

Classifying Crimes by Severity: From Aggravators to Depravity

Michael Welner, M.D.

Crime classification, indeed this manual, underlines the oft-overlooked reality that each murder, rape, arson, and other criminal act distinguishes itself. Contract killing is quite obviously different from sexual homicide, for example.

Crime-solving considerations force investigators to appreciate the differences between offenses according to the perpetrator's background, crime scene evidence, victimology, and forensic findings. Distinguishing subtypes of crime enables various organs of law enforcement to effect justice.

"Justice." What does that word truly signify? To be involved in the justice system is to be humbled by one's discrete role in a process that extends well beyond a suspect's arrest. Is justice served merely when a suspect is taken into custody? What if a manslaughter is charged as a murder? What if a cold-blooded killer is prosecuted as a battered woman? Is that justice? Obviously not.

Nor is it "justice" to presume that even within all subtypes of offenders, each is as blameworthy as the next. Each of us who impart our experiences in this text viscerally recognize that crimes distinguish themselves for their severity as well. Experience in murder, sexual assault, even property crimes imbues one with an appreciation that some crimes separate themselves from others as the worst of the worst.

"There's more to this horrible crime, this evil, evil crime because of his conduct and what he did afterwards to get away with it."

- San Diego lead prosecutor Jeff Dusek, in the 2002 trial of David Westerfield for the kidnapping and murder of 7 year old Danielle van Dam

"It is perfectly natural for tidal activity, boat propellers and feeding animals to break apart bodies....When you hear about a body without a head, you think, 'It must have been decapitated, it was a heinous crime.' That's not to say it wasn't horrible, but it's also not to say that anybody decapitated her. Nature probably did it."

- Dr. Gregory Schmunk, Santa Clara County coroner, on findings in the Laci Peterson murder

"Most people would agree that this is a vile crime... One thing is for sure - they took pleasure in killing people, they took pleasure in terrorizing people... and that's the sort of man that doesn't deserve to be in society."

- Prosecutor Paul Ebert, on the John Muhammed DC Sniper verdict

While American justice is closely scrutinized for its imperfections, and criticized for same, its openness to growth and evolution is the embodiment of justice. The utility of and need for punishment carves out a coexistence with compassion and rehabilitative goals.

Numerous factors diminish punishment, or the severity of sentencing, in American courts. An offender's previous history, social disadvantage, presence of mental illness or possibility of coinciding intoxication, lesser role in a crime, stature in the community, and negative impact of the punishment on others are examples of qualities that mitigate punishment. When these aforementioned factors distinguish an individual, American courts may choose to mete a less severe sentence to a convicted offender. Mitigating factors primarily relate to context, such as who the offender is, and why the crime was committed.

Factors that aggravate punishment in criminal courts have been distinguished as well. Some of these nearly 60 aggravating factors, like mitigators, relate to who an offender is. Many, however, focus attention on the crime itself – that is, what a person did.

Aggravators Relating to the Crime Itself

Of all the themes of aggravating factors, aggravators linked to what a person did in the course of carrying out a crime most protect the justice system from bias, prejudice, privilege, and other unintended inequalities in sentencing. The subjectivity of future dangerousness assessments, for example, parallels the subjectivity of an assessment of future docility. Nothing speaks for a crime like the crime itself.

Each state, along with the federal system, has its own criminal codes and sentencing guidelines. These codes, enacted by legislative initiative and interpreted by courts, contribute to distinct applications of justice. This decentralization also means that identical crimes, prosecuted in different jurisdictions, are punished based upon different factors. Depending on the level of judicial initiative in giving jury instructions, even more distinct outcomes are possible for each case.

State and federal criminal sentencing guidelines enumerate a host of aggravators relating to the specifics of a crime, as listed in table 1 and 2. Aggravators arise from the perpetrators intent, the perpetrators actions, and attitudes about the crime, including behavior after the fact. Victimology also provides a basis for aggravating factors.

