The Depravity Standard II: Developing a measure of the worst of crimes

Michael Welner[a,*], Kate Y. O'Malley[a], James Gonidakis[a], Alisha Saxena[b,1], James Burnes[a]

[a] The Forensic Panel, 224 West 30th Street, Suite 806, New York City, NY 10001, United States
[b] Teachers College, Department of Clinical Psychology, 428 Horace Mann, New York, NY 10027, United States

ABSTRACT

Purpose: Aggravating factors in United States criminal codes, such as "heinous," "atrocious," "cruel," "vile," or "depraved," distinguish elements of a crime that warrant more severe sentencing. These terms remain vaguely defined and arbitrarily applied. The Depravity Standard research was designed to develop a measure of societal standards for what elements make a crime depraved.
Methods and results: Thematic analysis of over 100 appellate court decisions deliberating depravity in crime was performed. Additional input drew from 91 professionals and students in forensic disciplines. 26 items reflecting depravity emerged for further study. Next, a survey of U.S. participants ($n = 25,096$) was conducted to gauge public consensus for depravity in these items. All items received majority support for being somewhat or especially depraved (69.5%–99.1% agreement). A final set of items was then applied to 770 murder cases to refine the definitions and qualifying and disqualifying examples for each item.
Conclusions: Case data from 770 murder cases informed the development of a Depravity Standard of 25 items with detailed examples of the intent, actions, victim choice, and attitudes, distinct to what society endorses as the worst of crimes. The items draw content validity from validation studies using actual cases provided by U.S. jurisdictions.

1. Introduction

Criminal sentencing codes in the United States feature 'aggravating factors,' and distinguish elements of a crime that warrant more severe penalty. Aggravated rape, for example, is eligible for harsher punishment than rape without this qualifier. The presence of aggravators can add years to murder, violent crime, sex crime, and even non-violent felony sentences.

The distinction by statute of a crime as "heinous, atrocious, or cruel (HAC)" and less commonly denoted instead as "vile," "horribly inhuman," or "depraved," is one such aggravator. Whatever the wording, which differs by state, these statutes attempt to distinguish the worst of crimes qualified for the worst of punishment.

HAC aggravators have drawn the most scrutiny in murder cases, particularly when the potential sentence is the death penalty. In *Furman v. Georgia* (1972), the United States Supreme Court held that death sentences could only be applied to a narrowed class of those convicted of murder. Aggravators such as the crime's distinction as "heinous" have been developed in order to differentiate a narrowed class of offenders. HAC aggravators have been regularly challenged in higher courts over the years, but remain an established, closely scrutinized,

and upheld component of how the law accounts for what is deemed to be criminally evil.

Although HAC aggravators have survived appellate contest, criminal defendants regularly challenge the statutes as vague and arbitrary. In the United States Supreme Court case of *Gregg v. Georgia* (1976), the defense argued that this particular aggravating factor violated *Furman* because it was so broad as to allow capital punishment to be applied in any murder case. The Court disagreed and upheld the aggravator. The same decision did acknowledge, however, that juries are burdened with the task of weighing factors in a crime, despite lack of expertise and experience with sentencing.

What is "heinous?" What is an "atrocious crime?" What makes a crime "especially depraved?" Even if these terms signify criminal evil, the Supreme Court has overturned findings of this aggravator when the state law or review process allows for an impermissibly vague definition. The Court in *Godfrey v. Georgia* (1980) stipulated that jurors must receive instruction on how to apply the otherwise ambiguous language in narrowing constructions.

In *Walton v. Arizona* (1990), the need to clarify the HAC aggravators was once again revisited by the Supreme Court. Specifically, the Court ruled that aggravating factors need to be identified through "objective

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circumstances." Invoking *Furman*, the Court required that states "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance'" (*Walton v. Arizona*, 1990, at 664).

Courts and legislatures have since wrestled with redefinitions of HAC aggravators. These efforts to date have secured the HAC aggravator from fundamental challenge. However, even as the classes of those eligible for the most severe punishment are narrowed, the statutes remain very limited in their specificity. Even when descriptive and narrowing, the existing HAC-related aggravators neither account for the range of evidence that is available to investigators, nor apply themselves to the potential range of case scenarios (Welner, O'Malley, Gonidakis, & Tellalian, 2018).

In the absence of more evidence-driven guidance, jurors and corrections officers are vulnerable to diversionary or theatrical arguments made for or against depravity that may play to biases and presumptions. Decisions on heinousness of a crime that are uninformed or underinformed by a vacuum of pertinent facts and evidence are necessarily vulnerable to bias and prejudice, a problem the courts themselves have identified (Welner et al., 2018).

Moreover, distinctions defined by legislative statute were largely arrived at by political negotiation and the personal orientation of those few who craft them. No scientific methodology was undertaken to validate any of the definitions enacted for the HAC terms. These factors further contribute to arbitrariness, when justice demands fairness.

Science regularly develops criteria that establish internal and external reliability, and provide means with which to assess facts fairly no matter who is utilizing those criteria. Forensic science, which promotes certainty through the methodological study of converging sources of evidence, can advance rigor and reliability in the determination of depravity in criminal cases.

Moreover, the different forensic sciences scrutinize each of the phases of crime, contributing evidence of motivation and planning, implementation, and the aftermath. Each of these phases has distinctive history and details and differentiates one crime from the next. Data derived through the different forensic sciences, as well as more detailed case investigation, afford the depth of detail needed for informing the deliberations of jurors.

2. The Depravity Standard

The Depravity Standard research aims to establish a valid and reliable approach to guide judges and jurors assessing the relative severity of a crime. It assists juries deliberating sentencing, and judges, corrections professionals and government officials responsible for early release decisions. The research methodology responded to directives of earlier Supreme Court opinions aiming to narrow the distinction of the worst of the worst in crime. Improving upon the prevailing challenges of vague and often inadequate descriptions of "heinous" and similar terminology, The Depravity Standard research studies and incorporates components preceding and following the crime, treating the criminal act as an arc rather than a specific moment that otherwise occurred in a vacuum of thought and action. The degree of detail thus available would far better inform a decision-maker about how a crime was or was not remarkable when compared to similar crimes. An evidence-driven approach would ensure fairness rather than arbitrariness, as mandated by the aforementioned decisions – in a way that is consistent across both jurisdiction and state lines.

