

The Pursuit



The Journal of the Criminal Justice Association of Georgia

“You are to appoint judges and officers for all your gates [in the cities] your G-d is giving you, tribe by tribe; and they are to judge the people with righteous judgment. You are not to distort justice or show favoritism, and you are not to accept a bribe, for a gift blinds the eyes of the wise and twists the words of even the upright. Justice, only justice, you must pursue; so that you will live and inherit the land your G-d is giving you.”

Deuteronomy 16:18 – 16:20



About *The Pursuit* Journal

The Pursuit, a publication of the Criminal Justice Association of Georgia (CJAG) is a peer-reviewed journal that focuses on the broad field of criminal justice. *The Pursuit* publishes scholarly articles relevant to crime, law enforcement, law, corrections, juvenile justice, comparative criminal justice systems and cross-cultural research. Articles in *The Pursuit* include theoretical and empirically-based analyses of practice and policy, utilizing a broad range of methodologies. Topics cross the spectrum of policing, criminal law and procedure, sentencing and corrections, ethics, juvenile justice and more, both in the United States and abroad.

Authors interested in submitting manuscripts for consideration should use the link on the CJAG website (<http://cjag.us>) or email the Editor of *The Pursuit* at cjagjournal@gmail.com

Welcome to the first issue of “*The Pursuit*” the journal of the Criminal Justice Association of Georgia. The concept for a journal was first broached by Fred Knowles at Valdosta State University. Dr. Knowles encouraged the Association to publish works of faculty, students and criminal justice professionals that advanced our field of practice and its pedagogy. After many years of work, his concept has finally reached fruition.

We would be remiss if we failed to acknowledge the many people whose efforts helped to produce this inaugural edition. First, Steven Hougland of Abraham Baldwin Agricultural College who took the lead, gathering a variety of manuscripts and distributing them to several teams of reviewers, including Emran Khan of Clayton State University and Dennis Murphy of Armstrong State University. We are grateful to all of them for their efforts, and to the many others who have offered their services as authors and reviewers.

The Criminal Justice Association of Georgia continues to grow, in terms of our membership and our offerings. We extend our thanks to Bobbie Ticknor of Valdosta State University for her past service as Webmaster. After several years on the Internet, we have revised our website (<http://cjag.us>) and we encourage you to visit it. We are grateful to Selena McIntyre for her tremendous help in updating and enhancing the website which now includes access to this journal. We also have a presence on Facebook (<https://www.facebook.com/CriminalJusticeAssociationofGeorgia>) and hope that you will not only visit that site, but “like” us as well. Following us on Facebook and checking our website are great ways to keep abreast of our activities.

After many years collaborating with the Georgia Political Science Association, six years ago we decided our conference should be held as a separate event. Five years ago we held our first stand-alone conference, thanks in no small part to the efforts of Peter Fenton at Kennesaw State University. This year’s conference will be hosted by Valdosta State University on Thursday, October 12 and Friday, October 13. Thanks to R. Neal McIntyre for serving as the on-site host, and to Jennifer Allen for her continued work as our Communications Director and Conference Coordinator. Conference pre-registration for faculty and professionals, including annual dues, remains a modest \$90, while student registration, including annual dues, has been reduced by two-thirds over the last two years and is now a mere \$25. We encourage all to attend, and to consider presenting at the conference. The deadline for submissions is August 31 and pre-registration ends September 15. There are links for both on the Association’s website.

It has been my privilege to serve as the Association’s President for the last two years. I am indebted to our officers, and to all of our members who hail from across the State of Georgia. I look forward to seeing many of you at the 2017 conference and beyond.

Fondly,

Michael B. Shapiro
Georgia State University
President, Criminal Justice Association of Georgia
Editor, *The Pursuit*

Acknowledgments

The concept for a Criminal Justice Association of Georgia journal was first suggested by Fred Knowles, Ph.D. many years ago. We are grateful for his suggestion and his continued encouragement.

The Pursuit gratefully acknowledges the assistance of the Criminal Justice Association of Georgia's membership, as well as that of all authors who have submitted manuscripts for consideration and publication, and members who have reviewed these manuscripts. Special thanks to Sarah Napper for her assistance in proofreading the references in this issue of *The Pursuit*.

We are indebted to Steven Houglan, Ph.D., for his tireless efforts in the creation of *The Pursuit*. This inaugural issue is dedicated to him.

Michael B. Shapiro
Georgia State University
Editor, *The Pursuit*



About the Criminal Justice Association of Georgia

The Criminal Justice Association of Georgia is a not-for-profit organization of criminal justice faculty, students and professionals. It exists to promote professionalism and academic advancement in all areas of inquiry related to the criminal justice field.

The Association holds its annual meeting in October. Those interested in presenting at the conference should contact Professor Jennifer Allen (jennifer.allen@ung.edu).

Readers are encouraged to “like” us on Facebook (<https://www.facebook.com/CriminalJusticeAssociationofGeorgia/>) and visit our website (<http://cjag.us>).

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22 Cases in 21 Years

The Supreme Court's Consideration of "Special Circumstances" Cases

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Abstract

Between 1942, when the Supreme Court of the United States decided *Betts v. Brady*, and 1963 when that Court handed down the far more famous *Gideon v. Wainwright*, the Court repeatedly wrestled with the issue of when indigent defendants in state proceedings were entitled to court-appointed counsel. These twenty-two cases became known for "special circumstance," issues such as illiteracy, mental competence or simply lack of familiarity with court proceedings. This article examines the unprecedented number of cases in which the Court's evolving standard of the right to counsel was developed.

Recently we marked the fiftieth anniversary of the United States Supreme Court’s decision in *Gideon v. Wainwright*,¹ surely one of the most significant cases of the Warren Court and of the twentieth century. Forming a natural stepping stone in a path that began with the so-called “Scottsboro Boys” case, *Powell v. Alabama*,² which held that states must provide counsel to indigent defendants in capital cases, and was expanded to cover all federal cases in *Johnson v. Zerbst*,³ *Gideon* held that poor defendants in state felony proceedings should be given government-provided attorneys. *Gideon* joins other landmark cases, such as *Mapp v. Ohio*,⁴ extending the “exclusionary rule” to the states, *Miranda v. Arizona*,⁵ providing for Constitutional warnings prior to custodial interrogation of suspects, *Chimel v. California*,⁶ limiting police searches at the time of arrest, and *Terry v. Ohio*,⁷ creating a “reasonable suspicion” standard for police pat-downs, as one of the most significant cases from the high court in our lifetime.

The road to *Gideon* was not so smooth, however, and the Court’s ruling in *Betts v. Brady*⁸ was a major stumbling block along the way. Decided in 1942, in *Betts* the Court determined that it would leave to the states the decision of whether to assign counsel to those unable to afford representation. For the ensuing twenty-one years, the Court struggled, year after year, with whether the states were meeting the legal, although not yet clearly constitutional, requirements of adequately providing counsel to the poor. Not quite accurately, *Betts* is remembered as the “special circumstances” case. Although those words were not specifically mentioned in *Betts*, the concept of circumstances having been addressed in both *Powell* and *Johnson*, until the decision in *Gideon* that was the standard the Court used to assess state decisions regarding counsel. Over time it became clearer that certain conditions required that attorneys be assigned to represent indigent defendants. Illiteracy, mentally challenged defendants, inappropriate racial or other discriminatory behavior could all trigger the requirement of court-provided counsel.

¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963)

² *Powell v. Alabama*, 287 U.S. 45 (1932)

³ *Johnson v. Zerbst*, 304 U.S. 458 (1938)

⁴ *Mapp v. Ohio*, 367 U.S. 643 (1961)

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966)

⁶ *Chimel v. California*, 395 U.S. 752 (1969)

⁷ *Terry v. Ohio*, 392 U.S. 1 (1968)

⁸ *Betts v. Brady*, 316 U.S. 455 (1942)

However, it was not until *Gideon* that the Court issued an absolute requirement of state-supplied counsel in felony cases.

How did the Court reach this posture? What were the cases during the twenty-one years between *Betts* and *Gideon* that caused the Court to issue such an edict? As others are singing praises of *Gideon*, or lamenting the states and federal governments' failures to achieve its lofty goals, now seems an ideal time to review the twenty-two "special circumstances" cases that formed the bridge between *Betts* and *Gideon*.

Rice v. Olson, 324 U.S. 786 (1945) – Rice was a Native American convicted of a burglary committed on a reservation. He entered a guilty plea in a Nebraska state proceeding. State appellate courts found that Rice had implicitly waived his right to counsel by entering a guilty plea. In a subsequent *habeas* action, Rice alleged that his due process rights were violated, since he was not advised of his right to counsel or to call defense witnesses before entering his plea. He further challenged the jurisdiction of the Nebraska court, since the crime was committed on federal land.

In a 6-3 decision written by Hugo Black reversing the lower court, the Supreme Court held that there was no implicit waiver of the right to counsel, and that the issue of jurisdiction was one that "... raises an involved question of federal jurisdiction, posing a problem that is obviously beyond the capacity of even an intelligent and educated layman, and which clearly demands the counsel of experience and skill."

Williams v. Kaiser, 323 U.S. 471 (1945) – Williams entered a guilty plea to a charge of robbery with a deadly weapon, a capital offense in Missouri at the time. He was sentenced to serve 15 years in prison. At trial he requested, but was denied court-appointed counsel, despite a state statute requiring appointment of counsel to indigent defendants in felony cases. Several years later, Williams filed a *habeas* petition with the Missouri Supreme Court, claiming that, without the assistance of counsel at trial, he had been compelled to plead guilty because he was unable to adequately pursue his defense. The Missouri Supreme Court dismissed his petition for failure to state a cause of action.

Williams appealed to the Supreme Court, alleging that the denial of counsel violated his Fourteenth Amendment rights. In its response to the appeal, the State of Missouri contended that Williams should have sought relief in the state courts via an appeal, rather than seeking *habeas* relief. Justice Douglas, writing for the 7-2 majority, pointed out that the failure to appeal does not preclude bringing a *habeas* action and, further, that Williams' failure to appeal emphasized his need for adequate legal representation throughout the judicial process. Citing *Powell v. Alabama*, Douglas found that the state's failure to provide counsel in this case was a violation of due process. The Missouri Supreme Court's dismissal of the Williams' petition for *habeas corpus* was reversed.

Tomkins v. Missouri, 323 U.S. 485 (1945) – This is the companion case to *Williams v. Kaiser*, discussed above. Tomkins pled guilty to first degree murder and was sentenced to life imprisonment. Nine years later, after exhausting state remedies, he filed a federal *habeas* action claiming a denial of due process in that, despite the fact that he was unaware of his right to demand counsel and unable to adequately defend himself, the trial court failed to affirmatively advise him of his right to counsel and to appoint counsel, contrary to the mandates in state capital cases.

The Court reversed the denial of the *habeas* petition by the Supreme Court of Missouri. Writing for a 7-2 majority, Justice Douglas asserted that, at least in capital cases, the accused need not affirmatively request counsel; the trial court must make an appointment if the defendant is indigent or unable to adequately represent himself. Douglas noted, "One who was not represented by counsel, who did not waive his right to counsel and who was ignorant of his right to demand counsel is one of the class which the rule of *Powell v. Alabama* was designed to protect."

White v. Ragen, 324 U.S. 760 (1945) – Charged with two counts of "obtaining money and goods by means of a confidence game," White, entered a guilty plea and was sentenced to a prison term. Following a rejection of his petition for *habeas* relief in the Illinois Supreme Court, White sought *habeas* relief in the U.S. Supreme Court. In his petition, White outlined several actions by

his attorney that, if true, would amount to ineffective assistance of counsel, including the entry of a guilty plea over White's objections.

In a *per curiam* dismissal of the petition for a writ of *certiorari*, the Court focused its inquiry on whether or not the decisions of the Illinois courts denying *habeas* relief were based on "adequate non-federal grounds", thus denying the Supreme Court jurisdiction. Unable to make a clear determination, the Court was compelled to dismiss White's petition for *certiorari*. Thus, it appears that, at least as of the time of this decision, the Court did not find mere procedural disputes as a sufficient "special circumstance" to require competent legal representation in a state court proceeding.

DeMeerleer v. Michigan, 329 U.S. 663 (1947) – This was another *per curiam* decision. In a 1932 state trial, the defendant, then 17 years of age, was arraigned, entered a guilty plea, and sentenced to life in prison all in the same day. At no time was counsel offered or assigned, nor did the trial judge advise DeMeerleer on the consequences of his guilty plea. Fifteen years later, the defendant requested from the trial court leave to file a delayed motion for new trial. Both the trial court and the Michigan Supreme Court denied this request, and DeMeerleer subsequently brought an appeal to the U.S. Supreme Court, alleging "serious impairment of his constitutional rights at the arraignment and trial." Referring to *Powell v. Alabama* and its more recent rulings in *Betts*, *Tomkins*, *Kaiser*, and *Ragen* (heretofore discussed), the Court summarily concluded that there had been a serious deprivation of DeMeerleer's rights and reversed the state's denial of his motion for new trial.

Marino v. Ragen, 332 U.S. 561 (1947) – Marino was an eighteen-year-old recent Italian immigrant who spoke no English when he was charged with murder in Illinois in 1925. Without counsel, he entered a guilty plea and was sentenced to imprisonment for life. Although the trial record indicates that he waived his right to trial and voluntarily entered a guilty plea, no written waiver existed. One of two interpreters appointed by the trial court was the officer who had arrested Marino.

More than two decades later, Marino petitioned the trial court for a writ of *habeas corpus*; the writ was denied. Since Illinois law at the time did not permit appellate review of this decision, Marino brought an appeal to the U.S. Supreme Court. In a *per curiam* opinion in favor of Marino, the Court noted that the Illinois Attorney General acknowledged the state's error and consented to the reversal of Marino's conviction. A concurring opinion written by Justice Rutledge, joined by Justices Douglas and Murphy, contained a scathing criticism of the appellate processes and practices of the State of Illinois.