Table 1: Aggravators, by Relation to Intent, Action, Attitudes, and Victimology, Applicability to What Crime, and Number of States Used

Item	Intent	Actions	Attitudes	Victimology	Applicability	No. of states
Created grave risk to others/ many persons		X			Non-capital, capital	27
Capital crime in Conjunction w/ Rape, Robbery, Kidnapping, etc.		X			Non-capital, capital	30
Preventing arrest or escaping custody	X				Non-capital, capital	21
Pecuniary gain/ransom	X				Non-capital, capital	27
Disrupt the government or enforcement of law	X				Non-capital, capital	9
Heinous, Atrocious, Cruel, Depraved, Wanton, Vile, Outrageous	X	X	X	X	Non-capital, capital	34
Contract killing or hiring of		X			Non-capital, capital	29
Age of victim-- old, or young				X	Non-capital, capital	25
Vulnerable victim –non-age [i.e., handicapped, mentally ill]				X	Non-capital, capital	15
Death of multiple victims		X			Non-capital, capital	23
Use of deadly weapon or dangerous instrument		X			Non-capital, capital	5
Presence of an accomplice/ defendant as leader		X			Non-capital	4
Property damage		X			Non-capital	1
Physical, emotional, or financial torture to victim or victim's family		X			Non-capital, capital	19
Death of unborn child/ victim was pregnant				X	Non-capital, capital	6
Hate crime: race, sexual orientation, religion, nationality, etc.				X	Non-capital, capital	9
Lying in wait for the victim;		X			Non-capital, capital	5

While most aggravating factors are very easy to define, one such aggravator – that a crime was “heinous, atrocious, and cruel” – means many things to many people. What is a “horribly inhuman,” “vile,” “depraved” crime – the worst of the worst? The answer has bedeviled many a court.

Distinguishing Severity – Its Relationship to Constitutionality

Use of terms such as “heinous, atrocious, and cruel”, “wanton” and other analogues of these has withstood repeated Court challenge. In *Gregg v. Georgia*,¹ the Court upheld the Georgia aggravator of “heinous, atrocious, and cruel” as constitutional but allowed for the problem that a jury would have difficulty deciding this issue. Writing for the majority, Justice Stewart noted:

“[S]entencing authorities are apprised of any information relevant to the imposition of the sentence and *provided with standards to guide* the use of the information...[T]he problem of jury inexperience in sentencing is alleviated if the *jury is given guidance* regarding *the factors about the crime and the defendant* that the state, representing *organized society*, *deems particularly relevant* to the sentencing decision.”²(Emphasis added).

In another decision fourteen years later, the Court, in *Walton v. Arizona*, clarified that aggravating factors needed to be identified through *objective circumstances*. (Emphasis added).³

Despite those allowances, inconsistency in defining the worst of crimes has afflicted numerous cases. The Supreme Court in *Godfrey*, for example – another Georgia case – reversed a capital sentence, stating:

“[T]here is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the death sentence.” Any sensible person could “fairly characterize almost every murder as outrageously or wantonly vile, horrible and inhuman.” Jury instructions in *Godfrey*, ruled the court, gave no guidance or explanation concerning the meaning of that aggravating factor, leading to what the Court called “The **standardless** and unchanneled imposition of the death sentences...”⁴

Heinous Atrocious, and Cruel – Challenges

While Courts have upheld the distinction of crimes for their severity, several challenges confound justice in this endeavor.

Any killing, one might argue, is emotionally painful to the victim. Or consider cases that reflect overkill; perhaps they involve an assailant naïve to how quickly one dies when lethal

¹ 428 US 153 (1976)

² *Ibid.*, p 192

³ 497 US 639 (1990)

⁴ 446 U.S. 429 (1980)

blows are struck. Not a medical examiner, this killer may leave a crime scene that, by virtue of overkill, suggests an “evil” crime, heinous when compared to other killings.

In current approaches to labeling crimes “heinous”, courts place heavy emphasis on actions and victimology, and lesser consideration of intents and attitudes.⁵ This reflects the paucity of evidence presented to Courts to reflect upon the latter two aspects of crimes – clearly, however, both qualities serve to distinguish certain crimes from others. Moreover, Courts have upheld findings that a given crime was evil when striking evidence relating to intent and attitude was available to the Court.

Furthermore, unless one can estimate the sequence leading to death, it is especially challenging to presume the nature of the suffering of a victim. The author’s review of Court decisions upholding findings of “heinous” crimes also found that killing using instruments other than guns was heavily represented.⁶ But do such trials explore whether killers who use knives and hammers choose them because there are no other weapons available?