The research informs a reference to provide guidance to the otherwise inexperienced trier of fact. The Depravity Standard's higher magnification of evidence of a perpetrator's intent, actions, choice of victim, and attitude about the victim and crime enables judges and juries to remain blind to factors that may bias a decision such as the perpetrator's race, ethnicity, gender, religion, sexual orientation, education level, and socioeconomic status.

The Depravity Standard has evolved through a series of five studies.

The first study established items of depravity for consideration, through a review of appellate court cases upheld as "heinous, atrocious, or cruel." Students and professionals in the industry provided additional potential expressions of the most severe murder scenarios based on a perpetrator's intent, actions, and attitudes.

The second study involved an online survey in which the American general public rated whether each of the items from the first study were sufficiently depraved to warrant inclusion in a Depravity Standard. The survey was constructed based on categories of intent, actions, attitude, and victim choice informed by the first study. In addition, the survey collected extensive and broad-ranging demographic information. This was done to ensure that the data informs conclusions about societal attitudes that accounted for a diversity of life experiences and personal backgrounds.

The third study involved an examination of closed felony case files from different jurisdictions across several American states. This comprehensive review enabled further refinement of The Depravity Standard item definitions and their qualifying and disqualifying descriptions. Large numbers of adjudicated guilty cases provided the reservoir for data-mining evidence informing the presence or absence of the items under study. These first three studies are presented in this paper.

The fourth and fifth studies address the validation and application of The Depravity Standard. These will be discussed in greater depth in a companion paper to allow for due attention and description of these studies. In brief, Study 4 addresses interrater reliability of The Depravity Standard items when applied to actual closed felony cases. Study 5 incorporates public survey data depicting how each item should be weighed for severity as it compares to the other items. A scoring mechanism is presented for comparing severity of depravity across cases.

The final results compiled from these five studies reflect a foundation of public opinion that informs our understanding of societal standards for depraved crime, as recommended by the U.S. Supreme Court in *Furman*. This research is the first forensic science or justice project developed in which society (including future jurors, victims and their families, attorneys, judges, offenders, and the broader community) collectively shapes future criminal sentencing and early release decisions. In so doing, The Depravity Standard research contributes to public confidence in the fairness of a guide developed for application to that same public expected to serve on a jury, or to be more directly affected by sentencing or release decisions as victims, perpetrators, or members of respective families.

3. Study 1 Phase A: item development

Study 1 aimed to ascertain what elements of a crime reflect depravity and which qualities of crime warrant further investigation for possible inclusion in a Depravity Standard applicable to case assessment. The first study used higher court rulings as a starting point to better inform the often ambiguous HAC aggravating factors (and their synonyms such as "vile," "horribly inhuman," and "depraved") as they apply in actual litigation.

3.1. Method

3.1.1. Sample & data collection

In a comprehensive *Lexis* search, the researchers identified 165 Appellate Court cases that upheld HAC aggravating factors and their statutes, spanning two decades from 1982 to 2002. As the laws' terminology differs across states, the search terms were entered as "heinous OR atrocious OR cruel OR vile OR inhuman OR horrible OR depraved." Appellate Courts not only often provide lengthy written opinions that interpret the statutes in applying them, but also provide a foundation upon which future courts rely and cite. Since subsequent higher courts were mindful of the opinions of these earlier higher court

decisions, the authority of the law's direction was incorporated as a foundation of The Depravity Standard serving future courts.

The cases were selected conditional on the explicit rationale detailed by the court as a basis for its decision that HAC aggravators were present. Those cases for which that rationale was not provided or otherwise not immediately clear were not included in the initial 165 cases for review. Six of the cases were excluded from review when it was found upon closer scrutiny that the basis of the court's decision did not speak to any HAC aggravating statutes. Of the remaining 159 cases, a random sample of 110 cases were extracted and reviewed.

3.1.2. Procedure

Of those cases reviewed, data was mined and entered into an Excel spreadsheet under the following variables: state; year; case name; stated standard used by the court to classify the aggravating factor; the definition of the standard; the type of case (nature of the crime, weapon used, relationship to the victim, the intent of the perpetrator, accomplices, the mode of the crime); the basis for upholding the decision; and additional notable details.

3.2. Data analysis & results

Thematic analysis was employed by the Principal Investigator to distill judges' decisions into similar groupings. This analysis focused attention on the specific elements of each crime that the judges cited as evidence for HAC aggravating factors. Once coded, the qualitative data highlighted a focus on 15 elements in crimes that occurred before, during, and after the commission of the crime. These phases of a crime conform roughly to the *intent* and *victim choice*, the *actions* of the crime, and a perpetrator's *attitude* about the crime committed. Three additional raters later studied these 110 cases, and independently coded the same original 15 themes. For a theme to be deemed present in a case, at least two additional raters must have identified it as present. These fifteen clear and distinct themes emerged to represent unique elements of crimes considered to be 'depraved' (Table 1).

4. Study 1 Phase B: item development

Higher court decisions informed components of crime based upon the scenarios and fact pattern of a given case. However, the universe of crime encompasses myriad possible examples of intent, victim choice, actions, and attitudes. An applicable Depravity Standard would only be a guide to judges, jurors, and corrections decision-makers if it were to account for the range of potential crime scenarios in which elements of depravity may be present. The goal was to create a Depravity Standard that was a net for capturing any case with elements of criminal depravity. At the same time, the research aim of creating a narrowed class of what represented depravity in crime would not incorporate ubiquitous crime qualities that rendered distinction of the worst of crimes difficult.

Phase B was designed to enable the application of a Depravity Standard to account for the full range of criminal scenarios. The goal in Phase B was to capture any additional elements of a crime that may be depraved for further study that were not featured in the 110 appellate case opinions studied in Phase A. Additional input from the academic and practitioner communities with case experience would expand the range of features of crime that the research could evaluate for potential inclusion in a Depravity Standard, focusing on specific themes of intent, victim choice, actions, and attitudes.

4.1. Method

4.1.1. Participants

A convenience sample of 101 participants took part in Phase B of Study 1. Participants were recruited during guest lectures on the topic by the Principal Investigator at law schools and academic forums. Forensic science colleagues were also emailed invitations to take part in the research protocol. Participation was voluntary, and no payment or credit was provided for participation. Participants could elect not to respond to the questions after volunteering to take part, and could withdraw from the study at any time. A brief, plain-language statement explaining the research was provided verbally at lectures and in written form in an accompanying letter for email recruitment. Consent was implied by completing the voluntary survey and returning it to the researchers.

