

## **ETHICS IN LIFE AND VOCATION**

Dr. Mark L. Whitman,  
Social and Behavioral Sciences  
(Criminal Justice)  
Alfred State College  
10 Upper College Drive  
Alfred, NY 14802



This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>.

## Table of Contents

<b>Introduction/Preface.....</b>	<b>5</b>
<b>Chapter 1 - Why Ethics? .....</b>	<b>8</b>
<b>Chapter 2 - Virtue Ethics And Ethical Systems.....</b>	<b>20</b>
<b>Chapter 3 – Laws/Crime/Deviance &amp; Ethics.....</b>	<b>33</b>
<b>Chapter 4 – Corruption in the System .....</b>	<b>46</b>
<b>Chapter 5 – Ethical Leadership.....</b>	<b>60</b>
<b>Chapter 6– Criminal v. Racial Profiling &amp; Surveillance .....</b>	<b>79</b>
<b>Chapter 7 Mid-Term Evaluation. A Case Study: Building a Better York Policy: .....</b>	<b>94</b>
<b>Project Component .....</b>	<b>111</b>
<b>Chapter 8: A Case Study: Pennsylvania Department of Corrections Review. ....</b>	<b>136</b>
<b>Chapter 9 Social Policy in Criminal Justice Systems .....</b>	<b>201</b>
<b>Chapter 10 Public v. Private Policing: The Ethical Dilemma .....</b>	<b>221</b>
<b>Chapter 11- Police Programs and Homeland Security/Hometown Security .....</b>	<b>228</b>
<b>Chapter 12-Finding Ethical People from an Unethical Society.....</b>	<b>248</b>
<b>Chapter 13 Criminal Profiling: The Good, the Bad and the Ugly .....</b>	<b>274</b>
<b>Chapter 14 An Examination of the 14th Amendment of the U.S. Constitution: Has it Aided Crafting Social Policy in America, Specifically Equally? .....</b>	<b>290</b>

## **About the Author**

**Mark L. Whitman, Ph.D.**

**Social and Behavioral Science**

**Alfred State College**



Dr. Mark Whitman has been a life-long trainer and more recently a professor in Criminal Justice in higher education. He asserts “Therefore, education is a process to provide a blend of experience, skill, reality and training coupled with creativity, innovation and resourcefulness by student and educator alike in order to prepare the student to enter a high speed and at times volatile occupation with change as a key stable sewn throughout the fabric of the system. Paramount to this goal is the reintroduction of critical thinking to our students”.

An experienced professional with over 28 years’ as a Police Chief, or Police Commissioner in a near 40 year law enforcement career and 20 years (Full-Time and Adjunct) in higher education he is credited with a strong track record of achievement in improving communities and reducing crime. He has key noted or has been the lead presenter in leadership training, specifically, “Surviving with Honor”. He has done so from the premise that “We begin at Excellence and we move toward perfection collectively”.

He has served fellow law enforcement professionals in leadership roles as the President of the NYS Association of Chiefs of Police and on the Executive Board of the International Association of Chiefs of Police as the Chair of the State Association of Chiefs of Police. Dr. Whitman, then Chief Whitman served as the Chair of the NYS Municipal Police Training

Council during the introduction of the Americans with Disability Act. He served in the U.S. Army during the Vietnam conflict, the only lottery he had ever won. The U.S. Military Draft. He was selected as the Field First in his training company. He completed Non-Commissioned Officer training during Basic Training and served his time at the United States Army Retraining Brigade, Ft. Riley, KS, a military work release correctional facility.

Dr. Whitman received numerous training certifications during his long law enforcement career and was a certified police trainer. His formal education includes:

**Capella University, Minneapolis, MN**

Ph.D. in Public Safety Leadership (2013) - Graduate with Distinction

**Alfred University Alfred, NY**

M.P.S. in Community Service Administration (1980)

**Florida Atlantic University, Boca Raton, FL**

B.A.S. in Social Science (1972)

**Monroe Community College, Rochester, NY**

Associates Degree in Police Science (1971)

**Graduate of the Federal Bureau of Investigation National Academy 165th and Law Enforcement Executive Development 43rd Class**

He chose to complete is lifelong goal of achieving his Ph.D. rather than to pursue another position. He did so and has put on paper those items of concern for the reader to unpack their personal capabilities. In most personal situations there resides a leader from within, it is important that the reader discovers that person.