Ambiguity is even present in some killings of children. Was the small victim nevertheless a witness to another crime, and eliminated for crime concealment – as opposed to the handiwork of a predator victimizing a child by design?

A lack of clarification to law enforcement and defense investigators as to what evidence is relevant to depravity means that much less factual information about a crime is available to a jury. Without guidance, therefore, the jury may be forced to make an uninformed decision, not only for lack of definition, but lack of evidence demonstrating or refuting depraved intents, actions, victimology, and/or attitudes.

With no guidance, as the United States Supreme Court has noted, distinguishing the worst of crimes is arbitrary. Arguments readily play to the fact-finder’s emotions, seducing them to unremarkable aspects of a case and risking the over-amplification of select detail, or wholesale dismissal of many pertinent pieces of factual evidence.

By now, we have all come to appreciate the role of the press in setting the tone for a case through its coverage and interest. The theater of competitive news coverage creates the risk of a person being the issue, not the person’s acts. High profile cases particularly fuel such dynamics for distortion.

Lastly, consideration of the worst of crimes most frequently attaches itself to murder. Yet, there are kidnappings that distinguish themselves as the worst of their ilk, just as there are robberies or even property crimes that may be particularly heinous relative to other property crimes.

⁵ Welner, M ‘Frontiers in Standardizing the Definition of Evil in Criminal Law’

Presented at the American Psychiatric Association, Annual Meeting, San Francisco, CA May 2003

⁶ Ibid.

Legislatures have thus codified that evil crimes exist. But without guidance, jurors do struggle to distinguish qualities of a “heinous” crime. The inspiration for establishing *standards* for the worst of crimes, and *guidance* to jurors therefore confronts:

What crimes are depraved?
What is it about those crimes that makes them depraved?

A Framework for Defining the Worst of Crimes

Many of the aforementioned aggravators denote behavior that distinguishes a particularly unusual criminal at work. As such, perpetrators who meet such aggravators earn membership in a narrowed class of defendants.

Other aggravators, however, speak more to the goals of society than the exceptional nature of the crime. A police officer is armed, for example, and engages with criminals and in hazardous duty. Society has an interest in protecting law enforcement. Yet when a perpetrator kills a police officer in attempting to escape, that clearly does not reflect an unusual criminal mentality nor ensure that such a crime was anything more than a spontaneous if dramatic choice. In other words, some aggravators, such as killing in the course of committing a felony, attach themselves to deterrence issues while others distinguish what are truly unusual, and the worst of the worst crimes.

Toward a Depravity Standard for Criminal Sentencing

The Depravity Standard research, initiated in 1998,⁷ has embarked on a series of protocols designed to create a standardized methodology for distinguishing the worst of crimes in any given legal case. The research aimed to identify features that would distinguish any particular crime in which those items were present as depraved, heinous, and the worst of the worst.

Given the aforementioned challenges, the Depravity Standard methodology committed to accomplish the following, in order to establish a Standard that would unfailingly contribute to justice:

- Can the Depravity Standard be inclusive, to be applicable to the range of all possible crimes?
- Can the Depravity Standard emphasize evidence over impressionism?
- Can its items ensure that such determinations are color, diagnosis, race, religion, nationality and socioeconomic blind?
- Can its items control for cultural distinctions?
- Can the Depravity Standard be non-denominational, namely, neither pro-prosecution nor pro-defense?
- Can its items incorporate the range of values of a free society?
- Can items bridge society’s judgments with psychiatry’s?
- Can the items incorporate established diagnostic understandings of the worst of behavior?

⁷ www.depravityscale.org

Can this be done in a way that does not, nevertheless, disproportionately target the ne'er do well or others labeled 'undesirable'?

Can the Depravity Standard ensure fairness rather than arbitrariness?

Can science contribute to the Depravity Standard, without stifling the law?

Can the Depravity Standard be measurable, in order to enable comparison?

Can it be applied in a way that is not cumbersome?

Can the Depravity Standard distinguish a narrow class of offenders within categories of offenses?

Can the Depravity Standard be protected from abuse?

Can the Depravity Standard assist jurors without replacing their decision-making?

Can it be utilized in a way that ensures consistent application to justice?

