A Survey Of Recent Developments In The Law: Criminal Law and Evidence

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V. CRIMINAL LAW AND EVIDENCE

A. "No-knock" Entries

At common law, law enforcement officers were permitted to break open the door of a person's home if the officers first announced their presence and authority. Until 1995, the United States Supreme Court had never decided whether this knock-and-announce principle was an element of the reasonableness inquiry under the Fourth Amendment to the United States Constitution. In Wilson v. Arkansas, the Supreme Court held that "in some circumstances an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment." However, the Court specifically noted that "law enforcement interests may also establish the reasonableness of an unannounced entry." The Court left "to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment." Since Wilson, the Court has twice revisited the issue to establish the standard of the "no knock" entry exception.

In Richards v. Wisconsin, the Supreme Court announced the rule that "no-knock" entries are justified when police officers have a reasonable suspicion that knocking and announcing their presence before entering would be dangerous or futile, or inhibit the investigation of the crime. Based on substantial evidence that defendant Steiney Richards was dealing drugs out of a hotel room, the police requested a search warrant authorizing a "no-knock" entry

2. See id. at 934. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV.
4. Id. at 934.
5. Id. at 936.
6. Id.
8. See id. at 394.
into Richards’ hotel room. The magistrate judge issued a search warrant, but deleted the portions of the warrant that would have authorized a “no-knock” entry. Several officers arrived at the hotel—one dressed as a maintenance worker, several in plain clothes, and at least one in uniform. Officer Pharo, dressed in a maintenance worker’s uniform, knocked on Richards’ door. Richards opened the door and noticed the uniformed officer standing behind Officer Pharo. Richards slammed the door shut. The officers then kicked the door in and found Richards trying to climb out the window. They seized cash and cocaine hidden above the bathroom ceiling tiles. The officers testified at trial that as they were kicking the door in, they identified themselves as police officers.

Richards moved to suppress the evidence obtained in the search, arguing that the officers did not knock or identify themselves before forcing their way into the hotel room. The trial court denied the motion, finding that the officers could have inferred from Richards’ behavior that he knew they were police officers and might attempt to escape or destroy the evidence, particularly in light of the easily disposable nature of the drugs. On appeal, the Wisconsin Supreme Court found that Wilson did not prohibit applying a blanket rule to a category of searches. The court determined that all felony drug crimes will involve “an extremely high risk of serious if not deadly injury to the police as well as the potential for the disposal of drugs by the occupants prior to entry by the police.” The court stated that “[t]he very facts supporting probable cause to believe that drugs and drug dealers are present in a dwelling also lead to the reasonable belief that exigent circumstances exist.” The court concluded that “exigent circum-

9. See id. at 388.
10. See id.
11. See id.
12. See id.
13. See id.
14. See id.
15. See id. at 388-89.
16. See id. at 389.
17. See id. at 388.
18. See id. at 389.
19. See id.
21. Id. at 219.
22. Id. at 222.

http://open.mitchellhamline.edu/wmlr/vol25/iss3/10
stances are always present when a search warrant for evidence of felonious drug delivery is executed. Therefore, when executing a search warrant in felony drug cases, police are never required to knock or announce their presence.

The U.S. Supreme Court rejected this approach, stating that "if a per se exception were allowed for each category of criminal investigation that included a considerable—albeit hypothetical—risk of danger to officers or destruction of evidence, the knock-and-announce element of the Fourth Amendment’s reasonableness requirement would be meaningless." The Court stated that although felony drug investigations may often present circumstances warranting a "no-knock" entry, the trial court must determine on a case-by-case basis "whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement." The Court held:

In order to justify a "no-knock" entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would be inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.

The Court reasoned that this standard strikes the appropriate balance between legitimate law enforcement concerns and the individual’s privacy interests. Applying this rule, the Court concluded that Richards’ Fourth Amendment rights were not violated by the "no-knock" entry.

