

Some Contrarian Concerns About Law, Psychology, and Public Policy

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I discuss six issues that may cut against the majoritarian grain. They are: (1) The U. S. Supreme Court's view of children; (2) the American Psychological Association's view of people with mental retardation; (3) the dilution of autonomy in favor of beneficence; (4) Tarasoff's undermining of fidelity to therapy clients; (5) the misuse of the PCL-R in death penalty litigation; and (6) the criminal law's rejection of determination.

KEY WORDS: Supreme Court; children; mental retardation; death penalty; autonomy; *Tarasoff*; criminal law; American Psychological Association.

To be given this special recognition by people who know you well, faults and all, makes this an honor that I will cherish for a lifetime. But I have to say I feel a bit guilty. You may recall that Mowrer became severely depressed after being elected president of APA because he believed he did not deserve the honor. I have similar feelings. I have not done the kind of programmatic research or legal analyses that creates cutting edge findings and revolutionizes public policy—the kind of work exemplified by many of my colleagues in law and psychology. Nevertheless, I am deeply grateful for this honor. And, as an exemplar of my diletantish interests, I will wax wisely and whinely about a half dozen or so topics—thus, Some Contrarian Concerns About Law, Psychology, and Public Policy.

CONCERN NUMBER ONE: CHILDREN AND THE SUPREME COURT

Decisions by the United States Supreme Court in the 1960s and early 1970s were the high water marks in the child advocacy movement. But the current reality, beginning with *Parham* in 1979 (*Parham v. J. R.*, 1979) and the adolescent abortion decisions, is that when it comes to children's rights, the Supreme Court is at best ignorant, at worst duplicitous, and more evenhandedly, simply confused and unprincipled.

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One can distinguish between the right of persons to make choices and the right of persons to be protected from the choices or misconduct of others. Translated in the context of this discussion, there are those who could be called “kiddie libbers” and others who could be called “child savers.” The child advocacy movement has mainly been populated by the child savers who have secured, I readily concede, important advances.

By and large, however, children remain, like Ralph Ellison’s hero, Invisible Persons whose views are infrequently invoked and whose wishes are rarely controlling. Everyone is asked to serve children’s best interests even if that means overriding their refusal to participate in testing, research, and therapy, or refusing to honor their preference between two fit parents in custody hearings.

The child saver function has been the traditional role of parents and the state. At bottom, however, this concern for children’s best interests—a term no one can accurately define—has meant that parents and the state have exerted inordinate control over children. The role of protector, acting *in* behalf of the child, is different from acting *on* behalf of, which connotes that the advocate is acting on the part of, another, or as the one represented might act. If we are genuinely to urge the expanded rights of children such advocacy must include the right of children to full-fledged participation in the decisionmaking process when their significant interests and future hang in the balance. Nevertheless, in light of the Supreme Court’s overriding preference for parental control and its distrust of older minors’ ability to make adult-like judgments, it is unlikely that children will be granted the right to decide most matters for themselves.

I personally believe that we should reverse our current presumptions. Rather than assume that children are too young emotionally and cognitively to make “appropriate” decisions, we can presume that children are capable of making those decisions no more disastrously than adults. The legal system, however, continues to assume that children are unable to render decisions that approach the level of judgments adults use. What is particularly galling to me, as well as those who have contributed scholarship to this debate, is that the Court justifies its differential treatment on the unsupported assumptions that all children, regardless of age, are particularly vulnerable, unable to make critical decisions in an informed, mature manner, and need the control and guidance of their parents. We know that, by and large this is not true—as recently exemplified in the study of adolescents’ adjustment to abortion in last September’s *Psychology, Public Policy, and Law* (Quinton, Major, & Richards, 2001).

