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Meth labs: “Cooking” Up Environmental Disaster

*U.S. v. Pinnow*¹

I. INTRODUCTION

U.S. v. Pinnow brings into question the court’s motivation to willingly draw inferences of environmental harm when previous case law has not dealt with the environmental issue, or was unwilling to draw such inferences without direct evidence of harm. *Pinnow* addresses the application of a criminal drug act against methamphetamine which factors in the effects on the environment. This note examines the case law relied on in *Pinnow*, and explores possible motivations for the lax standards in identifying environmental harm.

II. FACTS AND HOLDING

The Defendant, David Pinnow, was arrested in January 2004 on outstanding warrant charges after police observed Pinnow hurriedly loading several packages into a taxi outside of a hotel and taking off.² Upon searching Pinnow and the trunk of the taxi, the officers found the packages contained chemicals and equipment to manufacture methamphetamine (“meth”).³ The items in Pinnow’s possession at the time of the search included: “acetone, sulfuric acid, a gas mask, lithium batteries, burnt aluminum foil, coffee filters, glass and plastic containers

¹ *U.S. v. Pinnow*, 469 F.3d 1153 (8th Cir. 2006).

² *Id.* at 1155.

³ *Id.* at 1154.

Methamphetamine is a powerful stimulant. It is a controlled substance that is manufactured in clandestine

laboratories throughout the United States. It is easy to make using common household chemicals. No formal chemistry training is needed.

Methamphetamine can be ingested by swallowing, inhaling, injecting or smoking. Methamphetamine is highly addictive. The side effects, which arise from the use and abuse of methamphetamine, include irritability, nervousness, insomnia, nausea, depression, and brain damage.

U.S. Department of Drug Enforcement Agency fact sheet,

<http://www.usdoj.gov/dea/pubs/pressrel/methfact01.html>. (last visited February 1, 2007).

and tubing, a digital scale, and a seven-gallon metal tank wrapped in plastic bags.”⁴ In addition to these chemicals, and more importantly, the police discovered enough pseudoephedrine from fourteen boxes of over-the-counter cold medications to yield 18.36 grams of pure meth, as well as enough crushed pseudoephedrine to produce 32.38 grams of pure meth.⁵ The police also found additional chemicals⁶ and equipment in a car that Pinnow rented⁷ and in his hotel room.⁸ Pinnow eventually plead guilty to attempting to produce meth.⁹ Given that the attempted manufacture of meth “created a substantial risk of harm to human life or to the environment,” his presentence investigation report included a request for a three-level enhancement to the sentencing.¹⁰

Pinnow objected to the enhancement, but the district court overruled the objection and sentenced him to 175 months in prison.¹¹ The judge justified the sentencing enhancement given the materials and chemicals in Pinnow’s possession at his arrest constituted a traveling “toxic waste dump,” making him dangerous to himself, as well as to others.¹² In

⁴ *U.S. v. Pinnow*, 469 F.3d 1153, 1155 (8th Cir. 2006).

⁵ *Id.*

⁶ Over 32 different kinds of chemicals can be used to manufacture or “cook” meth.

Welcome to Meth Country, Sierra Club Magazine,

<http://www.sierraclub.org/sierra/200101/meth.asp>. (last visited February 1, 2007).

⁷ After...police officers detected a strong odor of ether emanating from a rental car parked at a local

hotel and a police dog alerted to the presence of drugs in the car, the police obtained a warrant and towed the vehicle. A subsequent search uncovered burnt aluminum foil containing an unknown residue; a plastic pitcher containing an unknown brown substance; an empty bottle of isopropyl alcohol; starter fluid; a five gallon bucket with lid and plastic tubing; multiple valves, plugs, and clamps; and receipts for the purchases of chemicals used in the manufacture of methamphetamine. Hotel records associated the rental car with room 163. The officers learned that Pinnow was staying in room 163 and had recently stayed at other hotels in the Coralville area.

Id.

⁸ *Id.* at 1154.

⁹ *Id.*

¹⁰ *Id.* The advisory guidelines sentencing range is 168-210 months, and this sentence is seven months over the base level. *Id.*

¹¹ *Id.* at 1155.

¹² *Id.* at 1156.

Pinnow’s appeal, he challenged the reasonableness of the sentence and the enhancement.¹³ Pinnow first argued mere possession of “precursors and materials” to produce meth did not create a substantial risk of harm to human life or environment, and thus the district court erred in applying the three-level enhancement.¹⁴ Second, Pinnow argued that his sentence was unreasonable.¹⁵ After reviewing Pinnow’s arguments, reviewing evidence of the materials, and evaluating Pinnow’s transient lifestyle, the United States Court of Appeals for the Eighth Circuit affirmed the decisions of the lower court and found that Pinnow did create a substantial risk to human life and the environment, and his sentence was not unreasonable.¹⁶

III. LEGAL BACKGROUND

A. *The Children’s Health Act of 2000*¹⁷

Enacted in October 21, 2000, the Children’s Health Act (“Children’s Act”) incorporated a portion of what originated as the Methamphetamine and Club Drug Anti-Proliferation Act of 2000 (“Meth Act”)¹⁸. During the incorporation, the Children’s Act retained a sentencing enhancement for offenses that created a substantial risk to human life or the environment.¹⁹ The Meth Act was largely incorporated into the Children’s Act “as is” with minor changes.²⁰ The Meth Act serves as a legislative history for the Children’s Act.²¹

¹³ *Id.* at 1155.

¹⁴ *U.S. v. Pinnow*, 469 F.3d 1153, 1157 (8th Cir. 2006).

¹⁵ *Id.*

¹⁶ *Id.* at 1156-57.

¹⁷ Children’s Health Act of 2000, H.R. 4356, 106th Cong. (2nd Sess. 2000).

¹⁸ Pub. L. No. 106-310, § 3601, 114 Stat., 1227 (2000). *See infra* note 23.