Townsend v. Burke, 334 U.S. 736 (1948) – Townsend was sentenced to two prison terms after pleading guilty to burglary and robbery. He brought an appeal to the U.S. Supreme Court after the Pennsylvania Supreme Court denied his petition for a writ of *habeas corpus*. Townsend claimed that, at the time he entered his plea, he was not advised of his right to counsel, nor was he offered counsel by the court, nor was he formally advised of the nature of the charges against him. Further, Townsend asserted that the prosecutor entered into the record false information about Townsend's prior criminal record which led the sentencing judge to believe that Townsend had been convicted of several offenses for which he had actually been found not guilty.

Although it acknowledged its recent contrary ruling in *Bute v. Illinois*, the Court distinguished the instant case by focusing on the erroneous information that was considered by the trial court in determining Townsend's sentence. In a 6-3 decision reversing Townsend's convictions, the Court recognized that competent counsel would have assured that the information regarding Townsend's prior criminal record was fair and accurate, so that the sentencing decision of the trial judge was not prejudiced by misinformation.

Uveges v. Pennsylvania, 335 U.S. 437 (1948) – Here the seventeen-year-old defendant pled guilty to four counts of burglary, each of which carried a maximum sentence of twenty years; he received four consecutive sentences of from five to ten years each. Several years later, Uveges sought *habeas* relief in Pennsylvania state courts, claiming that he was denied counsel in violation of his rights under the Fourteenth Amendment. Unsuccessful outcomes led to an appeal to the U.S. Supreme Court. Uveges alleged that he was neither given counsel nor advised of his

right to have legal representation. Further, he claimed that his guilty pleas resulted from the prosecutor's threat of "...dire consequences if he dared to stand trial."

Justice Reed wrote the opinion for the six-member majority. He noted that some of his brethren on the Court believed that the Fourteenth Amendment requires appointment of counsel in all state prosecutions for serious offenses, while others held to the idea that each case alleging denial of counsel should be decided on its individual merits. Without using the term "special circumstances," Justice Reed nevertheless described several scenarios in which justices in the latter category would be likely to find that counsel was required to assure fundamental fairness. Justice Reed concluded that the instant case met the criteria of both groups, and thus concluded that "...the opportunity to have counsel in this case was a necessary element of a fair hearing."

Wade v. Mayo, 334 U.S. 672 (1948) – The facts in this case fit a now all-too-familiar pattern: The eighteen-year-old defendant was tried and convicted of burglary in a Florida state court. Prior to trial, Wade requested court-appointed counsel, citing indigence; his request was denied. *Habeas* relief sought in the Florida courts was denied, and thus an appeal was brought in the U.S. District Court. The District Court found that the denial of counsel to Wade was a denial of due process, and his conviction was reversed. However, the State of Florida then appealed to the Fifth Circuit Court of Appeals, which held that, unless state law required appointment of counsel in non-capital cases, the due process provisions of the Fourteenth Amendment did not apply (at the time, Florida did not provide for court-appointed counsel in such cases, as we later learned in *Gideon*). Wade then brought his appeal to the U.S. Supreme Court.

Given the resulting decisions in recent similar cases, it is no surprise that the Court by a 5-4 majority found for Wade. In his opinion, Justice Murphy noted that the defendant here had had some involvement in the criminal courts prior to the case at hand, but that he was nevertheless only eighteen years of age at the time of his trial and "...was still an inexperienced youth unfamiliar with Court procedure, and not capable of adequately representing himself."

An interesting additional facet to this case is that Justice Reed, the author of the decision in *Uveges*, wrote a dissent in which he was joined by three others. However, the dissent was based

entirely on procedural issues regarding the propriety of *habeas* relief in this case; Justice Reed did not address the constitutional issue raised by Wade in his appeal.

Gibbs v. Burke, 337 U.S. 773 (1949) – Gibbs was convicted of larceny in a Pennsylvania state court after a trial in which he was compelled to act *pro se*. He later petitioned the state supreme court for a writ of *habeas corpus*, asserting that he was denied counsel and thus deprived of due process. The State responded, stating that Gibbs did not request or demand counsel at trial and that Gibbs’ prior criminal record as well as his conduct in representing himself indicated a “... familiarity with the legal process,” implying that he was adequately prepared to defend himself. When the Pennsylvania Supreme Court rejected his petition, Gibbs brought this appeal.

Justice Reed wrote for the majority, and held that the trial court’s failure to appoint counsel did in fact deny Gibbs of due process. Justice Reed identified a number of procedural errors apparent in the trial transcript, including the admission without objection of hearsay and other incompetent evidence, as well as the judge’s reference to Gibbs’ prior convictions while addressing Gibbs in the presence of the jury. In his opinion, Justice Reed put the burden of assuring due process squarely upon the trial judge, stating, “... the fair conduct of a trial depends largely on the wisdom and understanding of the trial judge,” and found that in this case the judge failed to carry that responsibility. In their concurrence, Justices Black and Douglas declare their belief that *Betts v. Brady* should be overruled.

Palmer v. Ashe [sometimes spelled *Asche*], 342 U.S. 134 (1951) – This was another appeal of a denial of *habeas* relief by the Pennsylvania Supreme Court, brought almost twenty years after the defendant’s initial conviction. The petitioner had entered guilty pleas to charges of armed robbery and attempted armed robbery and was sentenced to consecutive prison terms of five to fifteen years each. He sought relief on the basis that he was neither offered counsel nor advised of his right to legal representation.

In a 5-4 decision written by Justice Black, the Court found that there were in fact sufficient “special circumstances” in this case to warrant a departure from the *Betts* rule. Specifically, it was taken into account that petitioner Palmer had been declared an “imbecile” as a child and

spent years confined to a mental institution. In addition, he alleged that the police officers who arrested him led him to believe that he was only charged with a single charge of “breaking and entering” rather than two additional counts of robbery, and that deliberate misrepresentation prompted Palmer to enter a guilty plea. The four dissenting justices, which included Justice Reed, the author of the decisions in *Uveges* and *Gibbs*, evidently were not convinced of Palmer’s diminished mental capacity, and indicated that they would have deferred to the judgment of the Pennsylvania Supreme Court that no “special circumstances” did indeed exist here.

Massey v. Moore, 348 U.S. 105 (1954) – In a one-day trial, Massey was tried and convicted of robbery; because of prior felony convictions, he received a mandatory life sentence. Later, Massey unsuccessfully sought *habeas* relief in both state and federal courts, claiming that he was never offered counsel, was insane at the time of trial, had a long history of confinement for mental illness, and thus was unable to properly represent himself. Massey had a history of mental illness, including periods of confinement both before and after his conviction in the instant case.

The decision of the U.S. Supreme Court was written by Justice Douglas, who found that Massey was entitled to a plenary hearing on the issue of his insanity at the time of trial. Since Massey was denied counsel, that issue was never formally addressed, and the failure to do so, according to Justice Douglas, might have led to a “grave injustice.” In his opinion, Douglas identified the inherent paradox in petitioner Massey’s situation, stating, “We cannot hold an insane man tried without counsel to the requirement of tendering the issue of his insanity at the trial.”

Chandler v. Fretag, 348 U.S. 3 (1954) – Chandler, a middle-aged, uneducated black man living in Tennessee, was charged with “breaking and entering a business house” and stealing property worth \$3.00. When he appeared for trial, the judge verbally informed him that, because of his three prior felony convictions, he was to be tried as a habitual criminal and faced a mandatory life sentence without parole if convicted. Chandler requested a continuance to allow him time to secure counsel; his request was denied. A jury was empaneled, after which Chandler entered a guilty plea to the breaking and entering charge. By a show of hands, the trial judge asked the members of the jury if they accepted Chandler’s guilty plea. After a positive response, the judge asked for a second show of hands by the jury on a finding that Chandler was a habitual criminal.

A second positive response resulted in the imposition of the mandatory life sentence. In the U.S. Supreme Court decision that ultimately arose after Chandler was denied relief in the Tennessee appellate courts, it is noted that the entire trial process from empanelment of the jury to imposition of sentence, took less than ten minutes.

In reversing the rulings of the Tennessee courts, Chief Justice Warren, writing for the majority, distinguished this case from *Betts v. Brady*, in that Mr. Chandler did not ask the trial court to appoint counsel, but rather simply requested an opportunity to retain counsel. The Chief Justice concluded that, by denying him the right to obtain legal counsel, the trial court did deny Chandler the right to due process guaranteed to him by the Fourteenth Amendment.

Pennsylvania ex rel. Herman v. Claudy, 350 U.S. 116 (1956) – In a Pennsylvania state court, Stephen Herman pled guilty to thirty property offenses and was sentenced to serve from 17 ½ to 35 years in prison. Eight years later, he sought *habeas* relief, alleging that upon his arrest he was held in isolation for three days and had been physically coerced and threatened with further harm to himself and his family if he did not plead guilty. Further, he asserted that he had been denied counsel at trial and had not been told by either the prosecutor or the judge that he had a right to counsel or that he was actually entering a plea to thirty crimes for which the maximum sentence could total over 300 years. Appeals to the Pennsylvania courts were to no avail, leading to this appeal to the U.S. Supreme Court.

Justice Black wrote for the Court, reversing Herman’s convictions and remanding the case. He noted that there was considerable contention between the petitioner and the State as to the facts alleged in the petition, as well as to the law, with the State claiming that Herman did not have a constitutionally-guaranteed right to counsel. However, the Court ultimately concluded that the sheer number, seriousness, and complexity of the charges brought against the petitioner mandated that the petitioner be advised of a right to counsel. Justice Black cited the Court’s 1948 decision in *Uveges v. Pennsylvania* as arising from “strikingly similar” facts.

Moore v. Michigan, 355 U.S. 155 (1957) – In 1938, Willie Moore, then a seventeen-year old black youth with a seventh-grade education, pled guilty to the murder of an elderly white woman and was sentenced to solitary confinement for life without parole. Twelve years later, he filed a

delayed request for new trial, which was denied. He brought his case to the U.S. Supreme Court after exhausting state appeals. The record revealed that Moore was arraigned and entered his plea two days after his arrest. He had been advised of his right to counsel by the trial court, but asserted that he wanted to plead guilty and “get the matter over with.” The trial judge accepted Moore’s plea after conferring with him *in camera*. The record also contained testimony from the local sheriff that he had warned Moore that he couldn’t be guaranteed protection from vigilante violence if he refused to plead guilty.

The 5-4 majority opinion here was written by Justice Brennan, who found that Moore had several possible defenses, including insanity and mistaken identity, that were foreclosed by his guilty plea. Borrowing language from the Court’s ruling in *Herman v. Claudy* (discussed above), Brennan wrote, “... where a person convicted in a state court has not intelligently and understandingly waived the benefit of counsel and where the circumstances show that his rights could not have been fairly protected without counsel, the Due Process Clause invalidates his conviction” Thus, despite the fact that Moore ostensibly waived his right to counsel and to demand trial, even the trial court’s efforts to assure the voluntariness of Moore’s waivers were insufficient to meet the requirements of the Due Process Clause of the Fourteenth Amendment. Moore’s conviction was reversed and the case remanded.

Cash v. Culver, 358 U.S. 633 (1959) – The petitioner in this case is described in the Supreme Court’s decision as “...an uneducated farm boy of 20” at the time he was convicted of burglary and sentenced to a fifteen-year prison term. The initial trial on the burglary charge, in which Cash had a lawyer, ended in a mistrial after the jury deadlocked. Held in solitary confinement thereafter for more than two months, Cash learned just prior to his retrial that his original attorney had withdrawn. Cash’s mother attempted unsuccessfully to retain substitute counsel in the brief interim. When the retrial began, Cash requested either a continuance to secure representation or appointed counsel; both requests were denied. At the second trial, the sole evidence was the testimony of an alleged accomplice, who had pled guilty to the burglary charge. The trial record did not indicate if this witness was cross-examined or if there was any objection to his testimony. Following his conviction at this second trial, Cash brought a *habeas*

action in the state supreme court. Following its rejection, this appeal to the U.S. Supreme Court ensued.

In the decision finding for petitioner Cash, Justice Stewart wrote:

“In the 17 years that have passed since its decision in *Betts v. Brady*, 316 U.S. 455, this Court, by a traditional process of inclusion and exclusion has, in a series of decisions, indicated the factors which may render state criminal proceedings without counsel so apt to result in injustice as to violate the Fourteenth Amendment. The alleged circumstances of the present case so clearly make it one where, under these decisions, federal organic law required the assistance of counsel that it is unnecessary here to explore the outer limits of constitutional protection in this area.”

Justice Stewart went on to identify some of the special circumstances that had led the Court to depart from its ruling in *Betts*, including the serious nature of the crime charged, the defendant's age and level of education, the conduct of the prosecutor and the trial judge, the complexity of the case, and the existence of possible defenses.

Hudson v. North Carolina, 363 U.S. 697 (1960) – Hudson and two co-defendants were tried for robbery in a North Carolina court. Hudson was only eighteen years old at the time and had a sixth grade education, but he apparently had been arrested on several prior occasions, including one in which he successfully defended himself at his trial for assault and robbery. Citing indigence, Hudson requested but was denied appointed counsel, but the attorney retained by Cain, one of Hudson's co-defendants agreed to represent all three young men. In the midst of the trial in the instant case, Cain entered a guilty plea before the jury to a misdemeanor charge, received a six month suspended sentence, and his attorney subsequently withdrew, leaving Hudson and his other companion to defend themselves. Both were convicted of a felony called larceny of a person; Hudson was sentenced to a prison term of three to five years and the other co-defendant received sentence of approximately half that time. In considering Hudson's appeal following his conviction, the North Carolina Supreme Court found no special circumstances that

warranted appointment of counsel for Hudson. Appeal was then brought to the U.S. Supreme Court.

