and diagnoses by two doctors that the patient had less than six months to live. A year later California voters rejected a similar proposal by the same margin.

Then, in 1994, Oregon voters passed, by a margin of 2.6 percent, the Oregon Death with Dignity Act, making it the first jurisdiction in the world to legalize assisted suicide (but see "The Netherlands," below). As did the earlier proposals, Oregon's law—which permits doctors to prescribe, but not administer, lethal medication—requires a second medical opinion and applies only during the last six months of life; it also requires both multiple requests by the patient and two waiting periods. In the first two years after the act went into effect in November of 1997 there were 43 documented cases of physician-assisted suicide in Oregon.

Dr. Jack Kevorkian

No man has brought ore attention to the issue of physician-assisgted suicide than Dr. Jack Kevorkian, a pathologist from Detroit, Michigan. During the 1990s, Kevorkian helped 130 individuals commit suicide with the "Mercitron," a machine of his own invention. Kevorkian had been charged over the years with a variety of crimes, including assisting suicide, first-degree murder and murder under the common law. Then, in 1998, after the television program *60 Minutes* aired a videotape of Kevorkian injecting a fatal solution into a paralyzed man dying of Lou Gehrig's disease, he was charged with first-degree murder; a jury convicted him of a lesser offense, second-degree murder, on 26 March 1999. This was Kevorkian's first conviction. Under Michigan law he could have received as much as a life sentence, but the judge sentenced him to the minimum possible: ten to twenty-five years in prison.

Some herald Kevorkian as a hero. Others criticize him harshly, on several grounds: Kevorkian had but brief associations with those he assisted; he had little experience practicing medicine with living patients; he operated without regulation and supervision; and, of course, he worked outside of the law.

The Netherlands—Legalized Euthanasia

Both proponents and opponents of euthanasia point to the Netherlands as a revealing case study on decriminaliza-

tion. Although the letter of the Dutch penal code still criminalizes euthanasia, since 1973 Dutch courts have permitted physicians (but only physicians) to end a patient's life, under specific conditions: the patient, in the final stages of a terminal illness and in unbearable pain, must make a written request to the attending physician. In 1984, the Dutch Supreme Court narrowed these criteria, specifying that the death must not cause unnecessary suffering to others, that the patient's family must be consulted (unless the patient objects), and that a second physician must agree with the prognosis. In 1993 the Dutch parliament passed a law that protects doctors from prosecution if they follow these procedures. In April 2001 the parliament finalized this policy, enacting legislation that specifically legalizes euthanasia and assisted suicide. The Netherlands is the first nation in history to take this step.

Conclusion

In the United States, Quill and Glucksberg left open more legal issues than they resolved, although many of those issues will now be settled by state legislatures rather than by the courts. States can continue confidently to criminalize euthanasia and assisted suicide, but they may also follow Oregon's lead and decriminalize these practices.

It is too early to tell what ramifications Oregon's decision will have. This is not surprising. After two decades of study, commentators still cannot agree on the merits of the Dutch policy. Several things are certain, however. Each year, caregivers, friends and family members of the terminally ill facilitate thousands of deaths in the United States. In most cases, their motives are beneficent. Unless those who assist others to die make spectacles of themselves, as did Dr. Kevorkian, they are very rarely prosecuted. This is so despite the fact that euthanasia and assisted suicide are *de jure* criminal acts in almost every jurisdiction. Some have predicted that in the new century euthanasia will supplant abortion as our most divisive legal, moral and political issue.

—Jeffrey Brand-Ballard

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G

GRAND JURY

The Fifth Amendment to the U.S. Constitution guarantees that no person shall he tried for a serious crime "unless upon a presentment or indictment of a Grand Jury." So named because it comprises a larger number of jurors than a trial or petit jury, a grand jury is "a jury of inquiry . . . whose duty it is to receive complaints and accusations in criminal cases, hear evidence adduced on the part of the state, and find bills of indictment in cases where they are satisfied a trial ought to be had" (Black 1983: 444). Thus, the grand jury can be viewed as both a "sword" that helps the prosecutor acquire evidence by ordering witnesses to testify and produce documents, and a "shield" that screens against unjust prosecutions by insuring that the state has sufficient evidence to go to trial, because unless the grand jury finds probable cause to believe that a particular crime has been committed, it will refuse to issue an indictment authorizing the prosecutor to bring the defendant to trial.

Background

The grand jury functions both to assist the prosecutor and to limit the prosecutor's discretion to take cases to trial. In part because these roles are in tension, and in part because grand jury proceedings and records are not public, we know far less about grand juries than just about any other institution in the criminal justice process. What we do know, however, leads some to say that they are too effective in compelling the production of evidence, a fact that has led many commentators to call for their abolition. England, the country where the grand jury first developed some 800 years ago, abolished it by Act of Parliament in 1933. Grand juries have never played a role outside the Anglo-American legal world.

Grand Jury Functions

The screening function, the "sheild" against unjust prosecutions is formally performed in every case, because before the grand jury can issue an indictment it must find probable cause to believe that the defendant has committed a crime with which he or she is charged. If the grand jury does not find probable cause the case is dismissed, although federal prosecutors can refile the same case and seek to persuade a different grand jury that there is sufficient evidence of the defendant's guilt.

Grand juries are selected in much the same way as trial juries: the names of citizens are drawn from those who own property, register to vote or hold a driver's license. But grand juries function quite differently from trial juries. The grand jury can stay in session for as long as two years, usually meeting only one day a week, and can screen hundreds of cases. Trial juries decide guilt or innocence in a single case and must find proof beyond a reasonable doubta much higher standard than probable causebefore it can rule against the defendant. Federal grand juries consist of 23 members and can return an indictment by majority vote, while the trial jury consists of 12 members and must reach a unanimous verdict.

