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## Catch and Release: Procedural Unfairness on Primetime Television and the Perceived Legitimacy of the Law

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## COMMENTS

### “CATCH” AND RELEASE: PROCEDURAL UNFAIRNESS ON PRIMETIME TELEVISION AND THE PERCEIVED LEGITIMACY OF THE LAW

Thomas Gaeta\*

*Programs such as NBC’s Dateline: To Catch a Predator illustrate the possible pitfalls of law enforcement interactions with media. To Catch a Predator is rife with procedural deficiencies and often appears to place the goal of increased ratings ahead of appropriate law enforcement procedures. Recent research in the field of social psychology has revealed that the perception of the law and law enforcement as legitimate can have an important effect on public compliance with the law. When the police take part in procedurally flawed media events, they may do more harm than good—sincere efforts to inform the public about law enforcement actions may ultimately erode the perception of police legitimacy and result in increased criminality. As such, it is incumbent on law enforcement to wrest control of its media interactions and insist that proper police procedures be observed on camera and off.*

#### I. INTRODUCTION

In a normal, unidentified neighborhood, a nondescript car pulls up to an average house, and television ratings ensue. The car’s occupant is

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waved into the house by a young woman, with whom he believes he has been corresponding for quite some time. The young woman has told him she is underage, and he has made the trip to visit her for sex. Upon entry, he is greeted not with her embrace, but with a steely-eyed reporter who grills him about his behavior before the world. Under the guise of assisting law enforcement and exposing men who deserve the public's scorn, *Dateline: To Catch a Predator* has caught yet another. After his humiliation, the man leaves the house only to be tackled by waiting police. The cameras catch it all so that, months later, a heavily edited segment may be aired on national television. The same pattern, with minor changes to give the program flavor, repeats itself time and time again.

This Comment explores possible consequences of this public shaming under color of law. Current scholarship in social psychology illustrates a need for law enforcement to be perceived as legitimate in order to increase public cooperation with the law.<sup>1</sup> This public perception of legitimacy is informed in large part by perceptions of procedural fairness<sup>2</sup> that, in turn, are influenced by comparisons of observed outcomes with moral mandates.<sup>3</sup> A program such as *To Catch a Predator*, by presenting morally charged antagonists in a format that often precludes criminal prosecution, may result in diminished perceptions of law enforcement legitimacy. Both police and local prosecutors should consider this possibility when deciding whether and under what terms to participate in such programs.

Part II of this Comment highlights the procedural problems in *To Catch a Predator*, as well as legal issues arising in stings, generally. Part III reviews some of the social psychological literature on the perception of legitimacy, procedural fairness, and compliance with legal authority. Finally, Part IV examines law enforcement and media interactions in light of this social psychological research and sets out a possible solution for law enforcers who desire to participate in such programs: by maintaining control over the procedures used by media agents, law enforcers can help ensure that the programs ultimately aired present a fair view of legal procedures.

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<sup>1</sup> See, e.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3-4 (1990).

<sup>2</sup> See, e.g., Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 519 (2003); Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375, 382 (2006).

<sup>3</sup> Linda J. Skitka & David A. Houston, *When Due Process Is of No Consequence: Moral Mandates and Presumed Defendant Guilt or Innocence*, 14 SOC. JUST. RES. 305, 307 (2001); Linda J. Skitka & Elizabeth Mullen, *The Dark Side of Moral Conviction*, 2 ANALYSES SOC. ISSUES & PUB. POL'Y 35, 37 (2002).

## II. BACKGROUND

A. HISTORY AND FORMAT OF *TO CATCH A PREDATOR*

Since 2004, NBC and MSNBC have aired *To Catch a Predator* on the televised newsmagazine, *Dateline NBC (Dateline)*.<sup>4</sup> This segment, initially a one-off segment on an otherwise unrelated weekly program, received such a large audience response that it was quickly expanded into a regular feature on *Dateline* and was re-run frequently on MSNBC.<sup>5</sup> The *Dateline* episodes with *To Catch a Predator* segments averaged seven million viewers, 13% more viewers than of episodes aired during the same period that focused on other content.<sup>6</sup>

Each *To Catch a Predator* segment involves Chris Hansen, a *Dateline* reporter and producer, working alongside Perverted Justice, a private investigative group, and often local law enforcement to run a sting against alleged sexual predators.<sup>7</sup> This sting is captured for the audience, ostensibly from inception to arrest, and is usually prefaced by narration from Hansen about the dangers of online sexual predation.<sup>8</sup> The program alleges that the sting’s targets, alleged sexual predators,<sup>9</sup> initiate contact and solicit sexual liaisons with Perverted Justice volunteers posing online as minors.<sup>10</sup> These predators are given the address of the show’s sting house for a planned sexual encounter with the volunteer, still posing as a minor, and a time at which to arrive.<sup>11</sup> Upon arrival, the predators are either invited in by a seemingly underage actor playing the role of the minor the predators had contacted or enter without invitation as directed in their

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<sup>4</sup> *Dateline NBC: To Catch a Predator* was initially titled *Dangerous Web* during the segment’s first airing in September 2004. *Dateline NBC: Dangerous Web* (NBC television broadcast Sept. 24, 2004). This Comment will refer to all segments using the same format as *To Catch a Predator*.

<sup>5</sup> Brian Stelter, ‘*To Catch a Predator*’ Is Falling Prey to Advertisers’ Sensibilities, N.Y. TIMES, Aug. 27, 2007, at C1, available at <http://www.nytimes.com/2007/08/27/business/media/27predator.html>.

<sup>6</sup> *Id.*

<sup>7</sup> Beginning with the third installment, each episode of *To Catch a Predator* has involved police. *Dateline NBC: To Catch a Predator III* (NBC television broadcast Feb. 3, 2006).

<sup>8</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4. In the first broadcast, Hansen referred to a study by the National Center for Missing and Exploited Children, stating “[o]ne in five children online in this country has been approached by adults looking for sex.” *Id.*

<sup>9</sup> This Comment hereafter generally refers to all the targets of the show as “predators.” This is not meant to imply that all such individuals are guilty of any crimes but simply echoes the language used in *To Catch a Predator*.

<sup>10</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4.

<sup>11</sup> See, e.g., *id.*

online chat sessions.<sup>12</sup> Rather than finding an underage sexual partner, the predators are confronted by Chris Hansen.<sup>13</sup>

These confrontations are recorded by cameras hidden in the sting house, allowing Hansen to document them for later airings.<sup>14</sup> In each instance, Hansen has printouts of the predator's chat sessions with the Perverted Justice volunteer in hand and demands an explanation from the predator as to his<sup>15</sup> intentions.<sup>16</sup> In the early segments, the predators generally did not recognize Hansen as a journalist, and he opted not to identify himself or the program until several minutes into his conversation with the predator.<sup>17</sup> Once identified, a camera crew emerges, and the predator is informed that his attempted illegal liaison with a minor will be aired on national television.<sup>18</sup> At the conclusion of Hansen's interviews, the predator is allowed to leave the sting house, humiliated.<sup>19</sup> At this point in later segments, local police officers arrest the predator in front of *Dateline's* cameras.<sup>20</sup>

After the sting, the segment concludes with an epilogue detailing the legal travails of the predators, as well as their humiliation and suffering due to extra-legal social pressures.<sup>21</sup> If a predator does not show up at the sting house, the program sometimes approaches him at his home or place of work to confront him with evidence of his transgressions.<sup>22</sup> In most cases, such confrontations are not accompanied by law enforcement.<sup>23</sup>

<sup>12</sup> See, e.g., *id.*

<sup>13</sup> See, e.g., *id.*

<sup>14</sup> See, e.g., *id.*

<sup>15</sup> Without exception, the predators "caught" in the sting have been male. No explanation of this phenomenon has been offered by the program.

<sup>16</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4.

<sup>17</sup> Hansen stated in an interview supporting the airing of the first segment that "[a]t first [the target] seems to think I'm a police officer," and later that, "[i]t seems clear [the target] thinks he's been caught in a police sting." *Today* (NBC television broadcast Sept. 24, 2004).

<sup>18</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4.

<sup>19</sup> See, e.g., *id.*

<sup>20</sup> In the first two *To Catch a Predator* segments, there was no law enforcement involvement. See, e.g., *id.* Beginning with the third segment and continuing throughout the remainder of the series, police were involved in the stings. See, e.g., *Dateline NBC: To Catch a Predator III*, *supra* note 7.

<sup>21</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4.

<sup>22</sup> See, e.g., *id.* Hansen approached Ryan Hogan, a New York City fire fighter, outside the firehouse at which he worked to confront him about his online activities. *Id.* In a later segment, Hansen reported that Hogan was fired from his job with the fire department. *Dateline NBC: Fates of Men Caught in Previous Internet Sexual Predator Sting Operations* (NBC television broadcast May 24, 2005).

<sup>23</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4. In some instances, law enforcement does accompany Hansen to the target's home. See, e.g., *Dateline: To Catch a Predator* (NBC television broadcast Feb. 20, 2007).