Justice Stewart wrote the opinion for the seven-member majority, reversing the North Carolina courts. Stewart concluded that the mid-trial guilty plea of co-defendant Cain, combined with the immediate withdrawal of the attorney who had committed to help all three defendants, placed both Hudson and the remaining co-defendant in a position of extreme prejudice. To guard against the damaging effects of such prejudice, it was essential for the trial court to appoint substitute counsel at that point. In Justice Stewart's words, "The prejudicial position in which the petitioner found himself when his codefendant pleaded guilty before the jury raised problems requiring professional knowledge and experience beyond a layman's ken. *Gibbs v. Burke*, 337 U.S. 773 (1949); *Cash v. Culver*, 358 U.S. 633 (1959)."

Hamilton v. Alabama, 368 U.S. 52 (1961) – This case has some issues that make it unique among those reviewed here. Hamilton was charged in an Alabama state court with "breaking and entering with intent to ravish," a capital offense in that state. He appeared at arraignment without counsel, entered a not guilty plea, was later tried, convicted, and sentenced to death. Hamilton's appeal was brought on the grounds that, since in Alabama arraignment is a critical stage in a criminal case, denial of counsel is a denial of due process. The U.S. Supreme Court heard his appeal after he was denied relief in the Alabama courts.

In the Court's opinion, Justice Douglas examined Alabama law and found that arraignment was indeed a critical stage. It was the only point at which a defendant could bring challenges to the composition of the grand jury that brought the indictment, and the only time that a plea in abatement or a defense of insanity could be raised, at least without the consent of the trial judge. Since consideration of any one of these issues would have a profound effect on subsequent proceedings in a capital case, Douglas reasoned that a defendant facing arraignment in an Alabama capital case was in fact denied due process if counsel were not provided.

McNeal v. Culver, 365 U.S. 109 (1961) – McNeal was tried for "assault to murder in the first degree" and convicted of the lesser second degree of that offense; he was sentenced to

imprisonment for twenty years. At the time of trial, McNeal was a 29 year old black man described by the Court as “...indigent, ignorant and mentally ill.” His request for appointed counsel was denied by the trial judge, who told him that he was not entitled to counsel in a non-capital case and, further, that he didn’t need a lawyer. Finding no appellate relief in the Florida state courts, McNeal then brought his case to the U.S. Supreme Court.

Justice Whitaker wrote the Court’s opinion in favor of the petitioner, finding “...that petitioner’s ignorance, coupled with his mental illness and complete unfamiliarity with the law and court procedures, and the scant, if any, help he received from the court, made the trial fundamentally unfair,” and speculated that McNeal may have had grounds for an insanity defense. Whitaker also observed that this case involved a number of complex legal issue that, as in *Cash v. Culver*, were beyond the abilities of a layperson, particularly one with mental problems, to address *pro se*.

In a concurring opinion, Justice Douglas, joined by Justice Brennan, called for the Court to overrule *Betts v. Brady*. In an appendix, Justice Douglas discloses that, as of the time of this decision in early 1961, 35 states provided for appointment of counsel as a matter of course in all felony prosecutions.

Reynolds v. Cochran, 365 U.S. 525 (1961) – Reynolds was convicted of grand larceny in Florida and served more than a year in prison. Two months after his release, he was arrested, taken to another county, and arraigned two days later for being a “second offender,” having been convicted of robbery in 1934. At the arraignment, Reynolds informed the court that he had retained counsel who was en route to the courthouse at the time of the hearing, and asked for a continuance. He contended that the trial judge told him he didn’t need a lawyer, allegedly stating, “No point in calling a Doctor to a man already dead.” After asking Reynolds if he had in fact been convicted of two felonies and eliciting a positive response, the judge summarily sentenced Reynolds to ten years in prison under Florida’s “second offender” statute. Reynolds appealed to the U.S. Supreme Court once his state remedies were exhausted.

In its decision, the Court does not address the issue of the constitutionality of the Florida statute or its application in the instant case. However, the Court does cite its ruling in *Chandler v. Fretag* (discussed above), in which, according to Justice Black, "...we made it emphatically clear that a person proceeded against as a multiple offender has a constitutional right to the assistance of his own counsel in that proceeding." Finding the *Reynolds* case squarely on point with *Chandler*, the Court reversed the petitioner's conviction and remanded the case to the trial court.

Carnley v. Cochran, 369 U.S. 506 (1962) – Petitioner was an illiterate, charged with two counts of inappropriate sexual behavior with his daughter. He was tried without counsel, did not interpose a single objection during the trial, was not advised of the consequences of testifying. Further, he was unaware of the possibility of commitment to a Florida hospital for treatment and rehabilitation under the Child Molester Act had that defense been raised. Denied post-conviction *habeas* relief in the Florida courts, Carnley appealed to the U.S. Supreme Court.

The Court found no indication in the record as to whether counsel was requested by the petitioner or denied by the trial court. In any case, Carnley was compelled to represent himself. Several complex legal issues arose during the trial, and it was noted that the trial judge made some efforts to assist the defendant, but there were obvious deficiencies in the guidance that was offered, and the Court recognized that the trial judge clearly cannot also serve as counsel for the defense. Declaring that the petitioner had a constitutional right to counsel in this case, the Court then turned to the question of whether or not that right had been intelligently waived. Although the lower courts presumed, in the absence of evidence to the contrary, that such a waiver had occurred, the Supreme Court found that presumption improper, stating, "But it is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request," As it previously held in *Uveges*, *Rice*, and *Gibbs* (cited above), where the right to counsel does exist there must be a presumption against rather than in favor of a waiver of such right.

In a concurring opinion joined by Chief Justice Warren and Justice Douglas, Justice Black repeats his call for the Court to overrule *Betts v. Brady*: "Twenty years' experience in the state

and federal courts with the *Betts v. Brady* rule has demonstrated its basic failure as a constitutional guide. Indeed, it has served not to guide but to confuse the courts as to when a person prosecuted by a State for crime is entitled to a lawyer.”

Chewning v. Cunningham, 368 U.S. 443 (1962) – This was another “habitual criminal” case in which Chewning was prosecuted under a Virginia recidivist statute, having thrice been convicted of felony crimes. He was sentenced to ten additional years in prison. He had requested but was denied assistance of counsel at trial. Carnley pursued *habeas* relief in the Virginia courts, and appealed to the U.S. Supreme Court when those efforts were unsuccessful.

Relying in part on its recent holding in *Reynolds v. Cochran* and *Chandler v. Freitag*, the Court found multiple special circumstances in this case that mandated appointment of counsel. Specifically, the instant case involved a serious felony charge carrying a substantial punishment, and complex legal issues, including possible defenses relating to double jeopardy and the possible *ex post facto* application of the recidivist statute.

Of course, this line of cases addressing the issue of “special circumstances” requiring appointment of counsel culminated in the Court’s landmark 1963 ruling in *Gideon v. Wainwright*, 372 U.S. 335 (1963). Clarence Earl Gideon was no stranger to the criminal justice system when he was charged in a Florida state court with breaking and entering, but the crime was a felony, Gideon was indigent, and his unequivocal request for counsel was denied by the trial court. Gideon was forced to represent himself, was convicted and sentenced to a prison term of five years. His subsequent appeal to the U.S. Supreme Court asserted a constitutionally-guaranteed right to counsel.

The Court finally found a case upon which to base the abandonment of the rule of *Betts v. Brady*. Justice Black wrote the opinion for a unanimous Court, observing that, “the problem of a defendant’s federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts.” Black boldly declared that:

“...lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

The finding by this Court that the right to counsel is a “fundamental right,” at least in all felony cases, led the Court to eliminate the requirement of any showing of “special circumstances” and establish instead an absolute right of indigent defendants to court-appointed counsel in all state and federal felony prosecutions.

Thus, in the relatively short span of two decades, the Supreme Court’s consideration of some two dozen cases, from *Rice v. Olson* to *Gideon*, led to a complete reversal of the majority’s stance on the concept of the right to counsel as a component of due process, as guaranteed by the Fourteenth Amendment. What brought about such a fundamental change in such a short period of time? There are certainly several significant factors that came into play.

First, it is instructive to consider the “special circumstances” that came to the Court’s attention in the aforementioned cases (note that all of these numbers may actually be higher; this list is comprised of those circumstances specifically identified in the Court’s decision):

All of the defendants in these cases faced felony charges; six involved capital crimes. In at least 9 of these cases, the defendants were specifically identified by the Court as indigent.

In 13 or more, the defendants had been threatened by law enforcement or a prosecutor, or there was evidence of either prosecutorial or judicial misconduct.

Eight cases involved defendants who were noted to be either mentally ill or unfamiliar with the judicial process.

Eight defendants were young, under the age of 25.

Four were identified as minorities.

Seven were facing complex legal issues that the average layperson could not comprehend or address.

Nine defendants made requests for counsel that were denied.

Ten more were neither advised of their right to counsel nor offered representation.

It may well be that the Court finally realized that, without a definitive ruling on the issue of “special circumstances,” there would be an endless stream of appeals substantially similar to those already encountered since *Betts*, based on an ever-widening category of facts and circumstances deserving of consideration. Abe Fortas, counsel appointed to represent Clarence Earl Gideon in his appeal to the Supreme Court, made this point very succinctly in his oral argument, describing the Court’s role in hearing these “special circumstances” cases as: “the kind of minute, detailed, *ex post facto* supervision over State court trials that you have been exercising for these past years and which, in my opinion, is the most corrosive possible way to administer our Federal-State system.” (Oral argument by Abe Fortas, *Gideon v. Cochran*, 370 U.S. 932 (1963)).

In addition, there were substantial changes in the composition of the Supreme Court in the twenty-year span from *Betts* to *Gideon*. Hugo Black and William O. Douglas, known for their consistent activist, pro-civil rights positions, were in the minority in 1942. The driving force for the Court’s majority at that time was Felix Frankfurter who, although a strong advocate for civil rights, was also a proponent of judicial restraint. It was Frankfurter who wrote dissenting opinions in *Rice v. Olson*, *Tomkins v. Missouri*, and *Williams v. Kaiser*, the first three “special circumstances” cases addressed by the Court after *Betts v. Brady*. By the time the *Gideon* case came before the Court, a changing of the guard had occurred, and two of the dissenters in *Betts*, Justices Black and Douglas, were now part of the core of what has come to be known as “the Warren Court.” This cadre of liberal, activist justices would be the driving force behind the numerous cases of the 1950’s and ‘60’s that involved civil rights, most particularly the rights of the accused in criminal cases, including *Mapp v. Ohio*, *Miranda v. Arizona*, and, of course, the *Gideon* case itself.

Finally, the years between *Betts* and *Gideon* did in fact bear witness to the rise of the American civil rights movement. Filled with controversy, tumult, discord, and, tragically, sporadic violence, the American collective conscience nevertheless became attuned to the rights of many groups in the nation who for generations had been marginalized, oppressed, or simply denied basic constitutional rights, and American courts, especially the U.S. Supreme Court, were at the vanguard in bringing about change. Our society was changing, and it stands to reason that the social and political forces involved in the process would be manifested in decisions by the highest court in the land.

Acknowledgments

The authors would like to express their thanks to Roger Newman, Justice Hugo Black's biographer, as well as to former Vice President Walter Mondale, the late Anthony ("Tony") Lewis, and Abe Krash, for their kind assistance. We are especially grateful to Bruce Jacob. Often remembered as representing the "losing" side in *Gideon v. Wainwright*, Professor Jacob has been a champion of the right to counsel for many years, and we were fortunate to have both his help and his outstanding article "Memories of and Reflections about *Gideon v. Wainwright*," 33 *Stetson L. Rev.* 181 (Fall, 2003).

Table of Cases

All of the cases described in this article involved felonies, and many were capital crimes. Clearly each was a serious offense, and many involved multiple issues. Herein, in an effort to assist the reader, the authors have endeavored to catalog the Court's primary focus; however, it should be noted that in most cases there was more than a single issue that caused the Court to rule.

Primary Issue	Cases
Capital or Complex Charge Against the Defendant	<i>Rice v. Olson</i> (1945) <i>Williams v. Kaiser</i> (1945) <i>Tomkins v. Missouri</i> (1945) <i>DeMeerleer v. Michigan</i> (1947) <i>Marino v. Ragen</i> (1947) <i>Massey v. Moore</i> (1954) <i>Chandler v. Fretag</i> (1954) <i>Pennsylvania ex rel. Herman v. Claudy</i> (1956) <i>Moore v. Michigan</i> (1957) <i>Hamilton v. Alabama</i> (1961) <i>McNeal v. Culver</i> (1961) <i>Chewning v. Cunningham</i> (1962)
Ignorance of the Defendant	<i>Tomkins v. Missouri</i> (1945)
Prejudicial Conduct by the Trial Judge, Prosecuting Attorney, or Public Defender	<i>White v. Ragen</i> (1945) <i>Townsend v. Burke</i> (1948) <i>Uveges v. Pennsylvania</i> (1948) <i>Gibbs v. Burke</i> (1949) <i>Palmer v. Ashe</i> (1951) <i>Chandler v. Fretag</i> (1954) <i>Pennsylvania ex rel. Herman v. Claudy</i> (1956) <i>Moore v. Michigan</i> (1957) <i>Reynolds v. Cochran</i> (1961)
Inability to Understand the English Language	<i>Marino v. Ragen</i> (1947)

Extreme Youth or Lack of Experience

DeMeerleer v. Michigan (1947)

Marino v. Ragen (1947)

Uveges v. Pennsylvania (1948)

Wade v. Mayo (1948)

Pennsylvania ex rel. Herman v. Claudy (1956)

Moore v. Michigan (1957)

Cash v. Culver (1959)

Hudson v. North Carolina (1960)

Unfamiliarity with Court Procedure

Wade v. Mayo (1948)

McNeal v. Culver (1961)

Feeble-Mindedness or Insanity

Palmer v. Ashe (1951)

Massey v. Moore (1954)

McNeal v. Culver (1961)

Illiteracy or Lack of Education

Chandler v. Fretag (1954)

Pennsylvania ex rel. Herman v. Claudy (1956)

Moore v. Michigan (1957)

Cash v. Culver (1959)

Hudson v. North Carolina(1960)

Carnley v. Cochran (1962)

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The Criminal Justice Capstone Course: A Comparison of the Usage of Capstone Courses in the State of Georgia and Southern Regional States

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Abstract

Capstone courses are designed to give students the opportunity to apply the knowledge they have acquired through an education program, through the summarization of course program learning objectives. This culminating course is important for application to real-world situations, employment, or future education. The current paper addresses the responses of criminal justice educators reporting the usage of various types of capstone courses in their program, to include the senior thesis, research papers, internships, portfolios, and/or other major projects in this major course(s). The research focuses on comparisons of responses by the designation of private or public; and, there are comparisons of institutions by designation of college or university. Additionally, statistical comparisons were made and reported on the results of Georgia and non-Georgia criminal justice educators. These represent a culmination of undergraduate criminal justice data based on survey responses of criminal justice instructors from numerous colleges and universities in the Southeast Region of the United States.