The only persons present in the grand jury room (other than court personnel) are the grand jurors, the prosecutor and a witness. There is no judge, and more importantly, no defendant or defense lawyer to argue the other side of the case. Grand jurors, but not trial jurors, are permitted to ask questions of the witnesses and to discuss the case with the prosecutor. The proceedings are secret, the records sealed,

GRAND JURY SECRECY RULES: RULE 6(E) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Recording and Disclosure of Proceedings.

(1) Recording of Proceedings. All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the government unless otherwise ordered by the court in a particular case.

(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) Exceptions.

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to –

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A) (ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

and no official report is ever made as to why the grand jury chose to indict or not to indictalthough "leaks" in political cases are frequent.

As described below, modern grand juries very rarely screen out cases; thus, their most important function today is that of the sword. The sword function is not utilized in every case because prosecutors usually have enough evidence from other sources, typically in the form of a confession, eyewitness testimony or physical evidence linking the defendant to the crime. But when a grand jury performs the sword function, it can be very effective in compelling the production of evidence through its subpoena power. There are few objections that witnesses can make to keep from having to testify or produce documents to the grand jury, a rule that has existed for centuries. As the Supreme Court put this common-law principle: "[T]he public [through the grand jury] has a right to every man's evidence" (*Kastigar v. United States,* 406 U.S. 441, 443). The prosecutor directs this function and can use the grand jury to develop a case against a particular suspect or to determine who might be guilty of a particular crime.

The sword and shield functions of the grand jury exist in tension. This tension, combined with the secrecy of the proceedings, makes the grand jury one of the most unusual institutions in Anglo-American criminal justice.

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) when the disclosure is made by an attorney for the government to another federal grand jury; or

(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

(4) *Sealed Indictments.* The federal magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(5) *Closed Hearing.* Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) *Sealed Records.* Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

History

Henry II of England (reigned 1154-1189) is credited with the development of a system of justice that included an early form of the grand jury. From 1154 to 1163, Henry II, great-grandson of William of Normandy (also known as William the Conqueror), had consolidated his military power over the kingdom of England. By 1163, the kingdom was at peace.

With his enemies subdued, Henry II directed his intellect and energy to imposing his rule uniformly throughout the kingdom. Part of securing a uniform rule, Henry realized, was to have a uniform court system. He implemented a series of laws, beginning in 1164, that increased the jurisdiction and authority of the royal courts, staffed by judges he appointed. These new laws increased the penalties, generally owed to the king, while diminishing the role of the individual court systems that each baron administered.

Crime was, then as now, a concern of both government and citizen. Then, however, there was no police force, and limited jurisdiction and resources made it difficult for local sheriffs to ferret out malfeasants. To fill this gap, one of Henry's innovations was a new law requiring that each village call together 16 men whose function was to report whether "there be any man who is accused or generally suspected of being a robber or murderer or thief . . . since our lord the king was king" (Assize of Clarendon § 1:

1166). This 1166 law was the beginning of the grand jury, its role in the twelfth century limited to acting as a sword, identifying those who might be guilty of crimes.

The history of the grand jury functioning as a shield against unjust prosecutions is less clear. Two early instances in which a grand jury resisted the power of king and prosecutor were the treason cases brought by Charles II in 1687 against the Earl of Shaftesbury and Stephen Colledge. As Professor Andrew Leipold puts it, "Although there is some dispute over whether the charges were valid, there is no doubt that each grand jury withstood great pressure from the court, and indirectly from the Crown, and refused to indict" (Leipold: 282). But the victory against the (possibly) unjust prosecution was short lived: the king moved the Colledge case to a part of England where he was viewed more favorably, and a new grand jury indicted Colledge, who was tried, convicted and executed. Shaftesbury, realizing that the same fate probably awaited him, fled the country. This example does not inspire much confidence in the grand jury's shield function.

There was, however, one period when the grand jury did function effectively as a shield, and this period led to its inclusion in the U.S. Constitution. As American colonists grew weary of British rule, they increasingly challenged the laws imposed on them from England and the authority of the governors appointed by the king. In 1734, John Peter Zenger published a New York newspaper critical of New York Governor William Cosby. The governor charged him with the common-law crime of "seditious libel": publishing untrue material that might lead to revolution. Three grand juries heard the case of the king's prosecutors, but each refused to indict. The governor then filed a charge without getting an indictment. While this procedure was permitted at the time (and in many states today as well), the governor's avoidance of the grand jury in Zenger's case was "a controversial move that further eroded popular support for the Governor's actions" (Leipold: 284). The trial jury acquitted Zenger.

As the Revolutionary War approached, colonists used the grand jury as "a potent weapon . . . to harass royal officials and protest against British authority" (Younger: 27). While prosecutors and judges were appointed by the king, grand juries were selected in town meetings, and thus included "the very people who have committed all these riots" against British authority (Younger: 31). In 1765, for example, a Boston grand jury refused to indict the leaders of the Stamp Act riots, and three years later a Boston grand jury refused to indict the publisher of the *Boston Gazette* for libeling the governor of Massachusetts. Another role for the grand jury in this era was to protect colonists as they increasingly violated the laws imposing British customs and duties. The grand jury was thus an effective shield against the enforcement of oppressive laws that the British Parliament and monarch had forced on the colonists. Little wonder, then, that the framers included the grand jury right in the Fifth Amendment to the U.S. Constitution.

But it is far from clear today that the grand jury serves any function beyond that of the sword permitting the prosecutor to compel evidence that the police cannot get by other means, or that the police cannot get as easily.

The Future of the Grand Jury

The Fifth Amendment grand jury requirement applies only in federal court. The U.S. Supreme Court has never ruled that states must provide grand juries in criminal cases, and more than half of U.S. states do not havde a statutory grand jury requirement. In these states, prosecutors can file an "information," setting out the details of the crime and swearing that there is probable cause to believe the defendant guilty (which is what Governor Cosby did in the Zenger case.) The next stage in these states is a preliminary hearing in which the state must persuade a judge that probable cause exists. Preliminary hearings also occur in some jurisdictions that require grand juries, typically when the case begins with an arrest. The role of the preliminary hearing in these cases is to make certain that grounds exist to refer the case to the grand jury.