¹⁹ Pub. L. No. 106-310, § 3612, 114 Stat., 1229 (2000).

²⁰ *See* Pub. L. No. 106-310, § 3611, 3612, 3621, 3624, 3625, 114 Stat. (2000). Retaining in large portions such sections as Enhanced punishment of amphetamine laboratory operators, Enhanced punishment of amphetamine or methamphetamine laboratory operators, Environmental hazards associated with illegal manufacture of amphetamine and methamphetamine, Combating methamphetamine and amphetamine in high intensity drug trafficking areas, and Combating amphetamine and methamphetamine manufacturing and trafficking. *Id.*

²¹ *Pinnow*, 469 F.3d at 1156.

*B. Methamphetamine and Club Drug Anti-Proliferation Act of 2000*²²

The Methamphetamine and Club Drug Anti-Proliferation Act of 2000 (“Meth Act”) is a revision of the Comprehensive Methamphetamine Control Act of 1996, enacted to combat the growth of meth use and manufacture in the United States.²³ Despite the comprehensiveness of the 1996 Act, considerable amounts of methamphetamines continue to be produced and sold.²⁴ Faced with this fact, additional legislation was proposed with the purpose of preventing “the proliferation of methamphetamine and club drug²⁵ manufacturing, trafficking, use, and

²² METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1 (2000). The report was compiled September 21, 2000. *Id.*

²³ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *23 (2000). This act was known as the Comprehensive Methamphetamine Control Act. *Id.* The Comprehensive Methamphetamine Control Act sought to “prevent the illegal manufacturing and use of methamphetamine”. Pub. L. No. 104-237, 110 Stat. 3099 (1996). Only one section of the Act addressed environmental concerns; this part of the Act was concerned with the “failure to notify as to the release of a reportable quantity of a hazardous substance into the environment.” Pub. L. No. 104-237, 110 Stat. 3099, 3106 (1996).

²⁴ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *23 (2000).

²⁵ While “club drug” is not defined in the Meth Act, the Meth Act identifies the drugs in their chemical composition or any variation of the composition of the drug so long as the drug has the same effect on the body as the identified drugs. METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *16-17 (2000). Section 401 of the Meth Act lists the drugs identified by this act:

SEC. 401. ENHANCED PUNISHMENT OF CLUB DRUG TRAFFICKERS.

(a) Amendment to Federal Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines regarding any offense relating to the manufacture, importation, or exportation of, or trafficking in-

- (1) 3,4-methylenedioxy methamphetamine;
- (2) 3,4-methylenedioxy amphetamine;
- (3) 3,4-methylenedioxy-N-ethylamphetamine;
- (4) paramethoxymethamphetamine (PMA); or

(5) any other controlled substance, as determined by the Sentencing Commission in consultation with the Attorney General, that is marketed as a club drug and that has either

addiction in America" by equipping Federal, State, and local law enforcement with training and resources to address this epidemic, and by "authoriz[ing] comprehensive prevention and treatment programs to combat abuse and addiction as well."²⁶ The Meth Act intended to accomplish these tasks by funding the Drug Enforcement Administration ("DEA") and Office of National Drug Control Policy ("ONDCP") so that the agencies will be able to provide assistance to State and local law enforcement offices in all stages of meth investigations and provide funding to establish DEA offices in rural areas.²⁷ Additionally, the Meth Act will provide training²⁸ on how to handle the toxic waste produced by meth labs, and will allow for reimbursement for meth lab cleanups and

a chemical structure substantially similar to that of 3,4-methylenedioxy methamphetamine or paramethoxymethamphetamine or an effect on the central nervous system substantially similar to or greater than that of 3,4-methylenedioxy methamphetamine or paramethoxymethamphetamine; (including an attempt or conspiracy to commit an offense described in paragraph (1), (2), (3), or (4)) in violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. 1901 et seq.).

Id.

²⁶ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *21 (2000).

²⁷ *Id.*

²⁸ Section 113 of the Meth Act addresses the funding for training, and states :

Section 113. Training for Drug Enforcement Administration and State and Local Law Enforcement Personnel Relating to Clandestine Laboratories.

Section 113 authorizes \$5.5 million for each fiscal year 2001 through 2003 for DEA training programs designed to: 1) train State and local law enforcement in techniques used in meth investigations; 2) provide a certification program for State and local law enforcement enabling them to meet requirements with respect to the handling of wastes created by meth labs; 3) create a certification program that enables certain State and local law enforcement to recertify other law enforcement in their regions; and, 4) staff mobile training teams which provide State and local law enforcement with advanced training in conducting clan lab investigations and with training that enables them to recertify other law enforcement personnel. The training programs are authorized for 3 years, after which the States, either alone or in consultation or combination with other States, will be responsible for training their own personnel.

Id. at * 29.

disposal of the hazardous waste.²⁹ These modifications are coupled with the permission to increase the criminal penalties for offenses that involve the manufacture, production, or trafficking of meth³⁰ that "create a substantial risk of harm to human life or to the environment,"³¹ while at the same time providing for addiction treatment funding.³² The Meth Act justifies the augmentation of criminal penalties because of the "extreme dangers" associated with the drug including increased use, the threat the manufacturing process poses to the general public, and the high risk of

²⁹ *Id.* at *21.

Section 501 of the Meth Act states:

Sec. 501 Reimbursement by Drug Enforcement Administration of expenses incurred to remediate Methamphetamine Laboratories.

(a) Reimbursement Authorized.-The Attorney General, acting through the Administrator of the Drug Enforcement Administration, may reimburse States, units of local government, Indian tribal governments, other public entities, and multi-jurisdictional or regional consortia thereof for expenses incurred to clean up and safely dispose of substances associated with clandestine methamphetamine laboratories which may present a danger to public health or the environment.

(b) Additional DEA Personnel.-From amounts appropriated or otherwise made available to carry out this section, the Attorney General may hire not more than 5 additional Drug Enforcement Administration personnel to administer this section.