Of the 101 participants who returned the forms, $n = 10$ were incomplete and removed from analysis (participants completed the demographic section but submitted the forms online without providing responses to the questionnaire in the next section). Gender and Occupation distributions are presented in Table 2.

4.1.2. Procedure

Participants were asked to read a vignette about a fictitious crime in which someone was killed. Participants responded to three questions relating to the crime's "before," "during," and "after" stages that paralleled the analysis of Phase A: *What are examples of motivations or intentions of the hypothetical crime perpetrator that you would consider to be depraved?* (before)*; What are examples of actions reflected in the crime itself that would reflect a depraved act?* (during); and *What are examples of behaviors and attitudes around the time of the crime that you would consider to be depraved?* (after). Participants were asked to write as many possible suggestions as they felt appropriate in their own words. Forms were then handed to the Principal Investigator at the end of lectures, or emailed to the provided email address. Participants were thanked for their participation and invited to learn more about the research or to contact the researchers with any follow-up questions (at an online destination, now www.depravitystandard.org).

Table 1
Study 1 Phase A themes.

1.	Intent to emotionally traumatize the victim
2.	Intent to maximize damage
3.	Intent to permanently disfigure
4.	Planning not only the act but the depravity
5.	Choices were available that did not involve depravity
6.	Influencing depravity in others to avoid penalty
7.	Influencing depravity in others to overcome personal limitations
8.	Prolonging a victim's suffering
9.	Unrelenting physical and emotional harm
10.	Degree of physical harm
11.	Quality of the suffering of the victim
12.	Depravity inconsistent with social context; indulgence of actions
13.	Perpetrator shows response of indifference, satisfaction, or satiety
14.	Falsely accusing others of depraved actions, deliberately exposing innocent to penalty
15.	Perpetrator projects responsibility for depravity onto victim; entitlement

Table 2
Demographics of participants ($n = 91$)

Gender	
Female	$n = 34$
Male	$n = 52$
Not reported	$n = 5$
Occupation	
Attorney	$n = 2$
Forensic Science professionals	$n = 5$
Judge	$n = 6$
Nurse	$n = 6$
Professor (Law)	$n = 3$
Psychiatrist (Clinical/Forensic)	$n = 4$
Psychologist (Clinical/Forensic)	$n = 14$
Social worker/Counselor	$n = 2$
Student (Psychology/Law/Criminal Justice)	$n = 38$
Other	$n = 7$
Not reported	$n = 4$

4.2. Data analysis & results

Responses were entered into an Excel spreadsheet for coding using thematic analysis by the Principal Investigator and three additional Research Assistants. For a theme to be accounted, at least two additional raters must have identified it as present. Eleven additional themes were identified in total (Table 3).

The additional themes brought the total number of depravity items for consideration to 26, distinguished as intent items, action items, victim choice items, and attitude items (Table 4).

5. Study 2: consensus of depraved items

In *Gregg v Georgia* (1976), the Supreme Court ruled it necessary for any aggravating factors used in capital sentencing be grounded in, and a reflection of, societal standards. Study 2 engaged this directive through the expansive reach of online surveys. The Supreme Court's aspirations of evidence for societal standards would be directly researched, rather than relying upon lawmakers and special interest groups divining public sentiment of what are the worst qualities of crime. The current challenge faced by courts forced into arbitrarily interpreting statutes would be alleviated by input from the general public on these standards.

5.1. Method

5.1.1. Participants

Participants were 30,600 respondents from around the world. As the survey was online, it was accessible by anyone who elected to take part. However, efforts to disseminate information about the study targeted U.S. residents for participation. Individual entries that were known to be fake, such as invalid test responses by researchers, and entries including clearly frivolous demographics, incomplete surveys, and outliers with extreme response sets were removed. Additionally, data was removed for participants who reported that they did not consider themselves fluent in English ($n = 266$) and participants under the age of 18 who therefore were ineligible to serve on a jury[2] ($n = 630$; 15 participants were under 18 and did not consider themselves fluent in English, i.e. $n = 615$ were removed in this step). The final sample included 29,719 unique participants. The most represented countries were the United States ($n = 25,096$), Canada ($n = 1397$), England ($n = 1006$), Australia ($n = 604$), and Denmark ($n = 271$).

This paper reports results for U.S. participants, given the focus on its application to American courts. 39.5% percent of U.S. participants were male ($n = 9894$) and 60.5% were female ($n = 15,148$; $n = 54$ did not report gender). For those that reported their location ($n = 25,036$), participants took part from all fifty states as well as the District of Columbia. The most represented states were California ($n = 2777$), Texas ($n = 1764$), New York ($n = 1710$), Florida ($n = 1511$), Ohio ($n = 1176$), Pennsylvania ($n = 1159$), Illinois ($n = 948$), Virginia ($n = 876$), Minnesota ($n = 767$), Massachusetts ($n = 758$), Washington ($n = 709$), and Georgia ($n = 706$). Additional demographic characteristics of participants can be seen in Table 5. Not all participants elected to answer all of the demographic questions.

5.1.2. Procedure

In order to determine if The Depravity Standard items collected from Study 1 reliably captured the general public's collective construct of criminal depravity, an online open survey was used. The survey was designed to measure participants' perception of the level of depravity for each of the 26 potential items of The Depravity Standard. Questionnaire items within the survey were constructed from Study 1 of the research.

[2] Juror Qualifications, Exemptions and Excuses. (n.d.). Retrieved March 3, 2015, from http://www.uscourts.gov/FederalCourts/JuryService/JurorQualificaitons.aspx.

Table 3
Study 1 Phase B themes.

1. Carrying out a crime in order to terrorize others
2. Disregard for the victim's feelings or consequences of the crime on the victim
3. Targeting the victim based on prejudice
4. Targeting victims who are not merely vulnerable, but helpless
5. Carrying out a crime in order to gain social acceptance; crime was to show off
6. Carrying out a crime in spite of a close and trusting relationship to the victim
7. Escalating the depravity; inspiration for more
8. Carrying out an attack with unnecessarily close physical contact
9. Disrespect for the victim after the fact
10. Intent to carry out a crime for excitement of the act alone
11. Extreme attack in response to trivial irritant; actions disproportionate to the provocation

Table 4
Items under consideration at completion of Study 1.