In a preliminary hearing the defendant is present, with his lawyer, and has an opportunity to hear and refute the state's case. It would thus be more likely than the grand jury to function as an effective screen to keep weak cases from going to trial. Of course, in those states that use a preliminary hearing instead of a grand jury citizens do not participate in the screening of cases; what is lost is the voice of the people. Presumably, for example, a judge appointed by the king would have found probable cause in 1734 to believe that John Peter Zenger committed seditious libel.

But however effective the grand jury was in pre-Revolution days in protecting colonists from the overreaching of the British government, it is no longer. Because no defense is presented, and because the grand jury need find only probable cause, and only by a majority vote, grand juries rarely reject the prosecution's view of the case. The cliché offered to describe this phenomenon is that an able prosecutor can get a grand jury to "indict a ham sandwich," and in fact data from federal courts suggest that grand juries indict in 99 percent of cases (Leipold: 274). The full significance of these data is open to question. It might be that

prosecutors do such a good job screening cases that there is little work for grand juries to do. But the data clearly suggest that very little screening occurs at the grand jury stage.

Grand juries remain an effective swordtheir original role in 1166 when created by England's Henry II. Grand jury subpoenas produce large amounts of evidence difficult to get in other ways, particularly in complex federal cases involving multiple defendants and large-scale crimes like conspiracy and fraud. But there is no apparent reason to require a grand jury indictment in every case. Although we lack perfect data, it appears that the grand jury is a rubber stamp for the prosecutor, as its critics have maintained. Judges screening cases at a preliminary hearing surely could do no worse; and defendants can probe the state's case at the preliminary hearing, which makes it less of a rubber stamp.

The Fifth Amendment grand jury requirement cannot, of course, be abolished without a constitutional amendment. The difficulty of amending the Constitution might be reason enough to leave the federal grand jury requirement in place, but it is not surprising that England and about half of U.S. states do not use grand juries at all.

Summary

The grand jury was born as a "sword" to help the king's prosecutors. It functioned as an effecgtive "shield" to protect against unjust accusations for only a brief time in our history—when the American colonists were resisting British rule. It continues today to function effectively as a sword, but its shield function is often performed by a preliminary hearing before a judge.

—George C. Thomas III

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I

INTERNATIONAL CRIMINAL COURT

In 1998, more than 120 members of the United Nations approved the creation of an International Criminal Court (ICC), to be located in The Hague. Before the court could hear its first case however, at least 60 nations had to ratify the enabling statute. Ratification in most countries has been a lengthy legislative process, and as of May, 2001 only 29 countries had done so. Once convened, the court will have jurisdiction over four categories of crimes: genocide, crimes against humanity, serious war crimes and aggression.

Although plans for laws and courts to govern wartime conduct had been on the international political agenda for centuries, it took the atrocities of World War II to galvanize the international community to action. As a result, the Nuremberg and Tokyo war crime tribunals were convened. Shortly after the war, in 1948, the United Nations adopted the Genocide Convention, making it an international crime to commit acts intended to destroy a national, ethnic, religious or racial group. This was followed in 1949 by the Geneva Conventions, which codified the law of war and created a legal obligation for the nations ratifying them to try people accused of "grave breaches" in their own countries.

During the Cold War years, international war crimes issues languished until incidents in the former Yugoslavia propelled the international community to action once again. In 1993, the U.N. Security Council established an ad hoc tribunal for the former Yugoslavia to try crimes committed from 1992 onwards, and in 1994 a similar tribunal was established in Rwanda. However, the need still existed for a permanent court that was neither dependent on a Security Council vote for its existence nor limited in its scope. After considerable debate among U.N. committees, the Rome Treaty was signed. It focused on "the most serious crimes of concern to the international community as a whole": genocide, crimes against humanity, war crimes and aggression.

The definition of "genocide" was taken from the 1948 Genocide Convention, and protects national, ethnic, religious and racial groups from a variety of crimes directed towards them as an entity. "Crimes against humanity" includes widespread or systematic attacks against any civilian population in furtherance of a state or organizational policy. Because such crimes are limited to acts in furtherance of a state or organizational policy, the jurisdiction of the court will be restricted to only the most serious and systemic crimes.

The court will also have jurisdiction over serious crimes committed during armed conflict. Crimes committed during internal conflicts however, can only be heard when there is "protracted" armed conflict involving governmental and organized groups, or between organized groups. Since 1945, more than 80 percent of all armed conflict has been internal, rather than between nations. A fourth major category of crime, "aggression," was recognized; the United Nations has yet to define it however, and the court will not have jurisdiction until it has done so.

—Suzanne Carlton

See also Genocide, War Crimes

PRESIDENT CLINTON

Statement on Signature of the International Criminal Court Treaty,
Washington, DC, December 31, 2000

The United States is today signing the 1998 Rome Treaty on the International Criminal Court. In taking this action, we join more than 130 other countries that have signed by the December 31, 2000 deadline established in the Treaty. We do so to reaffirm our strong support for international accountability and for bringing to justice perpetrators of genocide, war crimes, and crimes against humanity. We do so as well because we wish to remain engaged in making the ICC an instrument of impartial and effective justice in the years to come.

The United States has a long history of commitment to the principle of accountability, from our involvement in the Nuremberg tribunals that brought Nazi war criminals to justice, to our leadership in the effort to establish the International Criminal Tribunals for the Former Yugoslavia and Rwanda. Our action today sustains that tradition of moral leadership. . . .

In signing, however, we are not abandoning our concerns about significant flaws in the Treaty. In particular, we are concerned that when the Court comes into existence, it will not only exercise authority over personnel of states that have ratified the Treaty, but also claim jurisdiction over personnel of states that have not. With signature, however, we will be in signature, we will not.