(c) Funding.-

(1) Fiscal year 2000.-From the unobligated balances available to the Department of Justice for fiscal year 2000 to carry out part Q of the Omnibus Crime Control and Safe Streets Act of 1968, known as the Community Oriented Policing Services program (42 U.S.C. 3796dd et seq.), the Attorney General shall make available \$10,000,000 to be used only to carry out this section.

(2) Fiscal year 2001.-There are authorized to be appropriated to the Attorney General to carry out this section \$20,000,000 for fiscal year 2001.

Id. at * 19.

³⁰ The Meth Act also identifies "3,4-methylenedioxy methamphetamine (MDMA), commonly known as "Ecstasy," gamma-hydroxybutyric acid (GHB), other enumerated 'club' drugs, as well as other similar controlled substances" which are to receive heightened criminal penalties. METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *21 (2000).

³¹ *Id.*

³² *Id.* at *22.

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addiction associated with meth use.³³ The DEA reports that the meth usage rate for high school seniors has more than doubled during 1990 to 1996, and reports that children as young as 14 are using the drug.³⁴

Combating the meth epidemic is treated differently than other illicit drugs because of the dangers posed not only to human lives but also to the environment.³⁵ This danger results from the fact that the chemicals

³³ *Id.* at *3-4. Section 801 subtitle A of the Meth Act identifies the additional reasons for the increased criminal penalties as:

(c) Additional Requirements.-In carrying out this section, the United States Sentencing Commission

shall ensure that the sentencing guidelines for offenders convicted of offenses described in subsection (a)

reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such

offenses, and the extreme dangers associated with unlawful activity involving amphetamines, including-

(1) the rapidly growing incidence of amphetamine abuse and the threat to public safety that such abuse poses;

(2) the high risk of amphetamine addiction;

(3) the increased risk of violence associated with amphetamine trafficking and abuse; and

(4) the recent increase in the illegal importation of amphetamine and precursor chemicals.

(d) Emergency Authority to Sentencing Commission.-The United States Sentencing Commission shall

promulgate amendments pursuant to this section as soon as practicable after the date of the enactment of

this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987

(Public Law 100-182), as though the authority under that Act had not expired.

Id.

³⁴ *Id.* at *23. While arrests rates have also increased significantly; in 1993 there were 1,893 and in 1999 this rate rose to 1999 which encompassed 21% of the DEA arrests. *Id.* This increase in use has also been paralleled by an increase in meth labs for production; in 1993 218 labs were seized compared to 7,316 lab seizures in 1999. *Id.* at *22. This combination of the significant amounts of toxic waste produced in the manufacturing process and the increase in the number of labs have resulted in millions of dollars expended to clean up the toxic pollutants and is an impetus to the creation of additional legislation to fight the "methamphetamine crisis, specifically its dangerous manufacturing process and costly clean-up." *Id.* at *22-23.

³⁵ *Id.* at *22 (2000).

used to create meth are easily acquired and can be processed in “makeshift laboratories” anywhere ranging from homes and trailers to motels and automobiles.³⁶ Additionally, the manufacturing process is unstable and the improper mixing of the chemicals can result in explosions and fires.³⁷ These risks are augmented by the fact that for “every one pound of methamphetamine that is produced, approximately five pounds of toxic and often lethal waste products may be left behind at the laboratory site” or illegally dumped into waterways via kitchen sinks or sewers.³⁸ Despite the dangerous manufacturing process and harmful effects on the human body,³⁹ meth usage continues to rise.⁴⁰

C. *U.S v. Allen*⁴¹

In *U.S. v. Allen*, the United States Court of Appeals for the Eighth District dealt with the issue of applying the standard of creating a “substantial risk of harm to human life while manufacturing methamphetamine.”⁴² In *Allen*, a Drug Task Force officer made a stop at 3 a.m. on November 3, 2000, and a search of the vehicle indicated that the driver, Robert Craycraft, was involved in manufacturing meth.⁴³ Attempting to cooperate with the officer, Craycraft implicated the defendant, Richard Allen. He stated that the night before he and Allen had bought ephedrine/pseudoephedrine pills with the purpose of making meth and drove in search of anhydrous ammonia to steal.⁴⁴ Craycraft indicated

³⁶ *Id.*

³⁷ *Id.*

³⁸ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *22 (2000).

³⁹ the Meth Act describes the effect of meth usage as not only affected and modifying one’s immediate state, but continued use can result in “serious damage to the brain. Use can result in death from heart failure, brain damage, stroke, and fatal kidney and lung disorders. Its use can induce uncontrollable violent behavior, and extreme, acute psychiatric and psychological symptoms, including paranoia and hallucinations that may eventually lead to suicide, violent acts, or even murder.” *Id.*

⁴⁰ *Id.*

⁴¹ 297 F.3d 790 (8th Cir. 2002).

⁴² *U.S v. Allen*, 297 F.3d 790, 793 (8th Cir. 2002).

⁴³ *Id.*

⁴⁴ *Id.*

that Allen was already in possession of thirty lithium batteries and twenty soda cylinders which he kept at his home.⁴⁵ Upon executing a search warrant on Allen's home, the Drug Task Force officers found and seized materials used "in the lithium-ammonia reduction method of manufacturing methamphetamine."⁴⁶ These items included: plastic hoses and funnels, salt, carbon dioxide soda canisters, bottles of pseudoephedrine pills, a gram scale, a coffee grinder, coffee filters, starter fluid and punctured starter fluid cans, and lithium batteries.⁴⁷ These items were linked to the meth-making process, as the materials not only contained meth, but also traces of substances used to make meth.⁴⁸

Allen appealed his conviction of the Drug Abuse Prevention and Control Act of 1970,⁴⁹ arguing that the evidence was not sufficient to establish that he had created a substantial risk of harm to human life.⁵⁰ The statute allows for either punishment of a fine or imprisonment for anyone that creates a substantial risk of harm to human life while "manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals..."⁵¹ In *Allen*, the government focused primarily on the threat of meth production on human life, specifically the Defendant's life, while Allen argued that the statute should be read to encompass only harm to third-party individuals.⁵² After hearing evidence from an agent with the Division of Narcotics Enforcement, the Court determined this

⁴⁵ *Id.*

⁴⁶ *U.S. v. Allen*, 297 F.3d 790, 793 (8th Cir. 2002).