In light of these comments, I would like to make two recommendations. First, I would urge researchers seeking to assess childrens’ competence and judgment to continue moving out of the laboratory and into more realistic settings, as we began to do in the latter part of the last century. Second, we need to study, in real-life settings and over the long term, what I call “liberating parents and liberated children.” Developmental psychologists must first discover parents who foster autonomy, independence, self-determination, and self-reliance and who view those as predominant values to be transmitted to their children. Then, we must study the effects of those overtly expressed values in a sample of these children, along with appropriate comparison

groups, along the age span from infancy to later adolescence. Maturity is fostered, not only through parental guidance and restraint, but through the creation by parents of the appropriate context for decisionmaking and offering choices to children, encouraging autonomy, and holding them accountable for their decisions. Until we engage in this kind of longitudinal, naturalistic study we will have a difficult time discerning whether children are genuinely developmentally incompetent for much of their childhood, or whether we have, indeed, subjected them to unnecessary dependency and learned helplessness. The present status of children's rights will not advance significantly unless there is strong, valid evidence that the "pages of human experience" (read, the subjective views of nine old men and women) are simply wrong.

CONCERN NUMBER TWO: APA AND THE SUPREME COURT

As Michael Saks has pointed out, lawyers are "smart people who do not like math" (Saks, 1989, p. 1115). So, while I decry the Supreme Court's unsupported assumptions about children, its behavior in this regard is understandable. But, our own professional organization, one would hope, would be a bit more sophisticated about data and its meaning. Thus, I find inexcusable and unwarranted the position the American Psychological Association (joined by the American Psychiatric Association and the American Academy of Psychiatry and the Law) took in its amicus brief in *McCarver v. North Carolina* (2001), the case that would have decided whether it is unconstitutional to execute those diagnosed as mentally retarded. However, when North Carolina changed its law to bar the execution of persons with mental retardation, the Court dismissed the writ of certiorari as improvidently granted and replaced *McCarver* with *Atkins v. Virginia* (2002), a case presenting similar issues. The Court heard oral arguments in *Atkins* in late February 2002. APA and its two cosigners were granted permission to resubmit its brief in *McCarver* in *Atkins*. In fact, not only did the *McCarver/Atkins* brief undermine the rights of people with mental retardation but, despite APA's efforts in prior cases, the rights of children as well. Here are two quotes from the APA's brief:

Th[e] small group of [individuals with mental retardation] represents those whose intellectual limitation substantially restrict their development and adaptive functioning. These limitations are reflected in diminished capacities to understand and process facts and information; to learn from mistakes and from experience generally; to generalize and to engage in logical if-then reasoning; to control impulses; to communicate; to understand the moral implications of actions and to engage in moral reasoning; and to recognize and understand the feelings, thoughts, and reactions of other people.

... A comparison with children is instructive. ... [C]hildren and persons with mental retardation share the same critical characteristic: diminished intellectual and practical capacities compared to non-retarded adults.

... Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. *McCarver v. North Carolina*, 2001, pp. 7-9 [footnotes and citations omitted]

An early hypothetical I was confronted with in my first year of law school concerned the stereotypical little old lady who, after contracting with a major bank to

secure a loan, found herself unable to pay the installments because of unfortunate life circumstances. Many of us sided with the poor, aged, and infirm woman against the big bad bank (knee jerk liberals were still going to law school in the early '70s). But, our professor pointed out, if a court permitted this senior citizen to breach her contract, the consequence would be that no bank would lend money to the elderly, an outcome that served no one's purposes. The applicability of this hypo struck me as I was drafting this talk. I believe a bright line rule making the death penalty unconstitutional for all defendants with mental retardation ultimately disserves their interests.

I want to state unequivocally that I am adamantly opposed to the death penalty for anyone. As we have discovered, its imposition is inevitably fraught with caprice and mistake (Black, 1974; *United States v. Quinones*, 2002). Execution by the State, particularly of those with severe intellectual deficits, does not comport with the standards of decency that should be the hallmark of governments, and therefore violates the cruel and unusual punishment clause of the Eighth Amendment.

But, if the death penalty can be meted out to adults and older adolescents, as the Supreme Court has said it can, then it is short-sighted to exclude all mentally retarded people from its imposition, precisely because a constitutional ban for these defendants, on the ground that they deserve special protection and dispensation, is antagonistic to their long range rights and entitlements. It is difficult for me to see how an absolute ban, grounded on the assumption that they are too incompetent to be held morally responsible and criminally culpable serves their ultimate interests. As important as it is to protect those who cannot protect themselves, it is equally important to promote the right of all persons to make their own choices, and, as a corollary, to be accountable for those choices. It is simply untrue that no person with mental retardation is incapable of carrying out a horrible murder with the requisite intent or foresight. If we accept the concept of blanket incapacity, we relegate people with retardation to second class citizenship, potentially permitting the State to abrogate the exercise of such fundamental interests as the right to marry, to have and rear one's children, to vote, or such everyday entitlements as entering into contracts or making a will.