## B. PERVERTED JUSTICE

Unlike many stings operated solely by law enforcement, *To Catch a Predator* uses volunteers from Perverted Justice in lieu of trained law enforcement officers to lure predators to the sting location.<sup>24</sup> Perverted Justice Foundation Incorporated, a private, nonprofit group founded in 2003 by Xavier Von Erck, is dedicated to the elimination of the threat of online sexual predation.<sup>25</sup> The group regularly uses volunteers in conducting its own stings, as it does in the *To Catch a Predator* stings, to pose as underage individuals and engage in sexual conversations with possible online predators.<sup>26</sup> Once they believe they have gathered evidence of a crime, Perverted Justice turns over all chat logs to law enforcement officials who then have the option of pursuing criminal charges against the alleged predator.<sup>27</sup> In the case of *Dateline*'s stings, Perverted Justice shares chat logs with the program and police working with the program.<sup>28</sup> When participating in the show, Perverted Justice volunteers are also responsible for encouraging predators to meet at designated times and places after the predators initiate inappropriate contact.<sup>29</sup>

In addition to stings, the Perverted Justice Foundation has branched out into other areas of online solicitation prevention.<sup>30</sup> These projects include, for example, a concerted effort of volunteers to pressure corporate interests into making online solicitation of minors more difficult,<sup>31</sup> providing advice and aid to individuals victimized online,<sup>32</sup> and publicizing the identities of individuals caught by Perverted Justice's extra-legal sting operations.<sup>33</sup> While these efforts are no doubt admirable, questions linger

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<sup>24</sup> See, e.g., *Dateline NBC: Dangerous Web*, *supra* note 4.

<sup>25</sup> Perverted Justice Foundation Incorporated, About Us, <http://www.pjfi.org/?pg=about> (last visited Jan. 31, 2010).

<sup>26</sup> Perverted-Justice.com, Frequently Asked Questions, <http://www.perverted-justice.com/index.php?pg=faq> (last visited Jan. 31, 2010).

<sup>27</sup> *Id.* Perverted Justice often works more directly with law enforcement, providing volunteers to lure predators into official stings under police supervision. *Id.* Many of the stings documented by *To Catch a Predator* segments followed this model. Perverted-Justice.com, Info for Police, <http://www.perverted-justice.com/?pg=policinfo> (last visited Jan. 31, 2010).

<sup>28</sup> See, e.g., *Dateline NBC: To Catch a Predator III*, *supra* note 7.

<sup>29</sup> See, e.g., *id.*

<sup>30</sup> See Perverted Justice Foundation Incorporated, <http://www.pjfi.org/> (last visited Jan. 31, 2010).

<sup>31</sup> See CorporateSexOffenders.com, <http://www.corporatesexoffenders.com/> (last visited Jan. 31, 2010).

<sup>32</sup> See How to Deal with Creepy People, <http://www.howtodealwithcreepypeople.com/ihtm.html> (last visited Jan. 31, 2010).

<sup>33</sup> Wikisposure Project, Main Page, [http://www.wikisposure.com/Main\\_Page](http://www.wikisposure.com/Main_Page) (last visited Feb. 20, 2010).

as to whether Perverted Justice is the correct group to offer such services, or whether law enforcement would be better suited to doing so.<sup>34</sup>

### C. TO CATCH A PREDATOR CONTROVERSY

In addition to the general controversy surrounding Perverted Justice,<sup>35</sup> *Dateline: To Catch a Predator* has itself been the focus of at least two multi-million dollar lawsuits stemming from its stings.

#### 1. Bartel v. NBC Universal, Inc.<sup>36</sup>

Until December 2006, Marsha Bartel was a producer employed by NBC Universal (NBC), working primarily on *Dateline*.<sup>37</sup> She was fired for an alleged breach of contract and shortly thereafter filed suit against her former employer for wrongful termination.<sup>38</sup> Although ultimately the suit was dismissed without any finding of fact, Bartel alleged in her complaint that she was fired due to complaints about rampant lapses in journalistic ethics in *To Catch a Predator*.<sup>39</sup> Among other allegations, Bartel claimed that *Dateline* producers were not provided with the identities of Perverted Justice volunteers,<sup>40</sup> that Perverted Justice did not provide complete transcripts to *Dateline*,<sup>41</sup> and that the targets of the *To Catch a Predator* stings were “led into additional acts of humiliation . . . in order to enhance the comedic effect of the public exposure of these persons.”<sup>42</sup> Bartel further alleged that *Dateline* had breached NBC’s Policies and Guidelines by paying Perverted Justice “to troll for and lure targets into its sting

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<sup>34</sup> This Comment does not address these questions, nor does it imply that any laws are being broken by the Perverted Justice Foundation Incorporated or its members. None of Perverted Justice’s actions appear to be in bad faith or criminal, though there have been allegations that some of the material posted on wikisposure.com constitutes defamation. *Kruska v. Perverted Justice Found., Inc.*, No. CV 08-0054-PHX-SMM, 2008 U.S. Dist. LEXIS 101322, at \*21 (D. Ariz. Dec. 15, 2008) (granting a motion to dismiss all claims for jurisdictional reasons, without prejudice with leave to re-file). For an excellent discussion of the legal propriety of Perverted Justice style vigilantism and its interaction with law enforcement, see Christopher P. Winters, Comment, *Cultivating a Relationship that Works: Cyber-Vigilantism and the Public Versus Private Inquiry of Cyber-Predator Stings*, 57 U. KAN. L. REV. 427 (2009).

<sup>35</sup> See, e.g., Winters, *supra* note 34.

<sup>36</sup> 543 F.3d 901 (7th Cir. 2008).

<sup>37</sup> *Id.*

<sup>38</sup> Complaint, *Bartel v. NBC Universal, Inc.*, No. 1:07-CV-2925 (N.D. Ill. May 24, 2007), 2007 WL 1995889.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.* at 6.

<sup>42</sup> *Id.*

thereby giving it a financial incentive to lie to and trick targets of its sting.”<sup>43</sup>

NBC sought dismissal of Bartel’s suit on contractual grounds. In its brief, NBC made only one reference, in a footnote, to Bartel’s claims about egregious lapses in journalistic ethics on *To Catch a Predator*.<sup>44</sup> There, NBC stated that such accusations were immaterial to the contractual claim Bartel presented and that the court need not resolve them.<sup>45</sup> It also pointed to numerous awards won by the program but did not address the substance of Bartel’s allegations beyond calling them “extreme” and pointing out that “many disagree with her views.”<sup>46</sup> The suit was ultimately dismissed for failure to state a claim, and none of Bartel’s allegations were explored in court.<sup>47</sup>

## 2. Conratt v. NBC Universal, Inc.<sup>48</sup>

The second major *To Catch a Predator* lawsuit was filed only a few months after Bartel’s complaint.<sup>49</sup> This suit arose from the events of a *Dateline* sting in suburban Texas where the combination of police overzealousness and media fervor had deadly consequences.

In early November 2006, only one month prior to Marsha Bartel’s discharge, *To Catch a Predator* ran a sting in Murphy, Texas.<sup>50</sup> This sting went terribly wrong, and the operation is a case study in the pitfalls of combining media with law enforcement. *Dateline* initially approached city manager Craig Sherwood prior to the sting and proceeded with his blessing.<sup>51</sup> Other than Sherwood’s unilateral approval, the only other “official” aspect of the sting was the involvement of local police, spearheaded by Police Chief Billie Myrick.<sup>52</sup> As with other *To Catch a*

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<sup>43</sup> *Id.* at 5.

<sup>44</sup> Defendant NBC Universal, Inc.’s Reply Brief in Support of Its Motion to Dismiss Plaintiff’s Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), No. 1:07-CV-2925 (N.D. Ill. Sept. 25, 2007), 2007 WL 3314895, at \*12 n.5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *Bartel v. NBC Universal, Inc.*, 543 F.3d 901 (7th Cir. 2008).

<sup>48</sup> 536 F. Supp. 2d 380, 386 (S.D.N.Y. 2008).

<sup>49</sup> *Id.*

<sup>50</sup> John Council & Brenda Sapino Jeffreys, *We Are in the Law Enforcement Business, Not Show Business*, TEX. LAW., Nov. 13, 2006, at 5, available at 2006 WLNR 25573194.

<sup>51</sup> Associated Press, *DA Refuses to Prosecute ‘Catch a Predator’ Cases*, MSNBC.COM, June 28, 2007, <http://www.msnbc.msn.com/id/19486893/>.

<sup>52</sup> The Murphy police department had run a prior sting with the assistance of Perverted Justice, but absent *Dateline* camera crews. This sting netted four arrests and appears to have been executed without incident. Press Release, City of Murphy, Tex., Follow-up Press Release Issued by Police Chief Billie Myrick (Nov. 13, 2006), available at

*Predator* stings, Perverted Justice volunteers posed as minors and, after allowing alleged online predators to contact them and initiate sexual chats, provided their targets with an address.<sup>53</sup> Over the course of four days, twenty-four individuals arrived at the Murphy sting house, were interviewed on camera by Hansen, and were subsequently arrested by Murphy police.<sup>54</sup>

After the sting was completed, *Dateline* and the Murphy police set their sights on an individual who did not show up at the sting house, Louis “Bill” Conratt, Jr.<sup>55</sup> *Dateline* alleged that Conratt attempted to solicit a Perverted Justice volunteer posing as a thirteen-year-old boy.<sup>56</sup> The producers were interested in Conratt because of his role as an assistant district attorney in neighboring Rockwall County and the sensational aspect his arrest would provide the program.<sup>57</sup> In later litigation, it was alleged that Hansen asked police for a “favor,” stating, “[i]f he won’t come to us, we’ll go to him.”<sup>58</sup> Local police arranged for arrest and search warrants, signed by a local magistrate, for Conratt and his home.<sup>59</sup>

On November 5, Murphy police converged on Conratt’s Kauffman County home with *Dateline* cast and crew in tow.<sup>60</sup> After knocking on Conratt’s door and receiving no response, they called in a S.W.A.T. team who entered Conratt’s home and announced their presence.<sup>61</sup> The S.W.A.T. team found Conratt standing at the end of a hallway, where he told them, “I’m not gonna hurt anyone,” then shot himself with a handgun.<sup>62</sup> At this point, a police officer informed Hansen, on camera, that Conratt had shot himself.<sup>63</sup> Another officer was videotaped on the scene telling a *Dateline* producer that “[t]hat’ll make good TV.”<sup>64</sup> Bill Conratt died from his self-inflicted gunshot wound within an hour.<sup>65</sup>

The fallout from the Murphy sting was swift and far-reaching. On November 5, before Conratt’s suicide, the *Murphy Messenger* was already

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<http://www.murphymessenger.com/articles/466/1/Follow-up-Press-Release-Issued-by-Police-Chief-Billie-Myrick.html>.