Signature will enhance our ability to further protect U.S. officials from unfounded charges and to achieve the human rights and accountability objectives of the ICC. In fact, in negotiations following the Rome Conference, we have worked effectively to develop procedures that limit the likelihood of politicized prosecutions. For example, U.S. civilian and military negotiators helped to ensure greater precision in the definitions of crimes within the Court's jurisdiction.

But more must be done. Court jurisdiction over U.S. personnel should come only with U.S. ratification of the Treaty. The United States should have the chance to observe and assess the functioning of the Court, over time, before choosing to become subject to its jurisdiction. Given these concerns, I will not, and do not recommend that my successor, successor, submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied.

Nonetheless, signature is the right action to take at this point. I believe that a properly constituted and structured International Criminal Court would make a profound contribution in deterring egregious human rights abuses worldwide, and that signature increases the chances for productive discussions with other governments to advance these goals in the months and years ahead.

Office of the Ambassador-at-Large For War Crimes Issues
Department of State Home Page

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The Coalition for an International Criminal Court. www.iccnow.org

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N

NEW GENERATION JAIL

The new generation jail is a departure from the traditional jail in its architecture, interior design, and design philosophy. The jail's state-of-the-art design attempts to create a safer and more humane environment for both the inmates and staff. The most important element of this new design is more effective supervision of inmates. Unlike traditional jails where inmates are only occasionally observed by correction officers, in the new generation jail inmates are under continuous and direct supervision.

The design was developed by the Federal Bureau of Prisons in the early 1970s and was first implemented in 1975 in newly constructed federal jails (known as Metropolitan Correctional Centers), in New York, Chicago, and San Diego. The first county-operated jail with the new generation design was built in Contra Costa County, California, and opened in 1981. Soon thereafter, new generation jails opened in Pima County (Tucson, Arizona), Multnomah County (Portland, Oregon), Clark County (Las Vegas, Nevada), and Spokane County (Spokane, Washington). In 2001 there were 300 new generation jails in operation throughout the United States and many more under design or construction (S. Schilling, National Institute of Corrections, personal communication, 8 February 2001). The design has been applied to jails as small as 47 beds (Benzie County, Michigan) and as large as 3,640 beds (Bexar County, Texas).

Traditional Jail Designs

Prior to the 1970s, most U.S. jails and prisons had a linear architectural design in which living areas (or "cell blocks") consisted of multiple-occupancy cells or dormitories aligned along a corridor or hallway. The problem with this design is that the correctional officers are unable to see what is going on in more than one or two cells at a time. As a result, there is what is typically referred to as "intermittent supervision," in that the correctional officers must patrol the corridors to observe inmates within the cells or dormitories. Patrol frequency and thoroughness may vary depending on the number of staff in the facility and the preferences of individual officers. Even in the best-operated linear jails, officers may only be required to patrol the corridors once or twice an hour. In the interval between patrols, inmates are essentially unsupervised and have ample opportunities to engage in misconduct. To compensate for the minimal staff supervision, high-security hardware such as bars, metal doors, electronic surveillance, and eavesdropping equipment are relied on to control aggressive inmate behavior. Heavy metal bars, for example, separate correctional officers from inmates and help to prevent inmate assaults against staff. Indestructible metal furnishings bolted to the ground or walls limit inmate vandalism and reinforced concrete walls, metal fences, and razor wire hinder prisoner escapes. Yet not all destructive inmate behavior can be controlled by this hardware. Assaults, rapes, or even homicides, may occur between inmates housed together in cells or dormitories. So too might inmate suicides, vandalism and property damage, extortion, robbery or other predation.

New Generation Jail Design

A guiding principle of the new generation jail design is that inmates must be under continuous observation by the correctional staff to prevent opportunities for misconduct (Zupan et al. 1991). The archictecture of the new genera-

tion jail is styled to facilitate this rigorous supervision. Smaller, more manageable groups of between 16 and 46 inmates are housed in self-contained living areas called "modules" or "pods" composed of single-occupancy cells arranged around a common area called a "dayroom." The inmates' daily activities, visitation, and recreation occur within the module, thus reducing the movement of inmates within the jail and the opportunities for security breeches such movement entails. Each module is staffed, 24 hours a day, by a correctional officer. The officer is in direct physical proximity to inmates, as there are no bars, walls, or other barriers separating the officer from the prisoners. The officer can easily observe most areas of the housing area from a single vantage point. This method of inmate management is referred to as "direct inmate supervision."

The high-security hardware so important to inmate control in linear jails is noticeably absent in the modules of the new generation jails. There are no physical barriers such as heavy metal bars, grills, or grates. Furnishings are made of wood or plastic, rather than metal. Toilets and sinks are porcelain, not stainless steel. In the new generation jail it is assumed that staff, rather than hardware, will control aggressive inmate behavior.

The interior of the new generation jail is designed to reduce the high level of stress that contributes to inmate violence. Psychologists have long known that environmental irritants such as noise, lack of privacy and territory, crowding, and lack of color can lead to aggressive behavior, particularly in individuals already prone to violence. Dayrooms complete with carpeting and upholstered furniture, for example, alleviates stress by absorbing irritating noise. Individual cells for inmates lessen the stress associated with lack of privacy and territory. The presence of mezzanines and open dayrooms diminishes the perception of crowding (even if the module is over capacity) and its related stresses. Colors such as rose, teal, gray, and peach on the walls soothe emotions rather than arouse them.

Although the architecture and interior design of the new generation jail are important, it is the direct supervision concept that is the critical feature of the new generation jail. Because the correctional officers are inside the module, their job is much more complex, requiring more sophisticated people skills than is needed in linear jails. Officers are expected to control inmates primarily through their leadership and communication skills; consequently, they receive extensive training in interpersonal communication and relations, principles of supervision, crisis and conflict management, problem-solving and various other human relations skills. The techniques used to deal with the inmates are reminiscent of those used by good parents, such as proactive rules enforcement, progressive discipline, early intervention into and reconciliation of disputes, fair and consistent application of rules, positive expectations, and active interaction and communication (Zupan et al. 1986).