⁴⁷ *Id.*

⁴⁸ *Id.* at 793-94.

⁴⁹ This statute, 21 U.S.C. § 858, provides for the punishment of those that "endanger human life while illegally manufacturing controlled substance." The statute states:

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

21 U.S.C. § 858 (2000).

⁵⁰ *Allen*, 297 F.3d at 796.

⁵¹ *Id.*

⁵² *Id.*

distinction did not need to be made at the time.⁵³ The agent testified to the dangerousness of “the lithium-ammonia reduction method of manufacturing methamphetamine” which included: “the possibility of suffocation or burns from anhydrous ammonia gas, the possibility of damage to lungs from inhalation of pseudoephedrine, the possibility of combustion when lithium reacts with moisture, the possibility of the ether exploding, and the creation of poisonous hydrogen chloride gas.”⁵⁴ The agent testified that Allen’s residence was located next to a playground and other individuals were present in the home on various occasions.⁵⁵ Ultimately, the Court decided that the dangerousness of the production process, the proximity of the residence to a playground, and the fact that others visited the home created a substantial risk of harm to human life.⁵⁶

D. *U.S. v. Chamness*⁵⁷

In *U.S. v. Chamness*, the Defendant, John Chamness, pled guilty to two counts of “knowingly attempting to manufacture a mixture or substance containing methamphetamine,” in violation of 21 U.S.C. §§ 841(a)(1) and 846.⁵⁸ In *Chamness*, police officers responded to a call from a trailer-owner indicating that people were inside of his trailer making meth and had threatened to harm him.⁵⁹ When the officers entered the trailer, they smelled ether and the trailer was clouded in a white gas. There were also glass jars containing a white substance with tubes coming out.⁶⁰ The officers suspected the trailer was being used as a secret meth lab and, in compliance with DEA guidelines, exited the trailer to await a hazardous waste disposal team to arrive.⁶¹ Upon subsequent search of the trailer, the officers discovered two glass jars containing 923 milliliters of liquid that contained methamphetamine, one gallon of

⁵³ *Id.*

⁵⁴ *U.S. v. Allen*, 297 F.3d 790, 796 (8th Cir. 2002).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 435 F.3d 724 (7th Cir. 2006).

⁵⁸ *U.S. v. Chamness*, 435 F.3d 724, 725 (7th Cir. 2006).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

muriatic acid, a one gallon container of Coleman stove fuel, peeled lithium batteries, an operating air pump, and 26 ounces of salt.⁶²

In reviewing the standard of creating a substantial risk of harm to human life, the Court applied the sentencing statute to the evidence.⁶³ The court focused on the Methamphetamine Anti-Proliferation Act of 2000 (the "Meth Act")⁶⁴, in which Congress found "that the manufacture of methamphetamine 'poses serious dangers to both human life and to the environment,' and it is 'unstable, volatile, and highly combustible.'"⁶⁵ Given this threat, the Meth Act allowed for an increase or enhancement in the base sentence for any meth manufacturing offense that "created a substantial risk of harm to human life."⁶⁶

While the court noted that "substantial risk of harm" is not defined in the Meth Act, there are factors listed in the Guideline commentary that a court must follow in making a determination of substantial risk of harm; the Court identified four relevant factors and used those to guide its analysis.⁶⁷ Of these factors, the Court focused on: 1) the quantity of the hazardous chemicals and the way in which the chemicals were stored, 2) the manner in which the toxic chemicals were disposed and the likelihood that the toxic substances were released into the environment, 3) the duration and extent of the manufacturing process, and 4) the location of the lab including its proximity to residential neighborhoods and the likely number of human lives that were affected by the lab.⁶⁸

The quantity of hazardous and toxic chemicals was established by the Court's review of the items recovered by the police; these items included an operational meth lab which contained "one gallon of muriatic acid, one gallon of Coleman fuel (or ether), salt and glass jars" containing a liquid that contained meth.⁶⁹ Reviewing each material, the court found "[m]uriatic acid is toxic and can cause significant burns," and when the

⁶² *U.S. v. Chamness*, 435 F.3d 724, 725 (7th Cir. 2006).

⁶³ *Id.* at 725-26.

⁶⁴ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, (2000).

⁶⁵ *Chamness*, 435 F.3d at 726.

⁶⁶ *Id.*

⁶⁷ *Id.* at 727.

⁶⁸ *Chamness*, 435 F.3d at 727.

⁶⁹ *Id.*

acid is combined with salt, it becomes hydrochloric acid, which is a strong irritant, and that "Coleman fuel is flammable and can be explosive."⁷⁰ Additionally, the Court found the meth itself was harmful and the ether cloud that filled the trailer was hazardous and/or toxic. In consideration of all of the chemicals that were discovered, and because a hazardous waste disposal team had to break down the lab per the Drug Enforcement Administration's guidelines, the chemicals were declared hazardous and toxic.⁷¹

Regarding the evaluation of the substantial risk on human lives, the Court did not read the guidelines to require actual harm, but that there was a risk of harm.⁷² The Court concluded a significant amount of human lives were put at substantial risk of harm, and because the lab was highly flammable and the potential for an explosion was great, anyone in contact or in the vicinity of the lab was at risk.⁷³ The Court included Chamness himself, those with Chamness, the owner of the trailer, the police officers that responded to the call, the hazardous waste disposal team, and anyone living near the trailer to be at risk.⁷⁴

While the Court relied on the potential dangers of the meth manufacturing process to find substantial harm to human life,⁷⁵ the Court relied on other factors when evaluating environmental concerns.⁷⁶ In evaluating the impact on the environment, the Court determined that an important factor was evidence of how the chemicals were disposed, yet the Court found the government did not have enough evidence to determine how the chemicals were disposed.⁷⁷ The Court decided since there was no evidence of how the chemicals were to be disposed, the issue was indeterminate.⁷⁸

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 729.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Chamness*, 435 F.3d at 729.