## **Introduction/Preface**

### **How might this material fit your educational needs?**

The purpose of this text is quite simple. It fits my teaching needs and in doing so, I assert that it too may fit your needs. I offer this script in whole or part for your use and would encourage peer feedback. I have written this from the lens of a Criminal Justice practitioner for nearly forty years. My career began in the early 1970's until 2010. As one can imagine, the ethical significance of each member of a CJ system is critical. I further assert that albeit this was written for self-serving interests to teach in the CJ discipline, I strongly believe that it remains sufficiently generic that it can fit in many other disciplines that accompanies professor imagination splicing your inventive juices.

Often professors, teachers, coaches, or trainers are provided a range of written materials (generally text books) that may fit a module or two of the desired material by the instructor. We often find ourselves researching many articles to supplant the selected text rather than to supplement. A major benefit of writing material for Open Educational Resources is that it provides a starting point and peers may add to the submitted material. Herein lies one of my personal interest, I would encourage my peers to provide a counterpoint section for each chapter provided within this material. Thus, we may collectively add to the critical thinking cycle of our future practitioners.

Additionally the diction, tone, categories, and fluctuating between first and third person, moderate citations, accompanied with associated humor is hopefully acceptable to the reader. If not, put this material down and fear not, I have been rejected by higher authority. The material is presented in a decipherable conversational style so you may take a breath during this association and the ability to imagine yourself in any of the scenarios. What has been written here is the

truth, however I may embellish it a tad in order to make it interesting but the presentation is without fabrications. I must however provide a disclaimer at this juncture: To my knowledge I have never knowingly met with Russian Agents.

The actions of government agencies in the criminal justice system are challenged to balance individual due process rights, with the need to provide effective crime control for the larger part of society. The decentralization of the criminal justice system, as displayed in the picket fence model is designed to provide separate but linked services at various government levels. The theme of this course is the challenge for the criminal justice system to balance its efforts in crime control, while acknowledging due process rights. The central premise of the due process model is the presumption of innocence. Due process protects the rights of a defendant while being processed through the system. I will bet that with moderate tweaking this material can fit your discipline as well.

The first acknowledgment of any criminal justice practitioner is to understand that “Rules of Evidence are Rules of Exclusion”. By the same token not all evidence excluded from a trial or not seeing the light of day does not necessarily mean that the evidence was obtained illegally. The study of procedural due process has often been intriguing to me. How then why must someone be ethical when no one is looking over their shoulder? I bet this may apply to business, law, medicine as well as policing.

This course explores the evolution of ethics, the impacts of ethics within the administration of justice, and how does one maintain a strong ethical center when no one is watching. Sklansky (2006) asserts the demographics of policing has all but removed the "Blue Curtain of Silence" in policing. This author tends to agree with Sklansky, after serving a near 40 years in policing of which 28 years was as the head of an agency. This notion serving some is

that most police are honest, which is true, but often never celebrated. Those that make headlines are generally officers in trouble. These headlines often create false equivalences that some accept. That is, officers just cover for wrong doing by other officers and are probably as corrupt. The latter is simply not true. So what keeps most in the CJ system honest? This journey explores these questions and hopefully will dispel false positives. Stop and think of the new medical student that has enormous educational loans to repay. Why not take a harmless kickback from a pharmaceutical company to peddle their drug? Hmmmm, street corner pharmaceutical entrepreneurship brought into a medical office?

We will discuss course expectations further during our first meeting. The syllabus has been made available to you in advance of the course beginning. During our first meeting we will take time to introduce each other and get relaxed. My goal is to create a comfortable environment that makes a tough subject, like the law, a fun experience.

I look forward to meeting you and getting to build a relationship with you. In the meantime go into the Syllabus read it and follow the instructions for your first submission.

Best

Dr. Mark L. Whitman

## **Chapter 1 - Why Ethics?**

### **Chapter Abstract:**

The material offers an introduction of the scope of authority of criminal justice members and ethical prescriptions for the administration of ones authority in contemporary society. The discussion introduces decision making and actions taken resultant of a decision that if they follow ethical pathways, it may aid in a better decision that can be well articulated and supported ethically. Materials offer an examination of one's authority and thinking critically to come to a reasonable conclusion. This section suggests two propositions essential to CJ members: "Just because you can, does not necessarily mean you should"; and perhaps "We should guide our conduct on how we ought to live rather than how we actually live".

### **Government and Ethics:**

The actions of government agencies in the criminal justice system are challenged to balance individual due process rights, with the need to provide effective crime control for the larger part of society. The decentralization of the criminal justice system, as displayed in the picket fence model is designed to provide separate but linked services at various government levels. The theme of this course is the challenge for the criminal justice system to balance its efforts in crime control, while acknowledging due process rights. The central premise of the due process model is the presumption of innocence. Due process protects the rights of a defendant while being processed through the system.