That is why, albeit reluctantly, I agree with Justice Scalia who has argued for individualized decisionmaking in death penalty cases. The concept of individualized decisionmaking comports with the sophisticated and discriminating treatment we should accord all people with intellectual deficits. IQ, after all, is not the factor that renders the imposition of the death penalty against those with mental retardation unjust. Rather, IQ is a proxy, and an imperfect one at that, for a combination of factors, such as maturity, judgment, and the capability of assessing the consequences of one's conduct, that determine the relative culpability of a mentally retarded killer. It is those factors that should be evaluated by a forensic clinician on a case-by-case basis. Culpability, not IQ, should be the benchmark. In this way, defendants with mental retardation will be treated as persons and society can respond to their conduct in a manner that respects the defendant's choice to engage in such conduct.

Incidentally, I raised these concerns with Division 33 representatives at the APA convention in August 2001. As a poignant reminder of the great influence I wield at APA, I discovered that APA refiled the *McCarver* brief, without a single change,

in *Atkins* in late February. I will never forgive and will always regret that the APA decided to take such a thoughtless approach to the rights of our fellow citizens.²

CONCERN NUMBER THREE: THE DILUTION OF SELF-DETERMINATION

The APA's brief surfaces a larger, more pervasive concern—our strong preference for beneficence over autonomy. In the last century, the English philosopher W. D. Ross (Ross, 1930) propounded a set of *prima facie* duties underlying ethical behavior. They include nonmaleficence, beneficence, justice, fidelity, and autonomy. These fundamental moral principles have been popularized by Beauchamp and Childress (1994) in their text on research ethics, and play a prominent part in the latest draft of the potentially new APA ethics code. Beneficence refers to our responsibility to help others and act in their best interests. Autonomy requires us to allow others the freedom to think, choose, and act, so long as their actions do not unduly infringe on the rights of others. APA and most of our colleagues display a strong preference for beneficence over autonomy. This is reflected in psychologists' involvement in involuntary civil commitment, restrictive definitions of the capacity to refuse psychotropic medications, and, as I have already discussed, our treatment of children. As a card-carrying autonomist, this preference, in my opinion, undermines the civil liberties of us all.

I believe that one of government's overriding social goals should be to promote human dignity and individual autonomy. Individuals should have the right to decide how to live their lives, and more particularly, what types of intrusions they will allow on their bodily integrity. Our society should be committed to respecting each individual's right to choose his or her own fate—even if the choices the individual makes do not serve, in some objective sense, what the majority would consider to

² After this talk was delivered in March but before it was set in print, the Supreme Court decided *Atkins v. Virginia* (2002). By a 6–3 vote, the Court held that executions of all mentally retarded individuals violated the eighth amendment's cruel and unusual punishment clause. Justice Stevens, writing for the majority, clearly relied on the APA's amicus brief in grounding his opinion. Justice Stevens, though acknowledging that people with mental retardation “frequently know the difference between right and wrong and are competent to stand trial” (p. 2250), found that their lesser culpability precluded imposition of the death penalty in any case. He based this lesser culpability on their “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reaction of others” (p. 2250). This quote echoes the excerpt from the APA's brief cited in the text of my talk. In a dissenting opinion, Chief Justice Rehnquist took issue with the majority's reliance on methodologically questionable public opinion polls, and the views of professional organizations to establish a national consensus against executing persons with mental retardation. Justice Scalia, in a separate dissenting opinion, as expected, would have relied on the individualized decisionmaking of sentencers to determine whether a particular defendant deserved the death penalty: “Once the Court admits . . . that mental retardation does not render the offender *blameless* . . . there is no basis for saying that the death penalty is *never* appropriate retribution, no matter *how* heinous the crime” (p. 2266; emphasis in original).

Although I am gratified by any decision that further reduces the imposition of the death penalty (as the majority has done) and do not support Justice Scalia's retributive basis for executing any defendant (see Concern # 6), as I asserted in my talk, I believe that Justice Scalia's particularized approach is, in the long run, more protective of the rights of people with mental retardation, than is the rationale adopted by APA and the Court's majority.

be in the individual's best interest. In short, each individual should have the right to make mistakes, and not to have those mistakes forcibly corrected or overridden by the State or its agents.