⁷⁶ *Id.* at 728.

⁷⁷ *Id.*

⁷⁸ *Id.*

IV. THE INSTANT DECISION

In reviewing the two issues on appeal, the Eighth Circuit first addressed whether possession of a controlled substance would satisfy the standard of creating "a substantial risk of harm to human life or the environment" that would warrant an increase or an enhancement in sentencing.⁷⁹ In making this determination, the Court relied on the legislative history of the Meth Act.⁸⁰ The Court focused on the language in the legislative history describing the volatile and combustible manufacturing process, the five to one pound ratio of toxic waste created in the meth manufacturing process, which is then illegally dumped into the environment, in considering the risk.⁸¹ The Court determined that the sentencing statute factors were mandatory factors⁸² to consider in making

⁷⁹ *Pinnow*, 469 F.3d at 1156.

⁸⁰ *Id.*

⁸¹ *Id.* (quoting the Meth Act, the Meth Act states:

Additionally, these chemicals and substances are utilized in a manufacturing process that is unstable, volatile, and highly combustible. Even small amounts of these chemicals, when mixed improperly, can cause explosions and fires. For every one pound of methamphetamine that is produced, approximately five pounds of toxic and often lethal waste products may be left behind at the laboratory site, or disposed of in rivers, kitchen sinks, or sewage systems in an effort to conceal evidence of illegal manufacturing. More disturbing is that most of these laboratories are situated in residences, motels, trailers, and vans, and often times are operated in the presence of children.

METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1, at *22 (2000).

⁸² *There* are four factors listed:

- (A) Factors to Consider.--In determining, for purposes of subsection (b)(8)(B) or (C), whether the offense created a substantial risk of harm to human life or the environment, the court shall include consideration of the following factors:
- (i) The quantity of any chemicals or hazardous or toxic substances found at the laboratory, and the manner in which the chemicals or substances were stored.
 - (ii) The manner in which hazardous or toxic substances were disposed, and the likelihood of release into the environment of hazardous or toxic substances.
 - (iii) The duration of the offense, and the extent of the manufacturing operation.
 - (iv) The location of the laboratory (e.g., whether the laboratory is located in a residential neighborhood or a remote area) and the number of human lives placed at substantial risk of harm.

18 U.S.C. § 2D1.1 n.20A.

a determination of risk to humans and the environment, but that the Court may also consider the facts of the case at hand to determine the risk, as well as account for the inherent dangerousness associated with the manufacturing of meth.⁸³ The Court relied on *Chamness*⁸⁴ and *Allen*⁸⁵ to establish the well-known risks to human life and the environment from the manufacture of meth.⁸⁶ Applying this multi-factored analysis in consideration of the risk associated with just the manufacturing process, the Court reviewed the substances and equipment seized from Pinnow.⁸⁷ Included in the items recovered was enough pseudoephedrine to make fifty grams of pure meth along with the supplies used in the “lithium ammonium reduction method of manufacture.”⁸⁸ When these items were added to the materials recovered in Pinnow’s room, there was strong evidence of recent manufacturing of meth even though no actual meth lab was seized.⁸⁹ Evidence of improper disposal or storage of the harmful chemicals was supported by Pinnow’s hurried departure from the hotel carrying “sulfuric acid, acetone, and starter fluid (which releases ether) into the taxicab.”⁹⁰

Considering all the facts of the case (the chemicals and equipment Pinnow was carrying, the quantity of the chemicals present, the evidence that manufacturing had been done in various motel rooms, the improper storage and likely improper disposal of the chemicals) the Court determined Pinnow’s actions were enough to create both “a substantial risk of harm to human life and the environment,” despite a lack of an active meth lab.⁹¹

⁸³ *U.S. v. Pinnow*, 469 F.3d 1153, 1156-57 (8th Cir. 2006).

⁸⁴ See legal background section C, *supra*.

⁸⁵ See legal background section B, *supra*.

⁸⁶ *Pinnow*, 469 F.3d at 1157.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Pinnow*, 469 F.3d at 1156-57.

V. COMMENT

Pinnow, while relying on both *Allen*⁹² and *Chamness*⁹³, moves beyond the two cases and actively asserts the environmental aspect as laid out in the Meth Act.⁹⁴ In *Allen*, the Eighth Circuit does not deal with the issue of the environment and focuses only on the impact the production and manufacturing of meth has on human life.⁹⁵ The Seventh Circuit, however, did address the environmental issue, but was reluctant to apply the environmental standard in *Chamness*.⁹⁶ This reluctance in *Chamness* seemed to indicate the environmental standard was a high bar that would be virtually untouchable given the laissez faire manner in which the court dismissed the government's environmental claim, despite the active meth lab that was discovered and the fact that a hazardous waste management team had to be called in to dismantle an active meth lab.⁹⁷

This standard, as applied in *Chamness*, would seem to spell the demise of the environmental aspect of the claim asserted in *Pinnow*, given that the use of a hazardous waste disposal team was not indicated in *Pinnow*, and there was only an inference of improper disposal of hazardous waste into the environment.⁹⁸ The court in *Pinnow* relies primarily on the hurried manner in which the defendant left the hotel and entered the taxi and inferred from this that there could not have been proper disposal of the dangerous materials,⁹⁹ whereas the court in *Chamness* found there was no evidence of how any hazardous waste got into the environment and thus the court could not make a determination on the environmental issue,¹⁰⁰ even though there was an active meth lab at the time the officers arrived to the site in *Chamness*.¹⁰¹

⁹² *Allen*, 297 F.3d 790.

⁹³ *Chamness*, 435 F.3d 724.