<sup>53</sup> *Id.*

<sup>54</sup> Council & Sapino, *supra* note 50.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Associated Press, *supra* note 51.

<sup>58</sup> Conratt v. NBC Universal, Inc., 536 F. Supp. 2d 380, 386 (S.D.N.Y. 2008).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 387.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

running an article describing the anger of local citizens stemming from the *Dateline* sting.<sup>66</sup> One Murphy resident said, “This isn’t about getting sexual predators off the streets of Murphy. To the contrary, we are inviting them to come and visit. This is about ratings for a television show and publicity for a small town police department. I’m disgusted, just disgusted.”<sup>67</sup> When asked for comment, Murphy Mayor Bret Baldwin stated that he was not forewarned about the sting and that it was never discussed by the city council.<sup>68</sup> When Baldwin approached the city manager, Sherwood told him that “[a]nyone who interferes with the police investigation in any way will be arrested.”<sup>69</sup>

Within a week, Mayor Baldwin issued a press release condemning the sting.<sup>70</sup> Baldwin contended that the sting was unnecessary to apprehend predators because “[i]n Texas, the law is broken when a minor is solicited online, not when the meeting occurs.”<sup>71</sup> According to section 33.021(c) of the Texas Penal Code,

[a] person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.<sup>72</sup>

Under that law, there is no legal reason to lure suspected predators to a specific location—the crime of solicitation is complete without any action or true intent to act to meet offline.<sup>73</sup>

According to Mayor Baldwin, the purpose behind the procedures employed by the show and the police working for it was that,

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<sup>66</sup> *Murphy Rolling Ridge Residents Angered by NBC Dateline Sting Operation*, MURPHY MESSENGER, Nov. 5, 2006, <http://www.murphymessenger.com/articles/456/1/Murphy-Rolling-Ridge-Residents-Angered-By-NBC-Dateline-Sting-Operation.html>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Press Release, Mayor Bret Baldwin (Nov. 13, 2006), *available at* <http://www.murphymessenger.com/articles/467/1/Press-Release-Issued-by-Mayor-Bret-Baldwin.html>.

<sup>71</sup> *Id.*

<sup>72</sup> TEX. PENAL CODE ANN. § 33.021(c) (Vernon Supp. 2009). The act defines “minor” as “(A) an individual who represents himself or herself to be younger than 17 years of age; or (B) an individual whom the actor believes to be younger than 17 years of age.” *Id.* § 33.021(a)(1). The Perverted Justice volunteer no doubt qualified as either or, more likely, both (A) and (B).

<sup>73</sup> Section 33.021(d) sets forth that “[i]t is not a defense to prosecution under subsection (c) that: (1) the meeting did not occur; (2) the actor did not intend for the meeting to occur; or (3) the actor was engaged in a fantasy at the time of the commission of the offense.” TEX. PENAL CODE ANN. § 33.021(d).

“[u]nfortunately for the citizens of Murphy, a sting operation provides a more photogenic set” for *To Catch a Predator*.<sup>74</sup> Mayor Baldwin went on to excoriate the city manager and police chief: “Using our community as a stage for *Dateline* NBC, without knowledge or consent of Council, was inappropriate and it demonstrates a serious lack of judgment . . . .”<sup>75</sup>

In the months after *To Catch a Predator* left, Murphy saw a flurry of news stories about Conradt’s death.<sup>76</sup> Conradt’s boss, District Attorney Galen Sumrow, was particularly critical of the November 5th arrest attempt.<sup>77</sup> One story quoted Sumrow as stating: ““This guy comes to work every morning at about 7:30. They could have arrested him in the parking lot. . . . I question the methodology they used. . . . Were they really doing it for law enforcement purposes, or were they doing it for reality TV?””<sup>78</sup> In essence, the opportunity to arrest Conradt without creating a dangerous situation existed, but the police opted to forgo it in order to produce more dramatic television.

The Murphy, Texas episode of *To Catch a Predator* aired on February 20, 2007.<sup>79</sup> The majority of the episode, as edited, was devoted to the sting itself, but nearly a third of the program focused on the botched attempt to arrest Conradt.<sup>80</sup> Conradt’s sister, Patricia, was shown in the closing footage of the segment.<sup>81</sup> In it, she railed against the “reckless actions [of] a self-appointed group acting as judge, jury, and executioner . . . [which] was encouraged by an out-of-control reality show.”<sup>82</sup>

On June 1, 2007, Collin County District Attorney John Roach released a terse statement to the press indicating that he was unable to prosecute any of the individuals arrested in Collin County during the *To Catch a Predator* sting.<sup>83</sup> He was unable to do so because Collin County had no jurisdiction

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<sup>74</sup> Press Release, Mayor Bret Baldwin (Nov. 13, 2006) available at <http://www.murphymessenger.com/articles/467/1/Press-Release-Issued-by-Mayor-Bret-Baldwin.html>.

<sup>75</sup> *Id.*

<sup>76</sup> See, e.g., Tim Eaton, *Prosecutor Kills Himself in Texas Sting over Child Sex*, N.Y. TIMES, Nov. 7, 2006, at A10; Associated Press, *Facing Arrest in Online Sex Sting, Prosecutor Kills Self*, CHI. TRIB., Nov. 7, 2006, at C4.

<sup>77</sup> Council & Sapino, *supra* note 50.

<sup>78</sup> *Id.*

<sup>79</sup> *Dateline NBC: To Catch a Predator*, *supra* note 23.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Collin County, *Collin County Update on the Criminal Investigation Regarding the Murphy, Texas NBC Dateline Program*, MURPHY MESSENGER, June 1, 2007, <http://www.murphymessenger.com/articles/625/1/Collin-County-Update-on-the-Criminal-Investigation-Regarding-the-Murphy-Texas-NBC-Dateline-Program.html>.

in sixteen of the cases since the crime—solicitation—was complete long before either the suspects or decoys were in the county.<sup>84</sup> The remainder of the charges needed to be dropped because neither law enforcement nor *Dateline* could guarantee the chat transcripts’ completeness or authenticity.<sup>85</sup> Roach stated that “[i]f professionals had been running the show, they would have done a much better job rather than being at the beck and call of outsiders.”<sup>86</sup> Shortly after Roach declined to press charges, Murphy’s city manager was relieved of his duties.<sup>87</sup>

On July 23, 2007, Patricia Conratt filed suit against NBC on behalf of her brother’s estate.<sup>88</sup> Among many other claims, Conratt sought relief for intentional infliction of emotional distress under 42 U.S.C. § 1983.<sup>89</sup> NBC moved to dismiss Conratt’s lawsuit in its entirety, but the § 1983 claims were upheld.<sup>90</sup> In June 2008, NBC settled Conratt’s lawsuit for an undisclosed sum.<sup>91</sup>

#### D. STINGS AND MEDIA: LEGAL ISSUES

Although the producers and creators of *To Catch a Predator* may have, at least in part, honorable intentions, the actual execution of the program leaves much to be desired. As illustrated by the sting in Murphy, there is a major conflict of interest inherent in using police stings to garner ratings while enforcing the law—*Dateline* producers are, first and foremost, entertainers. The mere existence of a sting house in Texas is unnecessary under state law; any risks posed by such an action are, therefore, wholly gratuitous. While the show was unquestionably successful as entertainment, it was far less so as a law enforcement tool. As of the filing of Conratt’s lawsuit, fewer than half of the individuals arrested in conjunction with *Dateline* segments had been convicted.<sup>92</sup>

The procedural flaws inherent in *To Catch a Predator* may extend far beyond issues of evidence and jurisdiction. In *Hanlon v. Berger*<sup>93</sup> and

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<sup>84</sup> Associated Press, *supra* note 51.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Conratt v. NBC Universal, Inc.*, 536 F. Supp. 2d 380, 387 (S.D.N.Y. 2008).

<sup>89</sup> *Id.* Conratt also sought relief for individual claims unrelated to her brother’s estate, as well as a RICO claim, all of which were dismissed. *Id.* at 387-88, 400.

<sup>90</sup> *Id.* at 400.

<sup>91</sup> Brian Stelter, *NBC Settles with Family that Blamed a TV Investigation for a Man’s Suicide*, N.Y. TIMES, June 26, 2008, at C3. Conratt had initially sought \$105 million in damages. *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> 526 U.S. 808 (1999).

*Wilson v. Layne*,<sup>94</sup> the Supreme Court held that inviting media into a home to observe and document the execution of an arrest or search warrant is a Fourth Amendment violation.<sup>95</sup>

While no *To Catch a Predator* producer or cast member has ever been invited to a “media ride-along” during the execution of a warrant, the show came dangerously close to doing so in *Murphy*.<sup>96</sup> There, *Dateline* producers were on Conradt’s property during the execution of the search and arrest warrants.<sup>97</sup> *Hanlon* and *Wilson* deal with instances in which media were brought into a private home during the execution of a search warrant; the cases do not address trespassing on property outside a home.<sup>98</sup> Should liability attach under *Hanlon* and *Wilson*, it may extend beyond law enforcement personnel to the media participants themselves.<sup>99</sup> Such an extension of liability is likely to raise the profile of the litigation, placing law enforcement actions on a national stage.<sup>100</sup> It seems apparent that the onus falls upon law enforcement to ensure that both their actions as well as the actions of their media collaborators are legally sound.