In United States v. Ramirez, the Supreme Court held that when a "no-knock" entry results in the destruction of property, the Fourth Amendment imposes no higher standard than that in Richards. In Ramirez, a confidential reliable informant reported to a federal agent that he had seen a person at Hernan Ramirez’s home

23. Id.
24. See id. at 227.
26. Id.
27. Id.
28. See id.
29. See id. at 395.
31. See id. at 995.
who the informant believed to be escaped prisoner Alan Shelby. Shelby had a history of violent behavior and was believed to have had access to large supplies of weapons. The agent drove to Ramirez's home and observed a man working outside who resembled Shelby.

A U.S. Deputy Marshal obtained a "no-knock" warrant authorizing law enforcement officers to enter and search Ramirez's home. The warrant was executed in the early morning, while Ramirez and his family were sleeping inside the house. The officers announced over a loudspeaker that they had a search warrant. At the same time, the officers broke a window in the garage and pointed a gun through the opening in an attempt to discourage any occupant from trying to retrieve weapons which the officers believed might be stored in the garage. Ramirez and his family were awakened by the noise. Believing that his home was being burglarized, Ramirez got a pistol and fired it into the ceiling of his garage. Once Ramirez realized that it was law enforcement officers who were trying to enter his house, he surrendered. While in custody, Ramirez admitted that he was the owner of the gun, that he had fired the gun, and that he was a convicted felon.

Ramirez was indicted for possession of firearms after a felony conviction. Ramirez moved for suppression of evidence regarding his possession of the weapons. The trial court granted the motion

32. See id.
33. See id. This was Shelby's third attempt to escape from police custody:

In 1991, [Shelby] struck an officer kicked out a jail door, assaulted a woman, stole her vehicle, and used it to ram a police vehicle. Another time he attempted escape by using a rope made from torn bedsheets. He was reported to have made threats to kill witnesses and police officers, to have tortured people with a hammer, and to have said that he would "not do federal time."

Id.

34. See id.
35. See id.
36. See id.
37. See id.
38. See id.
39. See id.
40. See id.
41. See id.
42. See id.
43. See id. at 996.
44. See id.
and ruled that Ramirez's rights under both the Fourth Amendment and a federal statute had been violated because there were “insufficient exigent circumstances” to warrant the destruction of property. The Ninth Circuit Court of Appeals affirmed the decision. The court stated that although a “mild exigency” is sufficient to justify a “no-knock” entry, “more specific inferences of exigency are necessary” when the “no-knock” entry results in property damage. The court held that the circumstances of this case did not satisfy the heightened standard.

The Supreme Court reversed the lower court's decision. The Court held that the “reasonable suspicion” standard articulated in Richards “depends in no way on whether police must destroy property in order to enter.” The Court noted the distinction between the lawfulness of the entry itself and the lawfulness of the manner in which the search warrant is executed. The Court stated that “[e]xcessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search not subject to suppression.” The Court found that in this case, the police had a reasonable suspicion that knocking and announcing their presence might be dangerous based on their knowledge that “Shelby was a prison escapee with a violent past who reportedly had access to a large supply of weapons.” The Court also concluded that the breaking of the window was clearly reasonable under the circumstances and did not violate Ramirez's Fourth Amendment rights.

Ramirez also argued that breaking his window during the execution of the search warrant constituted a violation of 18 U.S.C. section 3109. This provision states:

46. Ramirez, 118 S. Ct. at 996.
47. See United States v. Ramirez, 91 F.3d 1297, 1304 (9th Cir. 1996).
48. Id. at 1301.
49. See id.
50. See Ramirez, 118 S. Ct. at 998.
51. Id. at 996.
52. See id.
53. Id.
54. Id. at 997. The Court also based this conclusion on the report of the reliable confidential informant, the police officer's confirmation of the informant's allegations, and the fact that Shelby previously stated that he would “not do federal time.” Id. at 996-97.
55. See id. at 997.
56. See id.
The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.57