The first acknowledgment of any criminal justice practitioner is to understand that "Rules of Evidence are Rules of Exclusion". By the same token not all evidence excluded from a trial

or not seeing the light of day does not necessarily mean that the evidence was obtained illegally. The study of procedural due process has often been intriguing to me.

This material explores the evolution of ethics, the impacts of ethics within the administration of justice, and how does one maintain a strong ethical center when no one is watching. Sklansky (2006) asserts the demographics of policing has all but removed the "Blue Curtain of Silence" in policing. This author tends to agree with Sklansky, after serving a near 40 years in policing of which 28 years was as the head of an agency. This notion serving some is that most police are honest, which is true, but often never celebrated. Those that make headlines are generally officers in trouble. These headlines often create false equivalences that some accept. That is, officers just cover for wrong doing by other officers and are probably as corrupt. The latter is simply not true. So what keeps most in the CJ system honest? This journey explores these questions and hopefully will dispel false positives.

Before delving into the vast arena of criminal justice and just how ethics apply, one needs to understand the terms commonly consumed, often bantered about that rarely govern personal lives, realized by political affiliates that are often associated with government or lived through daily life-styles. One only needs to look at the disarray of the contemporary political landscape in the United States and the impacts this dysfunction has on the world as well as on U.S. soil. This unforeseen disruption in American life in the embryotic stages of the 21st Century does not bode well for stable life styles going forward. Then how does this turmoil seep into the fabric of all that is thought to be important to citizenry, CJ practitioners, and leadership; and more importantly how then does one sustain routine life free of missteps or misconduct.

This is not merely a practical exercise of follow the leader. The culture within an organization or profession may pose such power or authority over its membership that the members may yield to unsavory behaviors. How then can the CJ system attract ethical people from what may be an unethical society sufficient to alter unethical cultural strategy? Society may be better equipped to deal with the ethical questions posed in this material if we understand a couple basic propositions: “Just because you can, does not necessarily mean you should”; and perhaps “We should guide our conduct on how we ought to live rather than how we actually live”.

As an example of these schemes of ethical behavior, the reader is a police officer with access to the National Criminal Information Center (NCIC) data, and a personal friend of yours asks of you a criminal history on a perspective son-in-law. This is an innocuous request and you would certainly hope a friend of yours would do the same for you, but you know this is a violation of law and rules and regulation. None-the-less you perform the task because everyone else does it and what can it hurt, your friend is not in the mob. Albeit this is not a breach of national security, it is a violation of your oath of office, violation of rules and regulations, and most certainly a violation of law, regardless of enforcement activity. More importantly if you were to follow the former propositions more rigidly, you would not find yourself looking over your shoulder waiting for a formal inquiry.

**So why study Ethics?**

The daily life of most citizens within the United States and the world inclusively live by some form of moral guidance, character, values, and integrity. Albeit, not all of which may be conveniently compartmentalized to a one size fits all for every human being. An individual may be impacted by life course events that alter that which was once held sacred, however does not mean that should they move from one ethical approach to another the action does not render them unethical. This premise holds for the most part universally accurate in spite of one's vocation. Yet those that pursue a career in the criminal justice system morality, character, and integrity are paramount. At the end of the day when a shift or watch is complete or more so when a career has concluded the only thing we have that is truly ours is integrity and character (McCartney and Parent, 2015).

So why are ethics of such importance in criminal justice? What are ethics? Where had ethics originated? Taking the latter first, the roots of Ethics are woven into the fabric of the American Social Contract Theory that can be traced to the early teachings of Socrates (470-399 B.C.), Plato (428-348 B.C.), and Aristotle (384-322 B.C.). These philosophers are later found in the social contract era within the works of Thomas Hobbes (1651), John Locke (1689), and Jean-Jacques Rousseau (1762); and more recently in the works of John Rawls (1921–2002), and within the framework of our justice system (Albanese, 2012; & Pollack, 2010).

Second, the former question; why are ethics important? The United States is a country founded on the "Rule of Law" unlike forms of an oligarchy, plutocracy, or dictatorship forms of government that "Rule by Law". The Social Contract Theory in America in essence provides authority to local, state, and federal government to provide security of its citizenry through

citizen consent, to relinquish certain freedoms, such as taking the law into their own hands. America, since its inception has begun the slow process of less citizen involvement of safety and enforcement of the law by permitting military and law enforcement to perform such tasks (Adler, 1991; Pollack, 2010; & Albanese, 2012).