Introduction

Capstone courses are designed to give students the opportunity to apply the knowledge they have acquired through an education program, through the summarization of course program learning objectives. For the capstone course, the combination of applications is important for application to real-world situations, employment, or future education. The current paper and research addresses and provides the results of the responses of criminal justice educators responding to the usage of various types of capstone courses in their program, to include the senior thesis, research papers, internships, portfolios, and/or other major projects and requirements in this major course(s). These represent a culmination of undergraduate criminal justice study. The current research addresses the major findings of capstone course applications based on survey responses of criminal justice instructors from numerous colleges and universities in the Southeast region of the United States. Preliminary results will be presented with comparisons of the institutional programs.

Capstone courses are designed to give students the opportunity, through various measurable means, to concentrate what they have accumulated through their academic program and apply it to real world situations and future academic pursuits (AASL, 2014; Henscheid & Barnico, 2002). Capstones are designed to address a range of important educational processes and outcomes and to provide students with a culminating and integrative learning experience (Schwieger & Surendran, 2011). Senior capstone courses vary across disciplines and between institutions in the assignments and processes designed to attain specific learning outcomes, through integration, application, reflection and transition (Gardner, et al., 1998). Hunter, et al (2012) referred to the capstone as a 'rite of passage' through the demonstration of a mastery of the discipline, experienced through a culminating course that brings together the values, knowledge, and skills expected of graduates. Due to many factors, to include more advances in automation, the means of delivery, and a more intense focus on comparative assessment, to name a few, we still know very little about the nature and value of the capstone course for student learning. This is in regard, more specifically, to the value of the capstone course in the fostering of integrative learning (Kinzie, 2013). The lack of comparative data has made it difficult to develop a broader understanding of the nature and role of capstone courses within various social science programs (Hauhart & Grahe, 2010). As noted in a national survey, even though capstones are common in nearly every discipline, there have been few comprehensive studies of the most common goals,

features, formats, and practices within social science capstones (Huahart & Grahe, 2012). Beginning in 2007 in sociology, Kain (2007) performed research into the general availability of capstones and senior seminars. A consistency that was noted in capstone studies is that regardless of the discipline, students are most likely to take capstone courses during the final year, even final semester of their senior year in college (Hauhart & Grahe, 2010).

The current research involved the collection and analysis of a survey administered to criminal justice faculty members. The purpose of the research surveys was to determine the frequency and distribution and usage of the capstone requirements within the Southeastern U.S. criminal justice departments and gauge the variance of requirements and type of delivery for senior seminars and capstone courses within the criminal justice discipline. The research had an objective of determining if there is a consistent format and requirement for a capstone course in undergraduate criminal justice, in particular, comparing the employment of capstone courses of private and public institutions. Further comparisons were made of colleges versus universities. Findings may provide possible direction for future policy or decisions in relation to how the subject could be managed and for future research as a means to benchmark this research against others offered at other institutions. Finally, comparisons were made between Georgia institutions and non-Georgia institutions.

Typically, institutions provide an institutional definition that may include both general and specific institutional guidelines. For example, capstone courses are a means to help students attain an all-encompassing, integrated recognition of the key facets of their education over the course of their university experience, particularly within the major (UCWC, 2017). Such courses should also provide faculty with the means to assess how well students have progressed in relation to the institutional learning goals and the subject area's learning outcomes. These will vary by institution and, thus, although similarities are expected, differences are also expected. Such varied findings were validated in a meta-analysis by Brownell and Swaner (2010) that validated a lack of a universal definition for senior capstone course experiences.

The current study represented an attempt to focus on an investigation of capstone course organizations and requirements of criminal justice programs in the State of Georgia. The population of respondents came from the e-mail listing of individuals on the Southern Criminal Justice Association (SCJA) membership list and the individual websites of criminal justice departments located in states of the southeastern United States. Previous research has been

somewhat limited to other disciplines such as sociology and psychology (Hauhart and Grahe 2010); and, more so the examinations have been more limited in focus on a single institution or single discipline. The current dearth of research that directly compares criminal justice objectives of the departmental capstone course prompted a perceived need to pursue what had been published in this area. Further, the researcher compared the presence-of and usage-of capstone courses by various institutions with criminal justice degree programs. Past research on capstone courses has been limited in the area of criminal justice and has focused mainly on other disciplines. In a national study focused on sociology and psychology, Hauhart and Grohe (2012) found only a limited amount of research that has been pursued across disciplines that was dedicated to capstone requirements and practices. They found that most capstone research related to the social sciences focused on the disciplines of history, anthropology, sociology, and psychology. Their study, basically focused on sociology and psychology, found that time limitations often led to the failure to meet all learning outcomes. There are a number of questions and concerns related to capstone course, particularly on the usage, benefits, and assessment value of the culminating course. There have been a somewhat limited number of disciplines that have extensive, comprehensive, and comparative studies across disciplines and between institutions of capstone course standards and practices. In a national survey, Hauhart and Grahe (2010) found that the majority of published discussions of capstone courses in sociology and psychology are generally limited to single-course examinations in the social sciences. Additionally, there are studies of capstone courses in the disciplines of political science. In research focused on capstone studies in the political science discipline, Sum and Light (2010) focused on validating that the course served as a culminating point of programmatic and institutional goals that could meet the needed assessment imperative of the programs as initiated by the university studied. Siegfried (2001) reviewed the capstone course as related to the honors program with similar findings and agreement of other research confirming the culmination of learning outcomes. Economics with a capstone focus of using existing knowledge to explore issues and creating new knowledge were reviewed by Carlson, Cohn, and Ramsey with similar findings (2002). Research on capstone courses has focused on various forms of specific assessment of the degree program that have various points of focus to include attainment of institutional goals (Henscheid, 2000) and the quality of instruction (Black and Undley, 2004), and on the implementation of a standard scoring instrument, portfolio, or other related assignments used in both the conventional

and virtual classroom (Deardorff, Haumann, and Ishiyama, 2009). Similarly, Schermer and Gray (2012) found that institutions share the common emphasis of the capstone course as a culminating experience. And, this culminating event remained centered on the student's major, the writing of a major paper or thesis, and a focus on critical thinking and communication skills. Seeborg (2008) found agreement in the economics discipline that integrative experiences utilizing a research paper maximized required learning outcomes. Ishiyama (2005) focused on political science capstone courses at 32 institutions. His findings supported the importance and consistency of a structured sequential and integrated curriculum within the discipline. This was emphasized with the consistent finding of a culminating senior capstone course. The findings supported that students that did well in a capstone course would score well on the Major Field Aptitude Test and would have higher rates of application and admission to graduate programs.. In a study of four institutions, Schermer and Gray (2012) investigated the capstone courses of four liberal arts institutions and found a shared emphasis on the capstone as a common experience of a culminating, shared independent process, within the student's major area, with an emphasis on critical thinking, and the presentation of either a thesis or paper

Current Study

In the summer and early fall of 2016, the researcher collected surveys from 132 regionally accredited institutions across the southeastern United States on the usage and employment of senior seminars, capstone courses, and criminal justice internships. A total of 325 unique institutions were sent surveys for a 41.2 percent response rate. Because of the timing of the survey (late summer), respondents received up to four requests for participation. Fifty-eight percent of the institutions represented were public colleges and universities; 42 percent were private colleges and universities.

The survey was created by the researcher with a sampling of questions from the 2011 National Survey of Senior Capstone Experiences created by the National Resource Center (Padgett and Kilgo, 2012). The dissemination and administration of the survey instrument was conducted by the researcher utilizing Survey Share, a web-based survey technology program. In July, 2016 the

Table 1
Number and Percent of Institutions by Type

Type of Institution	Number	Percent (%)	Georgia (n)	Percent (%)
Public College	9	6.4	3	8.8
Public University	74	52.9	23	67.7
Private College	23	16.4	1	2.9
Private University	31	22.1	7	20.6
	132	100.0	34	100.0

survey was launched and there was an e-mail invitation to participate sent to criminal justice faculty members at 140 institutions. The original e-mails were sent to criminal justice instructors currently on the Southern Criminal Justice Association mailing list. In August, 2016, e-mail surveys were sent to additional criminal justice faculty members at 185 public and private colleges and universities in states within the SCJA area.

The instructors participating included those from public and private colleges and universities. Several responding institutions returned responses on several different types of capstone courses offered on their campuses. Overall, over 76 percent of responding institutions indicated that they offered at least one senior seminar or capstone course. The following are major findings of this research. There were a significant differences in the usage of a senior seminar / capstone course by instructors at public or private institutions ($x^2 = 5.164$, $p = .023$), with nearly 71 percent of public institutions reporting a capstone course compared to nearly 84 percent of private institutions. Likewise, there was a significant difference between institutions reporting as colleges versus universities ($x^2 = 6.125$, $p = .01$), with 87 percent of colleges versus 73 percent of universities.

In a comparison of the capstone course responses of Georgia vs. Non-Georgia institutions, Georgia institutional respondents were less likely to report the usage of a capstone course (69.7%) than non-Georgia institutional respondents (78.8%) which is not statistically significant ($x^2 = 2.496$, $p = .114$). Table 2 displays the number and percentage of non-Georgia institutions

compared with Georgia institutions, displayed by number and percentage of Capstone course used by Georgia and non-Georgia public and private institutions and colleges and universities.

Table 2
Usage of Capstone Course
By State and Type of Institution

Type of Institution	Non-Georgia (n)	%	Georgia (n)	%
Public College	3	60.0	2	40.0
Public University	35	78.7	15	30.0
Private College	21	95.5	1	100.0
Private University	19	76.0	5	71.4

Demographics

There were 132 respondents to the survey. The respondents were mainly from the 11 states associated with the Southern Association of Colleges and Schools and Southern Criminal Justice Association purview. 58 percent of the respondents were teaching at public colleges or universities. 42 percent were from private colleges and universities. Further, 76 percent of respondents were teaching at universities versus colleges (24%). The respondents were generally more senior faculty members: 40 percent were full professors; 22 percent were associate professors; 39 percent of respondents held the rank of assistant professor, instructor, or lecturer. There was a wide range in the size of the institutional enrollments and the number of criminal justice enrollments. Of those responding, 22 percent reported less than 2,500 students at their institution. 21 percent reported 2,500 to 5,000 students; 23 percent reported from institutions with student enrollments between 5,000 and 10,000 students; and, nearly 27 percent reported enrollments in excess of 10,000 students (Table 3). Twenty-five percent of those responding had 100 or less criminal justice majors; 30 percent had 100 to 50 majors; One-third (33.6%) reported 250 to 500 majors; and, 21 percent had more than 500 criminal justice majors. The median size enrollment of responding institutions was 6,200; Georgia institutions responding were slightly larger with a median of 6,700.

Table 3
Enrollments of Respondent Institutions

	0 – 2,500(%)	2,501 to 5,000(%)	5,001 to 10,000(%)	10,001 plus (%)
Percent of Institutional Enrollments	29 (21.6)	28 (20.9)	31 (23.1)	36(26.9)
State of GA Institutional Enrollments	3 (8.8)	11 (32.4)	9 (26.5)	11 (32.4)

The number of criminal justice majors varied by institution (Table 4). Over half of the institutional respondents (55%) reported that they had between 101 and 250 criminal justice majors. About one-fourth (24%) had 500-plus criminal justice majors. About one-fifth (21%) reported 100 or fewer criminal justice majors. The median number of criminal justice majors of Georgia respondents was 300 per institution compared to 200 for non-Georgia Institutions. Note that this is based only on the responding institutions and not based on all institutions in all of the states in the study.

Table 4
CJ Majors of Respondent Institutions

	0 to 100(%)	101 to 250(%)	251 – 500(%)	501 - Plus
Percent of CJ Enrollments	32 (24.2)	41(31.1)	31 (23.5)	28 (21.2)
State of GA CJ Enrollments	2 (5.9)	13 (38.2)	11 (32.4)	8 (23.5)

Instructors

Overall, over ninety-five (95) percent of respondents, that utilized a capstone course, reported that senior seminars and capstone courses are instructed by departmental faculty members. Twenty-eight (28.3) percent of respondents indicated that senior seminars and capstone courses are instructed by faculty members working in teams. Only a small percentage of senior seminars and capstone courses were reported as being taught by other instructors working alone or in

teams, including career center professionals, community leaders, other student affairs professionals, and graduate students. Those least likely to be instructors of these courses are student affairs professionals outside of career centers and graduate students.

There was not a statistically significant difference in the instructors for the capstone courses by type of institution when public institutions were compared with private institutions. Sixty-three percent (63.3%) of respondents from public institutions and 55.4% of respondents from private institutions reported that senior seminars and capstone courses are taught by faculty members. 29 percent of respondents from public institutions and 27.8 percent of respondents from private institutions reported that these courses are taught by faculty teams; these included assistance from other departments, graduate students, and community agencies.