Ramirez argued that this statute prohibits property-damaging entries under any circumstance other than those expressly provided for in the statute.58 The Court rejected this argument, stating that the statute merely authorizes law enforcement officers to damage property in certain instances.59 The Court reasoned that section 3109 is a codification of the common law “knock and announce” requirement, including the exceptions to the requirement.60 Applying the reasoning in Wilson and Richards, the Court held that “[section] 3109 includes an exigent circumstances exception and that the exception’s applicability in a given instance is measured by the same standard[] articulated in Richards.” 61 Applying the Richards standard, the Court concluded that the police did not violate 18 U.S.C. section 3109.62

B. Evidence of Similar Crimes in Sexual Assault and Child Molestation Cases

In 1994, Congress enacted the Violent Crime Control and Law Enforcement Act,63 and with it, Federal Rules of Evidence 413, 414, and 415. Rule 413 provides: “In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.”64 Rule 414 similarly provides that in

58. See Ramirez, 118 S. Ct. at 997.
59. See id.
60. See id.
61. Id. at 997-98.
62. See id. at 998.
64. FED. R. EVID. 413(a). Rule 413(a) is subject to the following notice requirement:
criminal child molestation cases, "evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant." \(^{65}\) Rule 415 authorizes the use of such evidence in civil cases concerning sexual assault or child molestation. \(^{66}\) In four recent cases, the Eighth Circuit Court of Appeals addressed the application of Rules 413 and 414 in criminal cases. \(^{67}\)

In *United States v. Sumner*, \(^{68}\) the court held that Rule 414 is subject to the Rule 403 \(^{69}\) balancing test. \(^{70}\) Sumner was convicted of aggravated sexual abuse and abusive sexual conduct for having touched the genitals of D.D. on two separate occasions. \(^{71}\) On a third occasion, Sumner had D.D. touch his genitals. \(^{72}\) At trial, under Rule 404(b), \(^{73}\) the district court admitted evidence of two prior incidents in which Sumner had sexually assaulted girls under fourteen years of age. \(^{74}\) The court of appeals held that the evidence was

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In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

**FED. R. EVID. 413(b).**

65. **FED. R. EVID. 414(a).** Rule 414(a) is subject to the same notice requirements as Rule 413. See **FED. R. EVID. 414(b).**

66. **See FED. R. EVID. 415(a).** Rule 415(b) imposes a fifteen-day notice requirement on the party intending to offer the evidence. See **FED. R. EVID. 415(b); see also FED. R. EVID. 413 (mandating notice in criminal sexual assault cases).**

67. **See infra notes 68-141 and accompanying text.**

68. 119 F.3d 658 (8th Cir. 1997).

69. Rule 403 states that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." **FED. R. EVID. 403.**

70. **See Sumner, 119 F.3d at 662; FED. R. EVID. 403 & 414.**

71. **See id. at 659-60.**

72. **See id. at 660.**

73. **Rule 404(b) provides:***

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .

**FED. R. EVID. 404(b).**

74. **See Sumner, 119 F.3d at 660.**
not admissible under Rule 404(b) because the evidence showed only that "Sumner has 'a propensity to commit crimes, which Rule 404(b) prohibits." 75

The government argued that the evidence should have been admitted under Rule 414.76 The district court refused to admit the evidence under Rule 414, finding that "the rule is unconstitutional because it allows 'any kind of evidence to show propensity' without allowing for the application of the Rule 403 balancing test." 77 The district court also stated that applying the Rule 403 balancing test to Rule 404 was contrary to Congress' intent. 78

The court of appeals ruled that Rule 414 is subject to the Rule 403 balancing test.79 The court reasoned that the language in Rule 414 is the same as language used in other rules which are subject to the Rule 403 balancing test80 and that "nothing in the language of Rule 414 precludes the application of Rule 403." 81 The court also found that the legislative history clearly indicated that Rule 403 was intended to apply. 82 One of the principal congressional sponsors of the Rule stated, "In other respects, the general standards of the rules of evidence will continue to apply, including the restrictions on hearsay evidence and the court's authority under Evidence Rule 403 to exclude evidence whose probative value is substantially outweighed by its prejudicial effect." 83 Another sponsor stated:

The practical effect of the new rules is to put evidence of uncharged offenses in sexual assault and child molestation cases on the same footing as other types of relevant evidence that are not subject to a special exclusionary rule. The underlying legislative judgment is that the evidence admissible pursuant to the new rules is typically relevant and probative, and any probative value is normally not outweighed by the risk of prejudicial or other adverse effects. 84

75. Id. at 660-61 (quoting United States v. LeCompte, 99 F.3d 274, 278 (8th Cir. 1996)).
76. See id. at 661.
77. Id.
78. See id.
79. See id. at 661-62.
80. See id. (citing Rules 402 and 404(b) of the Federal Rules of Evidence).
81. Id. at 662.
82. See id.
83. Id. (citations omitted).
84. Id. (quoting 140 CONG. REC. H8992 (daily ed. Aug. 21, 1994) (statement
The court advised that if the government offers this evidence on retrial, it is the district court's responsibility to conduct a Rule 403 balancing test. 85

In United States v. LeCompte, 86 the Eighth Circuit held that "Rule 403 must be applied to allow Rule 414 its intended effect." 87 LeCompte was charged under 18 U.S.C. sections 2244(a)(1) and 2246(3) for the alleged sexual abuse of C.D., his wife's eleven-year-old niece. 88 On at least one occasion, LeCompte allegedly exposed himself to C.D. while they played games together at her aunt's trailer. 89 On another occasion, LeCompte allegedly joined C.D. on the couch, forced her to touch his penis, and touched her breasts while C.D.'s siblings were sleeping on the floor next to her. 90 Before trial, the government provided LeCompte with notice that it intended to offer evidence under Rule 414 of prior uncharged sex offenses against T.T., another niece of his by marriage. 91 The incidents involving T.T. allegedly occurred eight to ten years prior to the incidents with C.D. 92 T.T. was prepared to testify at trial that "LeCompte had played games with her at her aunt's house, had exposed himself to her, had forced her to touch his penis, and had touched her private parts." 93

LeCompte moved to exclude the evidence. 94 After applying the Rule 403 balancing test, the district court ruled that the evidence was inadmissible because the potential for unfair prejudice

of Rep. Molinari)).

85. See id.
86. 131 F.3d 767 (8th Cir. 1997). This decision was based on LeCompte's second trial. See id. at 768. In his first trial, the government failed to provide LeCompte with timely notice of its intent to introduce evidence of prior similar acts, as required by Rule 414. See United States v. LeCompte, 99 F.3d 274, 276 (8th Cir. 1996). The district court admitted the evidence under Rule 404(b). See id. at 277. In its first decision, the court of appeals ruled that the evidence was inadmissible under Rule 404(b) and ordered a new trial. See id. at 279. On remand, the government provided timely notice and the evidence was admitted under Rule 414. See LeCompte, 131 F.3d at 768. The court noted that its prior ruling that the evidence was inadmissible under Rule 404(b) did not bar consideration of admissibility under Rule 414 on retrial. See id. at 769.
87. LeCompte, 131 F.3d at 769.
88. See id. at 768. See also 18 U.S.C. §§ 2244(a)(1) and 2246(3) (1994).
89. See LeCompte, 131 F.3d at 768.
90. See id.
91. See id.
92. See id.
93. Id.
94. See id.
outweighed the limited probative value of the evidence. The district court recognized similarities between the incidents, but found that the probative value was limited by several differences. The district court also found significant the eight year period separating the incidents. The court stated, “T.T.’s testimony is obviously highly prejudicial evidence against defendant . . . . ‘[C]hild sexual abuse deservedly carries a unique stigma in our society; such highly prejudicial evidence should therefore carry a very high degree of probative value if it is to be admitted.’”