⁹⁴ *Pinnow*, 469 F.3d at 1156.

⁹⁵ *Allen*, 297 F.3d at 798.

⁹⁶ *Chamness*, 435 F.3d at 727.

⁹⁷ *Chamness*, 435 F.3d at 727.

⁹⁸ *Pinnow*, 469 F.3d at 1157.

⁹⁹ *Pinnow*, 469 F.3d at 1157.

¹⁰⁰ *Chamness*, 435 F.3d at 728.

¹⁰¹ *Id.* at 725.

In both *Allen* and *Chamness*, the meth labs were more established and functional than the inferences the Eighth Circuit made to create a meth lab in *Pinnow*, and yet the court finds there had been substantial harm to the environment despite the previous disregard of the environmental concerns.¹⁰² Does *Pinnow* indicate a heightened awareness of environmental concerns, or a determination to fight the war on drugs with any tool in the figurative arsenal?

The United States has been fighting the war on drugs since the 1970s.¹⁰³ The damaging environmental side effects of drug production are not a new discovery.¹⁰⁴ However, the meth problem has brought environmental concerns of the War on Drugs to U.S. soil.¹⁰⁵ While

¹⁰² *Pinnow*, 469 F.3d at 1157.

¹⁰³ War on Drugs: A History, Daily KOS, March 9, 2005, available at <http://www.dailykos.com/story/2005/3/10/0376/21535>. (last visited March 15, 2007).

¹⁰⁴ Common Sense Drug Policy, Drug War Facts: Environment (2005), <http://www.drugwarfacts.org/enviroinm.pdf>.

More than 100,000 acres are deforested each year to grow coca, marijuana, and opium poppies. Paradoxically, the drug war waged by the US and Colombian governments has exacerbated deforestation and loss of biodiversity....Seventy three percent of the Andes, an area that is vital to the conservation of Colombia's water supply, has been deforested as a result of both migration and drug cultivation.

Id. at 1. (citing Trade and Environment Database (TED), TED Case Studies: Deforestation in Colombia (Washington DC: American University, 1997), from the web at <http://www.american.edu/TED/coldefor.htm>, last accessed March 23, 2005). To combat the growing of coca leaves, aerial spraying is used; “[c]urrent projections call for 80,000 hectares to be sprayed (largely in Putumayo), which, if achieved, will bring the annual total to roughly 65 percent of the area currently thought to be under cultivation.” *Id.* at 4.

When aurally sprayed, the herbicide Glyphosate can drift for up to about half of a mile. In Colombia, where the herbicide Glyphosate is sprayed from airplanes, children have lost hair and suffered diarrhea as a result of its application.

Id. at 6-9. (citing Cox, C., "Glyphosate, Part 2: Human Exposure and Ecological Effects," *Journal of Pesticide Reform*, Vol. 15 (Eugene, OR: Northwest Coalition for Alternatives to Pesticides, 1995); Lloyd, R., "Publisher Warns about Impacts of Drug War," *World Rainforest Report* 37, (Lismore, NSW: Australia, 1997); Drug Enforcement Agency, Draft Supplement to the Environmental Impact Statements for Cannabis Eradication in the Contiguous United States and Hawaii (Washington DC: U.S. Government Printing Office, April 1998)).

¹⁰⁵ METHAMPHETAMINE AND CLUB DRUG ANTI-PROLIFERATION ACT OF 2000, H.R. Rep. NO. 106-878, pt. 1 (2000), *supra* note 23.

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methamphetamines are not new,¹⁰⁶ many states have been forced to deal with the meth lab issue head on because the drug can be easily manufactured¹⁰⁷ coupled with the recent migration of the use of labs across the country.¹⁰⁸ The ability to mass produce meth labs and the fact that the DEA reports spending \$3,000 to \$4,000 on each meth lab clean up, brings even more attention to the environmental issues associated with the "cooking" of meth.¹⁰⁹ In fact, meth labs have earned

¹⁰⁶ In fact amphetamines used to be prescribed as an appetite suppressant, as well as given to aviators during the Vietnam War and Desert Storm. Common Sense Drug Policy, Drug War Facts: Methamphetamine 1, 5 (2005), <http://www.drugwarfacts.org/methamph.pdf>.

The Division of Alcohol and Drug Abuse states:

The amphetamine family of drugs was first introduced to the medical field in the 1930's as a

nasal decongestant. Amphetamine was used in Japan during World War II to provide soldiers

energy and to prevent sleepiness. Eventually the drug was made available to the public, and

amphetamine abuse was widespread in Japan among young people. In the United States,

amphetamine abuse did not become a major problem until the 1960's.

Methamphetamine,

known as "speed" on the street, became a popular drug because it was manufactured so easily.

The use of methamphetamine in the United States has steadily risen in the past decade, especially

in California and Missouri where abuse has reached epidemic proportions.

Missouri Dept. of Mental Health, Missouri Div. of Alcohol and Drug Abuse,

METHAMPHETAMINE AND MISSOURI 2 (2004).

¹⁰⁷ *Id.*

¹⁰⁸ M. Mindy Moretti, *Former Meth Labs Similar to "Mini-Superfund" Sites*, County News Online, April 11, 2005. Available at

<http://www.naco.org/CountyNewsTemplate.cfm?Section=4-11-05&Template=/ContentManagement/ContentDisplay.cfm&ContentID=16951>. (last visited Feb. 1, 2007).

¹⁰⁹ *Id.* DEA's annual cost for cleanup of clandestine laboratories (almost entirely methamphetamine laboratories) in the United States has increased steadily from FY1995 (\$2 million), to FY1999 (\$12.2 million), to FY 2002 (\$23.8 million).