Course Types

Of those that indicated that they had a senior seminar requirement, 88 percent of respondents indicated that senior seminars and capstone courses are discipline- or- department-based. Likewise, 16 percent reported that the capstone course was used primarily as either a transition course intended to focus on preparation for work, life choice, life skills, or preparation for graduate school. It will be noted below that the preparatory goals of the capstone courses are important to a varied percentage of respondents, depending on the specific goal. A small percentage of respondents reported other main focuses of their capstone courses: 2.8 percent of senior seminars and capstone courses are career planning courses; 2.8 percent of respondents indicated that these courses are interdisciplinary; and, 1.9 percent of respondents indicated that senior seminars and capstone courses are "other" types.

Respondents were asked to select from a number of varied assignments that they utilized in their capstone courses. For those that affirmed the usage of a capstone course in their degree program, a number of varied requirements were selected to include: reflective papers, service learning exercises, and discipline-specific seminar courses, capstone experiences and high- impact practices that demonstrate a students' ability to write, speak, acquire and use knowledge, solve problems, and apply a variety of skills, including time management and task analysis. Regardless of the form of a capstone experience, the demonstrative student outcome integrates knowledge from the discipline specific and general education courses in a unique way. It is of interest to note, and will be a focus of further research, the capstone course objectives may follow the program objectives and institutional objectives which can be found to differ.

Instructional Components

As presented in Table 5, the largest number of respondents with capstone courses (67.4%) reported that there was a requirement for multiple combined projects within the capstone course. This was consistent across the institutional types responding. Likewise, over 66 percent (66.3%) of respondents reported their capstone courses requires oral presentations by their students and, similarly, 66.3 percent reported that their senior seminars and capstone courses require major projects of some type. This was followed by the requirement for a term paper (57.8%) or final examination (53.4%). Less than one- third of respondents reported a capstone requirement of a group project (33.0%), thesis (29.2%), portfolio (22.0%), an internship (18.3%), or leadership training (18.1%).

Table 5

Requirement of Criminal Justice Capstone Course and Comparisons by Type of Institution

Components /Type Institution	Total response YES	College	University	Significance	Public	Private	Significance	Total Response (N)
a. Thesis	29.2	60.0	52.0		8.5	53.8	***	86
b. Final Examination	53.4	47.4	55.1		55.1	51.3		88
c. Major Project	66.3	60.0	68.1	*	72.0	59.0	*	89
d. Area Paper	37.29	36.8	37.3		44.0	27.8	*	86
e. Term Paper	57.8	50.0	60.0		66.7	47.4	***	83
f. Oral presentation / defense	66.3	90.5	58.8	***	52.0	84.6	***	89
g. Group project	33.3	35.0	32.8		41.7	22.2	**	84

h. Leadership training	18.8	23.5	17.5		18.2	19.4		80
i. Internship	19.0	5.9	22.6	***	25.0	11.4	*	79
j. Portfolio	22.0	21.1	22.2		32.0	6.3	***	82
k. Multiple combined projects (research project, academic essay, visual presentation)	67.4	75.0	64.7		67.9	66.7		82

* Significant at .05 level

** Significant at .01 level

*** Significant at .001 level

The components of the capstone course reported by Georgia colleges and universities were compared with those responding from outside of Georgia. The results are displayed in Table 6. Most notably, Georgia respondents were much more likely (94.7%) than non-Georgia respondents (60.3%) to require and utilize multiple major projects within the capstone course. Likewise, nearly three-fourths (73.7%) of Georgia respondents reported using a final examination in the capstone course compared to less than half of non-Georgia respondents

Table 6

Requirement of Criminal Justice Capstone Course and Comparisons by Southeastern

Components /Type Institution	Total response YES	Georgia Institutions (%)	Non-Georgia Institutions (%)	Significance	Total Response (N)
a. Thesis	29.1	27.8	29.4		86
b. Final Examination	53.4	73.7	47.8	***	88
c. Major Project	66.3	76.2	63.2	*	89

d. Area Paper	37.3	44.4	35.3		86
e. Term Paper	57.8	58.8	57.6		83
f. Oral presentation / defense	66.3	64.7	66.7		89
g. Group project	33.3	37.5	32.4		84
h. Leadership training	18.8	26.7	16.9	**	80
i. Internship	19.0	28.6	16.9	***	79
j. Portfolio	22.0	50.0	14.1	***	82
k. Multiple combined projects (research project, academic essay, visual presentation)	67.4	94.7	60.3	***	82

* Significant at .05 level

** Significant at .01 level

*** Significant at .001 level

(47.8%). Three-fourths of Georgia respondents reported the usage of a major project versus two thirds of non-Georgia respondents. Of some interest, half (50%) of Georgia respondents reported the usage of a portfolio in the capstone course compared to only 14 percent of non-Georgia respondents.

Goals

Respondents were asked to rank which specific goals apply to their specific senior seminar / capstone course. The rankings were from 'most important' (1) to 'least important' (5). This included responses by those with capstone courses, with a 'not applicable' section, utilized. Respondents were permitted to rank from one to eight of the items listed. The mean was calculated based on the scale of most important (1) to least important (5). Respondents were able to respond to more than one 'primary' goal of their capstone course. The results of the survey are displayed in Table 7. The survey responses of 'very important' and 'important' were combined to compare responses. Further, Table 7 further displays the comparison of goals between respondents representing public and private institutions responses on the importance of goals related to capstone courses.

A comparison of the mean responses revealed that respondents ranked highest the goal of *fostering integration and synthesis within the academic major* ($\bar{x} = 1.94$). A very close second goal priority included: *developing important student skills, competencies and perspectives developed in the college curriculum* ($\bar{x} = 1.98$). College institutional instructors reported this as a goal priority significantly more than university instructors. The third goal of *promoting integration and connecting between the academic major and the work world* ($\bar{x} = 2.15$) related responses of academic work to internships. University respondents reported the use and requirement of internships more than college respondents. Likewise, they reported promotion and integration of the criminal justice major to the work world significantly more than college respondents. Not surprisingly, university respondents were much more likely to promote the goal of the capstone goal of enhancement of student preparation and the prospects for

Table 7**Capstone Goals of Total Institutions and Institutional Types by Faculty Rating**

Type of Institution / Perceived Important Goals	All Faculty Respondents	Mean	Standard Deviation	Public Institution	Private Institution	Significance	College	University	Significance
a. Promoting the coherence and relevance of General Education of the institution	23.0	3.43	1.195	21.6	24.3		21.7	23.5	
b. Promoting integration and connections between education and the Academic Major	48.1	2.59	1.115	44.2	52.8		56.5	44.6	
c. Fostering integration and synthesis within the academic major	70.9	1.94	1.15	75.5	66		68	72.1	
d. Promoting integration and connecting between the academic major and the work world	70.5	2.15	1.176	73.1	67.4		53.4	72.1	**
e. Developing important student skills, competencies, and perspectives developed in the college curriculum	78.9	1.98	1.12	77	81.4		88.5	75.3	*

f. Enhancing awareness-of and support-for key personal adjustment encountered during transition from college to post-college life	35.4	3.16	1.219	41.3	27.8	*	34.6	35.7	
g. Improving students' career preparation and pre-professional development	62.3	2.40	1.190	73.1	48.7	***	61.6	62.7	
h. Enhancing students' preparation and prospects for postgraduate education	57.4	2.38	1.146	37.1	57.8	**	50	60.6	**

* Sig. at .05 level

** Sig. at .01 level

*** Sig. at .001 level

postgraduate education, than reported by college instructors. This was similar to the reported prioritization of the prioritized goal of the senior seminar as the *enhancement of student preparation and prospects for postgraduate education* ($\bar{x} = 2.38$). A similar prioritization was placed on *the goals of improving students' career preparation and pre-professional development* ($\bar{x} = 2.40$). The lowest prioritization was of *'promoting the coherence and relevance of General Education of the education* ($\bar{x} = 3.43$). Seventy-one percent (70.5%) of respondents felt that the important goal of the capstone course was to promote integration and synthesis within the academic major. Seventy-one percent (70.9 %) of respondents indicated that the most important or an important goal of senior seminars and capstone courses is to foster integration and synthesis within the academic major. Over three-fourths of respondents (78.9%) felt it was most important for developing important student skills, competencies, and perspectives developed in the college curriculum.

The comparisons of Georgia and non-Georgia are displayed in Table 8. Eighty percent of Georgia respondents compared to 77.4 percent and 68 percent, respectively, of non-Georgia respondents viewed a major capstone goal as *promoting integration and connecting, between the academic major and the work world* (significantly higher at the .05 level) and *the development of important student skills, competencies and perspectives* (significantly higher at the .01 level). Over three-fourths of Georgia respondents placed an importance on *improving students' career preparation and pre-professional development* vs. 58.4 percent of non-Georgia respondents. Ninety percent of Georgia respondents vs. only 48.4 percent of non-Georgia respondents placed an importance on the capstone goal of *enhancing students' preparation and prospects for postgraduate education* (significant at .001 level). Only twenty-three percent rated *promoting the coherence and relevance of General Education of the institution* as an important goal of their capstone course, and this was somewhat consistent between both sample groups.

Table 8
Capstone Goals of total Institutions, Non-Georgia Institutions, and Georgia Institutions
by Faculty Rating

Type of Institution / Perceived Important Goals	All Faculty Respondents	Mean	Standard Deviation	GA Institution	Non-GA Institution	Significance
a. Promoting the coherence and relevance of General Education of the institution	23.0	3.43	1.195	27.8	21.4	
b. Promoting integration and connections between education and the Academic Major	48.1	2.59	1.115	50.3	47.7	
c. Fostering integration and synthesis within the academic major	70.9	1.94	1.15	70.0	71.2	
d. Promoting integration and connecting between the academic major and the work world	70.5	2.15	1.176	80.0	68.0	*
e. Developing important student skills, competencies, and perspectives developed in the college curriculum	78.9	1.98	1.12	81.0	77.4	**

f. Enhancing awareness-of and support-for key personal adjustment encountered during transition from college to post-college life	35.4	3.16	1.291	68.5	25.4	***
g. Improving students' career preparation and pre-professional development	62.3	2.40	1.190	76.2	58.4	**
h. Enhancing students' preparation and prospects for postgraduate education	57.4	2.38	1.146	90.0	48.7	***

* Significant at .05 level

** Significant at .01 level

*** Significant at .001 level

Future analysis will compare the differences in these priorities by public versus private institutions, size of the institutions, and whether the departments are independent or combined with other disciplines. Seventy-five percent of respondents reported the use of a capstone course in their criminal justice program. There was no statistical difference in the percentage of public versus private institutions with capstone courses; nor was there a statistical difference between the percentage of colleges and universities with capstone courses. Similarly, Georgia institutions did not report a statistically significant difference in capstone courses from non-Georgia institutions. Capstone courses at the largest institutions (over 20,000) are slightly less likely to be required than at the smallest institutions (less than 500).

Private institutions were found to be much more likely than public institutions to require a thesis and an oral presentation/defense as part of the capstone course requirement. Public institutions were statistically more likely to require a term paper, oral presentation, group projects, internships, and portfolios as part of the capstone than private institutions.

When respondents were compared by designation of college or university, those designated as from colleges were statistically more likely to report a capstone requirement that include an oral presentation, than were university faculty respondents. University criminal justice faculty reported a statistically significantly higher requirement for an internship as part of the capstone course, than did college-level faculty respondents. It should be noted that the internship is utilized by nearly all of the responding institutions. Only 39 percent of respondents reported that the internship was a graduation *requirement*; and fewer (18.3%) of those that had a capstone

course included the internship as a required component of their capstone course. This was consistent with non-Georgia institutions. Twenty-seven Georgia institutions reported an internship as part of their capstone course.

Capstone courses at smaller institutions are statistically significantly reported to be more likely to require a thesis as part of the capstone requirement than at larger institutions. Capstone courses at small institutions were found to be statistically significantly more likely to require the writing of a thesis than larger institutions. Through the preliminary analysis of the survey responses, there are initial insights into the various methods used to assess student learning outcomes at or near the end of program requirements. Further, detailed research of the data, combined with specific institutional information can allow future research that can focus on skill sets and whether assessment is individual, course-related, program-related, or institutional-related. There is a benefit to be gained for the program and institutions to assist in assessing the program in context with other institutions, public and private, statewide, and across the region. Such information could also serve as the basis for further research and on additions or modifications in curriculum, in an effort to better serve our criminal justice students. Previous research in this area has identified the need to promote and assess critical thinking and analytical skills and written and oral communications as important outcomes for senior capstone courses. These were found to be important components of the current research, as evidenced by instructor responses. The findings from the current research may provide useful comparative data when assessing capstone needs for the institution; albeit, other factors related to the program will provide additional decision-making information.

Conclusions

Criminal justice educators play an active, academic role in the success of the program and the students. These professionals are crucial in the classroom success and monitoring student application in the classroom and the field. The current research was an attempt to capture and compare survey responses related to capstone courses within a regional sample and compare these results with institutions of higher learning in the State of Georgia. There were also comparisons made between private institutions and public institutions and college-level and university-level institutions. The initial findings from this limited research project may be used as a starting point for further, more detailed research. The current research represents a limited view of how approximately 30 percent of southeastern institutions with criminal justice programs

assess their capstone courses in the criminal justice discipline. Research of this type must be continuous and supplemented with assessment information within the departments, inter-institutionally, and intra-institutionally. For most, there is a sound rationale for the usage-of and types-of capstone courses. There are some institutions that continue to search for the needed format or the rationale for a capstone format.

The current research found support for the idea that undergraduate education, particularly criminal justice education, entails more than a collection of separate, disconnected experiences and course requirements. The suggestion is that institutions vary in how they instruct their students, course contents, and in how they enhance opportunities to connect, deepen, and generalize learning beyond the immediate setting where it occurs.