Beyond possible § 1983 liability for bringing the media into a suspect’s home, there is also the specter of liability for bringing suspects to the media. In *Lauro v. Charles*, the Second Circuit held that the then-common practice of a “perp walk” violates a suspect’s Fourth Amendment rights.<sup>101</sup> In *Lauro*, the police had brought a suspect into custody and, hours

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<sup>94</sup> 526 U.S. 603 (1999).

<sup>95</sup> *Id.* at 614 (“[I]t is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant.”). In *Hanlon* and *Wilson*, the plaintiffs’ recovery under § 1983 was barred because, at the time the search warrants were exercised, the law on media observers in such situations was unclear and the police and media were therefore afforded qualified immunity from monetary damages. *Hanlon*, 526 U.S. 808; *Wilson*, 526 U.S. 603.

<sup>96</sup> *Dateline* personnel trespassing on Conradt’s property were cited in *Conradt* as part of the district court’s decision not to dismiss the plaintiff’s § 1983 complaint. *Conradt v. NBC Universal, Inc.*, 536 F. Supp. 2d 380, 389 (S.D.N.Y. 2008). In fact, *Hanlon* and *Wilson* formed the basis of Conradt’s § 1983 claim. *Id.* at 389-90.

<sup>97</sup> *Id.* at 386.

<sup>98</sup> *Hanlon*, 526 U.S. 808; *Wilson*, 526 U.S. 603. It is also worth noting that in neither *Hanlon* nor *Wilson* were there allegations of journalists actively participating in the investigation (as is the case with *To Catch a Predator* stings).

<sup>99</sup> For this very reason, Patricia Conradt’s suit against NBC was allowed to proceed under § 1983. *Conradt*, 536 F. Supp. 2d at 389 n.4 (“A private individual may be subject to liability under [§ 1983] if he or she willfully collaborated with an official state actor in the deprivation of the federal right.” (quoting *Dwares v. City of New York*, 985 F.2d 94, 98 (2d Cir. 1983)) (alteration in original)).

<sup>100</sup> This is clear from the media attention paid to the *Murphy*, Texas sting. See, e.g., *Stelter*, *supra* note 91.

<sup>101</sup> 219 F.3d 202 (2d Cir. 2000).

later, when informed of media interest in the case, paraded the suspect before their cameras “in a manner designed to cause humiliation to [the] plaintiff with no legitimate law enforcement objective or justification.”<sup>102</sup> There is some question as to whether the publicity afforded to stings such as those seen on *To Catch a Predator* would be viewed as having a legitimate law enforcement objective, especially in instances in which the stings underlying the programs are neither legitimate nor necessary to apprehend suspected criminals.<sup>103</sup> In cases like the Murphy sting, where police had neither a reason to operate a sting nor jurisdiction to do so, the issue seems clearer.<sup>104</sup>

Beyond the pitfalls of media involvement in police stings of this nature, law enforcement should be mindful of the state of the underlying law in its jurisdiction. In Indiana, for instance, two recent appellate decisions have invalidated the felony convictions of accused pedophiles caught via stings similar to those employed by *Dateline* and *Perverted Justice*.<sup>105</sup> In both of these cases, the courts interpreted Indiana’s statute governing sexual misconduct with a minor<sup>106</sup> to require that the target of such misconduct be an actual minor, precluding a conviction for this crime based upon a sting operation involving adults posing as minors.<sup>107</sup> Although the stings in these cases were operated solely by law enforcement, they illustrate a need to examine carefully the applicable law. A television

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<sup>102</sup> *Lauro v. City of New York*, 39 F. Supp. 2d 351, 363 (S.D.N.Y. 1999).

<sup>103</sup> In *Lauro*, the Court noted that the suspect was brought before the media after his arrest rather than the media being present during the arrest itself. *Lauro*, 219 F.3d at 213. The court did not address media-captured arrest made under especially media-friendly circumstances. *Cf. id.*

<sup>104</sup> This is not to say that such a situation would necessarily be viewed as inappropriate in light of § 1983. In *Caldarola v. County of Westchester*, a district court found for the defendant law enforcement officers who videotaped the arrest and transport of a suspect and later disseminated the tape to the media. 142 F. Supp. 2d 431 (S.D.N.Y. 2001). There, the court ruled that the police had a legitimate interest in transporting the suspect and that the videotaping was not a seizure to be examined in light of the Fourth Amendment. *Id.* at 438. In the case of the Murphy, Texas sting, it is difficult to argue that police had legitimate reasons to conduct the sting given that the crime was complete at the time of the alleged solicitation and that the police could have easily tracked down the suspects and arrested them in other locations (as evidenced by the Conradt fiasco).

<sup>105</sup> *Gibbs v. State*, 898 N.E.2d 1240 (Ind. Ct. App. 2008), *transfer denied*, 915 N.E.2d 990 (Ind. 2009); *Aplin v. State*, 889 N.E.2d 882 (Ind. Ct. App. 2008), *transfer denied*, 898 N.E.2d 1231 (Ind. 2008). In both cases, the charge of attempted sexual misconduct with a minor was overturned, but the lesser offense of child solicitation was upheld because, for solicitation, “the statutory criteria with regard to age is satisfied if either the solicitee is at least fourteen but less than sixteen or the solicitor *believes* that a child of fourteen but less than sixteen was the object of his solicitation.” *Aplin*, 889 N.E.2d at 885.

<sup>106</sup> IND. CODE § 35-42-4-9 (2009).

<sup>107</sup> *Gibbs*, 898 N.E.2d 1240 at 1245; *Aplin*, 889 N.E.2d at 885.

show, whose primary goal is to garner ratings, does not share this obligation; it must be fulfilled by police and prosecutors.

### III. THE PSYCHOLOGY OF LEGITIMACY

Beyond the obvious harm to society of allowing a child predator to go free or serve only a partial sentence due to a botched sting, programs like *To Catch a Predator* may have much further reaching consequences for our communities. Current psychological research suggests that public willingness to cooperate with police is predicated, in part, on a perception of the police as legitimate.<sup>108</sup> This perception is derived primarily from the view that the actions of law enforcement are procedurally fair.<sup>109</sup> Studies have further shown that when crimes oppose a moral mandate, people judge procedures to be considerably fairer when they lead to a conviction than when they lead to an acquittal.<sup>110</sup>

*To Catch a Predator* poses a unique problem for law enforcement seeking to maintain a credible appearance of procedural fairness. The program is, at best, procedurally questionable—at worst, it may be outright illegal—yet it presents itself as procedurally fair.<sup>111</sup> One can easily envision a situation in which viewers interested in the show's procedures and fairness will learn about *To Catch a Predator*'s various controversies and see law enforcement's participation as unacceptable, while viewers oblivious to the show's procedures will nonetheless view subsequently publicized legal procedures stemming from sting arrests as unfair when they do not result in convictions. This is a lose-lose situation for law enforcement: both groups viewing the show may ultimately view police and prosecutors as less legitimate, which may have far reaching consequences.<sup>112</sup>

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<sup>108</sup> See, e.g., TYLER, *supra* note 1; Sunshine & Tyler, *supra* note 2.

<sup>109</sup> TYLER, *supra* note 1, at 104.

<sup>110</sup> See, e.g., Elizabeth Mullen & Linda J. Skitka, *Exploring the Psychological Underpinnings of the Moral Mandate Effect: Motivated Reasoning, Group Differentiation, or Anger?*, 90 J. PERSONALITY & SOC. PSYCHOL. 629, 634 (2006).

<sup>111</sup> *To Catch a Predator* outlines its procedures at the beginning of each segment; these outlines are brief, make no mention of any of the procedural controversies surrounding the show, and could just as well be describing a far more procedurally robust law enforcement action. E.g., *Dateline NBC: To Catch a Predator III*, *supra* note 7.

<sup>112</sup> A low conviction rate for suspects caught on television may also impact the public perception of the law's moral credibility. See PAUL H. ROBINSON, *DISTRIBUTIVE PRINCIPLES OF CRIMINAL LAW: WHO SHOULD BE PUNISHED HOW MUCH?* 135-212 (2008); Paul H. Robinson & John Darley, *Intuitions of Justice: Implications for Criminal Law and Justice Policy*, 81 S. CAL L. REV. 1, 18-31(2007); Paul H. Robinson et al., *The Disutility of Injustice* (forthcoming 2010) (abstract available at <http://ssrn.com/abstract=1470905>). This credibility is founded on the law's ability to do justice (as defined by the public's intuition of deserved punishments). Robinson & Darley, *supra*. When the law is viewed as providing too little—

## A. LEGITIMACY AND COOPERATION WITH LAW ENFORCEMENT

Social psychologists define and measure legitimacy as the property of an authority “that leads those connected to it to believe that is appropriate, proper, and just.”<sup>113</sup> Numerous studies have shown that as the legitimacy of law enforcement increases, the propensity for individuals to follow the law and cooperate with law enforcement increases.<sup>114</sup>

These studies, however, do not mean that only legitimate authorities will be followed. To the contrary, experimental studies have made it abundantly clear that individuals may be coaxed into any number of acts by an actor who is perceived to have authority, even if that authority does not derive from legitimacy.<sup>115</sup> In the infamous Milgram experiment, study subjects were convinced to administer what they believed to be progressively more painful and, ultimately, lethal electric shocks to another person.<sup>116</sup> These shocks were administered ostensibly as part of an experiment on memory, and a large number of participants continued to administer shocks with considerably less prompting than was expected for such an act.<sup>117</sup> In all, 65% of participants continued with the experiment through the most severe shock level, and no participants refused to continue before the “Intense/Extreme Intensity” shock range.<sup>118</sup> Despite the fact that the experimenters had no actual authority to cause such harm, their requests were, by and large, followed.<sup>119</sup> Clearly, the absence of *actual* authority is

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or too much—punishment to offenders, the public perception of the law as morally credible may be reduced. *Id.* This reduction in moral credibility can create a host of utilitarian consequences for law enforcement, including vigilantism and a lack of cooperation with law enforcement. *Id.* This Comment does not address these problems, as they may occur any time law enforcement activities are publicized prior to a final judgment of guilt or innocence. Whenever the public is led to believe a guilty person fails to receive deserved punishment (or an innocent receives undeserved punishment), the moral credibility of the law can be harmed. Absent *ex ante* controls to ensure that all persons targeted by media-publicized stings will be judged guilty or editorial control allowing the removal of any persons not judged guilty, moral credibility is at issue whenever law enforcement actions are broadcast. The recommendations offered in Part III, *infra*, may help alleviate reductions in moral credibility by making the convictions of individuals caught on camera more likely.