Item	Description
1	Intent to emotionally traumatize the victim, either through humiliation, maximizing terror, or creating an indelible emotional memory of the event
2	Intent to maximize damage or destruction, by numbers or amount
3	Intent to cause permanent physical disfigurement
4	Intent to carry out a crime for excitement of the act alone
5	Carrying out a crime in order to terrorize others
6	Disregard for the victim's feelings or consequences of the crime on the victim
7	Targeting the victim based on prejudice
8	Targeting victims who are not merely vulnerable, but helpless
9	Carrying out crime in order to gain social acceptance or attention; crime to show off
10	Influencing criminality in others to avoid prosecution or penalty
11	Influencing depravity in others in order to destroy more
12	Carrying out a crime in spite of a close and trusting relationship to the victim
13	Escalating the depravity; inspiration for more
14	Prolonging the duration of a victim's suffering
15	Carrying out an attack when unnecessarily close physical contact
16	Extreme attack in response to trivial irritant; actions disproportionate to the provocation
17	Unrelenting physical and emotional attack; amount of attacking
18	Exceptional degree of physical harm; amount of damage
19	Unusual quality of suffering of the victim; victim demonstrated panic, terror, and helplessness
20	Indulgence of actions, inconsistent with the social context
21	Satisfaction or pleasure in response to the actions and their impact
22	Falsely accusing others of actions, deliberately exposing innocent to penalty (regardless of the outcome of the investigation of the falsely accused)
23	Projecting responsibility onto the victim; feeling entitlement to carry out the action
24	Disrespect for the victim after the fact
25	Indifference to the actions and their impact
26	Choices for carrying out the illegal act were available that did not involve depravity

The study also aimed to account for the many individual qualities that can potentially influence differences in how participants gauge depravity. An expansive list of demographics was therefore requested from participants. The list of these demographics was developed with the assistance of colleagues from a range of specialties in law and forensic science. Because public attitudes about the worst in crime are so shaped by different aspects of unique background and experience, an account of the distinctive features of study participants contributes confidence in the endeavor of fashioning a societal standard.

Participation in the online surveys was voluntary. Various news outlets published articles and interviews with the Principal Investigator about The Depravity Standard, including instructions for viewers to access the survey.

Table 5
Demographics.

General demographics	
Age of participants when survey completed ($N = 25,096$)	
18–24	$n = 3644$ [14.5%]
25–34	$n = 5597$ [22.3%]
35–44	$n = 5481$ [21.8%]
45–54	$n = 5013$ [20.0%]
55–64	$n = 3645$ [14.5%]
65–74	$n = 1252$ [5.0%]
75 +	$n = 245$ [1.0%]
Nondisclosed/Error	$n = 219$ [0.9%]
Education ($n = 17,310$)	
Doctoral	$n = 1076$ [6.2%]
Graduate Degree	$n = 3398$ [19.6%]
Undergraduate Degree	$n = 7243$ [41.8%]
High School Diploma/GED	$n = 5296$ [30.6%]
Some High School	$n = 297$ [1.7%]
Income ($n = 1405$)	
< $25,000	$n = 348$ [24.8%]
$25,000–$50,000	$n = 303$ [21.6%]
$50,000–$75,000	$n = 227$ [16.2%]
$75,000–$100,000	$n = 220$ [15.7%]
> $100,000	$n = 307$ [21.9%]
How would you classify the influence of religion in your life and in your thinking? ($n = 24,295$)	
Not traditional, but spiritual	$n = 11,208$ [46.1%]
Not traditional, not spiritual	$n = 5944$ [24.5%]
Very traditional, very spiritual	$n = 5366$ [22.1%]
Very traditional, not spiritual	$n = 1777$ [7.3%]
Community type ($n = 24,874$)	
Rural	$n = 4123$ [16.6%]
Suburban	$n = 12,584$ [50.6%]
Urban	$n = 8167$ [32.8%]
Ethnicity ($n = 23,021$)	
Asian	$n = 405$ [1.6%]
Black	$n = 703$ [2.8%]
Hispanic	$n = 917$ [3.7%]
Native American	$n = 274$ [1.1%]
White (Caucasian)	$n = 20,722$ [82.6%]

Profession ($n = 14,389$)

Administrative and Clerical $n = 1138$	Pathologist - Forensic $n = 14$
Attorney - Civil $n = 286$	Pathologist - Nonforensic $n = 10$
Attorney - Criminal Defense $n = 269$	Professor - Behavioral Sciences $n = 161$
Attorney - Criminal Prosecution $n = 62$	Professor - Criminology $n = 63$
Civil Service $n = 111$	Professor - Law $n = 28$
Clergy $n = 76$	Professor - Medicine $n = 54$
Computers/IT $n = 1043$	Professor - Policy & Social Sciences/Other $n = 205$
Construction $n = 113$	Psychiatrist/Psychologist - Forensic $n = 180$
Corporate – Executive/Professional $n = 648$	Psychiatrist/Psychologist - Nonforensic $n = 222$
Corrections Officer $n = 39$	Real Estate $n = 133$
Customer Service $n = 305$	Retail/Wholesale/Sales $n = 561$
Financial Services $n = 400$	Small Business Owner $n = 319$
Gov - Executive - Federal $n = 105$	Social Worker $n = 502$
Gov - Executive - Local $n = 55$	Student - Doctoral $n = 168$
Gov - Executive - State $n = 56$	Student - Graduate $n = 587$
Gov - Legislative - Local $n = 15$	Student - HS $n = 94$
Gov - Legislative - State $n = 18$	Student - Law $n = 280$
Homemaker $n = 606$	Student - Medical $n = 37$
Hospitality/Food Services $n = 267$	Student - Undergrad $n = 2043$
Human Resources $n = 137$	Teacher - K12 $n = 587$
Judge – Local/State $n = 14$	Telecommunications $n = 130$
Law Enforcement $n = 288$	Toxicologist $n = 8$
Media $n = 274$	Trade Worker/Artisan $n = 123$
Military $n = 196$	Transportation $n = 118$
Nurse $n = 709$	Unemployed $n = 532$

Legal demographics

Do you oppose the death penalty, without exception? ($N = 23,487$)	
Yes	$n = 6312$ [26.9%]

Table 5 (*continued*)

General demographics	
No	$n = 17,175$ [73.1%]
Has a close family member ever been sentenced to prison? ($N = 17,312$)	
Yes	$n = 3335$ [19.3%]
No	$n = 13,977$ [80.7%]
Have you ever been sentenced to prison? ($N = 17,315$)	
Yes	$n = 331$ [1.9%]
No	$n = 16,984$ [98.1%]
Have you/family member ever been a victim of violent crime? ($N = 25,044$)	
Yes	$n = 7928$ [31.7%]
No	$n = 17,116$ [68.3%]

Due to rounding, some percentages may not total one hundred.