Common Sense Drug Policy, Drug War Facts: Environment 9 (2005),

<http://www.drugwarfacts.org/enviroanm.pdf>. (*citing* National Drug Threat Assessment 2004 (Johnstown, PA: National Drug Intelligence Center, April 2004), p. 18).

themselves the label of mini-superfund sites,¹¹⁰ given the 32 or so hazardous chemicals used in creating the drug and the devastating effect the process reeks on the environment.¹¹¹

So compelling are the environmental clean up issues that the House initiated the Methamphetamine Remediation Research Act of 2005 to authorize federal research to address the effects of meth production and establish voluntary guidelines to deal with the clean up meth labs inflict on the environment.¹¹² While the meth problem may have had a focus on the

¹¹⁰ The EPA defines Superfund as:

CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) - commonly known as Superfund, this law, enacted by Congress on December 11, 1980, created the Superfund program. Specifically, CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites, provided for liability of persons responsible for releases of hazardous waste at these sites, and established a trust fund to provide for cleanup when no responsible party could be identified.

EPA, FY 2004 SUPERFUND ANNUAL REPORT 38 (2004).

Congress created the Superfund program to address the immediate threats posed by hazardous substances, pollutants, and contaminants. To limit exposures across the country, the United States Environmental Protection Agency ("EPA") undertakes a variety of Superfund response actions. From providing alternative water supplies for communities to performing residential yard cleanups, the Superfund program continues to protect public health and safety. The Superfund program is important because it may be the best defense against direct human exposure to the contamination at these sites, assures the protection of those who work and live nearby sites, and is a principal source of information on the risks at these sites.

Id. at 4.

¹¹¹ M. Mindy Moretti, *Former Meth Labs Similar to "Mini-Superfund" Sites*, County News Online, April 11, 2005. Available at <http://www.naco.org/CountyNewsTemplate.cfm?Section=4-11-05&Template=/ContentManagement/ContentDisplay.cfm&ContentID=16951>. (last visited Feb. 1, 2007).

¹¹² *Id.* The Bill refers to the Methamphetamine Remediation Research Act of 2005, is designed to "provide for a research program for remediation of closed methamphetamine production laboratories, and for other purpose" given that Congress has found that:

(1) Methamphetamine use and production is growing rapidly throughout the United States.

(2) Some materials and chemical residues remaining from the production of methamphetamine pose novel environmental problems in locations where methamphetamine laboratories have been closed.

West coast, the migration East has not left Missouri unscathed.¹¹³ In Missouri alone, the National Clandestine Laboratory Database cited 2,707 meth related incidents during 2004.¹¹⁴ In fact, Governor Bob Holden's executive order 04-04 identified Missouri to be a High Intensity Drug Trafficking Area, and Missouri earned the title of being the nation's leader in meth lab seizures.¹¹⁵

(3) There has been little standardization of measures for determining when the site of a former methamphetamine laboratory has been successfully remediated.

(4) Initial cleanup actions are generally limited to removal of hazardous substances and contaminated materials that pose an immediate threat to public health or the environment. It is not uncommon for significant levels of contamination to be found throughout residential structures where methamphetamine has been manufactured, partially because of a lack of knowledge of how to achieve an effective cleanup.

(5) Data on methamphetamine laboratory-related contaminants of concern are very limited, and uniform cleanup standards do not currently exist. In addition, procedures for sampling and analysis of contaminants need to be researched and developed.

(6) Many States are struggling with establishing assessment and remediation guidelines and programs to address the rapidly expanding number of methamphetamine laboratories being closed each year.

Methamphetamine Remediation Research Act of 2005, H.R. 798, 109th Cong. § 2 (1st Sess. 2005).

¹¹³ M. Mindy Moretti, *Former Meth Labs Similar to "Mini-Superfund" Sites*, County News Online, April 11, 2005. Available at <http://www.naco.org/CountyNewsTemplate.cfm?Section=4-11-05&Template=/ContentManagement/ContentDisplay.cfm&ContentID=16951>. (last visited Feb. 1, 2007).

¹¹⁴ *Id.*

¹¹⁵ Exec. Order No. 04-04 (2004). Part of the order reads:

WHEREAS, law enforcement statistics show an exponential rise in the number of methamphetamine labs in the state, causing Missouri to be the nation's leader in the number of methamphetamine lab seizures. As far back as 1998, Missouri was declared a High Intensity Drug Trafficking Area ("HIDTA") because of the number of clandestine methamphetamine labs located in the state; and

WHEREAS, the manufacturing of methamphetamine is very dangerous due to the fact that the chemicals used are volatile and toxic to the environment. Methamphetamine labs present a clear and present danger to the methamphetamine cook, their children, the community and law enforcement officials; and

However, the court's increased focus in *Pinnow* on the environmental concerns could also just be a factor of the passage of time and the increased awareness of issues surrounding the production and manufacturing of meth. Missouri garnered the title of a High Intensity Drug Trafficking Area in 1998,¹¹⁶ with the greatest rise in meth use occurring in 1992 and 1998.¹¹⁷ However, since 2000, state and local law enforcement agencies nationwide have identified methamphetamines as the second largest contributor to violent crime and the greatest contributor

WHEREAS, the effects of methamphetamine pose a serious and growing risk to the health, safety and welfare of Missouri citizens and the state's environment, making it necessary to address these increasing risks in a more aggressive, comprehensive and coordinated manner.

Id.

This order created the Missouri Methamphetamine Education and Prevention Task Force to educate Missourians on the dangers of methamphetamines as well as address "all facets of the widespread problems created by the manufacturing and use of methamphetamines." *Id.* Governor Holden also enacted a Task Force to address the environmental concerns. Missouri Dept. of Mental Health, Missouri Div. of Alcohol and Drug Abuse, METHAMPHETAMINE AND MISSOURI 14 (2004). The act became known as Methamphetamine Enforcement and Environmental Protection Task Force, which had the focus on dealing with the issues officer and environmental safety. *Id.* at 15.

The Enforcement and Environmental Protection Task Force will address:
Providing law enforcement a safe, legal, and effective place to temporarily store, manage, and dispose of methamphetamine lab chemicals
Certification program to train law enforcement officers dealing with methamphetamine labs
Personal protective equipment for law enforcement when dealing with hazardous chemicals.