The research began by identifying numerous examples of intent, actions, and attitudes that appellate Courts have upheld as crimes reflective of the aggravators "heinous," "atrocious," "cruel," "vile," "inhuman," "wanton," or "horrible."⁸ This also included a victimology of the worst of crimes.

In order to distinguish depraved features from those items earning aggravator status to serve the aims of public policy -- but which do not *uniformly* distinguish a heinous or evil act (examples include "using a deadly weapon", "ambushing", "killing a witness to disrupt testimony", "preventing arrest or escaping custody") -- the intents, actions, attitudes, and victimologies of those upheld appellate cases were distilled and organized under headings shaped by psychiatric diagnoses associated with the most pernicious behavior. See Table 2.

Table 2
Diagnoses Associated With Criminally Depraved Acts

Diagnosis (source)	Characteristics
Antisocial Personality Disorder (DSM IV-TR)	History of Conduct Disorder in youth; adult pattern of irresponsibility and rule breaking, exploitativeness for money, sex, and other primitive needs.
Conduct Disorder (DSM IV-TR)	Childhood/adolescence of truancy, lying, fighting, destruction of property, fire setting, impulsivity and cruelty to animals
Narcissistic Personality Disorder (DSM-IV-TR)	Grandiosity, entitlement, haughtiness, envy, intense anger
Psychopathy (Hare)	Brazenness, manipulative, callus, self-centered, grandiose personality, plus antisocial behavior.

⁸ Welner M "Defining Evil: A Depravity Scale for Today's Courts" 2(6) *The Forensic Echo* 4-12 May 1998

Sexual Sadism (DSM IV-TR)	Sexual arousal through coercion and control, including through the infliction of pain
Sadism (Fromm)	The desire to inflict pain irrespective of sexual satisfaction
Necrophilia (Fromm)	Infatuation with Death and Decay
Malignant Narcissism (Kernberg)	Antisocial behavior, sadism, paranoia, more ideological and more likely to attach to groups. Experience others as threatening enemies rather than merely objects to be exploited
Antisocial Personality by Proxy (Stawar)	Predator, physically or materially unable to carry out an antisocial impulse, manipulates a vulnerable and less inhibited person to do so

Thus, a given fact pattern might relate very much to Sadism, and would be condensed under the heading of “actions that cause a victim emotional suffering.” Or, a perpetrator who enlists followers into active criminality may be, per the construct of Antisocial-by-Proxy, may be represented well by “involving another person in the crime in order to maximize destructiveness.”

After expanding the list of potential intents, actions, and attitudes to encompass the range of imagination for potential crimes, the Depravity Standard research project identified 26 items for closer study by April 2001.⁹

These items focus on the depravity of a crime – *what* is depraved. The items are event, history, and fact driven. Questions of *who* is depraved, or evil, are more diagnostic and addressed through the aforementioned psychiatric diagnoses or theological sources. Questions of *why*, or context, already are well addressed in mitigation evidence and its rebuttal; the Depravity Standard does not replace these elements of a case, as it confines itself to the circumstances of the crime.

In addition, the Depravity Standard items were developed in such a way as to apply with equal relevance to murder as to robber or other crimes. “Intent to maximize damage” for example, is applicable to the planting of a computer virus as much as it is to a mass casualty terror plot.

Moreover, items were worded in order to ensure the instrument would be color, religion, political and socioeconomic blind. At the same time, “Intent to terrorize” works with defined terrorism, something many societies refuse to do for fear of self-incrimination.

⁹ Welner M ‘*The Depravity Scale: Development and Potential*’ Presented at the American Psychiatric Association, Annual Meeting, New Orleans, LA May 2001

The Depravity Standard items were, furthermore, constructed in such a way as to distance themselves from anything that might suggest a perpetrator’s diagnosis or prognosis, so as to avoid prejudices inspired by a particular individual. These approaches aimed at a Depravity Standard that emphasizes fairness over arbitrariness.

In order that the research yield results that reflect *societal attitudes*, in keeping with U.S. Supreme Court directives, the next phases of the research explored which of the 26 intents, victimologies, actions, attitudes would draw a *consensus of support* from the general public as representative of a depraved crime, regardless of a person’s demographic or background.