The survey presented participants with the 26 items and definitions developed in Study 1, which were further refined for clarity (see Table 6), along with qualifying and disqualifying criteria as they related to the context of the crime. These initial qualifying and disqualifying examples were devised from the appellate court decisions used in Study 1, and from the specific examples provided by participants in Study 1 Phase B. Participants rated each of the items as either "Not Depraved," "Somewhat Depraved," or "Especially Depraved."

For the intent items, participants were asked to consider whether the item was present in a case, whether or not the victim of the crime actually experienced the consequences of the offender's intent. Once the demographics and survey questions were completed, participants were asked if all information entered was correct, and they were invited to log out of the survey.

5.2. Data analysis

Each of The Depravity Standard items presented in the survey was scored for the percentage of participants that rated it "Not Depraved," "Somewhat Depraved," or "Especially Depraved," and again for the percentage of participants that rated it "Not Depraved" versus at least somewhat depraved ("Somewhat Depraved" and "Especially Depraved" combined). This analysis assists in determining both which items warrant further investigation in subsequent studies, and also which are not reflective of depravity and should be removed.

Additionally, a one-way ANOVA on the U.S. states with the largest participant samples was performed. The purpose of this analysis was to determine if US participants attributed similar overall scores of depravity for each of the items, regardless of region of residency. For example, do participants from a state such as Texas have similar views on depravity compared to California, despite the cultural differences between those states?

5.3. Results

The percentage of overall depravity, calculated as the combined score of "Especially Depraved" and "Somewhat Depraved," and subsequent ranking of 'Most Depraved' to 'Least Depraved' item can be seen in Table 7 for participants aged 18 years and older in the U.S. These data indicate that the general public views each of the items as at least somewhat, if not especially depraved with the lowest percentage (Item 20, 69.5%), still earning majority support by the public.

The one-way ANOVA conducted on the 12 highest participating US states (California, Florida, Georgia, Illinois, Massachusetts, Minnesota, New York, Ohio, Pennsylvania, Texas, Virginia, and Washington) revealed a non-significant Levene's statistic ($F (9, 12,399) = 0.304$, $p = 0.974$), meaning the assumption of homogeneity of variance was not violated. The ANOVA was not statistically significant, indicating that participants rated the items with similar overall scores of depravity regardless of state residency ($F (9, 12,399) = 0.622$, $p = 0.779$).

Item 26 (Choices for carrying out the illegal act were available that

Table 6
List of Depravity Standard items.

Item number	Item description
1	Intent to emotionally traumatize the victim, maximizing terror, through humiliation, or intent to create an indelible emotional memory of the event – INTENT
2	Intent to maximize damage or destruction, by numbers or amount if more than one person is victimized, or by degree if only one person is victimized – INTENT
3	Intent to cause permanent physical disfigurement – INTENT
4	Intent to carry out a crime for excitement of the criminal act – INTENT
5	Targeting victims who are not merely vulnerable, but helpless – VICTIM CHOICE
6	Exploiting a necessarily trusting relationship to the victim – VICTIM CHOICE
7	Influencing depravity in others in order to destroy more – INTENT
8	Crime reflects intent of progressively increasing depravity – INTENT
9	Carrying out crime in order to terrorize others – INTENT
10	Carrying out crime in order to gain social acceptance or attention, or to show off – INTENT
11	Influencing criminality in others to avoid prosecution or penalty – INTENT
12	Disregarding the known consequences to the victim – ACTION
13	Intentionally targeting victims based upon prejudice – VICTIM CHOICE
14	Prolonging the duration of a victim's physical suffering – ACTION
15	Unrelenting physical and emotional victimization; amount of victimization – ACTION
16	Exceptional degree of physical harm; amount of damage – ACTION
17	Unusual and extreme quality of suffering of the victim, including terror and helplessness – ACTION
18	Indulgence of actions, inconsistent with the social context – ACTION
19	Carrying out crime in unnecessarily close proximity to the victim – ACTION
20	Excessive response to trivial irritant; actions clearly disproportionate to the perceived provocation – ACTION
21	Pleasure in response to the actions and their impact – ATTITUDE
22	Falsely implicating others, knowingly exposing them to wrongful penalty and the stress of prosecution – ATTITUDE
23	Projecting responsibility onto the victim; feeling entitlement to carry out the action – ATTITUDE
24	Disrespect for the victim after the fact – ATTITUDE
25	Indifference to the actions and their impact – ATTITUDE
26	Choices for carrying out the illegal act were available that did not involve depravity - INTENT

Table 7
Somewhat and especially depraved results by items.

Item order (Most Depraved to Least)
Item 1 (99.1%)
Item 14 (99.1%)
Item 17 (99.0%)
Item 3 (98.9%)
Item 8 (98.5%)
Item 15 (98.5%)
Item 16 (98.3%)
Item 5 (97.4%)
Item 26 (96.9%)
Item 18 (96.8%)
Item 21 (95.8%)
Item 6 (95.7%)
Item 2 (95.1%)
Item 24 (94.2%)
Item 4 (92.9%)
Item 7 (92.8%)
Item 25 (85.9%)
Item 9 (85.2%)
Item 11 (84.3%)
Item 10 (83.6%)
Item 12 (82.9%)
Item 19 (81.3%)
Item 13 (81.0%)
Item 23 (80.4%)
Item 22 (76.7%)
Item 20 (69.5%)

did not involve depravity) was dropped during the development of more extensive qualifying and disqualifying criteria for Study 3 due to heavy overlap with several other items that would impede the clarity of its eventual definition.