The increase in the number of institutions that offer a capstone course as a culminating experiences and the focus may trend for greater institutional investment and resources in integrative learning and experiences that bring coherence to undergraduate education. This, in turn, requires more focus on ensuring the integrative potential of the capstone course. To date, there is limited research on capstones, especially in the criminal justice discipline. Results from this type of research will support positive outcomes for students who participate. There is a need to focus future research on this topic to educate the students and faculty members and the academy on the quality-added of these experiences and their contribution to integrative learning essential in the criminal justice program.

While the specific content of the programs surveyed varies, to some degree, as indicated in comparisons of private and public institutions, college-level and university-level institutions, and Georgia versus non-Georgia institutions, there are still opportunities in each program, at each type of institution to integrate, synthesize, and apply knowledge essential to ensuring deep, meaningful learning experiences. The senior capstone course provides students with an opportunity to culminate the undergraduate program and graduate with a preparation to continue their educational journey in higher education or begin their career in their chosen major.

It is a responsibility of the institutions, beginning at the department level, to fully interpret and understand the students' learning needs and use this understanding to create and implement a capstone course that embodies the departmental, college and institutional goals. The student experience and learning is essential in the entire program of learning. The capstone course is crucial in this process as a culminating experience that will integrate the learning experience and

allow a thorough and valuable departmental and institutional assessment. This will be instrumental in aiding institutions in the maximization of the potential for improving the capstone experience to focus and function on the successful integrated learning and educational coherence of their students.

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No Statute of Limitations: Will 2017 Bring Closure to the Murder of John Kennedy?

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Abstract

The 1992 Kennedy Assassination Records Collection Act mandated that all classified assassination-related documents were to be released within 25 years, by October, 2017. After more than half a century, what do we need to know about the case that may be secreted in these documents, particularly those 1100 documents long safeguarded from public scrutiny by the C.I.A.? The essential questions are who killed Kennedy and why – and will we learn the answers?

Introduction

For an historical event that occurred before a large majority of Americans were born, the assassination of President John Kennedy on the streets of Dallas, Texas, remains unusually topical. One reason may be the lack of strong consensus – at the time of the murder and to this day – as to who killed the “Leader of the Free World” and why. With no statute of limitations on murder, and early 1940s misdeeds of Nazi SS death-camp guards still being prosecuted today, a keen yearning for justice and closure in the 1963 Kennedy assassination spurs many to demand answers to those two basic questions: WHO killed the President, and WHY? Only when answers emerge may the murderer(s) be held accountable, by either actual prosecution or posthumous assignment of culpability for what many Americans still deem “The Crime of the (20th) Century.”

As the second section will discuss, the official government and mainstream media view of the assassination was and is that a troubled young man, then and now typically dubbed a “lone nut,” killed the President. In that conception, this was the quintessential Black Swan Event, totally unpredictable and impossible to prevent, with far-reaching political and societal consequences, none of them intended. Further, the official view sees only total coincidence in a troubled older man coming in off the street unimpeded and murdering the sole suspect two days later in the basement of Dallas Police Headquarters. That the Warren Commission investigation, the official inquiry leading to these conclusions and the view informing them, was flawed is widely acknowledged, both by those who would contest the conclusions of the Commission and those who believe the process flaws did not taint those conclusions; that it was (as it were) *fatally* flawed is the firm conclusion of the former group, many of whom have delved – and continue to delve – deeply into the facts of the case. Although the assassination may be viewed, as some researchers approach it, as simply a case of first-degree murder, was it not more than that? Was it a coup, perhaps, the act of a few to nullify an election?

The official investigation conducted by Presidential appointees sidestepped serious inquiry into palpable conspiracy-related political and geopolitical issues swirling around the case. Such avoidance evinced intentionality, but to some as yet unknown degree it was rooted in ignorance. Politically and geopolitically innocuous conclusions were doubtless preordained and reached before any systematic marshalling and evaluating of evidence, but, as it turns out, critical

evidence was kept from investigators by key federal agencies. For both these reasons, historian John Newman noted, “[t]he JFK murder case cannot be truly closed before it has been genuinely opened” (2008, p.420).

Who and why in this case are not rhetorical questions. The guilty may not still be alive, but answers are out there, and they must be found. Toward that historic and potentially explosive end, all federal intelligence and investigative agencies are by law required to declassify and release in October, 2017 *all* assassination-related documents and records up to that point kept from the public. This is not an insignificant cache of a few obscure memos, written by low-level staffers, kept from the public but long forgotten by the agencies: according to Morley (2016), the haul comprises 3,600 records and tens of thousands of pages. Roughly one-third of these records, more than 3,000 pages, comprise C.I.A. documents (location 124). To be sure, 1st year President Donald Trump at that time may choose to exempt specific records from disclosure, but the intent of the law is clear: only compelling national security considerations may justify continued secrecy of any of the half-century-old information. Will the mass of documents that certainly will see the disinfecting sunlight of day answer or at least illuminate the who and why questions? Let us hope so, for governmental transparency and accountability are at stake. Indeed, to paraphrase William Faulkner in his Nobel Prize for Literature acceptance speech, the very Rule of Law must not merely endure, but prevail.

The Warren Report: Oswald did it. Alone. Unaided.

Dallas police arrested Lee Harvey Oswald in a movie theater on a tip, only an hour after the assassination. Interrogations at police headquarters ensued intermittently over the next 45 hours. Passing through the hallway, the sole suspect declared that he did not kill the president, that he was “just a patsy.” A handful of hours later, Oswald was being led through the basement en route to the county jail, when mob-connected local nightclub owner Jack Ruby stepped out of the crowd of police and reporters and fired his handgun into Oswald’s abdomen. As with Kennedy, unconsciousness was immediate, followed very soon by death. Oswald would never go to trial, never mount any defense beyond a few comments to reporters at the police station (incredibly, no official record of any of the interrogations was made), never offer any dispositive information on who (or who else, if he was in fact “just a patsy”) or why. It appeared to many that his killing was designed to achieve exactly what it did achieve: Oswald’s eternal silence. Surrounded by

armed police, Ruby was quickly arrested and ultimately processed as a lone actor, through a trial verdict of guilty.

The F.B.I.'s initial investigative conclusions posited two murders by two lone nuts, with no conspiracies involved. A third murder, that of a Dallas police officer at a location not close to the Dealey Plaza killing of the President, was attributed to Oswald in flight, "evidence" further demonstrating his guilt in killing Kennedy. Case closed, time for America to move on, with a new President. For the reasons just reviewed, that new President very soon felt pressure to follow up on the official law enforcement investigations. This was proactive as well as reactive, however, in that by doing so the federal executive branch was able to forestall uncontrollable Congressional and Texas investigations (Kurtz, 2006, p.19). There were too many loose ends, it seems: Oswald seemed to lack any motive, and even if he had enjoyed a clear view from behind the target (*i.e.*, a view unobstructed at any point by the large live oaks that in fact loomed below), his old, erratic rifle and suspect marksmanship would not likely have wrought the gory death that occurred. Moreover, Kennedy's wounds included what the emergency room physicians saw as an entry wound in the *front* of the neck and extensive skull damage that indicated a frontal shot. And then there was Oswald's emphatic denial of guilt, his "I'm just a patsy" declaration, and then his own murder that could easily be construed as an abrupt silencing. Given all this, and more, President Lyndon Johnson moved quickly to appoint a blue-ribbon group of respected establishment luminaries to look into the assassination. Tapping an extremely reluctant Chief Justice to chair the group, Johnson created the Warren Commission.

Entire books have been written about the formation and operation of the Commission, but with this paper's October 2017 records-release focus, it will suffice here to note two points:

1. Although the Warren Commission had a General Counsel leading a group of bright lawyers who could and did conduct on-the-record interviews with witnesses, it had no genuinely independent investigative powers, staff, or function (Scott, 1993, p. 47). Instead, it had to rely on J. Edgar Hoover's F.B.I. to do the actual investigative work. The F.B.I., of course, had already conducted a quick investigation and reached conclusions befitting a quick investigation. For good measure, Commission member Representative (later President) Gerald Ford served as a reliable conduit of ostensibly confidential Commission work to Hoover. As both a bureaucratic and national security matter, the F.B.I.'s interests would be protected.

2. The strongest personality and most influential member appointed to the Commission by Johnson was none other than Allen Dulles, the still-powerful long-time Director of the C.I.A., ignominiously fired by Kennedy two years earlier, after the Bay of Pigs debacle. Still inextricably connected to the organization he built and staffed, and forever true to the institutional and national security loyalties he championed, Dulles saw to it that the C.I.A.'s interests – and his -- would be protected (Summers, 1998, p.121).

Not coincidentally, it is the records and documents of these two agencies that are of greatest moment in the 2017 release. To be sure, information from the files of the Secret Service, Department of Defense, and even the Post Office will potentially have some impact, but that impact is expected to pale in comparison to that from those of the F.B.I. and the C.I.A. Both agencies had outsized impact on the official version of the assassination and both remain wedded to the lone gunman/no conspiracy viewpoint. It would come as no surprise, then, that the Warren Commission focused on interviewing witnesses who tended to corroborate rather than contradict that theory, and even less of a surprise that its conclusions comported with that bias. The C.I.A., moreover, withheld clearly valuable evidence from the Warren Commission, perhaps to protect sources and methods, perhaps to cover incompetence, perhaps to keep hidden its secret dalliance with organized crime and assassination of foreign leaders -- or perhaps to cover up evidence of rogue C.I.A. agents being involved. Without such information, the Commission could and did proceed unimpeded by larger truths, to arrive at its lone gunman conclusion. Left to more objective assassination researchers were both the uncovering of evidence and the developing of analytical frameworks to address *two* conspiracies. According to such researchers, the first was concerted action by more than one person, with or without connections to intelligence or law enforcement agencies, to kill Kennedy. Many military and law enforcement experts cast grave doubt on even the possibility that Lee Harvey Oswald physically could have done by himself all he was alleged to have done. In his fascinating background, moreover, are too many unusual activities and “coincidences” to conclude that, even if he might have done such a thing as assassinate the President and pulled off the physical act, that he would do it alone. The second conspiracy involved concerted action by persons within and possibly among federal agencies, whether that action was or was not connected to the first conspiracy, to cover up facts of the first conspiracy. Why would an agency totally uninvolved in killing the President want to cover anything up? The more noble reason proffered -- since some evidence immediately after

the assassination seemed to link Oswald either the Fidel Castro or a Soviet KGB specialist in political assassination -- was to avoid WWII (Kurtz, 2006, p.19). Avoiding a nuclear holocaust, in fact, was the rationale undergirding both Chief Justice Earl Warren's change of mind about chairing the investigative commission and, likely, the rationale for his commission not seriously considering the abundant evidence of conspiracy. A less noble reason for the cover-up was bureaucratic: the Secret Service already looked bad, obviously, but both the F.B.I. and the C.I.A. had closely watched Oswald *prior* to the assassination, and yet no one prevented the assassination. Indeed, the F.B.I. had put Oswald on its high-priority watch list in 1959 for his activities as a defector to the Soviet Union, but removed him from that list, and thus from close watching, only six weeks before Kennedy was killed (Douglass, 2008, p. 178).

The C.I.A., for its part, had also failed to alert anyone of Oswald's suspicious activities, and had itself engaged in manifestly suspicious activities in its handling post-assassination of evidence of Oswald's trip to Mexico City. Even worse, some assiduous researchers aver that though the agency as a bureaucracy has egg on its face, it also has blood on its hands: historian John Newman declares that, "[h]ad the CIA shared all it knew about Oswald in Mexico City with the FBI, John Kennedy might be alive today" (2008, p.419). The manifestly ignoble reason one or more agencies might want to cover up the whole truth of the assassination would be if one or more agencies (or more likely, rogue agents of one or more agencies) organized and carried out the assassination. Therein lies the specter of coup.

One need only look at the organization of the Commission's findings in what is informally termed *The Warren Report* to infer quickly that its purpose was nothing more and nothing less than to etch the lone gunman theory into stone, to effectuate the prescription offered shortly after Oswald's death by Deputy Attorney General Nicholas Katzenbach: "The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that evidence was such that he would have been convicted at trial" (Bugliosi, 2007, p.321). The major heading of the outline of work the Commission set out for itself is "Identity of the Assassin;" use of the singular demonstrates, and abundant additional evidence corroborates, that the Commission never seriously considered any alternative to the lone gunman / Lee Harvey Oswald scenario (Kurtz, 2006, p. 34). It proffered a possible, but highly unlikely "explanation" for the multiple gunshot wounds inflicted on two victims: critics deride that conjecture as "the magic bullet theory." The point here is not that Katzenbach and the Commission were

necessarily operating in bad faith or incorrect in their conclusions, though these explanations are certainly plausible, but rather that those conclusions were based on the rushed, self-serving “findings” of the F.B.I. and, for the Commission, on information from the C.I.A. that was virtually criminal in its deficiency. In both cases, the 2017 records release may provide essential information. For example, it is clear even before the records release deadline that both agencies followed the activities of Oswald prior to the assassinations, but what is not yet clear is whether he was an informant or operative of either or both. In fact, some who suspect a government-connected conspiracy believe he was not only tied to one or both agencies, but was tasked to carry out (or take the blame for) the assassination (Lane, 1966; Marrs, 1989).