This Phase B of the research, accessible to this day at www.depravityscale.org, was set up on the WorldWide Web in order to sample the general public in a secure, confidential and identical manner. As such, the Depravity Scale research, as it was known at the time, was the first systematic academic effort to engage citizen input to shape a future sentencing instrument for legislatures and courts.

Data from this survey have contributed to establishing the intents, victimology, actions, and attitudes to be included in the Depravity Standard. Data collection at this website continues, for societal attitudes evolve. The methodology enables the Depravity Standard to reflect updated societal attitudes, even many years after a valid scale would begin use as an instrument of justice.

Almost all of the studied items, in research involving thousands of participants to date, have drawn an overwhelming endorsement for being especially or somewhat representative of depravity. There is, notwithstanding differences among the cultures of different states, remarkable consistency of data across American states.

Some distinctions have emerged in data comparison between American respondents and residents of Great Britain and other countries. Nevertheless, this phase of the Depravity Scale research has demonstrated that **no matter the differences among us personally, ethnically, or spiritually, consensus can be achieved as to what intents, victimology, actions, and attitudes distinguish a heinous or depraved crime.**

Defining the Depravity Standard Items – Implications for Investigators

Items of the Depravity Standard have been carefully defined, in order to inspire evidence-based determinations of whether an item is present. What denotes, for example, “actions that cause grotesque suffering?” Given the ramifications of a jury finding that such was a feature of the crime, determination of this item must be evidence driven. In order to further reduce risk of arbitrariness in decision making, description of this and all items must ensure consistent examination in Court cases everywhere. A description of the item, “actions that cause unusual quality of suffering,” is seen in Table 3.

<p>Table 3 Example of Item Description</p>
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Unusual quality of suffering of the victim; victim demonstrated panic, terror, and helplessness.

Key Distinctions: Victim terror

Description: The key ingredient of this item is the level of emotional suffering endured by the victim during the crime. The presence of post-traumatic stress disorder or acute stress disorder validates the degree of suffering during the crime. However, the absence of these diagnoses in the victim does not necessarily mean that this item is not present.

Alternatively, if it is clear from the available evidence that the deceased victim endured a realistic consideration that he or she would die, or threat to body integrity amidst a period of helplessness, criteria for this item are met. The assessment of this item is more reliant upon history if the aforementioned diagnoses are not later present.

Eligible crimes: Assault, Kidnapping, Murder, Rape, Reckless Endangerment

Sources of information: Victim, perpetrator, and witness statements; victim medical, psychological treatment, and autopsy records; witness psychological treatment records; writings in diaries, emails, message boards, chats, and letters; weapon choices, ligatures and other restraints; crime scene evidence; video or audiotapes.

Examples:

Qualifying Exemplars:

Rape and less frequently attempted rape traumatize victims and are particularly likely to meet the criteria for this item. Assault victims may also experience indelible emotional impact, which is heightened when such attacks occur in places where the experience of powerlessness and helplessness is more acute to the victim (e.g. prison.) Victims of assaults by multiple attackers may also experience a heightened sense of helplessness, and such crimes may manifest this item.

Murders meet the criteria of this item if evidence demonstrates that the victim was helpless and recognized death as destiny. Such cases arise more often in stabbings, where death is not instantaneous. However, there are gun homicides in which the victim clearly experienced terror, helplessness, and anticipation of impending death or serious injury. To that end, stranglings and drownings invariably meet criteria for this item, as do deaths that follow periods of restraint or torture.

Attacks which occur in the course of a person being overwhelmed, restrained, and forced to anticipate death meet criteria for this item.

Arsons and terror attacks may expose many to carnage and their own vulnerability to instant death. Such reactions in survivors, and in the dead who do not pass away quickly, satisfy criteria for this item.

Perverse cases inspire emotional trauma and terror and may also reflect this item. An HIV-positive person who knowingly has unprotected sex with unsuspecting partners causes

significant emotional impact to those individuals when they learn of their seroconversion. Whether seroconversion happens or not is irrelevant; this item's criteria are met. Additionally, a person left to die in a desert, begging for his or her life, endures terror and emotional trauma in fearing that he or she will starve. Even if the victim survives, the perpetrators meet criteria for this item.