6. Study 3: rating of cases for item development

The higher court decisions reviewed for analysis in Study 1 had all upheld findings of "depraved" or "heinous" crime by lower courts. The cases reflected a select subset of the worst of crimes, as opposed to a random sample of major crimes without specifically depraved intent, victim choice, actions, or attitudes. Study 3 therefore focused on further

refinement of each item's distinction and definition to ensure applicability of The Depravity Standard across a representative sampling of felony cases.

Case files for adjudicated guilty murder cases were obtained from numerous jurisdictions across the United States. The data from these cases were scrutinized to assess the effective application of The Depravity Standard and to discern whether items qualified as present or absent in a given case.

6.1. Method

6.1.1. Participants

Study 3 participants were male and female research volunteers accepted into the internship program at The Forensic Panel. The participants, aged approximately 20 to 40 years, were students or recent graduates in the health science disciplines. Participants heard about the internship by visiting The Forensic Panel and The Depravity Standard websites, on www.internships.com, by word-of-mouth from their academic program advisors, and through peer-referral. Participants applied to become involved in the research and were selected after an interview focusing on their qualifications, dedication, aptitude, and references from academic recommendations. Approximately 3% of those applying for the internship were accepted. Participation in the program was voluntary, and some interns received school credit for the six-month internship.

6.1.2. Sample & data collection

To obtain homicide case data for review, more than 150 jurisdictions in all of the United States were individually invited to supply a random sample of approximately 100 closed felony homicide files from the most recent years available. Nine disparate jurisdictions offered a combined 797 closed murder case files for our review. Due to personnel and time constraints, and availability of in-office files, not all jurisdictions provided the same number of cases. A researcher at the District/ Prosecuting Attorney offices collected cases, and Depravity Standard researchers retrieved the files by either scanning hardcopy files, or downloading (if the file was digitized). The files were saved on a secure network accessible only by staff and research interns who had signed a Non-Disclosure Agreement.

Table 8
Murder cases supplied and included per jurisdiction.

Jurisdiction	Cases supplied	Incomplete cases	Total included
Little Rock, AR	150	0	150
Lake County, IL	50	2	48
St. Clair County, IL	71	0	71
Clay/Lowndes/Oktibbeha Counties, MS	100	2	98
Jackson County, MO	100	5	95
Jacksonville, FL	100	5	95
Utica, NY	100	8	92
Jefferson Parish, LA	112	4	108
Kaua'i County, HI	14	1	13
Total	797	27	770

The case files contained a range of data sources to inform the study, including but not limited to presentencing reports, criminal history, police reports, medical examiner reports, crime scene and autopsy photographs, 911 call transcripts, witness and defendant statements, and forensic evaluations. Incomplete cases, and cases with an outcome of not-guilty by reason of insanity, were removed from analysis (n = 27). Cases were defined as incomplete if information germane to The Depravity Standard was missing due to a clear lack of documented information about the crime, or if the documents were so heavily redacted that it was uncertain as to what took place. Table 8 demonstrates the total number of cases supplied and then included for review. Table 9 presents the final breakdown of cases identified after review.

Upon review, an additional 39 cases were identified that were not adjudicated guilty capital murder, first degree murder, second degree murder, or murder without a provided level. These cases included instances where non-murder felony charges had been accidentally included, were involuntary manslaughter charges where intent would not have been able to be assessed, or had been supplied because the subject was a co-defendant in a murder case. One additional case was identified as a duplicate. These cases (n = 40) were removed from further analysis.

Capital cases were over-represented in the Arkansas sample. Further investigation demonstrated that Arkansas officials responded to the request for a random sample of murder cases by also selecting a complement of capital cases. As the content was still informative to the development of the murder definitions, and non-murder definitions to come in subsequent studies, these cases were not removed from this stage of the research.

6.1.3. Procedure
6.1.3.1. Item definitions. Extensive and detailed descriptions were developed for each item. These included numerous qualifying and disqualifying examples. The aim was to create definitions that were unambiguous and easy to understand, with thorough descriptions of how each item might present in a range of scenarios, so as to guide

raters in reliably applying these definitions during case data mining. Evidence for the presence or absence of each item would subsequently be less likely to be overlooked.

6.1.3.2. Rater training. Participants completed a two-hour training session in order to be assigned cases for rating to be used in the analysis. These participants were trained in the descriptions of the items and their various qualifying and disqualifying examples, covering the breadth of criminal scenarios and contexts in which a murder or attempted murder may occur. Any questions posed by the participants as they related to clarity or definitions of the items were encouraged, noted, and addressed in the continued refinement of the definitions. All participants then completed up to 10 training cases and were provided with individualized feedback by an experienced researcher to ensure accurate scoring of the items. When training supervisors determined that participants had a keen understanding of the 25 Depravity Standard items, cases were randomly assigned for rating.

6.1.3.3. Case rating. Participants reviewed each of the randomly assigned cases, applying the definitions and qualifying and disqualifying examples of each of the 25 items under consideration. The definitions were formulated and refined such that an item, when rated to be present, was uncommon or even rare relative to the overall sample of its crime cohort. These examples were formulated and supplemented from the data of each of the cases in order to ensure that the presence or absence of an item could be reliably scored by a trained legal, investigative, forensic science, or corrections professional. The goal of this exercise was to pilot The Depravity Standard as a guide applicable in customary case review, aiding responsible parties to interpret fundamental evidence. This priority aimed to ensure that The Depravity Standard, even when denoting elements of depravity to be present, delineated a narrowed subset of crime.

Each case was rated by at least two independent participants trained using the same protocol. The rating process involved reviewing a case and charting the presence or absence of each of the 25 items within each of the documents of the case, one at a time. For each case document, a rating of present (Yes), absent (No) or insufficient data (ID) was recorded for each of the 25 items, along with the raters' explanation of the evidence accounting for the score. For example, the rater would review the autopsy report, and for each item, note Yes, No, or ID. The ID responses represented either a lack of information (i.e., in an autopsy report, the photo of the body was too overexposed to see any detail) or a rater's uncertainty about the information presented (i.e., the defendant's statement contradicts a co-defendant's statement and there is no way to determine which is the true account from the provided materials without speculation).

Then, the rater completed an overall rating for each of the items, detailing the evidence for each decision. See Table 10 for an example of the overall results for Item 3 "Intent to cause permanent disfigurement" as assessed for one of the cases.