This contract is the creation of man for the purposes of providing social tranquility administered by government; however in return members of American society expect the highest level of integrity and ethical conduct in doing so (Whitman, 2013). To this point, those employed in the CJ system generally conduct them self with limited supervision and have vast amounts of discretionary authority, specifically this is true within policing. Those that are employed in any one of these fields are human and are subject to bias, prejudice, and emotion. Thus ethical conduct is principal to ensure integrity within the system.

Third, what are ethics? The quick, down and dirty overview so far of this material emphasizes a historical perspective of the topic of ethics. Now what are ethics is a more broad discussion fraught with bias and myth. Hence forth it is important to read, research, and learn for yourself. We shall introduce and discuss “Critical Thinking” as a key component to the study of ethics. Critical thinking requires critical listening and readers are required to form an opinion for one-self, thereby there is no AP, nor can you Google your opinion. Later in this discussion we shall examine processes that are often employed to weed out unsatisfactory police officer candidates being considered for hire. First, it is important to define words that will often be used in this writing:

*Character*: the mental and moral qualities distinctive to an individual; "running away was not in keeping with her character"

*Critical Thinking*: Is the ability to evaluate fact-viewpoint and behavior objectively. Critical Thinking requires Critical Listening that is the ability to listen objectively without forming opinions prior to hearing all facts and points of view. The exercise culminates in the ability to compare that which was conveyed with that which is real, true, accurate, and can be substantiated. In research the critical analysis applies pro/con viewpoints and fact to the question to arrive at a valued opinion.

*Ethics*: The study of Morality (Ortmeier and Meese, 2010).

Factual Judgements-Describe something.

*Integrity*: the quality of being honest and having strong moral principles; moral uprightness.

*Integrity-Ethics*: This involves maintaining high standards of personal conduct. It consists of attributes such as honesty, impartiality, trustworthiness, and abiding by laws, regulations and procedures. It includes not abusing the system nor using the position of authority for personal gain; not bending rules or otherwise trying to beat the system by tampering with evidence, slanting reports, providing inaccurate testimony, etc.; not engaging in assaultive or violent conduct; and not engaging in illegal or immoral activities – either on or off duty. This involves avoiding that conduct which brings discredit to oneself and the police agency (NYS DCJS, 2009).

*Morals/Morality*: Good conduct, or that which focuses on universal rules of society, how one ought to behave Ortmeier and Meese, 2010).

*Values*: a person's principles or standards of behavior; one's judgment of what is important in life (Webster's Dictionary). That which provides guidance.

*Value Judgements*: a person's principles or standards of behavior; one's judgment of what is important in life; characterize a situation or event by making an evaluative statement. (Ortmeier and Meese, 2010)

### **Can Morality Be Taught?**

Morals and ethics must be taught as they are not ingrained through genetic predisposition. Humans are not born naturally moral. We are taught how to act morally and ethically. They differ from manners and etiquette, however these act as a precursor to the moral being. One tells us how to act in social settings and the former expresses a moral obligation. What is right and what is wrong has little grey area involved. These are generally black and white issues, it is when social extracts are mixed that we move from what is right and expected to what is provided and rationalized.

### **Authority of Office.**

Police authority is an awesome power that provides opportunities by police to intrude into the privacy and liberty of individual members of society. Inclusive in this list, but not exhaustive, is the right to enter dwellings, limit freedom to total restraint of freedom, search vehicles and dwellings, and most extreme is the justifiable taking of life. All of which is legally permissive, if performed in accordance with legal obligations. Police officers are provided discretion to legitimately proscribe unlawful conduct and behaviors contrary to a peaceful environment. Equally, this profession is often called upon to perform public service to the

citizens served. This entails controlling public behaviors, traffic control, persons in need of assistance, and service providers when no other agency is open or available. In fact police record many instances annually that they are first responders for services that ultimately may be transferred to other service agencies. More often than not the service may be provided to elements of society that are powerless and disenfranchised. Regardless of whom a service may be provided, it is essential that the authority is not purposely misused or abused.

Because the authority is provided to the gatekeepers of the CJ system through laws, rules, and regulations provided within the guidelines of the Social Contract discussed briefly. Most citizens of a free society will want the police to have this authority but not *carte blanche*. Interestingly society will want the civil and military authorities to perform their duty without hesitation to interrupt criminal or terrorist acts. However, this is not without increasingly higher levels of oversight and supervision (Pollock, 2010). Police officers through over 18,000 police agencies nationally, conduct millions of police/public contacts daily and most are without fracas or fanfare. The media and the courts generally do not find interest in routine police/public contacts. The smaller percentage of close calls gain the attention of media and the courts.