The Eighth Circuit rejected the district court’s analysis. The court stated that although Rule 414 is subject to the requirements of Rule 403, it must be applied to allow Rule 414 its intended effect, namely to supersede the restrictive aspects of Rule 404(b). The court ruled, “In light of the strong legislative judgment that evidence of prior sexual offenses should ordinarily be admissible, we think the District Court erred in its assessment that the probative value of T.T.’s testimony was substantially outweighed by the danger of unfair prejudice.”

The court of appeals also rejected the district court’s emphasis on the “unique stigma” of child sexual abuse—the danger that the

95. See id. at 769.
96. See id. (“[T]hey were both young nieces of LeCompte at the time he molested them, he forced them both to touch him, he touched them both in similar places, and he exposed himself to both of them.”).
97. See id. The differences were that “the acts allegedly committed against C.D. occurred with her siblings present, while the acts against T.T. occurred in isolation” and that “LeCompte had not played games with C.D. immediately before molesting her, as he had with T.T.” Id.
98. See id.
99. Id. (quoting District Court Order at 4) (citation omitted in original).
100. See id.
101. See id.
102. See id. (citing 140 CONG. REC. H8992 (daily ed. Aug. 21, 1994) (statement of Rep. Molinari)).
103. Id.
104. See id.
105. Id. at 769-70 (quoting District Court Order at 4).
jury might convict based on LeCompte's propensity to commit child sexual abuse, rather than on the facts directly supporting the offense against C.D. The court concluded that "[i]t is for this reason that the evidence was previously excluded, and it is precisely such holdings that Congress intended to overrule."

In United States v. Eagle, Eagle sexually abused K.W., the niece of his common law wife, while K.W. was visiting their home. Eagle told K.W. to lie on the bed beside him, and then touched her vagina several times. Eagle also attempted to take off K.W.'s clothing. At trial, the government sought to introduce evidence that Eagle had pleaded guilty ten years earlier to a federal crime involving sexual abuse of a minor. The minor in that case was K.W.'s aunt, who was fourteen at the time of the offense. The trial court admitted the evidence under Rules 413 and 414.

On appeal, Eagle argued that the probative value was minimal because of the ten-year separation between the offenses and because the victim in the first case later became his common law wife. The court of appeals rejected both arguments. The court reasoned that the fact that the first victim was Eagle's common law wife gave the jury the opportunity to discount the prejudice the information might otherwise have caused. The court also noted that the ten-year separation between the offenses was less significant than it might appear because Eagle was incarcerated for six of the ten years.

Eagle also argued that LeCompte requires that evidence offered under Rule 414 must also comply with Rule 404. The court rejected this argument, stating that "[i]n LeCompte the court analyzed evidence of prior acts of child sexual assaults by the defendant un-

106. Id. at 770 (noting that "[t]his danger is one that all propensity evidence in such trials presents").
107. Id.
108. 137 F.3d 1011 (8th Cir. 1998).
109. Id. at 1012.
110. See id. at 1012-13.
111. See id. at 1013.
112. See id. at 1013, 1015-16; Fed. R. Evid. 413 & 414.
113. See Eagle, 137 F.3d at 1016.
114. See id. at 1015-16.
115. See id. at 1016.
116. See id. (noting that the district court properly conducted a balancing test under Rule 403 of the Federal Rules of Evidence).
117. See id.
118. See id.
119. See id. See also Fed. R. Evid. 404(b).
der Rule 404 because the government had failed to file a timely Rule 414 motion, not because such evidence is only admissible if it fulfills the requirements under both rules. The court pointed out that on remand, the same evidence was held admissible under Rule 414 where the government complied with the notice requirements. The court concluded that the evidence of Eagle's prior offense against K.W.'s aunt was admissible.