Warren Report Skepticism and Demand for Release of Assassination Records

When the official Kennedy assassination inquiry spawns serious scholarship rendered as a book entitled, “*Breach of Trust: How the Warren Commission Failed the Nation and Why,*” it is manifestly self-evident that all may not have been above board with the effort. Yet, the august group of famous men hand-picked by President Johnson carried out just such an inquiry. Author Gerald McKnight (2005) avers that the Commission’s report was essentially a second conspiracy, a cover-up of assassination truth by men who were wrong and *knew* they were wrong. Indeed, *The Warren Report* was such deeply flawed work, with its preordained, orthodox conclusions and palpable biases, that many, primarily on the left initially, reacted with suspicion if not outrage. The inquiry had not only systematically excluded important sources of nonorthodox information but ignored compelling nonorthodox evidence that did somehow manage to get on the record. It seemed to these critics that the Commission was all too ready to “rush to judgment” on guilt and label the killer as a Marxist in orientation and a supporter of Fidel Castro in geopolitical persuasion, even if there was no international communist conspiracy alleged (Lane, 1966). Some, particularly in Europe, saw the assassination as rather obviously a coup, triggered in the midst of intense Cold War conflict and intrigue (Scott, 1993, p. 297). Could the assassination have been a coup? Much has been written about such a theory, *pro* and *con*, and it is certainly directly germane to what may (or may not) be substantiated by the upcoming records release. Suffice it to state at this juncture that Kennedy was dealing with serious resistance to his control from elements of the national security establishment. After his steadfast refusal to deploy U.S. military might either during the 1961 Bay of Pigs action or the October, 1962 Cuban missile crisis, ominous grumbling at the highest echelons about Kennedy’s

Cold War weakness began in earnest (Horne, 2014, location 1718). The novel-then-movie *Seven Days in May* plausibly depicted an attempted American military coup against a Cold-War era president deemed too weak and ineffectual. Beyond the Cuban question, once Kennedy effected a nuclear test-ban treaty with the Soviet Union, delivered his famous (or infamous, depending on point of view) détente speech at the American University in June, 1963, and seemed to have decided on a complete military withdrawal from South Vietnam, the cumulative effect on some dedicated and powerful Cold Warriors was profound.

Summer 1963 became Fall. In what he termed an “intra-Administration war,” respected *N.Y. Times* columnist Arthur Crock picked up on copy from an equally respected war reporter’s story out of Saigon: “[Scripps-Howard reporter Richard Starnes] related that, ‘according to a high United States source here, twice the C.I.A. flatly refused to carry out instructions from Ambassador Henry Cabot Lodge ... in one instance frustrated a plan of action Mr. Lodge brought from Washington because the agency disagreed with it.’ [One] ‘very high American official “likened the C.I.A.’s growth to a ‘malignancy’ which he ‘was not sure even the White House could control...any longer.’” Even more ominously, and of great moment here, are two quotes from other sources familiar with C.I.A. self-appointed autonomy in Saigon: “‘If the United States ever experiences a coup, it will come from the C.I.A. and not the Pentagon,’” perhaps because, the agency “‘represents a tremendous power and total unaccountability to anyone.’” Coming only a few weeks before Kennedy’s assassination, this is, to say the least, potentially momentous on the issue of who pulled it off and what agency might have records that at least hint at involvement (Foreword by J.G. Hornberger in Horne, 2014, location 25).

Extending the thought of a possible coup *cum* cover-up, it may be worthy of note that Allen Dulles, in his best take-charge manner and ever-striving to protect the institutional interests of the C.I.A. in Warren Commission discussions and deliberations, early on attempted to frame the Kennedy assassination as simply the most recent in the series of President-killed-by-lone-nut episodes that were a hallmark of American history. He even handed out to his fellow Commissioners copies of a well-regarded book that seemed to show such a pattern (Talbot, pp. 576). To view Kennedy’s death in such a way would certainly obviate concerns about Fidel Castro, the Soviet Union, international intrigue and WWII. Of course, it would not coincidentally also get the C.I.A. off any hook it might otherwise have hung from – at least until

the October, 2017 documents release that of course was not in any way anticipated by those who mightily labored in 1963-4 to get the assassination in the rear-view mirror.

With some exceptions such as Mark Lane, most Americans initially accepted the Warren Report uncritically. It was good, almost palpably necessary, to put the assassination tragedy in the past. Among accepters was the District Attorney of Orleans Parrish (New Orleans), who had briefly looked into a possible city connection because of Oswald's activities there a very few months before the assassination. Jim Garrison didn't pursue matters after the F.B.I. and then the Warren Commission ran the frontline effort, but he underwent an epiphany two years later when a casual conversation with a high-ranking elected federal official, a strong Warren Report skeptic, convinced him to go back into investigating a possible New Orleans connection to the Dallas crime. He and select members of his staff plunged into a secret but methodical investigation of a possible assassination conspiracy hatched in his jurisdiction the summer before the November assassination. After an unfortunate leak and national media coverage, generally of the notoriety vein, Garrison went on in early 1969 to try a successful local businessman, Clay Shaw, as a key player in the alleged conspiratorial plot that included Oswald, asserting that it was all connected to the C.I.A. (Garrison, 1988, p.204). The murder was, in essence, a coup. Shaw's jury quickly acquitted him of involvement in an assassination conspiracy, but interviews with jurors after the verdict showed that many of them had concluded that substantial evidence, perhaps proof beyond a reasonable doubt, did in fact support Garrison's theory that Kennedy had been killed by a conspiracy of some kind. He had not been dispatched by a lone nut.

At about that point, the public was beginning to conclude, reluctantly, that the assumed societal ethos no longer obtained, and that their government can and does lie to them. Despite years of optimistic government assessments, there was in fact no "light at the end of the tunnel" in Vietnam. Worse, the very Rule of Law met with callous disregard again and again. Watergate and Cointelpro, to mention only two examples, exacerbated the public's breach-of-trust perception. Then, Geraldo Rivera managed to procure and show on national television home movie footage of the Kennedy kill shot from the Zapruder film, long kept from the public by mainstream media and government. That shot seemed dramatically and undeniably to have come from Kennedy's front-right, an impossibility for a lone shooter named Oswald from behind. At about this point, President Ford appointed the Rockefeller Commission, and both the Pike Committee of the House and the Church Committee of the Senate instituted hearings on

domestic activities of intelligence agencies. Pressure from the sick-of-being-lied-to public, moreover, soon prompted the House to create a Select Committee to investigate both the John Kennedy and Martin Luther King assassinations. That these efforts should have covered some key common ground is now axiomatic. The Church Committee uncovered much abuse of power, to be sure, but ostensibly nothing tying any agency to Kennedy's death. However, even shadowy intrigue and various forms of C.I.A. deception and noncooperation didn't prevent the House Select Committee's dramatic last-minute conclusion that, although Lee Harvey Oswald was guilty of killing Kennedy, he was in fact probably part of a conspiracy. At that point, the effort ran out of the funding Congressionally appropriated to enable its investigation; no additional monies were forthcoming, the Committee's mandate expired, and neither the tantalizing general concept of assassination conspiracy nor any supporting details were officially pursued by that entity. Many in the public once again asked, *why will our government not find out who killed the President, and why?*

Unofficially, however, freelance assassination researchers who had long suspected a conspiracy felt both vindicated and motivated to determine, once and for all Who and Why. Work continued. Freedom of Information Act requests were made and followed up by litigation, when necessary. Toward the end of the 1980s, Jim Garrison published the story of his prosecutorial investigation and the conspiracy theory undergirding it (1988). On its heels, Jim Marrs published a startling book, well documented and argued, ostensibly destroying the lone gunman scenario through application of *evidence*, much of it ignored by the Warren Commission, and *logic*, notably less tortured than that employed by the Commission (1989). With all these bits and pieces coming together concerning an important-but-almost-30-year-old murder, Hollywood director Oliver Stone seized the moment to craft his epic movie *JFK*. Based on the Garrison and Marrs theories, Stone presented as fact a coup orchestrated at the highest levels of the national security apparatus. It was fascinating, gripping cinema that struck an immediate chord with the public while being attacked and derided by the same government and media establishment that had so alienated that public. But one point remains unobscured by the careful viewer: Kennedy's assassination was an act of murder, a crime, almost certainly still an unsolved crime. The upshot, in addition to publicizing the issues and introducing a whole new generation to them – and to the overarching principles at their heart – was to prompt Congress through public outrage to pass the President John F. Kennedy Assassination Records Collection Act. It was that 1992 legislation

that mandated release of federal agency assassination records no later than 25 years hence – in 2017.

What Will We Learn from the October 2017 Records Release?

In a few months, we may be able to confirm or refute the politically-charged, but likely preposterous 2016 allegation that the Cuban-born father of Texas Senator Ted Cruz assisted Lee Harvey Oswald in distributing pro-Castro leaflets in New Orleans during Oswald's flurry of peculiar behavior in that city the summer leading up to the assassination. Unless the man photographed with Oswald that day either influenced Oswald to engage in criminal political behavior or was otherwise connected, even tangentially, with the events in Dallas on November 22 that year, it doesn't much matter today who he was. The point is, however, that if identifying evidence resides either explicitly or implicitly in the documents to be released in 2017, another bit of fact can be placed in the mosaic of fact (as opposed to theory, speculation, conjecture, or fantasy) which, if substantially completed, could depict who killed Kennedy and why. That's what the release is all about, even if the Cruz matter is presidential primaries political polemic. Whether it achieves such a result is anyone's guess at this point. Still, there are key tiles in the mosaic that are currently missing and, if found, could point to the fuller truth. Viewed this way, the Kennedy assassination is an unsolved murder case needing additional evidence leading to probable cause and even proof beyond a doubt of the guilt of specific suspect(s), now dead or still alive. As noted early on, no statute of limitations limits the process, though the passage of time obviously limits the availability and probative value of some evidence and the essential vitality of all suspects.

Kennedy assassination literature includes more than one work treating the killing as a simple murder, attempting to discern the who by trying to determine the what, when, and how. Most use forensic, crime scene and other evidence already available, some from the *Warren Report's* 26 volumes of evidence documentation (the contents of which seemed to many close readers not to support the conclusions of the *Report* itself – Mark Lane, an early and enduringly influential critic, is said to have observed that “The only way to believe the *Warren Report* is not to have read it.” [attributed]). Some such works are solid, others simply the result of a person with law enforcement experience trying to cash in on a fairly sure bet for some guaranteed book sales. The most provocative, or at least interesting, of these go without distraction to the who, as in who could be charged and convicted for murdering the President, generally concluding that

Oswald himself was guilty and in fact a lone killer. Bugliosi (2007), writing what he considered the definitive (and what all agree to be the lengthiest) book approached the matter as a prosecutor marshalling evidence. He concluded that Oswald was a lone assassin, but his quest for truth was marred by the same mindset as the Warren Commission; he not only set out to prove Oswald's guilt, but his work sarcastically belittles rather than simply refutes reasonably plausible alternative scenarios. *Ad hominem* attacks on those with whom one disagrees hardly bolster one's arguments. Fuhrman (2006), in a work arguably open to "if-I-write-a-book-about-the-Kennedy-assassination-people-will-buy-it" criticism, used a similar police-detective approach, concluding that bullet damage to the limousine windshield holds the key by highlighting shots from behind and thereby implicating Oswald.

Given the exceptional complexity of this case, other assassination researchers taking a routine police murder investigation approach draw different conclusions: Oswald may or may not have shot at or even killed the President, but in any event he was in fact a hapless patsy, masterfully manipulated by high-level conspirators whose identity could certainly indicate the why. Some recognize that *proving* -- rather than using logic to assume -- that Oswald was physically in the 6th floor sniper's nest from which at least some of the rifle shots were fired constitutes a foundational requirement for his prosecution. As de Mey (2013) noted, "there is no proof that Oswald was in the sniper's nest, but equally no proof that he wasn't here" (p. 363), hardly the proof-beyond-a-reasonable-doubt needed. Indeed, a searingly provocative new book closely examines photographic and testimonial evidence and posits a strong argument that Oswald was just another bystander, in the shadows of the street-level entrance to the Texas School Book Depository building, during the flurry of rifle shots -- six floors below where at least three of the shots were fired (Dane, 2015). Souza (2015), after reviewing the medical and other evidence, concludes (as many others without his extensive experience as a detective do) that too many "facts" simply don't add up in the Oswald-as-lone-gunman scenario. Looking for others with means, motive, and opportunity, he sees a conspiracy comprising what he calls "the big three:" the C.I.A., the mob, and the LBJ/Big Oil Texas connection (p. 169). In any event, these works show that the quick apprehension and subsequent murder of Oswald, a man with several lifetimes of military, political, and intelligence experiences packed into barely more than two decades, certainly should raise questions about not only the why but the prosecutorial *sine qua non* of how Oswald could have pulled off the crime he was charged with. As in any murder case,

the how is critical here: absence of a statute of limitations would permit prosecution of any assassination suspect still alive after the 2017 records release, but no prosecutor unable to explain clearly how the defendant committed the crime could ever win conviction.

At the outset, this paper contemplated the importance to this case of both the why and the who, rather than the how; the three nevertheless interrelate. In typical criminal cases, proof of both the how and the why go far in determining the who. In the Kennedy case, it would seem at first blush that only the conspiracy-based conclusions, particularly those indicating a political coup, would depend for their proof upon answering the why question, but that's not necessarily the case. True, Kennedy murder investigations positing an Oswald-did-it-alone scenario would seem not to require an answer to why he did it, but addressing motive often supplies, as circumstantial evidence, enhanced weight to other inculpatory evidence. One of the greatest logical weaknesses in the *Warren Report* is that the Commission could discern no motive. Indeed, evidence tended to show that Oswald *admired* President Kennedy. The Report was reduced to speculating that he was just a troubled loser (embodying, as Commissioner Allen Dulles repeatedly stressed, the familiar pattern of other troubled losers who had assassinated past presidents). Indeed, with his leaving the scene of the crime (and his job) and, after arrest, his emphatic denials of guilt, even the he-wanted-his-15-minutes-of-fame argument doesn't wash. Thus, lack of discernible motive doesn't lead necessarily to a conclusion of non-guilt in any murder case, but proof of a plausible motive certainly strengthens a case where the other evidence is seemingly spotty, contradictory, and unconvincing. Lack of strong motive evidence would have augured well for acquittal, had Oswald lived to be tried as a murderer who had acted alone and unaided.