The public as a whole generally will pay little attention to the grand and glorious document penned into flaming gold by James Madison and his cohorts, The United States Constitution. That is not until the document favors them in some fashion. The U.S. Constitution is omnipresent with the thousands of cadre of the CJ system. First and foremost the Constitution provides guidance, ethics, moral conduct expected and an Oath of Office for those that serve to

uphold and protect the contents within the four corners of the document. I say with little hesitation that the majority of America's protectors, both civil and military, take the Oath of Office with obligation, strength of purpose and intent to perform their tasks with enthusiasm and will rarely find themselves on the wrong side of the issue. Guardians of our guardians are required to appropriately supervise and take punitive action for the small percentage that do not get it right. Ethical leadership will be discussed further on in the material.

### **Ethical Decisions:**

Ecstasy is having choices and Agony is having to make one. An ethical decision is often obfuscated by a plethora of information (factual or not) that muddies the pool of clear thought. The fact is a decision is simply a choice. How one makes that choice or concludes a decision is right for a particular situation is what shall be relegated to the 20/20 censors from now until eternity. Members of the CJ System are often called upon to make a decision anywhere from a Nano-second to Mill-second. The front line practitioner does not enjoy the same periods of time to ponder the action as does lawyers and judges that may have months upon years to evaluate an action. The greater the difficulty of the decision therein lies the mirrored degree of dilemma. The decision may be juxtaposed with competing values of equal intensity or may place the decision maker in a character challenge or in a personality conflict. Either of these will often render the most innocuous decision more difficult, and there are those moments in time we may make a wrong decision as a result of a choice.

Albanese (2012) asserts “Aristotle emphasizes that ethical conduct requires practice so that it become a habit” (p.18). In short decision making requires practice. Good decisions require correct measures or a set of skills to make the most correct decision. These are:

Maintain an open mind;

Evaluate relevant facts;

Identify moral questions; and

Apply ethical principles (Albanese, 2012).

Let’s re-examine the situation that you, the police officer found yourself misusing the NCIC system. How would you use these steps to analyze your dilemma and come to an ethical conclusion? What might you offer your friend rather than risk discipline or termination or jail time? How might you act rather than relying on the “Well everyone else does it” excuse? The choice really will not be that difficult if you follow these few steps and perform your duty as required.

## **Chapter Summary**

What should be abundantly apparent to the reader at this juncture is that Aristotle’s measures of good thinking is a precursor to critical thinking that has passed the test of time. He along with other philosophical scholars have provided pathways relevant to ethical decision making today. A significant take-away from this section is simply this, a thirst for knowledge is a sound behavior for ethical thinking. As such, one must practice critical thinking daily, until it is second nature. Critical thinking requires the formation of a hypothesis (Why not this way or

that way or specifically this way.) that may be based on experience, skill sets developed to date, and knowledge.

A key ingredient required to test this opinion is intellectual curiosity. Members of the CJ system may have received a degree from an institution of higher education prior to entering the field or one may rely on a certificate of training that has qualified you for participation in the CJ endeavor. Neither of which has qualified you to stop thinking. Ethical and moral guidance, the drive to get it right, and a continuous search of fact to establish a well-grounded opinion should be ones prescription and not a proscription to moral reasoning.

#### References

Adler, M. (1991). *Desires, right and wrong: The ethics of enough*. New York: MacMillan.

Albanese, J.A. (2012). *Professional ethics in criminal justice: Being ethical when no one is looking (3rd Ed.)*. Upper Saddle River, NJ: Prentice Hall.

McCartney, S., & Parent, R. (2015). *Ethics in law enforcement*. Victoria, BC: BC campus.

Retrieved from <http://opentextbc.ca/ethicsinlawenforcement/>

Ortmeier, P.J., & Meese, E., III, (2010). *Leadership, ethics, and policing: Challenges for the 21st century (2nd Ed.)*. Upper Saddle River, NJ: Prentice Hall.

Pollock, J.M. (2010). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth.

Sklansky, D. A. (2006). Not your father's police department: Making sense of the new demographics of law enforcement. *Journal of Criminal Law & Criminology*, 96(3), 1209-1243. Retrieved from

<http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21820080&site=ehost-live&scope=>

Whitman, M.L. (2013). Investigating the correlation between preemployment screening and predicting unethical behavior in police candidates. *Capella University Dissertation*, ProQuest Dissertations Publishing ISBN: 9781303151750, 1303151758.