The basic assumption is that direct supervision will significantly curb negative inmate behavior in a number of ways. First, the presence of the officer inside the module should deter many inmates from aggressive behavior. Second, the officer is in an excellent position to observe and quickly defuse a possibly violent situation. Third, because the officer has more contact with inmates, he or she will be better able to sense when problems may arise and/or to learn about a potential crisis through informal interactions with inmates.

Effectiveness of the New Generation Jails

Preliminary studies of the new generation jail design show that it is generally effective in controlling negative inmate behavior, particularly when compared to linear jails. In a comparison of five new generation and six linear jails, the National Institute of Corrections (Nelson and O'Toole 1983) found fewer inmate homicides, suicides, aggravated assaults, escapes, and escape attempts in the new generation facilities. Sigurdson (1985, 1987a, 1987b) studied new generation jails in Manhattan, Pima County, and Larimer County (CO) and found few, if any, incidents of inmate homicides, suicides, sexual or aggravated assaults, inmate disturbances, escapes, vandalism, or possessions of contraband.

Senese and associates (1992) compared the number and types of inmate rule violations that occurred in one county before and after the transition to a new generation jail. They found that the number of violations for inmate violence, contraband, suicides, and escapes decreased significantly after the transition to the new generation jail, but that the number of violations for property theft and inmate misbehavior (i.e., disobeying orders) increased. Bayens and colleagues (1997) also studied inmate rule violations in one county before and after the transition to a new generation jail and reported an overall decline in the number of staff reports of inmate rule infractions. The most dramatic reduction was in the area of aggressive behavior such as assaults, batteries, sex offenses, attempted suicides, fires, possession of weapons, and escapes.

These, and other researchers who have studied new generation jails, concur that the new design is not a panacea. It

does not miraculously transform inmates into law-abiding and obedient individuals. Even in new generation jails, some inmates will pose management problems. The difference, however, is that in the new generation jail they have fewer opportunities to do so without being observed and disciplined by the staff.

—Linda L. Zupan

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V

VIDEO AND COMPUTER GAMES

Sometimes called electronic games, video and computer games are a form of interactive multimedia entertainment played by oneperson, either alone or in competition with others. The use of multimedia—in the form of sound, computer graphics, animation and textin combination with the ability of the player to control, combine and manipulate these media, distinguishes electronic games from other kinds of entertainment, such as television, motion pictures and music. Video and computer games are of significant interest to the public and criminal justice professionals because research suggests that exposure to screen violence leads to aggression, fear, and insensitivity to real-life violence. In addition, video and computer game technology and the use of that technology has legal implications concerning freedom of speech and privacy rights, copyright law, gambling, and consumer protection.

History

The first interactive computer game, Spacewar, was created in 1961 by Steve Russell, a student at the Massachusetts Institute of Technology. But what began as a student exercise quickly became an industry, and by the 1970s coin-operated arcades could be found in bars, malls and transportation centers worldwide. Soon thereafter, electronic games became available as hand-held, battery-operated devices, and as home console games played on a separate television screen. In the 1990s the change in distribution mechanisms for electronic gamesfrom cartridges, floppy disks and CD-ROMs to cable television lines and the Internetblurred the distinction between a PC and console; the most popular console, PlayStation 2, for example, is now marketed as a "computer entertainment system" due to a number of features: a DVD and hard drive, a modem for the Internet access and a digital camera. Currently, the industry is looking into developing gaming and entertainment applications for third generation mobile networks, which means that people will be able to use their cellular phones to play both single and multiplayer games.

The video and computer game industry is incredibly profitable. Forecasters predict that interactive game sales will reach $13.8 billion in 2004, with an annual growth rate of 21.7 percent. In 1999, Americans bought 109.9 million copies of console videogame software, 15.5 million consoles and 61.3 million copies of computer game software. Sony, Nintendo and Sega are the leading electronic game makers.

Game Genres

Like movies, video and computer games are often classified by genre. Although game genres are flexible and new kinds of games evolve rapidly, the Interactive Digital Software Association (IDSA), the leading trade association for the interactive entertainment software industry, distinguishes between the following genres of video and computer games: puzzle/board/card and learning games; action games; strategy, driving/racing and adventure/role-play games; sports; simulation and children's story games; creativity games.

Who Plays the Games?

Despite the popular belief that video and computer games attract mostly boys in their teen years, statistics show that the average age of an electronic game player is 28 years old, and 34 percent are women. According to some reports, many senior citizens (52 percent) have overcome their technophobia by learning to play computer games. Studies show that men and women play games for different reasons, and in different ways: men like competitive and action games, while women prefer puzzles or scavenger hunts; men respond better to visual stimuli, while women want a satisfying emotional resolution.

Eventually, the negative representation of women in electronic games, the marketing of these games to boys, and the meager proportional representation of women in the gaming industry attracted criticism from feminist activists. The resultant "girls' games" movement led to the creation of games targeted at girls (e.g., Barbie Fashion Designer, Kiss, The Girls' Club) and a profitable new outlet for the electronic game industry. Another significant trend is the emergence of companies that are owned and staffed largely by females (Girl Games, Girltech and Purple Moon, among others), at least part of whose motivation is an attempt to transform gender relations within American culture. Opponents of the "girls' games" movement argue that rather than conforming to stereotypical gender differences, unisex formats should be explored in order to appeal to alternative tastes and sensitivities in both male and female consumers.