Kennedy murder investigations positing a conspiracy to murder, whether including Oswald as a conspirator or not, would logically seem to require some kind of motivating stimulus that brought the conspirators together in concerted action. What motive drove the conspirators -- *why* did the conspirators work to end the President's life? To jolt national security or foreign policy decisions to a new direction, perhaps to prevent American military withdrawal from Vietnam? To exact retribution against the one who had presided over the killing of South Vietnam's president and imperiled the lucrative heroin business run by that country's military and economic elite in conjunction with the C.I.A. (Murphy, 2016)? To elevate to the presidency Lyndon Johnson, who otherwise may well have been dropped entirely from the ticket in 1964 because of egregious legal and ethical misdeeds? To prevent termination of the oil depletion allowance for

petroleum barons? To eliminate Kennedy for sanctioning attempts on Fidel Castro's life? To take out Kennedy for not invading Cuba to go after Castro? To pay back the Kennedys for going after organized crime? Again, why was he killed? Why? An answer could logically lead to who authorized, perhaps to who planned and to who carried out, the assassination. If there were a conspiracy, motive would most likely not be a required element of proof -- agreement among multiple persons to carry out a crime is the *sine qua non* of conspiracy, rather than the reasons for the agreement -- but logic dictates that persons rarely enter into any kind of agreement without a reason. Proof that there is a reason, that there is a motive, goes far in proving that there is an agreement and conspiracy and would have in this case, had such proof actually sought and found in a prosecution of Oswald.

With the initial treating physicians in Dallas disagreeing with the military autopsy physicians at Bethesda, with operation of the usual testimonial infirmities of faulty perception and erroneous memory leaving no single narrative among the many eye (and ear) witnesses in Dealey Plaza, and with federal investigations differing regarding evidence but typically flawed by preordained conclusions, agency dysfunction and other issues, it should come as no surprise that even a simpler treat-it-like-any-other-murder approach might lead to contrary conclusions. Still, even if investigators wished to treat the assassination as any other murder from the standpoint of collecting and marshalling evidence, such an approach may not be effective, or even feasible in the real world. In the real world, assassinations take place, some instigated by those inside or outside government who with great care keep multiple layers between them and those who do the killing. Plausible deniability and motive-obscuring would allow a well-conceived coup to appear to be the act of a lone nut. Regime change would instantly occur with no fingerprints implicating the conspirators or illuminating the reasons for their actions. In the Kennedy assassination, is the *Warren Report* an intentional or unintentional exemplar of this, a second conspiracy or exercise in willful blindness?

Enter the Kennedy Assassination Records Act. If in fact all federal agency records pertaining to the assassination are released without redactions rendering them essentially opaque, much new information will be available. Only competent, relevant and material information may be admissible evidence in a prosecution, of course, but that determination is really an unlikely Phase 2, required only for actual prosecutions, as contrasted with historical analysis; if the released records do point to killers or conspirators (other than Oswald) who are dead, with no prosecution

in the offing, the Republic will still benefit from that knowledge. A blow for transparency and the Rule of Law will have been dramatically delivered.

The records may well show that Lee Harvey Oswald was likely either a genuine “lone nut” or a fully witting partner of an assassination conspiracy. For either, records of his visit to Mexico City in the months before the assassination – a visit of such potential import to the case that it spawned a book (Morley, 2008) – may well turn out to be, in Ray Bradford’s estimation, “the Rosetta Stone” of the entire matter. Then again, those and other records may show that he was neither (Hornberger, 2015, location 260). He was, in this third scenario, an F.B.I.

informant/operative or an intelligence agent working for the C.I.A. or military intelligence, a man for whom shadowy forces arranged the job in the building abutting the itinerary of the soon-to-occur presidential motorcade, a man manipulated into being in the right place at the right time – right for them, not him. Those forces could ensure he would be blamed, sought, and apprehended. In this scenario, he was knowingly part of the organization(s) that conspired, but not a knowing part of the conspiracy itself. He was, in his own words, “just a patsy.” Buttressing such a scenario would be release of records demonstrating that he was either set up or impersonated in Mexico City, and in New Orleans and Dallas the summer and early fall before the assassination, in a way designed ultimately to cause any serious investigation of the imminent assassination to be controlled by the federal executive branch, to muting calls to uncover conspiracies of any kind, foreign or domestic.

C.I.A. operatives had already established a track record of effective regime change through scenario-staging, including assassination. Under Allen Dulles, longtime Director fired by Kennedy, yet appointed to the Warren Commission by Johnson, “the C.I.A. became an effective killing machine . . . any nationalist leader who seemed a problem for U.S. interests was viewed as fair game [for assassination]” (Talbot, 2015, p. 248). Douglass (2008) argues the C.I.A.-supported coup-cum-assassination removing South Vietnam’s President Ngo Dinh Diem from power, and from this world, was effectively a trial run, an interrelated C.I.A. “dark operation” in the stark term of John Newman (2015, p. xv), for what was to happen to President John Kennedy just three weeks later (p.218). Indeed, a C.I.A.-connected plot to assassinate Kennedy may have been scheduled to take place in Chicago the very day after Diem’s murder, but circumstances prevented its reaching fruition (Douglass, 2008, p.213). The 1100 C.I.A. files, the 3,000 pages (Morley, 2016, at location 169) still entirely kept by the agency from the prying eye of

accountability, may prove the connection, either in Chicago, or Dallas, or both. More generally, officially generated documents, maintained not just by the C.I.A., but also the F.B.I., Secret Service, and other federal agencies, documents as of this writing never seen by the public, could lend light and clarity to a multitude of possibilities, rendering many moot -- but perhaps rendering one probable or definite.

Jefferson Morley, former *Washington Post* reporter who has been at the forefront of the effort to access federal agency assassination documents through the Freedom of Information Act (FOIA), noted the trickling out of information over 50+ years and identified a number of still secret documents that might well hold the key to a revision in the *Warren Report's* conclusion. Recall that more than 1000 never-seen-by-the-public documents held by just the C.I.A. are to be released under the JFK Assassination Records Act in 2017, absent presidential exemption. In Morley's colorful descriptions quoted from his 2013 online newspaper article, these are documents concerning:

- William King Harvey, “a legendary operative who oversaw the CIA’s efforts to assassinate Fidel Castro. Harvey’s contempt for John and Robert Kennedy cost him a high-ranking position in mid-1963.” Disdain, resentment, loathing, even hate fail to capture the spite and venom Harvey felt toward the Kennedys.
- David Atlee Phillips and Anne Goodpasture, “career officers who monitored Oswald’s movements in Mexico City weeks before JFK was killed. In the ’70s, they testified that they learned about Oswald’s recent contacts with suspected Soviet and Cuban intelligence officers in October 1963”.
- Howard Hunt and David Morales, “two swashbuckling operatives who made statements late in life that seemed to implicate themselves in JFK’s assassination” (Morley, 2013).

Worthy of note is that Morley is in the final stages of a 13-year struggle to gain FOIA compliance from the C.I.A. on the records of agent George Joannides, who worked closely with the Cuban exile student group that accosted Oswald as he distributed leaflets in New Orleans. Was Senator Cruz’ father helping Oswald that day? Perhaps the Records Act will work more quickly for Morley – and us -- than the FOIA. In addition, perhaps clarification on the relationship between Oswald and the well-connected yet mysterious White Russian *emigre* George de Mohrenschildt will emerge. In his recent ebook (2016), Morley expands his list of persons whose records bear critically on the assassination to include Yuri Nosenko, Soviet KGB

officer who suspiciously defected to the U.S. shortly after the assassination (location 272). It might very well be fruitful to access any hitherto hidden files of a true C.I.A. legend, longtime counterintelligence chief James Jesus Angleton. A paranoid “poet-spy” who drank much and immersed himself in finding ever-elusive, possibly nonexistent, Soviet moles high up in the Agency, Angleton personally travelled at some point after the assassination to the Mexico City home of the chief of that city’s pivotal C.I.A. station. The occasion was the chief’s death, but the purpose was not to console his erstwhile colleague’s family but to retrieve from the family safe a photograph of the purported “Oswald” who had visited the local Soviet and Cuban embassies a short time before the assassination (Scott, 1993, p. 44). That this has all the appearances of one of several possible post-assassination agency cover-ups is clear. Records release might help distinguish between cover-ups designed to avoid the appearance of agency pre-assassination negligence and misfeasance regarding Oswald and direct complicity in the assassination. Furthermore, one might ask what was taken and who may have been behind the personal-papers burglary of Bill Harvey’s home, not long after his death, that cleaned out whatever private papers and correspondence were still in existence (Stockton, 2006, p.302). As with so many other documents and records, these have been unavailable. Fortunately, the Records Act mandates that the many classified agency records that still exist will be divulged in the near future. But will they?

Highly anticipated information, what before release constitutes seemingly material evidence of conspiracy, may end up being trumped by unanticipated information that may noisily splash ashore in the records release. Donald Rumsfeld famously referred to such things generically as “the unknown unknowns,” for records-release watchers something of their own Black Swan event. The point is that *although sometimes we know what we don’t know* (e.g., did the brilliant but erratic alcoholic C.I.A. agent Bill Harvey, already a rogue during the Missile Crisis, go entirely off the reservation and kill the president he despised?), *sometimes we don’t know what it is we don’t know*. Finding out the former can be highly unsettling but good for investigation closure; finding out the latter can be all that plus a shock to the body politic, with wide-ranging and manifestly unpredictable fallout. Whether unknown unknowns will emerge in October 2017 is anybody’s guess. Researchers, moreover, may ostensibly seem in the beginning to experience a degree of information overload, echoing Philip Shenon’s observation about the “dual curse faced by anyone who tries to get closer to the truth about the assassination – of too little

information and too much” (2015, p. 11). But with the already finely-honed, methodical approach of many who truly wish to ferret out the truth, no matter how long it might take, this may not be debilitating information overload at all. Rather, for researchers starved for particular information who’ve been fed a steady diet of either mundane or important-but-partially-redacted documents, while being denied truly important documents *in toto*, too much information would seem a problem worth having.

In a reasonable world, a month shy of 54 years after the assassination, the sitting President will not exempt from forced release any of these documents. That, however, is in a reasonable world. Still, even that reasonable world might well not be the best of worlds. The reason for this is that we’re dealing with a dedicated, highly-motivated, and self-protective intelligence agency. Even if The Company, as the agency is sometimes called, still possesses incendiary documents that could in some way implicate even rogue C.I.A. agents in the assassination, documents it could and obviously under the Law should release, researchers must appreciate that the agency is a bureaucracy that always has and doubtless always will protect its own interests. It doesn’t take a jaundiced observer or a total cynic to expect that such documents would probably “disappear without a trace” before October 2017. The agency can’t release on that date what it doesn’t have on that date.

Still, even full disclosure of *all* documents currently secreted in the archival vaults of the C.I.A. and other agencies, with none being legitimately withheld by President Trump, to protect sources and methods or illegitimately withheld by self-protecting agencies, may not answer key questions that are still out there as known unknowns. Taken together, documents may allow the connecting of dots, but then again, they may not; documents ostensibly accurate individually may evince implicit or explicit unintentional discrepancies or contradictions when critically juxtaposed with other such documents. Worse, it is likely that some important dots were never recorded in a document. Such would not be far-fetched in the intelligence game. Lack of evidence, documentary or other, goes to the heart of the plausible deniability that is key to many intelligence operations.

But plausible deniability can be manufactured by commission, not just omission. As injurious to transparency and to finding the truth as disjunctive or omission problems are, much worse would be highly deceptive but ostensibly accurate records for which there is no apparent reason to question the accuracy. Such is the murky realm of “backstopping,” where the agency early-on,

perhaps contemporaneous with a particularly risky or explosive operation, creates documents that – even if ultimately held secret for decades – are created to misdirect and mislead if they ever were to see the light of day; Bill Harvey clearly engaged in such calculated deception in the CIA’s infamous selected assassination program, code named ZR/RIFLE, he led from 1960 (Douglass, 2008, p.144) and possibly as a rogue operative in the equally infamous Fidel Castro assassination schemes specifically designated AMLASH (Morely, 2016, at location). This is routine in the intelligence world, and is to be expected. The documents are legitimate in the sense that they were in fact created in the course of agency business, but they constitute insidious, intentional disinformation. An unsuspecting reader would be satisfied that the content, whatever it was originally contrived to be, states reality as of the time of its recording, but it’s all a clever subterfuge, virtually undetectable. It creates a false “reality” that serves perceived agency (or, possibly rogue agent) purposes, usually plausible deniability. If it turns out to be necessary or desirable to one who could thereby benefit, backstopping can also be effected well after the fact to cover tracks. Relying on such documents would hardly aid in the search for truth: it’s something of a *Joseph Goebbels meets Edward Snowden* scenario, but it’s a very real possibility in the 2017 records release that should not be discounted. In 2017 we may well see the progenitor of contemporary “fake news,” with the source being official records of a key federal agency.

Given these very real obstacles to the search for truth, of what value is the Records Act and the expectant anticipation leading up to it, and what will we learn? That’s hard to say. Optimists always hope the Rule of Law and essential allegiance to truth will carry the day. Indeed, the hardest-core Cold Warriors and intelligence agency cowboys saw themselves as the most committed of American patriots. Earlier investigations were denied so many sensitive agency records that even when investigators kept open minds, they had no choice but to draw their conclusions without what may have been dispositive documentary evidence of who killed President Kennedy, and why. Backstopping and all manner of agency subterfuge notwithstanding, full access to all records is more likely to further, rather than obstruct, the search for truth.

Despite the absence of statutes of limitations for murder, it ironically almost no longer matters whether any or all who were in some real way guilty of the assassination are in fact tried, convicted, and punished. Justice in that individual criminal sense defers to a more political form

of justice undergirding transparency in a democratic republic. Even with the distinct possibility of backstopping, misdirection, disinformation, destruction of key documents, missing dots and plausible deniability generally, the federal government, all its agencies and personnel, *owe* The People full disclosure. Perhaps they will make good on that debt.

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The Journal of the Criminal Justice Association of Georgia