Coerced victims reflect terror in their willingness to submit to even bizarre or humiliating exercises in order to stave off their execution. Victims who are told to dig their own graves (even if they survive the ordeal), to unwillingly take part in the torture and beating of others, to engage in exercises that may later cause them considerable torment, or to watch their loved ones being victimized are all crimes where this item's criteria are met.

Disqualifying Exemplars:

This item's criteria are not met when individuals discover the bodies of their loved ones. This unfortunately common occurrence cannot necessarily be attributed to the crime itself, and does not reflect an exceptional event.

Killings where blunt trauma renders a person quickly unconscious do not meet criteria for this item.

Property crimes may create tremendous stress, but do not directly traumatize to the end of satisfying criteria for this item.

Detailed descriptions of items are important guidelines to law enforcement and investigators. Those who investigate crimes have greatest proximity to evidence that reflect on the required evidence for items such as "disrespect for the victim after the fact," or evidence that such an item is not present.

Evidence for the depravity of the crime may be derived from numerous sources of information available to the investigator. Examples of these appear in Table 4.

Table 4
Information sources for Depravity Standard items

Victim's statements
Victim's medical and psychiatric records
Autopsy records
Witness statements
Defendant's statements
Marks on victim's body
Wounds reflecting time of death
Sequence of infliction of wounds
Writings in diaries
Chat rooms and computer documents
Emails, letters
Telephone records
Video or audiotapes

Materials from crime scene Blood spatter Choice of weapons Ligatures

Criminal profiling and even many forensic science methodologies do not reliably guarantee that the same conclusions will be generated by qualified professionals conducting a given examination. This lack of interrater reliability, which has limited the potential for evidence's admissibility, is carefully addressed in the definitions and thresholds of items of the Depravity Standard. A qualified, trained professional who adheres to the guidelines of the Depravity Standard is therefore likely to arrive at the same determination about a crime (low, medium, or high depravity) as another colleague following those same protocols.¹⁰

The descriptions of items also aim to preserve a narrowed class of individuals who truly meet criteria of a Depravity Standard item. These specific parameters preserve the constitutionality of the Depravity Standard. One item was ultimately dropped from consideration – despite overwhelming support of participants in Phase B that it was representative of depravity -- when our research team concluded that evidence for this item would be too difficult to consistently and scientifically distinguish.

The Depravity Standard in Court

Newman et al coined the notion of “super aggravators” – specifically, those aggravators that when present, were more likely to result in a death sentence in a capital eligible case, in Pennsylvania. Super aggravators that the authors cited were:

- (a) the victim was a prosecution witness to a crime committed by the defendant and was killed to prevent his or her testimony
- (b) torture
- (c) significant history of felony convictions for acts of violence
- (d) prior convictions for which sentences of life imprisonment or death were impossible
- (e) prior murder convictions¹¹

The findings are consistent with our findings, from Phase B, of relative severity even of the most severe qualities of a crime. Still, Newman et al were not able to determine that other aggravators were not charged in some cases where their super aggravator factors were present. Moreover, because prosecutors may have selected defendants for capital prosecution because of these aggravators, the findings may say more about prosecutors than jurors or a fair, unbiased system.

Litigation very much uses tried and true experiences; it is also possible that since prosecutors of case in Newman and colleagues' sample found any of these factors to have been

¹⁰ Welner, M “**The Depravity Standard: A Future Role of Forensic and Behavioral Evidence Analysis**” In: Petherick, W. *The Science of Criminal Profiling*, Barnes & Noble. London. 2005 pp 150-152

¹¹ Newman S; Rayz E; Friedman S **Capital sentencing: the effect of adding aggravators to death penalty statues in Pennsylvania** *University of Pittsburgh Law Review*, Spring 2004 v65 i3 p457-506

successful in capital prosecution, they chose future capital prosecution *solely* because of the presence of any or more of these super aggravators in the case history. The research does not demonstrate, however, any aggravators that prosecutors selected that were *not* often associated with a death penalty. Without accounting for selection bias by prosecutors, therefore, conclusions that can be made about jurors and the general public are therefore limited.

Phase B findings that reflected particularly strong endorsement of some items as “especially” depraved point to the conclusion that even among heinous qualities of a crime, some elements are even more heinous than others.