In United States v. Mound, the Eighth Circuit held that Rule 413 does not violate the Due Process or Equal Protection Clauses of the U.S. Constitution. Mound was convicted of seven counts arising out of multiple acts of physical and sexual abuse of his daughter that occurred between 1993 and 1997. At trial, the government sought to introduce evidence of two incidents occurring in 1987 in which Mound sexually abused two girls. Mound pled guilty to one offense and government dropped the investigation on the other incident. The district court conducted a Rule 403 balancing test and concluded that evidence of the prior act that did not result in prosecution or conviction was inadmissible. The district court stated that "while I find that this evidence is relevant, I find that its probative value is substantially outweighed by the danger of unfair prejudice. And I further find that it would simply confuse the issues in this case, none of which are similar to the case of the witness." However, the district court found that evidence of the prior conviction presented no similar concerns and admitted the evidence after giving a cautionary instruction to the jury.

On appeal, Mound argued that Rule 413 violates the Due Process Clause of the U.S. Constitution because it "authorizes the jury to overvalue character evidence, to punish a defendant for past acts and to convict the defendant for who he is, rather than for what he

120. Eagle, 137 F.3d at 1016 (citing United States v. LeCompte, 99 F.3d 274, 274 (8th Cir. 1996)).
121. See id. (citing United States v. LeCompte, 131 F.3d 767, 768-69 (8th Cir. 1997)).
122. See id.
123. 149 F.3d 799 (8th Cir. 1998), cert. denied, 119 S. Ct. 842 (1999).
124. Id. at 801; see also U.S. CONST. amends. V. and XIV.
125. See Mound, 149 F.3d at 800.
126. See id.
127. See id.
128. See id. at 801.
129. Id. at 802.
130. See id.
has done." The court of appeals considered whether "the introduction of this type of evidence is so extremely unfair that its admission violates fundamental conceptions of justice." The court followed the reasoning of the Court of Appeals for the Tenth Circuit, which reviewed a similar case and held that "it was within Congress's power to create exceptions to the longstanding practice of excluding prior-bad-acts-evidence."

The court of appeals also rejected Mound's argument that Rule 413 violates the Equal Protection Clause. The court cited two distinctive characteristics of sexual abuse cases which Congress used to justify the use of prior-bad-acts evidence in these cases: "[T]he reliance of sex offense cases on difficult credibility determinations that 'would otherwise become unresolvable swearing matches'" and, "in the case of child sexual abuse, the 'exceptionally probative' value of a defendant's sexual interest in children." The court held that "[p]romoting the effective prosecution of sex offenses is a legitimate end" and that "Congress's judgment in enacting Rules 413, 414, and 415, was rational."

The court held that the district court did not err by admitting the evidence of Mound's prior conviction. The court stated that "[t]here is no evidence that the prior conviction presented any danger of unfair prejudice beyond that which 'all propensity evi-

131. Id. at 801 (quoting Appellee's Brief at 24).
133. See United States v. Enjady, 134 F.3d 1427 (10th Cir. 1998). In Enjady, the Tenth Circuit stated:

One reason the majority in Spencer gave for upholding the validity of the Texas statutes was that "it has never been thought that [the Court's Due Process Clause fundamental fairness] cases establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure." Rule 413 is a federal rule, of course, and most federal procedural rules are promulgated under the auspices of the Supreme Court and the Rules Enabling Act. But we must recognize that Congress has the ultimate power over the enactment of rules, see 28 U.S.C. § 2074, which it exercised here.

Id. at 1432 (discussing Spencer v. Texas, 385 U.S. 554 (1967)).
134. Mound, 149 F.3d at 801.
135. See id.
137. Id.
138. See id.
idence in such trials presents,' but is now allowed by Rule 413.\textsuperscript{139} The court also noted that the district court's cautionary statement to the jury provided an additional safeguard against unfair prejudice.\textsuperscript{140} The court concluded that the district court did not err in admitting under Rule 413 evidence that would be inadmissible under Rule 404(b) because it was Congress's intent that Rule 413 supersede the restrictive aspects of Rule 404(b).\textsuperscript{141}

\textit{Cynthia K. Schneider}