<sup>113</sup> Tyler, *supra* note 2, at 376. This definition of legitimacy is notable because it encompasses both actors who are actually “appropriate, proper, and just” and those who are merely perceived to be so. *Id.*

<sup>114</sup> See, e.g., Sunshine & Tyler, *supra* note 2; Tom R. Tyler et al., *Armed and Dangerous(?): Motivating Rule Adherence Among Agents of Social Control*, 41 LAW & SOC’Y REV. 457 (2007).

<sup>115</sup> See, e.g., Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL SOC. PSYCHOL. 371 (1963).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 376.

<sup>119</sup> *Id.*

not dispositive of compliance; the perception of legitimacy, even without actual power or authority, can have a great effect on behavior.<sup>120</sup>

One proposed explanation of the interaction between increased perceived legitimacy and increased compliance and cooperation is that when individuals perceive an authority as legitimate, the “duty to obey superior orders” replaces personal morality, and legitimate authorities are given leave to define appropriate and inappropriate behavior.<sup>121</sup> This is not, of course, an axiomatic principle; personal morality may provide a check on authority, reducing the odds of an individual following an order or law that individual deems immoral.<sup>122</sup>

This explanation neatly dovetails with the Milgram experiment.<sup>123</sup> There, individuals bowed to perceived authority, subordinating their own (presumed) moral proclivities against administering electric shocks to strangers to the “superior orders” of Milgram’s experimenters.<sup>124</sup> Given the intense stress evidenced by Milgram’s participants, it is likely that the conflict between their own morality and the “superior orders” was great. This disparity between personal morality and the morality of an order to continue shocking another person despite protests of pain is one possible explanation for why a great number of study participants *did not* continue with the experiment to completion.<sup>125</sup>

The tendency for people to follow authorities they believe are legitimate, as illustrated by the Milgram experiment, can be extended to the tendency of individuals to follow the law. While the law clearly wields authority that psychological experimenters do not—in the Milgram experiment, for example, there was no harm to participants if they ceased to comply—the perception of the law’s legitimacy informs citizens’

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<sup>120</sup> The “authority” in Milgram’s experiment was played by a “31-year-old high school teacher of biology” whose “manner was impassive, and his appearance somewhat stern throughout the experiment.” *Id.* at 373. This teacher was dressed in a “gray technician’s coat.” *Id.* There may have been a certain amount of legitimacy, as defined above, inherent in such actors, but it is unlikely that experimenters performing such experiments would be viewed as legitimate over a long period. This has been borne out in the controversy over Milgram’s experiment and the wide disapproval of his methodology by modern experimental psychologists. It is important to note that, as no one has replicated the Milgram experiments for ethical reasons, the precise interactions of legitimacy and authority illustrated there have not been empirically tested.

<sup>121</sup> HERBERT C. KELMAN & V. LEE HAMILTON, *CRIMES OF OBEDIENCE* 16 (1989).

<sup>122</sup> *Id.*

<sup>123</sup> *See, e.g.*, Milgram, *supra* note 115.

<sup>124</sup> *Id.* at 377-78.

<sup>125</sup> *Id.* at 376. While a majority of participants took the experiment to its completion, nearly a third refused to do so. *Id.*

willingness to comply with the law in situations where law’s deterrent effects are not otherwise felt.<sup>126</sup>

In a landmark study of Chicago residents, Professor Tom R. Tyler analyzed the willingness of individuals to comply with various laws<sup>127</sup> and their perceptions of both the Chicago police and the law more generally.<sup>128</sup> Individuals surveyed were given similar queries on two separate occasions and asked to provide information about any police or legal contact they had between surveys.<sup>129</sup> Analysis of the survey responses yielded two important results: first, higher reported perceptions of legitimacy corresponded to increased rates of compliance with the law;<sup>130</sup> second, perceptions of legitimacy were tied to the perception that law enforcement procedures are fair and just.<sup>131</sup>

Through regression analysis, Tyler was able to determine that perceived legitimacy exerts an independent influence on frequency of compliance.<sup>132</sup> Further, the survey results suggested that the effects of legitimacy on compliance are stronger among groups with positive evaluations of police and court performance.<sup>133</sup> Although the reported personal morality of respondents played a greater role in predicting the level of compliance with the law, an important second factor was “the person’s feeling of obligation to obey the law and allegiance to legal authorities.”<sup>134</sup> An individual’s sense of obligation is informed, in large part, by the perception of both the law and legal authorities as legitimate.<sup>135</sup>

#### B. PROCEDURAL FAIRNESS AND LEGITIMACY

Because the perception of law enforcement as legitimate can increase compliance with the law, thereby reducing criminality,<sup>136</sup> one must turn to

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<sup>126</sup> TYLER, *supra* note 1, at 270-72.

<sup>127</sup> *Id.* Specifically, Tyler queried respondents as to whether they “[d]rove over 55 miles per hour on the highways,” “[p]arked [a] car in violation of the law,” “[m]ade enough noise to disturb neighbors,” “[l]ittered in violation of the law,” “[d]rove a car while intoxicated,” and “[t]ook inexpensive items from stores without paying for them.” *Id.* at 41.

<sup>128</sup> *Id.* at 43-56.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 60.

<sup>131</sup> *Id.* at 104.

<sup>132</sup> *Id.* at 60. Other factors found to be important in influencing compliance are personal morality, sex, and age. *Id.* This Comment does not address these factors as they are, by and large, entirely outside the control of law enforcement.

<sup>133</sup> *Id.* at 58.

<sup>134</sup> *Id.* at 64.

<sup>135</sup> *Id.*

<sup>136</sup> It may be argued that compliance with the law is not necessarily a desirable outcome, especially if the law is imperfect to begin with. Such concerns, however, are tempered by

the question of what informs this perception. One proposed model suggests that police gain acceptance from the individuals they serve when they (a) appear to be creating credible threats of arrest, (b) actually control crime, and (c) fairly distribute their services.<sup>137</sup> These three factors—risk, performance, and distributive fairness—comprise the instrumental model of legitimacy.<sup>138</sup> A competing model to explain the perception of legitimacy is normative: procedural justice.<sup>139</sup> According to this model, the legitimacy of law enforcement in the eyes of the public is closely tied not to instrumental factors, but instead to judgments by the public of the fairness of the process used by law enforcement to make decisions and exercise their authority.<sup>140</sup>

These competing models have been empirically tested to determine which more accurately describes the perceptions and responses of the public.<sup>141</sup> In one such examination, participants were questioned about their interactions with, and opinions of, police as well as their willingness to cooperate with law enforcement.<sup>142</sup> Using regression analysis of the data collected during this study, researchers found that perceptions of legitimacy were based primarily on procedural justice and, to a lesser extent, performance and distributive justice.<sup>143</sup> In a second study that surveyed a similar population, legitimacy was shown to be the driving factor behind cooperation with law enforcement,<sup>144</sup> and as before, legitimacy was based primarily on procedural justice.<sup>145</sup> The data collected in each of these studies were used to create a latent structural equation to illustrate the interactions between various social and perceptual factors and compliance with the law, cooperation with police, and police empowerment.<sup>146</sup> As expected, legitimacy informed all three of the dependant variables, itself

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the fact that the compliance garnered by increased perceptions of legitimacy is tempered by the personal morality of members of the public and is by no means absolute. *Id.* This Comment takes no position on the desirability of compliance in the abstract and proceeds under the assumption that the effectiveness of police in reducing crime and creating secure communities is, on balance, beneficial.

<sup>137</sup> See Sunshine & Tyler, *supra* note 2, at 514.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See, e.g., *id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> “Perceptions of police legitimacy . . . and evaluations of risk . . . predicted citizen cooperation with the police . . . .” *Id.* at 529.

<sup>145</sup> *Id.* at 530.