The study is being following up by another protocol, also located at www.depravityscale.org, which aims to ascertain societal standards for how individual items should be *weighted*, when present in a crime. Establishing weight of a given feature will enable any crime to be distinguished according to the evidence unique to it. Such distinctions will assist courts to understand the level of depravity of any crime, relative to other crimes, thus compensating the lack of juror exposure to crime.

Table 5 The Depravity Standard - Items Under Study		
Item	Aspect of the crime reflected	Diagnostic correlate
Intent to emotionally traumatize the victim, maximizing terror, through humiliation, or to create an indelible emotional memory of the event	Intent	Sadism
Intent to maximize damage or destruction, by numbers or amount if more than one person is victimized, or by suffering and degree if only one person is victimized	Intent	Psychopathy, Malignant Narcissism, Necrophilia
Intent to cause permanent physical disfigurement	Intent	Sadism
Intent to carry out a crime for excitement of the criminal act	Intent	Psychopathy
Carrying out crime in order to gain social acceptance or attention, or to show off	Intent	Psychopathy
Carrying out a crime in order to terrorize others	Intent, Victimology	Sadism

Intentionally targeting victims based upon prejudice	Victimology	Malignant Narcissism
Targeting victims who are not merely physically vulnerable, but helpless	Victimology	
Exploiting a close and trusting relationship to the victim	Victimology	Antisocial Personality Disorder, Psychopathy
Excessive response to trivial irritant; actions clearly disproportionate to the perceived provocation	Actions	Antisocial Personality Disorder, Psychopathy
Carrying out attack in unnecessarily close proximity to the victim	Actions	
Indulgence of actions, inconsistent with the social context	Actions	Psychopathy
Unusual quality of suffering of the victim; victim demonstrated panic, terror, and helplessness	Actions	Sadism
Prolonging the duration of a victim's physical suffering	Actions	Sadism
Unrelenting physical and emotional attack; amount of attacking	Actions	Sadism, Malignant Narcissism
Exceptional degree of physical harm; amount of damage	Actions	Sadism
Influencing criminality in others to avoid prosecution or penalty	Actions	Antisocial Personality by Proxy
Influencing depravity in others in order to destroy more	Actions	Antisocial Personality by Proxy
Falsely implicating others, knowingly exposing them to wrongful penalty and the stress of prosecution	Attitudes	Psychopathy, Antisocial Personality
Disregarding the known consequences to the victim	Attitudes	Psychopathy
Pleasure in response to the	Attitudes	Sadism, Necrophilia

actions and their impact		
Projecting responsibility onto the victim; feeling entitlement to carry out the action	Attitudes	Narcissistic Personality
Disrespect for the victim after the fact	Attitudes	Sadism
Indifference to the actions and their impact	Attitudes	Psychopathy, Antisocial Personality

Using the Depravity Standard

What an offender did can be notable for being unremarkable, just as a crime can distinguish itself as unforgettable. Once formulas are calculated to account for the weights of items, the Depravity Standard will be available for use in courts, parole and tribunals engaging all crimes across the spectrum.

The Depravity Standard is meant only to guide, and to not replace, a trier of fact. In order to protect the responsibility of the jurors, crimes will, according to the weights of items present, be classified relative to other such crimes as “low depravity,” “medium depravity,” or “high depravity,” rather than presenting to the court a numerical threshold of “depraved” or “not depraved.”

With a validated and reliable Depravity Standard, prosecuting authorities will be required to distinguish a *basis* for charging a crime as “depraved,” “heinous,” or “evil.” If the evidence collected by investigators points to “exploiting an emotionally vulnerable or trusting relationship,” then – and only then – can the sentencing body consider “depravity.” The defense will have an opportunity to present its own evidence that, for example, “exploiting an emotionally vulnerable or trusting relationship” did not distinguish that crime, and therefore, that depravity is not present.

The availability of substantive evidence to be considered by a sentencing authority weighing “depravity” is paramount. If no evidence is available with which to assert the presence of an item of the Depravity Standard, then a claim that a crime was “evil,” “heinous,” “vile” or the like can not be made in a just system.