## Chapter 2 - Virtue Ethics And Ethical Systems

### Chapter Abstract

In this section is a brief overview of ethics sufficient to provide the reader of the importance of the topic as it relates to the CJ arena. The material provided is a seminar regarding Socrates, Plato, and Aristotle through more contemporary periods illustrating how the original philosophies of ethics prevails in modern applications. The chapter imparts summaries of the Goods, Virtue, and Ethical Systems abundant for a reader to think critically of daily life and of practitioners in the field and how ethical crafters of philosophy remain applicable from then to now.

### Seeking the Good

During my 28 years as a Police Chief, my character and members of the police agency I headed was critical to service delivery. Therein lies the foundation of success in attaining goals and objectives is selecting the best members to serve. Further, understanding the theories surrounding virtue ethics is inescapable by the leader. Members of the community have the absolute right to expect higher moral standards of their centurions than they, the community is willing to live. This is discussed in detail later in selection processes.

Virtue is commonly associated with good character, good judgment, and good ethical decision making. Obviously these are characteristic sought in criminal justice employees and leadership roles. Virtue is behavior showing high moral standards and Virtue Ethics (or Virtue

Theory) is an approach to Ethics that emphasizes an individual's character as the key element of ethical thinking (Deontological Approach), rather than rules about the acts or consequences of the act themselves (Teleological Approach) (Carr, & Steutel, 1999). Adler, (1991) maintains Moral Virtue can be defined as “the habit of right desire” (p.1).

Virtue ethics or Virtue Ethics Theory has its roots situated in the works of Plato, Socrates and Aristotle. Socrates engaged his followers in a battery of question answer dialogue, forcing his students to develop their own theory. This has become known as the Socratic Method. He viewed knowledge, wisdom, and virtue as identical (Albanese, 2010). Plato committed his study to writing attributing Socrates virtue as the knowledge of good and evil that is a prerequisite for achieving the ultimate good or eudemonia. Eudemonia is defined as a person's state of excellence characterized by objective flourishing across a lifetime, and brought about through the exercise of moral virtue, practical wisdom, and rationality, which is what all human desires and actions aim to achieve (Collins English Dictionary, 2014).

Plato became disillusioned with government corruption following the death of his mentor, Socrates at the hands of the government. He felt few laws were necessary due to highly developed morality and character of inhabitants (Albanese, 2010). Aristotle, a student of Plato, formed his own school, The Lyceum where he produced more than 400 works ranging in several topics. One such work, the *Nicomachean Ethics* provided the earliest study of the history of ethics in Western Civilization (Albanese, 2010). According to Aristotle, all human pursuits are aimed at some good, complete life is needed to achieve happiness because many changes occur in life; there are ups and downs. In other words, “how ought people live their lives”. This is established, not by honor, wealth or power, but by rational activity in accordance with virtue

over a complete life, not unlike self-actualization asserted in Maslow's Hierarchy of Need (Aristotle, 1998).

This rationale has manifest itself throughout history to include contemporary disciplines of study such as, theology, political science, sociology, criminology, and criminal justice. A few other major contributing philosophers of ethics that followed Socrates, Plato and Aristotle are: Emmanuel Kant (1724-1804) deontological ethics (duty); John Stuart Mills (1806-1873) teleological (action is judged in the results); Jeremy Bentham (1748-1832) consequentialism (promotes happiness and absent of pain); and consequentialism may also be found in the works of Cesare Beccaria (1738-1794) free choice. Beccaria an early prison reformist brought attentions to punishment in Criminal Justice Systems during the Enlightenment Period in Europe (Albanese, 2010). The works of these philosophers are rooted in Natural Rights that is the fundamental rights of life, liberty, and property.

Consequentialism or Consequentialist theories, unlike virtue and deontological theories, hold that only the consequences, or outcomes, of actions matter morally. ... The most common form of consequentialism is utilitarianism. Utilitarianism is also distinguished by impartiality and agent-neutrality (Utilitarian Theories, n,d).

Why are Goods sought?

I am situated in the camp that the goodness of mankind is embedded in all that is important. Seeking the Goods refers to seeking the goodness in mankind, what are goods? Goods are at minimum is a tri-fold proposition, first those that are tangible, second those that provide forms of sensual pleasure, and third those that are intrinsically consumed. Why should this philosophy be important to members of the justice system in contemporary periods?