That is why I have some concern, for example, about prescription privileges for psychologists. I fear that like our psychiatric colleagues, we will become paternalistic, compelling our patients to take drugs even when they do not want to take them. I am not against attempting to influence those we care for to agree to take something that will improve their functioning and there is a role for the State in caring for those citizens incapable of caring for themselves. This interest does not, however, justify every good faith effort to intrude, interfere, intervene, or become involved (you choose your own verb—I opt for intrude) in individual decisionmaking. As Justice Brandeis wrote in a famous dissenting opinion, and his statement is so often quoted that it has become trite, but is so singularly apt in this context that I feel bound to repeat it: “Experience should teach us to be most on our guard to protect liberty when Government’s purposes are beneficent” (*Olmstead v. United States*, 1928, p. 479).

CONCERN NUMBER FOUR: *TARASOFF* AND ITS PROGENY

It has been my view for over 25 years (Bersoff, 1974), and I agree totally with Chris Slobogin (Reisner, Slobogin, & Rai, 1999) on this, that *Tarasoff* is bad law, bad social science, and bad social policy. It is bad law because there never has been a duty within the Restatement of Torts to protect private third parties from harm unless there are specific conditions and relationships not present in *Tarasoff* (*Tarasoff v. Regents of University of California*, 1976). Remember Poddar was in outpatient therapy not under the control of a hospital and not eligible for involuntary commitment. Second, it is bad social science because the therapist’s duty is based on an evaluation of the patient’s propensity to act violently. Although more sophisticated research done by the MacArthur Project’s Research Network on Mental Health and the Law has improved risk assessment (Monahan et al., 2001), it is still extremely difficult to make accurate assessments in outpatient, nonpsychotic, nonsubstance abusing populations—the vast majority of patients mental health professionals see. Third, the duty to protect is bad social policy. The crucial fact in this case was not an uttered threat of future violence but that once Poddar knew that his confidences were disclosed by his therapist to the campus police, he never returned for treatment. One wonders if Ms. Tarasoff would be alive today if the psychologist–therapist and his psychiatrist-supervisor were not so quick to call the police but rather worked with their patient for the 2 months between the threat and the killing.

This does not mean that I advocate letting potentially violent patients go unchecked. The truly violent aggressor at some time loses his or her right to absolute protection when he or she threatens to use deadly force. The APA code of ethics (American Psychological Association [APA], 1992), which permits unconsented to disclosures merely to protect others from harm (left undefined) and not under the more stringent standard required by *Tarasoff* of serious bodily harm, and immunity statutes that protect us from litigation, simply make it too easy to betray our fidelity to our patients and to become society’s police force. I think we should be obliged

to do all we can to attempt all other viable options before we abrogate the principle of fidelity and unilaterally disclose confidential communications to private third parties.

I would agree in large part with the Supreme Court's view on this issue in *Jaffee v. Redmond* (1996) expressed in a footnote: "[W]e do not doubt that there are situations in which the [psychotherapist-patient] privilege must give way . . . if a serious threat of harm to the patient or others can be averted *only* by means of a disclosure by the therapist." I find it heartening that Texas in the 1999 case of *Thapar v. Zezulka* rejected the mandatory rule of *Tarasoff* and supported what to me is a more defensible position by recognizing the statutory exception to its privilege statute that allows, but does not require, disclosure and only when the therapist determines that there is a probability of imminent physical injury by the patient to others. This is more in line with the ethical rules binding lawyers. In any event, I would hope that organized mental health would ally themselves with our clients' desire for privacy rather than society's increasingly serious attempts to diminish it. The latest draft of APA's ethics code lamely follows the latter trend, I am sad to say.

Tarasoff, by the way, is also an example of the legal system's tendency, particularly the legislature, to make laws without considering their long term or unintended consequences. A tragedy occurs, most likely some violent death, and lawmakers, driven by some inherent availability heuristic, enact some quick fix to remedy the situation. Current examples are sexually violent predator laws, Megan's laws, and recidivist statutes (I call them three strikes and you are in laws) where three felonies, even nonviolent ones, can lead to life imprisonment, often without parole. So now we will have to take care of the health needs of burnt out senior citizens while they languish with Alzheimer's, cancer, and the like.