Electronic Games and Education

Claims have been made for both positive and negative consequences of electronic game playing on the emotional, social, cognitive and physical development of children. Advocates believe the games teach children to become computer literate, and improve their motor coordination and problem-solving skills. Nevertheless, the adaptation of computer game strategies for educational purposes is most common among adults, as more and more industries utilize computer games as a training tool for their employees. The potential harmful effects of electronic games—passivity, aggression, addiction and stress—are investigated more fully in the literature than the benefits.

Electronic Games and Violence

Action games have always been the most popular electronic game genre: among the industry because point-and-shoot games are easier to design and manufacture than other types of games; and among users because they are more exciting, and because the player is immediately rewarded with additional points and advancement to higher game levels. The design of many of these electronic action games is built on a psychological phenomenon called "operant conditioning," where certain behaviors are rewarded, thereby reinforcing those behaviors.

The link between the increase of aggression and violent behavior in children and the amount of violence portrayed in television, motion pictures and video and computer games has been the subject of many studies in psychology, sociology, education and criminology. With the popular video game Doom at the center of controversy after the 1999 school shooting in Littleton, Colorado, even the industry found itself questioning whether the games were getting too violent.

Researchers have found three basic negative effects from exposure to screen violence: increased aggression, fear and insensitivity to real-life and screen violence. Many sociologists and educators believe that while playing games children learn and practice culturally accepted norms of social behavior, and that therefore, killing can be learned. Their opponents believe that this research is biased towards seeking evidence of harm, and argue that other factorsalienation, an imperfect educational system and poor parentingcontribute to children's antisocial behavior. The majority of scholars agree, however, that aggressive children prefer violent games.

Industry Self-Regulation

In 1994, as a result of the ongoing debate about the contribution of mass-media violence to aggressive behavior in children, the IDSA established a voluntary rating sysgtem for electronic games. The Entertainment Software Rating Board (ESRB) reviews video and computer games in regard to age appropriateness and content, in hopes of allowing consumers and parents to make informed decisions when buying or renting a gamea practice recently extended to online games and websites as well. Although ESRB ratings are not an industry standard, many retailers will not carry games without an ESRB rating label. Of the 7240 games submitted to ERSB since it was formed, 70 percent were rated E (Everyone). However, the recent report of the Federal Trade Commission on self-regulation and marketing practices of the entertainment industry found this process flawed: for example, 70 percent of video games rated M (Mature) were routinely marketed to

children younger than 17 years of age and were easily accessible to them.

Those opposed to the manufacturers' self-rating system say the government would provide better regulation, and argue that such oversight might prevent subversion of regulatory goals by the industry. Moreover, government regulation might promote competition and thus limit the number of antitrust issues among game manufacturers. On the other hand, First Amendment protections make it difficult for the government to prohibit the violent content of electronic games. All of the researchers agree that parental supervision is the best regulatory method.

Electronic games and the Law

The rapid growth of the electronic game industry and the versatility of the computer technologies employed pose new challenges for the government and courts on crucial issues ranging from copyright legislation the First Amentment protection to Internet regulation.

Copyright

A variety of federal and state laws (e.g., trade-secret, trademark and patent law) are intended to protect electronic game manufacturers from crime. But video and and computer games are particularly vulnerable in the area of copyright (the right to produce copies), which is the underlying law of the entertainment industry. Game manufacturers are especially susceptible to software, online and merchandise piracy. In 1998 alone U.S. video and computer game makers lost $3 billion dollars worldwide due to software piracy.

In the 1980s piracy and counterfeiting of arcade video games quickly became a problem. (Counterfeiting includes not only duplication of the game but also alteration of the software, graphics and player controls.) In the United States, persons dealing with pirated video games may be prosecuted under Title 18 of the U.S. Code, for conspiracy, false statements on entries, undervaluation, copyright infringement and trafficking in counterfeit goods. Tim O'Reilly, for example, was convicted of criminal copyright infringement for selling counterfeit copies of the circuit boards for Data East USA's video games Karate Champ and Kung Fu Master (*United States v. O'Reilly,* 794 F.2d 613 [11th Cir. 1986]).

Manufacturers of electronic games often practice reverse engineering, (that is, taking apart a competitor's games to determine how their computer program works and then using that program in manufacturing its own games), a practice that sometimes infringes upon copyright protection, as was demonstrated in *Sega Enterprises v. Accolade* (785 F. Supp. 1392 [N.D. Cal. 1992]).

In an age when digital information is extraordinarily fluid and prone to piracy over the Internet, video and computer game manufacturers use the provisions of the Digital Millennium Copyright Act of 1998 as their protection against websites and Internet service providers that host sales of pirated software. In March 2000, for example, Nintendo, Sega of America and Electronic Arts sued Yahoo! in U.S. District Court in San Francisco, alleging that it ran a "cyber flea market" for counterfeit video games.

First Amendment Protection

Freedom of speech has been an issue in many cases brought to court against entertainment companies during the last 20 years. The First Amendment generally bars tort claims for injuries caused by free speech,

The plaintiffs in *Watters v. TSR Inc.* (715 F. Supp. 819) filed a tort lawsuit against the producers of the video game Dungeons and Dragons, alleging that their son committed suicide because the manufacturer was negligent in issuing warnings about the danger of playing the game. *James v. Meow Media* (90 F. Supp. 2d 798) was the first lawsuit filed against an entertainment company for allegedly manufacturing a game that caused a player to injure a third party. The plaintiffs, parents of three students killed in the 1997 high school shooting in West Paducah, Kentucky, claimed that games like Quake, Doom, and Mortal Kombat had a profound effect on freshman Michael Carneal and contributed to his violent acts. Both cases were dismissed on First Amendment grounds. Opponents of these rulings argue that as a new, three-dimensional and interactive form of media marketed mostly to children, video and computer games should be entitled to lesser First Amendment protection. Studies showing a correlation between playing violent video games and aggressive behavior support this point of view, but very little of this research has been tested in court.