Aristotle framed human behavior as aimed at some good (Albanese, 2010). He provided a hierarchy of goods, these are:

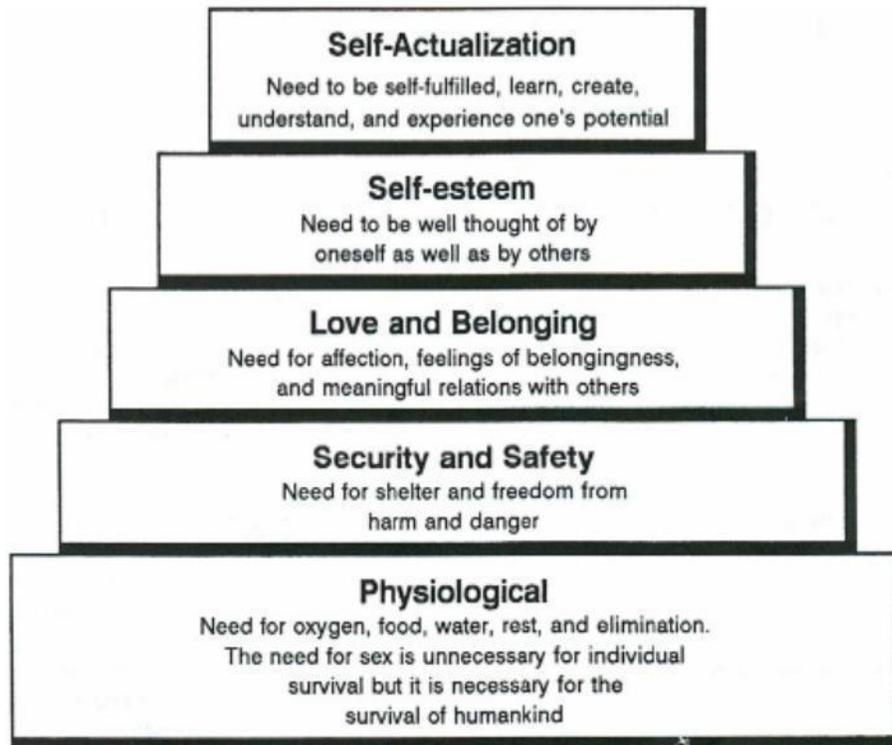
1. Real goods (food, shelter, health, wealth, pleasure, knowledge, and liberty, friends, and civil peace).
2. Apparent goods (items that ought to be desired regardless if we really do; Examples are sweets, good music, and fine wine).
3. Ultimate good (happiness, that beyond usual definition).

These help establish a foundation for Moral Virtue. Aristotle defined this as excellence of character (Albanese, 2010). These initial ethical foundations did not survive in a vacuum as throughout history the goods that relate to virtue, that relate to character may be found in other works. One such prominent later work is by Abraham Maslow. His Hierarchy of Needs was published in 1943 that illustrates human motivation is similarly situated with the works of Aristotle (Maslow, 1943). Compare Aristotle's 10 Moral Virtues in Figure 1. with Maslow's Hierarchy of Needs Figure 2.

Fig. 1. Aristotle's 10 Moral Virtues.

- Courage
  - Temperance
  - Prudence (practical wisdom—choosing the right means for the right reason and end)
  - Justice
  - Pride
  - Ambition
  - Having a good temper
  - Being a good friend
  - Truthfulness
  - Wittiness
- (Albanese, 2010, p. 17)

Fig. 2. Maslow's Hierarchy of Needs



[https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=imgres&cd=&cad=rja&uact=8&ved=0ahUKEwjhioustcHYAhWFNd8KHafKA1sQjRwIBw&url=https%3A%2F%2Fwww.researchgate.net%2Ffigure%2F224867217\\_fig8\\_Figure-2-Hierarchy-of-human-needs-1990s-eight-stage-model-based-on-Maslow&psig=AOvVaw2NCJs1bTFWfhhGQbyTky9U&ust=1515261874375167](https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=imgres&cd=&cad=rja&uact=8&ved=0ahUKEwjhioustcHYAhWFNd8KHafKA1sQjRwIBw&url=https%3A%2F%2Fwww.researchgate.net%2Ffigure%2F224867217_fig8_Figure-2-Hierarchy-of-human-needs-1990s-eight-stage-model-based-on-Maslow&psig=AOvVaw2NCJs1bTFWfhhGQbyTky9U&ust=1515261874375167)

The original virtues, Courage, Temperance, Prudence, and Justice (Four Cardinal Virtues) located in Plato's work and later Aristotle have been adopted by Theologians such as St. Thomas Aquinas in his "Summa Theologiae" of 1274 (McInerny, and O'Callaghan, 2016). Moral virtues have leached into modern political philosophy through the works of Thomas Hobbes and influences of John Locke in American politics and in the construct of the America's Declaration of Independence and later the Social Contract Theory fused into the fabric of the "Rule of Law" in America today.