Id.

¹¹⁶ Exec. Order No. 04-04 (2004).

¹¹⁷ Common Sense Drug Policy, Drug War Facts: Methamphetamine 2 (2005), <http://www.drugwarfacts.org/methamph.pdf>. (citing Substance Abuse and Mental Health Services Administration. (2004). Results from the 2003 National Survey on Drug Use and Health: National Findings (Office of Applied Studies, NSDUH Series H-25, DHHS Publication No. SMA 04-3964). Rockville, MD, p. 46. Also available on the web at <http://www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#ch5>, last accessed Aug. 31, 2005)).

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to property crimes,¹¹⁸ despite little indication of any increase in use since 2000.¹¹⁹

The willingness to draw inferences of environmental harm in *Pinnow* could also be the result of identifying issues surrounding the production and manufacturing of meth with "a form of terrorism unto itself."¹²⁰ While the recent revision of the U.S. PATRIOT Act includes the Combat Methamphetamine Act ("CMA"), which labels the availability of meth as a form of terrorism, it is not clear the label has to do with the War on Terrorism as it actually has more to do with the bolstering of the War on Drugs.¹²¹ This emphasis can be seen in a fiscal comparison: the 2008 Drug Control budget has been identified at roughly \$12.9 billion dollars,¹²² while the EPA budget request is \$7.2 billion.¹²³ In addition, there is a debate as to the effectiveness of the EPA to address and clean up identified Superfund sites and whether these inadequacies warrant a

¹¹⁸ *Id.* at 8 (citing National Drug Threat Assessment 2004 (Johnstown, PA: National Drug Intelligence Center, April 2004), p. 18.)

¹¹⁹ Common Sense Drug Policy, Drug War Facts: Methamphetamine 2 (2005), <http://www.drugwarfacts.org/methamph.pdf>. (citing Substance Abuse and Mental Health Services Administration. (2004). Results from the 2003 National Survey on Drug Use and Health: National Findings (Office of Applied Studies, NSDUH Series H-25, DHHS Publication No. SMA 04-3964). Rockville, MD, p. 46. Also available on the web at <http://www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#ch5>, last accessed Aug. 31, 2005)).

¹²⁰ John J. Berlau, *Making a Meth of the PATRIOT Act*, Reason Online, Feb. 23, 2006, available at <http://www.reason.com/news/show/117336.html>. (last visited March 15, 2007).

¹²¹ John J. Berlau, *Making a Meth of the PATRIOT Act*, Reason Online, Feb. 23, 2006, available at <http://www.reason.com/news/show/117336.html>. (last visited March 15, 2007).

Within the amended USA Patriot Improvement and Reauthorization Act of 2005, the CMA is called Combat Methamphetamine Epidemic Act of 2005. USA Patriot Improvement and Reauthorization Act of 2005, H.R. 3199, 109th Cong. (2nd Sess. 2006). Subtitle D of the CMA addresses the "Enhanced environmental regulation of methamphetamine byproducts." *Id.*

¹²² Office of National Drug Control Policy February 2007 available at http://www.whitehousedrugpolicy.gov/publications/pdf/bdgt_hghlght_07.pdf last visited March 10, 2007.

¹²³ EPA budget in brief FY 2008. www.epa.gov/ocfo/budget/2008/2008bib.pdf last visited March 10, 2007.

reduction in the EPA budget.¹²⁴ It is unclear by this challenge as to how non-drug-related clean up processes would be affected by a curtailment of the EPA budget. If the EPA budget is cut due to concerns regarding Superfund site clean up, and money is funneled to the DEA to take over managing the clean up process of meth Superfunds, it is not clear what status non-drug-related Superfund sites will have. If portions of the EPA budget are shifted to the DEA to address meth cleanups, it would appear as though meth lab Superfund sites are allowed to jump to the front of the cleanup line over other forms of hazardous waste solely based on the new “terrorism” label. Certainly the decision in *Pinnow* does not make any such assertion; however, the willingness of the court to find a substantial harm to the environment based upon bare inferences of hurried behavior calls into question the motivation of the court to link the defendant to an environmental harm.¹²⁵ Given that the substantial risk to human life and the environment serve as a basis for enhancing the sentencing criteria of the criminal offenses,¹²⁶ the environmental focus would appear to be nothing more than a veiled attempt at fighting the War on Drugs from a more creative angle, as opposed to fighting the devastation of the environment.

VI. CONCLUSION

Environmental devastation as caused by the production of drugs has been an ongoing problem and *Pinnow* brings environmental harm caused by the production of meth into focus. The willingness of the court to draw inferences about the possible harm that most assuredly must have been inflicted upon the environment through the process of manufacturing meth seems to be a puff in the proverbial environmental sails. While previous Acts may have focused only on the impact on human life, the addition of the environmental harm element to the Children’s Act was not an easy remedy for securing protection of the environment. The Seventh Circuit was reluctant to apply the environmental standard without concrete

¹²⁴ Bret Schulte, *Democrats Target EPA Budget and Direction*, USNews & World Report, Mar. 1, 2007, available at www.usnews.com/usnew/news/articles/070301/1epa.htm. (last visited March 10, 2007).

¹²⁵ *Pinnow*, 469 F.3d at 1157.

¹²⁶ *Id.* at 1156-57; Pub. L. No. 106-310, § 3612, 114 Stat. 1228 (2000).

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evidence of harm; however, in the instant case, the Eighth Circuit easily inferred environmental harm from the defendant's hurried dismantling and subsequent departure from what the court concludes was a working meth lab.

Given the volatile nature of meth labs during the manufacturing stage, and the fact that one pound of meth produces five pounds of toxic waste, there seems to be Congressional support for sponsoring and allocating funds for environmental clean up. But the motivation behind supporting the environment appears to have less relation to protecting the environment and more relation to finding another mechanism to bolster the War on Drugs.

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