Online Privacy

Invasion of privacy is a big problem for Internet users. In order to guarantee safe access to the Internet by minors, the U.S. Congress passed the Children's Online Privacy Protection Act of 1998, which bars Internet sites from collecting personal information from children under 13 without parental consent. Distributors of free downloadable electronic games must comply with this act.

Internet Gambling

Online gambling is a fast growing addiction, especially among the young, women and the elderly. The widespread availability of games of chance and casinos on the Internet not only causes financial and psychological harm to the player, but is also problematic for law enforcement agencies that deal with issues like debt collection and money laundering. Although online gambling is illegal in five U.S. states, there is no federal prohibition. In 1999 the Senate tried to block gambling sites that originate in other countries (Antigua, Australia, Costa Rica, Dominica and Trinidad all permit online gambling) by introducing The Internet Gambling Prohibition Act (H.R. 3125), but it failed to pass. Currently, the House of Representatives is considering the Unlawful Internet Gambling Funding Prohibition Act (H.R. 556). So far, there has been only one successful conviction against an online betting site by a U.S. Attorney (*United States v. Cohen,* No. 00-CR-187).

Consumer Protection

Online computer game players have the same legal rights as other software buyers who seek restitution when injured by faulty products. The creators of the popular Internet game Ultima Online, for example, wer sued for breach of warranty by plaintiffs who alleged that the game's software had caused lags and server crashes on their computers, and that the company's advertisement failed to mention system requirements. The case was settled out of court.

Summary

The emergence of video and computer games resulted from a natural development of children's play in the twentieth centurty. The computer accelerated the movement of the children's play from dangerous streets to a safe home environment. The proliferation of the online games that can be played collaboratively over the Internet allows children to play games with others without leaving the house. The violent nature of many electronic games has attracted criticism from educators, parents and the government, so much so that the industry has established a self-regulation system to educate consumers and limit the availability of violent games to children. Video and computer game manufacturers are exploring new markets to attract people of different genders and ages to their products. The changing nature of multimedia technologies requires amendment of old laws and passing of new ones to guarantee legal protection to both consumers and manufacturers.

—Maria Kiriakova

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WOMEN IN PRISON

By the end of the twentieth century there were over one million women incarcerated, on probabion or on parole in the United States. There were almost eight times as many women in prison at the turn of the century as there were twenty years earlier, increasing from 12,300 in 1980 to 90,668 in 1999, at a rate nearly double that of men. While numbers vary from state to state, there are approximately ten times as many women incarcerated in the United States as in all of Western Europe, which is roughly equivalent in population.

This growth does not reflect an increase in women's criminality, but rather a shift in U.S. crime policy, specifically drug policy. Historically, women in the United States have been most often convicted for minor theft and property crimes. Violent offenses committed by both women and men have been in continual decline in recent decades, while drug offenses account for the dramatic increase in the number of female inmates. Data from 1997 show that 40 percent of women in state and federal prisons were incarcerated for drug offenses (over one third for "possession"), 27 percent for property offenses, 25 percent for violent offenses and 8 percent for other offenses. These numbers do not include the tens of thousands of women who were sentenced to less than one year and therefore served their time in jail, also most often for drug offenses. Harsher drug laws and mandatory sentences have increased the number of incarcerated women so sharply that some experts have called the "war on drugs" a "war on women."

Profile of the Female Offender

The typical female inmate in the United States is a woman of color beteen 25 and 29 years old, incarcerated either for a drug or property crime. She was raised in a single parent home from which she ran away one to three times. Between the ages of t5 and 124 she was likely to have been the victim of sexual abuse and to have witnessed violence at home. She started using drugs by the time she was 13 or 14, dropped out of high school and left home before the age of 17. She has received government assistance, most likely been involved with prostitution, and been a victim of domestic abuse at some point in her life. A single parent, she has never married and has two children who are living with her mother or other relative while she is incarcerated. She plans to maintain custody of her children and live with them after her release. She is typically released with no money, no job, court fines, a criminal record and children to support. She has been incarcerated before and will probably be sent to jail again.

Who Gets Incarcerated

Incarcerated women report experiences of childhood physical and sexual abuse at a rate higher than women in the general population, and studies show that 60 to 80 percent of the female prison population has suffered adult physical, sexual or domestic abuse as well. Most women in prison are poor and under-educated: about half finished high school and more than half were unemployed at the time of their arrest. Minorities are over-represented: in 1999, black women were seven times more likely to be in-

The number of women in prisons in the United States has increased from about 12,000 in 1980 to 90,000 in 1998. It is harsher drug laws and mandatory sentences that have placed more women in prison and this has led many experts call the Awar on drugs@ a Awar on women.@

carcerated than white women and Hispanic women three times more likely. Although minorities are not the only women in society who suffer physical, sexual and domestic abuse or use drugs, women of color and low socioeconomic status tend to be under more police surveillance (especially if they have been in jail before), and are less likely to be able to afford therapy, bail or a private attorney; consequently they are more likely to be incarcerated as a result of their criminal activity.

The fact that they are overwhelmingly poor and subject to institutional racism and sexism in society and in the criminal justice system influences the "choices" they make. Their status as marginalized citizens in society often leads them to jail, while women in the middle and upper classes tend to have many more options for managing and concealing their problems.

Life on the Inside

Women who cannot afford bail get taken to jail to await their court date. If sentenced to more than one year they are transferred to prison, where they are issued prison clothing, assigned an inmate nuimber and housed accorfding to their offense, criminal history and health. Women who are considered a danger to themselves or others are confined in the Security Housing Unit (SHU), "the prison within the prison," where they spend 23 hours a day in a six by eight foot cell. Administrative Segregation is a similar, shorter term secure facility where women are sent if they violate prison rules (e.g., fighting, using drugs, attempting suicide, assaulting a guard).

The majority of female prisoners live in the general population, in dormitories or cells, where it is not unusual for three women to share a space originally designed for two. Women in the general population may participate in prison programs, such as job or school assignments; however, the surge in the number of incarcerated women has packed prisons far beyond their capacity, creating conditions where education, job training, rehabilitation programs and health care are in short supply.