CONCERN NUMBER FIVE: THE INCREASING USE OF THE PCL-R IN DEATH PENALTY CASES

My penultimate concern relates to an increasingly invidious practice; the use of the PCL-R in the penalty phase of capital murder cases. You may recall that in 1995 the American Psychiatric Association expelled from its membership James Grigson, the notorious Texas psychiatrist, better known as Dr. Death. He was tossed out "for arriving at a psychiatric diagnosis without first having examined the individual in question, and for indicating, while testifying in court as an expert witness, that he could predict with 100 [per cent] certainty that the individual would engage in future violent acts" (quoted in Shuman & Greenberg, 1998). Much of the same kind of behavior is, unfortunately, being engaged in, in my opinion, by a few misguided, ignorant, and unethical forensic psychologists who are using the PCL-R to testify, to a reasonable psychological certainty, that capital defendants comprise a continuing threat of violence, even while confined in maximum security prisons. The problem is compounded by the fact that, unlike psychiatric diagnoses propounded on the basis of interviews, the PCL-R is widely regarded as a psychometrically sound instrument. Although it may have some usefulness in predicting future violence, recent articles (Edens, in press; Edens, Petrila, & Buffington-Vellum, in press; Freedman, 2001) indicate that it is not a valid predictor of the most pertinent forms of violence relevant

to determining future dangerousness in capital cases. For example, Sorenson and Pilgrim (2000) reported that of a sample of 6,390 convicted murderers in the Texas prison system, the incidence of homicides over a 40-year period was about 0.2%. Given that the base rate of psychopathy is about 20–30% of the prison population, approximately 1,600 of the prisoners would be psychopaths as defined by the PCL-R. As Edens et al., who cited this study in their about-to-be published article, states, “[e]ven if all of the 13 homicides estimated to occur over this [40 year] time period . . . were to be committed by psychopaths—a highly questionable assumption—the overwhelming majority of these offenders (99%) will not kill again.” A table summarizing almost a dozen studies in Freedman’s 2001 article in the *Journal of the American Academy of Psychiatry and Law* indicates that false positive rates for violent recidivism are uniformly at or above 50%. The use of the PCL-R in death penalty cases to offer an expert opinion about future lethal violence is therefore, in my humble opinion, negligent, unethical, and inadmissible under any reasonable interpretation of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) and *Kumho Tire Co., Ltd. v. Carmichael* (1999).

Let me also warn that attorneys who defend death penalty cases are well aware of this literature. I strongly urge all forensic psychologists to read this literature as well. In the unbridled defense of their clients, defense counsel are ready, willing, and able to attack on cross-examination those unwary psychologists who misuse the PCL-R or any psychological instrument and to report this conduct to the appropriate professional associations.

CONCERN NUMBER SIX: THE CLASH BETWEEN SCIENCE AND CRIMINAL LAW

Nowhere is the disconnect between science and law more obvious than in how we define crime and treat criminals. Criminality is commonly defined as conduct that will incur a formal and solemn pronouncement of the moral condemnation of the community. And, while the Supreme Court pays lip service to deterrence and to an even lesser extent, rehabilitation, the predominant theory underlying the punishment of criminals is retribution. Retributivists believe that punishment is justified because people deserve it. Although the tragedies of September 11th have resurrected the rampant concept of evil and its retaliation by moral crusade, there is nothing new in this. Writing 120 years ago in *A History of the Criminal Law in England*, James Fitzjames Stephen (1883) asserted that:

[T]he infliction of punishment by law gives definite expression and a solemn ratification and justification to the hatred which is excited by the commission of the offense. . . . The criminal law thus proceeds upon the principle that it is morally right to hate criminals and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it. (p. 81)

Retribution is grounded in the belief that behavior is the result of free will. People freely choose, the position claims, to engage in evil behavior and, therefore, deserve the punishments they receive, including execution at the hands of the State. But, any decently trained psychologist knows that behavior is determined as the

result of the confluence of genetic endowment and life experiences. For those who do not ascribe to the reality of determinism, one must respond to the question—Would Hitler or bin Laden have acted as they did if they were born to the doubter's parents, lived in their home town, and gotten their doctorate in psychology? Those who ascribe to free will would make human beings the only species whose behavior was not determined by heredity and the reinforcing impact of their daily lives. Free will is a legal fiction, but an enduring one impervious to the findings of science.