<sup>146</sup> *Id.* at 530-31.

being determined primarily by procedural fairness.<sup>147</sup> These results have been substantially replicated in other peer-reviewed empirical studies.<sup>148</sup>

Tyler’s Chicago study also bore out the normative procedural justice theory of legitimacy.<sup>149</sup> Tyler examined the influence of police contacts between surveys to determine what factors reported about those contacts influenced changes in perceived legitimacy.<sup>150</sup> Tyler found that “[w]hen people react to their dealings with police officers and judges they focus their attention sharply on questions of procedural justice.”<sup>151</sup> In cases in which negative outcomes were achieved through interactions with police or courts, the use of fair procedures mitigates, to a large degree, the negative perception of law one might expect to arise.<sup>152</sup> In contrast, when procedures were viewed as unfair, noticeable drops in individuals’ estimation of the legal system were associated with negative outcomes.<sup>153</sup>

The use of increased procedural fairness as a tool to increase the effectiveness of law enforcement is not without precedent.<sup>154</sup> This strategy has been effectively applied by the U.S. military in its reconstruction efforts in Iraq, where noncompliance may manifest as acts of terror that take the lives of both Iraqi civilians and American service personnel. In a 2004 study of Iraqi students, designed to discern the psychological underpinnings of support for resistance, researchers observed that the lack of perceived procedural justice on the part of the occupying U.S. forces was a major contributor to support for armed resistance.<sup>155</sup> These findings are reflected in the military’s 2006 counter-insurgency strategy manual, which emphasized that the American military must establish a legitimate local government to secure order.<sup>156</sup> The manual further emphasizes that “illegitimate actions are self-defeating, even against insurgents who conceal

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<sup>147</sup> *Id.* at 531. As the study authors note, this measure of procedural fairness is entirely based upon perception; nothing in the study addresses whether or not law enforcement is *actually* acting in a procedurally fair manner, merely whether the public *views* law enforcement to be acting in a procedurally fair manner. *Id.*

<sup>148</sup> See Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 250 (2008).

<sup>149</sup> TYLER, *supra* note 1, at 7.

<sup>150</sup> *Id.* at 98.

<sup>151</sup> *Id.* at 104.

<sup>152</sup> *Id.* at 100 (“The cushioning effects of procedural justice are quite robust. In no case involving fair procedure did effect become less positive as outcomes became more negative.”).

<sup>153</sup> *Id.*

<sup>154</sup> See Ronald Fischer et al., *Support for Resistance Among Iraqi Students: An Exploratory Study*, 30 BASIC & APPLIED SOC. PSYCHOL. 167 (2008).

<sup>155</sup> *Id.* at 169.

<sup>156</sup> HEADQUARTERS, DEP’T OF THE ARMY, COUNTERINSURGENCY (2006), available at <http://www.usgcoin.org/library/doctrine/COIN-FM3-24.pdf>.

themselves amid noncombatants and flout the law.”<sup>157</sup> It is notable that one of the authors of this manual, General David Petraeus, was later appointed commander of U.S. forces in Iraq, followed by a marked reduction in violence in the region.<sup>158</sup>

Domestically, the Judicial Council of California has recently invested considerable resources into examining public perception of fairness and has taken an experimental approach to new techniques to increase the public’s perception of the courts’ fairness by increasing public involvement in judicial processes.<sup>159</sup> Courts have also adopted the findings of procedural justice research in their move towards increased use of alternative dispute resolution, resulting in increased satisfaction with the legal system and greater willingness of participants to defer to the decisions courts impose.<sup>160</sup> Because the public perception of procedural fairness in law enforcement is of such high importance, and given the already great investment made in increasing perceived procedural fairness among law enforcers, it is vital that law enforcement view with suspicion activities that may reduce perceived procedural fairness, taking part only if these activities will truly advance another important law enforcement goal.

#### C. THE “MORAL MANDATE EFFECT”<sup>161</sup> AND ITS IMPLICATIONS FOR PROCEDURAL FAIRNESS JUDGMENTS

Even when procedures appear to be fair, their outcomes may have a large effect on *ex post* judgments of fairness.<sup>162</sup> In evaluating legal actions, individual moralities can play a large role in biasing the public in one direction or another. When individuals have a strong moral conviction about a topic, and they view that moral conviction as important to their identities as moral individuals, the conviction may be termed a “moral mandate.”<sup>163</sup> These mandates may dramatically inform public perceptions of ideal legal outcomes irrespective of the “correct” legal outcome as set forth by the judiciary.<sup>164</sup> When the outcomes of legal actions implicating

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<sup>157</sup> *Id.* at 1-24.

<sup>158</sup> Dexter Filkins, *His Long War*, N.Y. TIMES, Oct. 18, 2009, at MM36.

<sup>159</sup> California Courts, Programs: Access and Fairness (2010), <http://www.courtinfo.ca.gov/programs/access/index.htm>.

<sup>160</sup> TOM R. TYLER, WHY PEOPLE OBEY THE LAW 274 (2d ed. 2006).

<sup>161</sup> Skitka & Houston, *supra* note 3; Skitka & Mullen, *supra* note 3.

<sup>162</sup> Skitka & Houston, *supra* note 3.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 310. For example, the belief that Elián Gonzáles should remain in the United States might overshadow legal precedent or important political concerns; if a moral mandate exists, then whether the court gets its decisions “right” or not may matter less than the decision itself. *Id.*

such moral quandaries are consistent with moral mandates, the outcomes themselves will “validate the procedure’s legitimacy, and could be argued to lead people to perceive the procedure to be even fairer than they did [pre-outcome].”<sup>165</sup> This upward legitimization based upon fair outcome is not, however, likely to be of great magnitude “because there is little motivation to devote much thought to either outcomes or procedures when morally mandated outcomes are achieved.”<sup>166</sup> Although this upward legitimization is unlikely to have a large effect on perceptions of legitimacy or fairness, divergent legally and morally mandated outcomes can have great effects on these perceptions.<sup>167</sup>

In a study of the Elián González case,<sup>168</sup> national random samples were surveyed before and after the federal government’s raid to collect González and after his eventual return to his father in Cuba.<sup>169</sup> It was found that the strongest predictor of post-raid and post-resolution judgments of procedural fairness, outcome fairness, and decision acceptance was the strength of participants’ moral mandates about the situation.<sup>170</sup> Pre-raid judgments of fairness were not predictive of post-raid and post-resolution judgments of fairness, indicating that many participants actually changed their assessment of fairness after learning of outcomes that diverged from their moral mandates.<sup>171</sup>

In a separate study, this effect was also tested in the abstract, using a more traditional empirical study design to test the effects of moral mandates without the possible confounding factors present in the previous real-world study.<sup>172</sup> There, a study vignette outlining a trial but limiting the amount of information presented to participants was crafted to allow for a cleaner test,

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<sup>165</sup> *Id.* at 309.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Elián González was a five-year-old found floating off the Florida coast after the boat he was travelling in capsized, killing most of the other occupants including his mother. The boat was travelling from Cuba to the United States, where González had extended family. There was a months long custody battle between González’s father in Cuba and his extended family, culminating in an armed raid on his extended family’s home and González’s forced return to Cuba. *Id.*

<sup>169</sup> Linda J. Skitka & Elizabeth Mullen, *Understanding Judgments of Fairness in a Real-World Political Context: A Test of the Value Protection Model of Justice Reasoning*, 28 PERS. PSYCHOL. BULL. 1419, 1422 (2002).

<sup>170</sup> *Id.* at 1427.

<sup>171</sup> *Id.*

<sup>172</sup> Skitka & Houston, *supra* note 3, at 312. In the initial Elián González study, factors such as media portrayal—for example, the infamous photograph of a screaming González being held at gunpoint—could have had a great effect on perceived procedural fairness even without any actual moral mandate effect.

though it was less immediately applicable to a specific event.<sup>173</sup> By presenting participants with fictional defendants who were either clearly guilty, clearly innocent, or who had ambiguous levels of culpability, along with differing sets of procedurally relevant facts, investigators were able to compare differences in perceived procedural fairness against the actual fairness of the scenario presented, and to determine what drove the estimation of fairness.<sup>174</sup>

As would be expected in the presence of a moral mandate effect, the perceived fairness of the vignettes depended far more on the outcome of the trial than on the propriety of the procedures outlined in the vignette.<sup>175</sup> Participants given a story about an apparently guilty defendant found the trial presented to be fairer if it resulted in a conviction rather than an acquittal, even in the presence of procedural flaws.<sup>176</sup> Conversely, trials resulting in the acquittal of clearly innocent defendants were seen as more procedurally fair than those resulting in conviction regardless of the presence of procedural flaws.<sup>177</sup> As predicted by the absence of a moral mandate, the perceived fairness of trials of ambiguously culpable defendants was correlated to the presence or absence of procedural flaws.<sup>178</sup> These results confirm that when the public is already convinced of the proper outcome, procedures leading to that outcome will be viewed as more fair than those leading to an opposing outcome regardless of their actual propriety.

An additional study has shown that when confronted with outcomes inconsistent with moral mandates, individuals become less likely to obey social constraints.<sup>179</sup> In this study, researchers first assessed participants' moral views on abortion (either pro-choice or pro-life) and the strength of these views in order to determine whether each participant had a moral mandate on the subject of abortion rights.<sup>180</sup> Participants were then randomly assigned to read either a vignette in which a doctor was tried for allegedly providing an illegal late-term abortion and convicted or a vignette in which the same doctor was acquitted.<sup>181</sup> Half of the vignettes also

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<sup>173</sup> By limiting the amount of information presented, investigators can ensure that participants are all presented with and observe the same facts.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 315.

<sup>176</sup> *Id.* at 322.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Elizabeth Mullen & Janice Nadler, *Moral Spillovers: The Effect of Moral Violations on Deviant Behavior*, 44 J. EXPERIMENTAL PSYCHOL. 1239 (2008).

<sup>180</sup> *Id.* at 1240-41.