Table 9
Breakdown of cases rated by type supplied and included per jurisdiction.

Jurisdiction	Capital murder	Murder 1st	Murder 2nd	Murder/Homicide (level not provided)	Other crime type	Duplicate case
Little Rock, AR	102	42	2	2	2[a]	
Lake County, IL		29		19		
St. Clair County, IL		67	3		1[a]	
Clay/Lowndes/Oktibbeha Counties, MS	12	7		72	7[a]	
Jackson County, MO		72	11	10	1[a]	1[a]
Jacksonville, FL		22	43	21	9[a]	
Utica, NY		2	70	11	9[a]	
Jefferson Parish, LA		44	58	5	1[a]	
Kaua'i County, HI			4		9[a]	
TOTAL	114	285	191	140	39[a]	1[a]

[a] Non-murder cases included in error, or where a co-defendant was charged with a non-murder felony, and duplicate cases removed from further study.

Table 10
Example of case rating for Item 3.

Case #30	Police records				Statements and interviews				
	EMT case narrative	Facts of the case	Grand jury statement	Supplemental narrative	Witness testimony	Officer testimony statements	Co-defendant statement	Defendant statement	Witness statement
Overall rating: present (YES), absent (NO), or insufficient data (ID)									
Item 3 NO: there was no evidence that suggests the intent was to inflict permanent physical disfigurement. The motive was drug related robbery	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described	No: this document indicates that the perpetrators intent was to kill the 2 individuals	No: the statement indicates the perpetrators had the intent to kill the 2 victims. No evidence of an intent to cause permanent physical disfigurement	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described.	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described.	ID: Based on the evidence in this statement the perpetrators intent of causing physical disfigurement is unknown/not described.	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described.	ID: Based on the evidence in this document the perpetrators intent of causing physical disfigurement is unknown/not described.

The full template contains a row for all 25 items. Each case would have two full templates completed by two individual raters. The overall results of Yes, No, or ID for each rater were entered into an excel spreadsheet for comparison.

These templates were reviewed by a Research Assistant who had extensive training in the protocols and was employed to supervise the participants. This review was designed to form a consensus rating for each of the 25 items per case, which was determined by both raters' independent agreement on an item's rating.

If there was a discrepancy between the ratings, an in-depth review was initiated. If it was determined that the discrepancy was present due to a clear misunderstanding of an item, additional training was provided to the rater. If the discrepancy identified an opportunity to refine the tool's qualifying and disqualifying examples to add clarity, the question was reviewed by the entire active research team in a scheduled Depravity Standard meeting, discussed below. If the differing rationales provided by the two raters both seemed appropriate, the discrepancy was also raised at the next Depravity Standard research team meeting for discussion and consideration by the group. If adjustments to the definitions were agreed upon, an additional rater was assigned to rate the case using the updated definitions. Then, an experienced Research Assistant formed a new consensus rating for that item in that case and any further discrepancies were again treated as above.

6.1.3.4. Debriefings. Participants were debriefed regularly to ensure adequate supervision, promote discussion about the cases, and ensure quality control for a clear understanding of the items. Furthermore, debriefings provided an opportunity to ensure that the nuances of instruction were being followed in a uniform fashion.

Debriefing sessions also created a space for counseling that was available to those for whom the case material was especially impactful. While participants were debriefed at least once per week, they were also aware that they could request a meeting at any time with either a Research Assistant or the Research Director. Participants were also encouraged to switch cases at any time, with no questions asked; however, this only occurred twice.

6.1.3.5. Depravity research meetings & item updates. Any gaps in the qualifying or disqualifying examples of each item that arose during debriefing sessions, or ad-hoc as participants reviewed the cases, were noted and added to the agenda for the next formal Depravity Standard meeting. These monthly (or otherwise as-needed) meetings were intended to serve as an avenue whereby the participants, Research Assistants, Research Director, and Principal Investigator could collectively determine whether an item needed to be further refined based on the particular scenarios and features from the cases under review, or other potential scenarios inspired by the discussion.

An explicit amendment to the qualifying or disqualifying example in an item's description was not enacted unless consensus was attained by the group and approved by the experienced research team who supervises the case raters. Once the decision was made to update a qualifying or disqualifying example for an item, the language was developed by an experienced researcher on the project, reviewed and refined by the Principal Investigator and Research Director, and then presented for approval at the next Depravity Standard meeting. Upon approval, the appropriate revisions were made to the item descriptions.

The protocol of independent rating of cases by the participants, a Research Assistant facilitating consensus, and collaborative discussion about each item by the entire research team, has refined The Depravity Standard and its items into an inventory applicable to case data as it is appraised in court proceedings. Qualifying and disqualifying examples for each item in the context of homicides have been finalized through this process in order to guide the determination of rating for an item's presence or absence.

7. Discussion

The Depravity Standard is a systematic research effort to increase focus on relevant evidence of intent, victim choice, actions, and attitude to enhance fairness in sentencing.

Disparity in criminal sentencing results from many factors, some of which are well-founded. However, disparity based upon arbitrary or ill-informed rationale, inconsistent application of vague criteria, and impressionistic presentation of cases necessitates a means to operationalize what it means for a crime to be depraved, heinous, and the worst of its class. The Depravity Standard has been researched with the specific goals of remedying these systemic factors that undermine fairness in sentencing.

The Depravity Standard has taken shape from an inclusive review of higher court sentencing for the worst of crimes, input from professionals and observers on what elements constitute the worst of crimes, survey of public appraisal of different facets of depravity, and data from large samples of closed cases of comparable crimes. Coalescing a definition of criminal depravity from these different influences has contributed to build a Depravity Standard that accounts for what courts believe to be the extremes of criminality, what the public believes should be defined as these extremes, what working professionals and interested students of crime experience as exceptional, and finally, what actual case study reveals about the qualities of the more narrowed class of offenses and the offenders responsible.

The methodology above informs a Depravity Standard applicable to homicides and murders. Thus, the items and definitions of The Depravity Standard address the nuance and investigative focus specific to homicide, from the standpoint of legal, law enforcement, and forensic science professionals alike. The same methodology can and is being carried out with large samples of sex crime cases, non-violent felonies, and violent non-murders. The inventory respects the distinctions in crime enough to address not merely the worst of crime generally, but rather the worst of crime within classes.