I distinguish between responsibility and accountability. We all have the right to self-defense and to be protected from harm. So, those whose genes and environment lead them to engage in acts that we define as criminal should be held accountable and it may be entirely appropriate to segregate them from society. But, that is much different from viewing them as evildoers deserving of hateful retribution. Adopting a deterministic philosophy would result in more humane institutions, greater reliance on empirically-validated interventions, and, of course, the end of the death penalty. These arguments, however, have been made before and to no avail. Unfortunately, like so many other areas of law, this is another example of how unreceptive the law is to science and reality.

It is my hope that this curmudgeonly rendition of some issues will stimulate discussion and rebuttal. As I wrote about them, it was clear what my core preferences are—privacy over intrusion, autonomy over beneficence, science over faith, rehabilitation over retribution. But this is not where the world seems to be going and it saddens me terribly.

REFERENCES

- American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597–1611.
- Atkins v. Virginia, 122 S. Ct. 2242, 536 U.S. (2002).
- Beauchamp, T., & Childress, J. F. (1994). *Principles of biomedical ethics* (4th ed.). New York: Oxford University Press.
- Bersoff, D. N. (1974). Therapists as protectors and policemen: New roles as a result of *Tarasoff*. *Professional Psychology*, 7, 267–273.
- Black, C. L. (1974). *Capital punishment: The inevitability of caprice and mistake*. New York: Norton.
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
- Edens, J. (2001). Misuses of the Hare Psychopathy Checklist—Revised in court: Two case examples. *Journal of Interpersonal Violence*, 16, 1082–1093.
- Edens, J., Petrila, J., & Buffington-Vollum, J. K. (2001). Psychopathy and the death penalty: Can the Psychopathy Checklist—Revised identify offenders who represent “a continuing threat to society?” *Journal of Psychiatry and Law*, 29, 433–481.
- Freedman, D. (2001). False prediction of future dangerousness: Error rates and the Psychopathy Checklist—Revised. *Journal of the American Academy of Psychiatry and Law*, 29, 89–95.
- Jaffee v. Redmond, 518 U.S. 1 (1996).
- Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999).
- McCarver v. North Carolina, No. 00-8727, writ of certiorari dismissed as improvidently granted (Sept. 25, 2001).
- Monahan, J., Steadman, H., Silver, E., Appelbaum, P., Robbins, P. C., Mulvey, E., et al. (2001). *Rethinking risk assessment*. New York: Oxford University Press.
- Olmstead v. United States, 277 U.S. 438 (1928).
- Parham v. J. R., 442 U.S. 584 (1979).
- Quinton, W. J., Major, B., & Richards, C. (2001). Adolescents and adjustment at abortion: Are minors at greater risk? *Psychology, Public Policy, and Law*, 7, 491–514.

- Reisner, R., Slobogin, C., & Rai, A. (1999). *Law and the mental health system* (3rd ed.). St. Paul, MN: West Group.
- Ross, W. D. (1930). *The right and the good*. Oxford, England: Clarendon.
- Saks, M. (1989). Legal policy analysis and evaluation. *American Psychologist*, *44*, 1110–1117.
- Shuman, D., & Greenberg, S. (1998, Winter). The role of ethical norms in the admissibility of expert testimony. *The Judges' Journal*, *37*, 4–9; 42–43.
- Sorenson, J. R., & Pilgrim, R. L. (2000). Criminology: An actuarial risk assessment of violence posed by capital murder defendants. *Journal of Criminal Law and Criminology*, *90*, 1251–1270.
- Stephen, J. F. (1883). *A history of the criminal law in England* (Vol. 2), quoted in Dressler, J. (1999). *Cases and materials on criminal law* (2nd ed.). St. Paul, MN: West Group.
- Tarasoff v. Regents of University of California, 551 P.2d 334 (1976).
- Thapar v. Zezulka, 994 S.W.2d 635 (Tex. 1999).
- United States v. Quinones, No. S3 00 CR 761, 2002 WL 1415648 (S.D.N.Y. 2002).