<sup>181</sup> *Id.*

included procedural flaws that, ideally, would be outcome determinative.<sup>182</sup> In addition to replicating the moral mandate investigations seen in prior studies, the study investigators also tracked whether or not participants stole the pens they were loaned to use during the survey.<sup>183</sup>

As expected, the perceived fairness of the trial presented to participants was, for participants with a moral mandate,<sup>184</sup> determined primarily by the outcome of the trial rather than the presence or absence of procedural flaws.<sup>185</sup> More interestingly, the investigators observed what they termed a “moral spillover effect,” in which participants exhibited behavioral consequences of “experiencing a [moral mandate] violation.”<sup>186</sup> It was observed that none of the participants who had a pro-choice moral mandate and read the vignette in which the doctor was acquitted absconded with their borrowed pen, while 25% of those with the same pro-choice moral mandate who read the vignette in which the doctor was convicted did not return their pen.<sup>187</sup> For individuals without a moral mandate, a greater proportion took their borrowed pen when they read a vignette where the doctor was acquitted than when he was convicted.<sup>188</sup> Thus, not only can outcome inconsistencies increase deviant behavior in the presence of a moral mandate, consistent outcomes may serve to decrease them.<sup>189</sup>

Although none of these studies tested the public perceptions of sex offenders specifically, abstract study of moral mandates tends to suggest that, when confronted with limited information (as viewers of *To Catch a Predator* are) and a seemingly unambiguously guilty defendant (as the targets of *To Catch a Predator* are presented to be—even the segments’ titles suggest guilt on the part of those caught by the sting), the eventual

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<sup>182</sup> *Id.* at 1241.

<sup>183</sup> “After participants completed all the studies, they were instructed to return their pen and an envelope containing their material to two clearly labeled, adjacent boxes (one labeled ‘PENS’, the other labeled ‘ENVELOPES’). . . .” Pens were identical, but numbered “unobtrusively . . . with ink that was only visible under ultraviolet light. Thus, participants did not know that their pen was numbered but the experimenter was able to identify missing pens” and correlate them to participant morality. *Id.* at 1241.

<sup>184</sup> The study population, drawn from the undergraduate student body at a major Midwestern university, included no individuals with a pro-life moral mandate. *Id.* “[D]espite concerted efforts to recruit participants with a pro-life [moral mandate], on the campus where we conducted the study there were simply too few student volunteers with pro-life beliefs” to comprise a suitable sample population. *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 1240.

<sup>187</sup> *Id.* at 1242 fig.1.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

acquittal of those implicated may erode public perceptions of procedural fairness.<sup>190</sup>

#### D. PROBLEMS WITH THE DIRECT APPLICATION OF THIS MODEL

The application of empirical social science research to real world situations must be done with an eye towards the limitations of the research itself. None of the above-cited studies was quantitative; rather, they were qualitative. They may tell us that a phenomenon exists and much about its nature, but they are not competent to inform law enforcement of the extent of the phenomena's effects. The moral mandate effect, for example, has been clearly demonstrated in repeated studies, but the degree to which those carrying moral mandates will discount the procedural fairness of a trial or police action cannot be accurately discerned from a qualitative study no matter how compelling. Such studies, while providing convincing evidence of the presence or absence of the quality or relationship tested, are not designed to measure its magnitude or strength.

Similarly, although it has been demonstrated that procedural fairness is the greatest contributor to the perception of law enforcement legitimacy, it is not the sole contributor, and it should not be focused on to the exclusion of other instrumental factors. For example, a police department would be foolish to abandon efforts to increase the likelihood of catching criminals in favor of efforts to appear more procedurally fair—the studies cited all examined perceptions of competent police forces.

It is also conceivable that the moral mandate effect itself might cut in favor of procedurally unfair treatment of sexual predators as a mechanism by which law enforcers might *increase* public perceptions of their legitimacy. Numerous studies have shown that individuals are not always equanimous in the application of fair procedures.<sup>191</sup> In one such study, university students were asked to outline proper procedures to deal with an accused rule breaker; the identification of the accused as a classmate or as a student at another institution had a significant effect on the nature of the procedures put in place to protect the accused rule breaker.<sup>192</sup> This tendency was characterized as an inclination to provide increased

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<sup>190</sup> See Skitka & Houston, *supra* note 3, at 324.

<sup>191</sup> See, e.g., Robert J. Boeckmann & Tom R. Tyler, *Commonsense Justice and Inclusion Within the Moral Community: When Do People Receive Procedural Protections from Others?*, 3 PSYCHOL. PUB. POL'Y & L. 362 (1997); Kevin M. Carlsmith, John Monahan & Alison Evans, *The Function of Punishment in the "Civil" Commitment of Sexually Violent Predators*, 25 BEHAV. SCI. & L. 437 (2007).

<sup>192</sup> Boeckman & Tyler, *supra* note 191, at 371-72.

procedural protections to individuals identified as “in-group” as opposed to “out-group.”<sup>193</sup>

In a study examining public perceptions of postconviction civil commitment of sex offenders, it was found that, contrary to Supreme Court precedent and due process considerations, the public is inclined to apply civil commitments to sex offenders in a punitive fashion.<sup>194</sup> In 1997, the Supreme Court held in *Kansas v. Hendricks* that postconviction civil commitment was constitutional (it does not violate the Fifth Amendment prohibition on double jeopardy) because the legislative intent behind the Kansas act allowing commitments was both incapacitative and therapeutic.<sup>195</sup> It was stated categorically that such a statute, enacted for punitive reasons, would not pass constitutional muster.<sup>196</sup> In his dissent, Justice Breyer pointed out that the legislative intent relied upon could easily have been written to mask such a law’s true punitive intentions.<sup>197</sup>

In order to test the masking referenced in Breyer’s dissent, Carlsmith et al. conducted an empirical study to examine whether individuals would apply civil commitment laws in a punitive manner.<sup>198</sup> In this study, participants were presented with a description of the law, as well as a brief vignette outlining a fictional convict’s crimes, initial sentence, and likelihood to recidivate.<sup>199</sup> Participants were asked whether the fictional convict presented should be civilly committed after his initial sentence had run, and their responses were correlated to the divergent facts of the vignettes provided.<sup>200</sup> Unlike the stated legislative intent or the Supreme Court’s directive, the factors leading participants to favor the civil commitment of the convicts were the heinousness of the convicts’ crimes and the sufficiency of the convicts’ sentences.<sup>201</sup> Even when presented with a convict who, participants were informed, had absolutely no probability to recidivate (and who, therefore, needed neither therapy nor incapacitation), many chose to commit nonetheless.<sup>202</sup> Conversely, convicts who had a high probability of recidivating but had served an apparently appropriate sentence were not to be civilly committed.<sup>203</sup>

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<sup>193</sup> *Id.* at 372.

<sup>194</sup> Carlsmith et al., *supra* note 191, at 437.

<sup>195</sup> 521 U.S. 346 (1997).

<sup>196</sup> *Id.* at 369.

<sup>197</sup> *Id.* at 380 (Breyer, J., dissenting).

<sup>198</sup> Carlsmith et al., *supra* note 191, at 439.

<sup>199</sup> *Id.* at 442.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 446-48.

<sup>203</sup> *Id.*

Several explanations are possible for such results. First, it is possible that the lack of a unanimous desire to provide procedurally fair processes is because sex offenders are viewed as an out-group. If this is the case, it is also possible that the application of unfair procedures to individuals identified as sex offenders will not result in the same reduction in perceived legitimacy. After all, if procedural fairness ceases to be desirable, it is easy to imagine that a lack of procedural fairness will not result, *sui generis*, in a perceived lack of legitimacy.

Another possible explanation for the public's response to sex offenders is that it is another type of moral mandate effect, applied prospectively rather than retrospectively. Just as the moral mandate effect, when applied to disparate outcomes, can affect perceived procedural fairness, it is likely that a desired outcome can affect the perceived fairness of procedures being applied.

While both of these explanations may be possible, neither has been tested empirically. Even if one or both was true, it still would not obviate the need for law enforcement to appear to practice fair procedures with sex offenders. In each of the studies, the tendency to apply procedurally unsound practices to out-group individuals or sex offenders was neither unanimous among study participants nor did it suggest that there is no level of procedural unfairness that would result in the loss of legitimacy. Nothing about either study indicates that the basic rights of out-group individuals or sex offenders may be infringed upon with impunity or even what level of fairness must be present to give relaxed standards.<sup>204</sup>

It is clear that further research needs to be done before law enforcement can truly act upon the findings of these studies, but this does not imply that current research should therefore be ignored. The research performed thus far is compelling, if not perfectly suited to law enforcement decision-making, and the findings may be used as a guide for law enforcement in attempting to improve their standing. If nothing else, the research points the way to a major pitfall for unwary law enforcers.

#### IV. APPLICATION TO *TO CATCH A PREDATOR* AND MEDIA IN GENERAL

Having established that, generally, the procedural fairness of law enforcement may have a large effect on both public perception of law enforcement and compliance with the law, it is incumbent upon prosecutors and police officials to examine their involvement with media. How law enforcement comports itself when it is directly in the public eye naturally has an effect on perceptions of law enforcement held by the public. To that

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<sup>204</sup> Cf. Boeckmann & Tyler, *supra* note 191, at 374-78.; Carlsmith et al., *supra* note 191, at 441-47.

end, law enforcers need to evaluate their decision to take part in programs like *To Catch a Predator* and examine the program itself for procedural flaws before tying their own departments to its reputation.

#### A. WHAT ARE THE GOALS OF LAW ENFORCEMENT PARTICIPATION?

First, law enforcement must examine the goals advanced by participation in programs such as *To Catch a Predator* or other similar shows or segments to determine whether these goals are being met or outweighed by the possibility of a negative public reaction to police or prosecutorial involvement.