Investigators of the depravity of a crime must be mindful to a number of key subtleties. Determination of intent has always been the most elusive aspect of crime. Examination of possible depraved intent must rely upon evidence, not presumption. This challenge compels the investigator to utilize evidence available from diverse forensic sciences, from forensic pathology to forensic anthropology, to forensic psychiatry. Forensic psychiatric interviewing of defendants and other witnesses may provide particularly key evidence relating to “depraved,” “heinous,” “atrocious”, or “horribly inhuman” intent items.

Case Example – Intent & Victimology Items
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A 40 year-old white unemployed male is arrested for the murder of a woman found dead days after she disappeared. It is his first arrest for murder; he is a known gang affiliate, and has a history of assault. The 5'0 Asian victim, buried in a shallow grave in a wooded area, suffered multiple traumatic blows. There is evidence the victim suffered a fractured jaw, and she sustained numerous stab wounds to the hands, face, neck, and torso.

Analysis: A number of intent items could potentially be invoked here, at first glance. Superficial neck wounds may indicate that the assailant taunted his victim before killing her. The number of blows may indicate a desire to maximize damage. Facial wounds may indicate an attempt to disfigure. A small enough female may indicate a victim targeted because of her physical vulnerability. Without motive, the crime may be carried out for the excitement of the attack. Or, as a gang member, the crime may be carried out in order to gain status within the gang order. Or if ethnic tensions contributed, a violent crime borne of prejudice.

A focus on the intent of the actor reflects that cameras last recorded her leaving a cash machine near a busy shopping area. The victim was not sexually assaulted. Autopsy shows that she died of the effects of a lethal stab wound. Interviewed in connection with a pre-sentencing evaluation, the defendant states that he saw the victim leave the cash machine, and he needed money. He states he robbed the victim by approaching her as she walked to her car, and demanded her money. When she declined, he punched her in the face, knocking her to the ground. When she continued to struggle, he drew a knife and pinned her down.

The victim paused for a moment, then, began to struggle and scream. The defendant states that at that time he decided to kill her. He acknowledges that he was furious when some of her blows hurt him. He states that he realized, at that point, that he lost control of the victim and attempted to silence her. According to the defendant, he stabbed her until she stopped moving, attempting to slit her throat and to stab her in the heart. Eventually he inflicted lethal injury.

He reports that he told no one about the crime. Close investigation of his background revealed violence within his romantic relationships, but otherwise no incidents or expression of ethnic hatred.

Ultimately, evidence demonstrated that the crime did not reflect any of the items of depraved intent or victimology.

Several areas of the Depravity Standard potentially overlap, as noted in Table 6. Evidence suggesting one such item must carefully be distinguished from evidence for the other item, that the item is not present, or that both items are present.

Table 6
Areas of potential overlap

- Actions that cause physical damage and actions that cause grotesque

suffering

- Targeting victims who are physically vulnerable, and targeting victims who are emotionally vulnerable
- Intent to terrorize and intent to cause emotional pain

With respect to Depravity Standard actions, forensic pathology, emergency medicine, radiology, anthropology, dentistry, and criminalistics are particularly important contributors. Not surprisingly, analysis of actions in a crime must control for a prolonged confrontation, in which damage and injuries multiply while a struggle occurs, as opposed to an unopposed sequence of attack. These forensic sciences contribute to understanding what weapon was used, how it was used, and how often it was used.

Typically, crime investigation focuses least upon the attitudes of a criminal about his crime. More commonly, however, the absconding offender is not witnessed or communicating his attitudes. Post-crime communications, which police and forensic psychiatric investigation may elicit from interviewing skills, are often the most useful evidence with which to consider attitude items.

Investigation of attitude about the crime focuses on the offense's aftermath. The Depravity Standard investigation uses a model of the life cycle of a crime encompassing the before, during, and after to ascertain evidence relating to intents, victimology, actions, and attitudes.

The refinement of the Depravity Standard will thus merge the potentials for evidence-based science with a fundamental need in justice. The higher scrutiny prompted by the Depravity Standard's use in sentencing enables a closer scrutiny of crimes, and further protects against key evidence being overlooked.

The more fairly Courts distinguish the worst of crimes, the more readily courts balance the aims of punishment with sensitivity and understanding. Once again, classification serves the interest of justice at every stage.

¹ 428 US 153 (1976)