Health Care

Reports of medical neglect are common. There are numerous class action lawsuits across the country (e.g., California, Washington, Indiana) alleging that the quality of health care for women that it constitutes "cruel and unusual" punishment. One California woman waited months to have a breast lump examined while cancer overran her body. Others complain of not receiving timely prescriptions for chronic or potentially contagious diseases, and of misdiagnosed, improperly treated or altogether ignored ailments. Several deaths have been attributed to inadequate medical attention as well. Women also report routine sexual abuse by physicians and prison guards.

Sexual Abuse

Many imprisoned women are victims of rape and other for4ms of sexual abuse, including sexually offensive language, inappropriate contact during searches and lack of privacy. Their status as inmates mitigates their credibility i reporting abuse, and often incites retaliatory action, such as time in the SHU. Even though some women admit to willingly engaging in sex, often in exchange for special privileges, the nature of the authoritative relationship between a guard and prisoner arguably constitutes sexual harassment and misconduct under all circumstances.

Familes on the Inside

One of the many ways in which incarcerated women differ from men is in their relationshps inside prison. Women inside often create "play families" where they adopt the role of mother, father, daughter, son, aunt, uncle or cousin. Some, although not all, of these relationships are sexual, and more generally serve as support systems. These families share their limited commodities, defend each other when conflicts arise and provide emotional support.

Families on the Outside

Four out of five incarcerated women are mothers, with an average of two children under 18 yars of age. Many incarcerated women report that the most difficult part of imprisonment is being away from their children. Most of these mothers were the primary caregiver of their children before being incarcerated, leaving at least 230,000 children per year without mothers while they are imprisoned.

Mothers report that their children suffer from fear, guilt, anger, grief, rejection, shame and loneliness. Studies have identified higher rates of poor school performance, aggres-

sive behavior, depression, sleeplessness and concentration problems among children of incarcerated parents. Research shows such children are 50 percent more likely to be juvenile or adult offenders.

Because prisons are typically located in rural areas, far from where most inmates live, more than half of these children do not visit their mothers in prison. The majority live with grandparents, one in four live with their father, and approximately 10 percent end up in foster care. A mother whose children are being cared for by her family has less chance of losing legal custody than a mother whose children are in foster care. Some states consider incarceration grounds for terminating a mother's custody rights and several states have recently shortened the length of time a mother has to reunite with children placed in foster care. Once a woman loses custody, it is very difficult to get her children back.

Pregnant Prisoners

Approximately 10 percent of women enter jail or prison pregnant, giving birth to about 14,000 babies each year. Because many prisons and jails lack adequate prenatal and postpartum care, the rate of miscarriage is unusually high. In many states, regardless of her criminal history or behavior in prison, a pregnant prisoner goes through labor under the watch of a correctional officer, with one leg shackled to the bed. Generally within 48 hours after birth the newborn is either taken home by a relative, put into foster care or given up for adoption, and the mother is returned to prison.

Substance Abuse Treatment

About half of the incarcerated women surveyed in 1991 committed their offenses under the influence of drugs or alcohol, more than half had been incarcerated before, and more than half had never been in a drug treatment program. In 1991, three out of four substance abusers in prison received no treatment; by 1997 that number had grown to nine out of ten. Without treatment, approximately 80 percent of drug users will return; successful treatment reduces that number to 20 percent.

Release and Recidivism

A woman is typically released from prison with "gate money" (approximately $200), the clothes she came in with, and a bus ticket back to the county where she was arrested. If she had a place to live before her incarceration, she may have lost it due to her absence. If she had a job, she has most likely lost it. She is expected to find a place to live, get a job and support her children. Federal welfare legislation of 1996 declares people convicted of a drug felony ineligible for federal benefits including food stamps, student loans, federal grants and fellowships, federally insured housing loans, commercial vehicle licenses and small business loans. If she is fortunate, she has a safe place to live and relatives who have been caring for her children ready to relinquish their parenting responsibilities. Sometimes all she has is her gate money and an untreated addiction to drugs.

A woman is more likely than not to return to prison. In 1991, 71 percent of women in prison had served a prior sentence. Various surveys reveal that most women in prison have been incarcerated before, an average of four times. Many studies show that about one third are returned for parole violations. If a woman tests positive for drugs, misses a meeting with her parole officer, or otherwise violates the conditions of her release, she can be returned to prison. Repeat offenders, many of whom are repeat drug offenders without adequate treatment in or out of prison, are sentenced more harshly under repeat felony offender laws.

Conclusion

The United States spends considerably more money on incarceration and punishment than on rehabilitation, education and prevention. Taxpayers pay millions of dollars each year to lock up nonviolent offenders who are addicted to drugs and convicted over and over again. Researchers suggest that instead of recycling hundreds of thousands of women through prison, treating drug addiction as a health issue rather than a criminal issue will improve their lives and the lives of their children and, ultimately, cost less.

While the current situation for women in prison is grim, there are signs of change. Recent voter approval of Proposition 36 in California, which requires that all first and second time drug offenders be provided treatment instead of jail, indicates public support for alternatives to incarceration for nonviolent offenders.

There is a clear need for transitional support aimed at preparing women for release and helping them re-establish law-abiding lives on the outside. Without a high school degree, job skills, a place to live, transportation and treatment many formerly imprisoned women find it impossible to avoid the behaviors that led them to prison the last time.

Community service agencies assist thousands of women who are released from prison each month. They also work toward prevention by identifying ways to help

children avoid following a similar path. A key determinant is the structural variable of poverty, not only because it is an important risk factor in its own right, but also because of its connection to other criminogenic influences like child abuse, delinquency and drug use. These experiences often accumulate and interact to create a destructive pathway that leads from poverty to the revolving door of prison.

—Susan Greene

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