Moreover, the large-scale public survey input that influences item inclusion and in a later article in this issue, the weighting of items, is an important cornerstone in the study of evil and depravity. Rather than delegating the definition of HAC aggravators to legislators and their interests, or to psychiatrists and their own unique perspective, The Depravity Standard reflects a societal standard guided by the gamut of values and experiences of the general public.

This research operationalizes an evidence-focused Depravity Standard for the courts in the course of creating a societal standard that allows for the comparison of similarly charged crimes. The Depravity Standard methodology has underscored the importance of wedding validation from the general public with that from the realities of everyday casework in which the public has little experience. This research has demonstrated that the public can, and has, agreed upon what makes a crime depraved, though certain boundaries to the generalizability of findings should be acknowledged.

Some of the U.S. states in the online survey in Study 2 were more heavily represented than others. Additionally, minority participants were underrepresented in our sample, a common issue in survey and clinical research (Ejiogu et al., 2011). However, the ANOVA run between the states with the largest representation, while accounting for significant cultural diversity, did not show any significant difference in overall scores by participants in those states. This suggests that there is concordance amidst cultural diversity – that an American societal standard transcends individual differences. Additional online surveys, presented in a subsequent paper, will employ statistical weighting to increase the value of minority participant responses in line with United States population statistics.

Study 2 also presented participants with a three-level forced-choice response of "Not Depraved," "Somewhat Depraved," or "Especially Depraved." This was required to determine the inclusion or exclusion of items for further study. This response format, however, did not discriminate between crime types. The 25 Depravity Standard item descriptions were accompanied by examples of how the item may appear in any type of crime, and thus precluded a more nuanced analysis of an item's degree of depravity relative to other items within a certain category of crime. To account for this, the authors designed additional online surveys across four crime categories comprising murder/attempted murder, violent crimes, non-violent crimes, and sex crimes to assess each of the 25 items on a scale of 1 (the least depraved) to 100 (the most depraved). The murder/attempted murder results are presented in a subsequent paper in this issue.

Additionally, this inventory has been developed based on a current snapshot of public attitudes towards elements of depravity in crime that may change over time. For example, the item "carrying out a crime in order to terrorize others" was not highlighted in the review of appellate court decisions up to 2002, and as such was not identified at Phase A of Study 1. After 2002, when Phase B of Study 1 was undertaken, and post the September 11, 2001 terrorist attacks in the U.S., the awareness of terrorism, and the need for counter-terrorism, had formed part of the societal zeitgeist and was highlighted for inclusion as an item by participants in the general public. To account for changing societal attitudes, the authors have determined that regular additional reviews of appellate court cases is required, and that online public surveys will remain open and continue to be promoted for participation. This will allow for further refinement of qualifying and disqualifying examples of existing items, items to be added to subsequent iterations of The Depravity Standard as appropriate, and items to be removed if the public no longer deems them to be depraved. The ongoing surveys will allow the instrument to evolve with meaningful changes in public attitudes and ensure the research stays current with the public our justice system serves.

8. Conclusion

Aggravators of the magnitude of "heinous" and "depraved" serve justice when they reflect hyperfocus on the case evidence and relegate biasing influences. The Depravity Standard appraises specific intent, actions, attitudes and victim choice of crimes as the "what" of a crime, as opposed to the "who." In distinguishing depraved aspects of a crime's fact pattern, sentences applied due to a HAC aggravating factor will no longer rely on arbitrary subjective opinion or the biases of background, but rather on specific objective criteria that must be demonstrably present. The evidence informing The Depravity Standard and the presence and absence of items is already customarily derived from investigation and forensic science examinations. Therefore, detailing the elements of the worst of criminality spurs criminal and forensic science investigators to dig deeper and draw out more qualitative data for the trier of fact's understanding, rather than creating new procedures.

Studies 1, 2, and 3 of this research addressed each of these aspects in order to develop The Depravity Standard. The Standard currently includes 25 items representing aspects of the intent, actions, attitudes, and victim choice distinct to the worst of crime. Study 3 in particular enhanced the range and dimension of qualifying and disqualifying examples available to the user. The specificity fulfills the mission of maintaining a narrowing function that ensures that no matter the crime, The Depravity Standard isolates the most depraved features of crime if they are present and otherwise demonstrates a standard for comparison across cases within a crime category.

Deriving qualifying and disqualifying examples from actual case material also enables The Depravity Standard, as an organic byproduct of societal attitudes (via survey) and experience (via adjudicated cases) to update and account for the proper scoring of features of more recent trends in casework. These include, as of this writing, burning of bodies, feeding of remains to animals, and broadcasting killings on live streaming technology.

It is not enough to merely denounce or to punish such behavior; The Depravity Standard disciplines justice to deconstruct such features of a

case to ascertain whether, in each instance, the history reflected which item or items, and why. In this regard, no matter how sensational the detail, the focus remains on the evidence for whether the item is present or not, and without any litigation advantage to prosecution or defense. Both sides have the same opportunity to scrutinize what intent, actions, victim choice, and attitude are at the bottom of, for example, setting the body (or person) on fire. This illustrates where forensic science fits into an overall investigation: whether a person was immolated or whether a body burned impacts a depravity assessment. Forensic pathology is specifically qualified to derive these answers from examining remains. Resolution of these fine-point questions is exactly what critics of the HAC aggravators have called for as an alternative to the vague. It is more than an academic exercise, it is the pragmatic endpoint of a process that piques investigation to find definitive answers. The availability of higher quantity and quality of evidence, with appropriate guidance from The Depravity Standard, also informs the relative culpability of co-defendants.

As demonstrated through the internship training process and debriefings, The Depravity Standard emphasizes evidence-based assessment of criminal depravity in a given case that can reliably guide courts. Be it jurors or judges, corrections officials or parole officials, each of those charged with decision-making responsibility that affects liberty and justice are better equipped with evidence-driven tools and the understanding for how to apply these tools. Moreover, The Depravity Standard resolutely focuses the assessment of HAC aggravators away from demographics that can bias determinations, such as race, gender, ethnic background, criminal and medical history, religion, political affiliation or other personal qualities independent of the crime itself.

Additional experimental measures were undertaken in order to validate The Depravity Standard before its application, and to establish a process for its use and measurement in cases. These additional validation stages are presented in the final manuscript in this issue.

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