Murphy, Texas Police Chief Billie Myrick, explaining his department’s participation in the November, 2006 *To Catch a Predator* sting, said,

We went out on a mission to arrest bad people that were here to harm the children of this community. People were coming here because they actually believed that they were actually talking to a 12- or 13-year-old child. That’s it. No different than any law enforcement mission that we take on every day of the week.<sup>205</sup>

For Myrick, who was fired in May 2008, it may have seemed to be a normal police operation, but other departments have characterized their involvement differently.<sup>206</sup>

Kentucky Bureau of Investigation Commissioner David James characterized the impetus to participate alongside *Dateline* as one of publicity.<sup>207</sup> “Most parents think their child is safe at home alone having a computer in their room and not knowing who they’re chatting with,” he said. “They don’t think anyone would try and contact their child.”<sup>208</sup> The *Dateline* stings, he says, prove that underage children are not necessarily safe online and force people to pay attention to the problem.<sup>209</sup>

While this may be an admirable goal, as is the apprehension of individuals who would harm children, it begs the question of whether this goal is only achievable through participation with *To Catch a Predator* or similar shows. Currently, all fifty states and the District of Columbia have statutes criminalizing online solicitation of minors,<sup>210</sup> and stings run without

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<sup>205</sup> Vic Walter, ‘*To Catch a Predator*’ Police Chief Fired, ABCNEWS.COM, May 29, 2008, <http://abcnews.go.com/Blotter/story?id=4956588&page=1>.

<sup>206</sup> *Id.*

<sup>207</sup> Burton Speakman, *Seven Arrested in Sting*, DAILY NEWS (Bowling Green, Ky.), Oct. 22, 2007, <http://www.bgdailynews.com/articles/2007/10/22/news/news1.txt>.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> National Center for Missing and Exploited Children, State Laws Used to Prosecute Online Enticement of Children, [http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en\\_US&PageId=2835](http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2835) (last visited Jan. 31, 2010).

media participation still garner media attention.<sup>211</sup> Therefore, participation with *Dateline* or NBC in particular is unnecessary to advance the goals of law enforcement outlined above.

B. IF LAW ENFORCEMENT *SHOULD* PARTICIPATE, MUST *TO CATCH A PREDATOR* REMAIN PROCEDURALLY DEFICIENT?

The agents of the law generally have routine, controlled contacts with media outlets in order to maintain a favorable public image.<sup>212</sup> The vast majority of municipal law enforcement agencies employ public information officers to facilitate the flow of information from the department to the media and act as spokespersons for the entire police force.<sup>213</sup> These information officers must act as both a conduit through which law enforcement communicates with the public as well as a public relations officer, assisting law enforcement in maintaining a positive image.<sup>214</sup> The mere presence of such officers is a tacit recognition of the important role media plays in the day-to-day operations of a law enforcement agency; as one officer quipped,

We can use drama to inform the public and still be accurate . . . And if . . . cops [don't like] this, then they had better go back to a time when TV didn't exist; like it or not, we live in a media/video/showbiz world. We can either understand that and work with it or live in a bubble.<sup>215</sup>

Given the power inherent in media, it is no surprise that law enforcement agencies are tempted to participate in programs like *To Catch a Predator*; ideally, through the show they can quickly disseminate information and maintain a positive image among the public they serve.

Even if law enforcement is convinced that participation with *Dateline* on *To Catch a Predator* segments is necessary and beneficial to the

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<sup>211</sup> See, e.g., Jennifer Squires, *Teacher Pleads Guilty in Online Sex Sting*, OROVILLE MERCURY REG. (Cal.), Jan. 16, 2009, available at LEXIS. Terry Talbert, *Shippensburg Man Jailed Through Internet Sting*, PUB. OPINION (Chambersburg, Pa.), Jan. 22, 2009, available at <http://www.allbusiness.com/government/government-bodies-offices-regional/12162089-1.html>; Office of Attorney Gen., State of Pennsylvania, Attorney General Corbett Announces Arrest of Internet Predators from Bucks Co. & Ohio; Re-Arrest of Predators in Lebanon & Montgomery Co. (Jan. 16, 2009), <http://www.attorneygeneral.gov/press.aspx?id=4257>.

<sup>212</sup> JARRET S. LOVELL, MEDIA POWER & INFORMATION CONTROL: A STUDY OF POLICE ORGANIZATIONS & MEDIA RELATIONS 7 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/197060.pdf>.

<sup>213</sup> *Id.* at 105 (“[Eighty-nine percent] of municipal law enforcement agencies have an employee whose primary responsibility is to serve as a media public information officer.”).

<sup>214</sup> *Id.* at 111-12.

<sup>215</sup> *Id.* at 179. (quoting an unnamed public information officer interviewed by the author) (alterations in original).

community, it must recognize that between the competing goals of publicity and law enforcement the latter must come first for law enforcers. As has been demonstrated empirically, a focus on high-profile media events at the expense of fair procedure may have the simultaneous effect of eroding the public perception of law enforcement as legitimate while at the same time disseminating this negative effect to as broad an audience as is possible.

In order to avoid this, prosecutors and police officers must take a proactive stance. Despite the presence of cameras, law enforcement is in a position of power and control over media when media requests law enforcement participation in programs like *To Catch a Predator*.

### 1. *The media market is competitive*

*Dateline: To Catch a Predator* is a single program among many in a cutthroat business. *Dateline* desires law enforcement participation in order to lend its shows credibility, and a threat to withhold participation absent the implementation of robust legal procedures that ensure both fairness and positive outcomes is unlikely to be met with a great deal of resistance from the show’s producers. This is especially so given the competitive climate in the media market; if *Dateline* refuses to capitulate, law enforcement participation may be withheld, and the reasoning behind this lack of participation may be widely publicized on networks that compete with NBC.

Even with police participation, *To Catch a Predator* has received widespread criticism.<sup>216</sup> By associating themselves with *To Catch a Predator*, law enforcers open themselves to scathing scrutiny for their related actions.<sup>217</sup> Several articles have criticized the Murphy, Texas sting and police actions taken there—for example, for the decisions to arrest Conradt in his home, for the use of a S.W.A.T. team to attempt the arrest, and for the failure to make more efforts to resolve the situation in a peaceful, albeit less exciting, manner.<sup>218</sup>

### 2. *To Catch a Predator relies upon secrecy in order to run its stings*

In addition to embarrassing NBC and causing it to lose credibility in its market, a timely release to other media outlets of *Dateline*’s refusal to

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<sup>216</sup> See, e.g., Luke Dittrich, *Tonight on Dateline this Man Will Die; Nine Months Ago NBC’s “To Catch a Predator”: Arrived in Murphy, Texas, to Conduct a Sting Operation. The Only Honest Thing that Followed Was the Gunshot*, ESQUIRE, Sept. 1, 2007, at 233; Melissa Healy, *My Pal, My Bully*, L.A. TIMES, Jan. 26, 2009, at F1 (criticizing *To Catch a Predator* for drawing undue attention to the problem of online sexual solicitation at the expense of the more immediate concern of online bullying).

<sup>217</sup> See Dittrich, *supra* note 216.

<sup>218</sup> See, e.g., Council & Sapino, *supra* note 50.

act according to law enforcement requirements will ensure that *To Catch a Predator* will be unsuccessful in a community. The program relies on secrecy in order to run its stings; they would doubtless be unsuccessful if the “predators” they sought to catch were able to learn that a sting was underway.

One of the hallmarks of the show’s stings is that the predators it “catches” actually show up to a sting house. Had Murphy District Attorney John Roach publicized that *Dateline* was attempting to run such a sting without the city’s involvement because it refused to implement the district attorney’s procedural recommendations, the turnout at the sting house would be dramatically depressed by simple virtue of the fact that the putative predators would know better than to be enticed to a town in which they knew a sting was being carried out.

In Texas and states with similar laws governing online solicitation, the crime of solicitation is complete long before *Dateline* cameras begin to roll.<sup>219</sup> Despite disruption to *Dateline*’s sting, the producers of the show would be hard pressed to argue that a prosecutor was impeding the arrest and prosecution of online sexual predators. Such allegations would ring hollow, as there is no legal requirement to have a sting at all—let alone to have one in any particular community—and the disruption of a sting would have legal effect.

## V. CONCLUSION

While the empirical research cited in this Comment does not indicate that all law enforcement media interactions are suspect or even that all such interactions may have a detrimental effect on citizens’ view of law enforcement legitimacy or their inclination to obey laws of their own volition, it indicates that there may be a high price to pay for interactions that demonstrate a lack of procedural fairness. These high costs are, however, easy for law enforcement to avoid by either declining to participate in programs like *To Catch a Predator* or by demanding that, as a condition of law enforcement participation, the goals of law enforcement must supersede those of the programs with which police or prosecutors choose to associate themselves. The goal of bringing attention to law enforcement efforts to curb online solicitation of minors is an admirable one, and quite achievable through popular media, but the agents of the law should consider all possible implications of their actions before deciding to move forward. As Collin County District Attorney John Roach said in the aftermath of the Murphy, Texas debacle, “We are in the law enforcement

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<sup>219</sup> TEX. PENAL CODE ANN. § 33.021(c) (Vernon Supp. 2009).

business, not show business.”<sup>220</sup> Where media goals align with those of law enforcement, media outlets can provide a valuable tool in the arsenal of law enforcement; where they diverge, law enforcement goals must be met before allowing cameras to roll.

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<sup>220</sup> Council & Sapino *supra* note 50, at 6.