To summarize thus far those that commonly practice seeking goodness or real goods according to the moral virtues is morally virtuous. This has been referred to by Adler (1991) as the habit of right desire that is the “process of conquering one’s childish tendencies toward indulgence in immediate gratification” (p.106). The pathways provided by practice of moral virtues does not provide answers to ethical dilemmas but only a clearer method to form the correct decision.

### Ethical Systems

In contemporary society the only stable that is consistent is that of change, Change at a rapid rate unthought-of in just a few short years gone by. Technology and attitude of younger generations have prompted the speed at which change occurs. What is important to note, based on my experience and research is that current generations want change, they require change, they need change, and they find it difficult to live without it. However when push comes to shove and when this membership is confronted with something in the gray area, they stop dead in their tracks and are often confused as to how to handle the situation. Perhaps this concept may aid in understanding of increased police officer use of force than a few decades past.

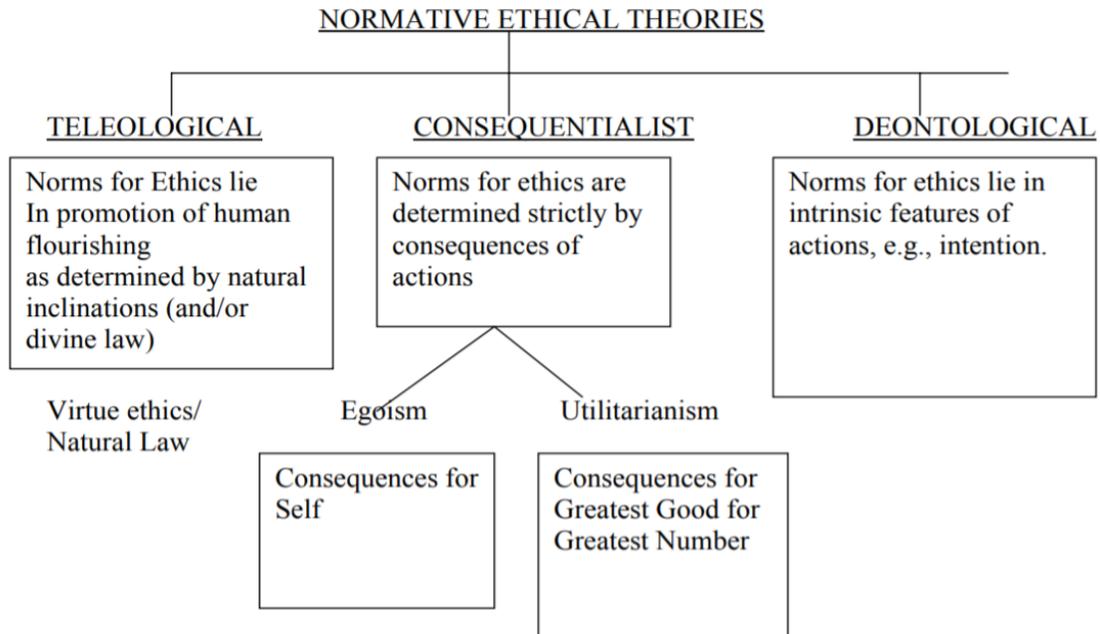
So because times have changed, does this mean our ethical frameworks must change? In some situations decisions generally confronting leaders and subordinates alike were often less complex and perhaps less impacting. Today members of society are bombarded with ethical dilemmas, at least on the surface, they appear to be greater in number than those a mere 20 years ago. In order to resolve ethical dilemmas it is important to justify the rationale of a decision in a well-formed and articulate fashion. In other words why was the decision made, and how is the best or most correct for the situation as compared to other alternatives. Understanding the ethical

systems and meaning of goodness may offer more solid footing as to why a choice was made at least for the person making the decision.

I have often maintained that if the United States would make jumping to conclusion and leaping to suppositions our countries physical fitness plan, we would not have an obesity issue at all. As an example, a decision that had been made may have the appearance of impropriety and being unethical. If those studying the issue would stop, take a hard look, and possibly interject one of the philosophical systems, it may not be as was first blush. An opportunity to examine something from a different perspective may be a blessing in disguise.

The following table provides a visual illustration of what we have outlined to this point in our discussion. The normative approach provides pathways relevant to CJ discipline by conveying what we ought to do, while appearing counterintuitive to some degree as to what is thought to be a more ethical decision could or should be. Such theories are often called ethical systems that allocates pathways for ethical actions to be taken by people (Pollock, 2007). Normative ethics are defined by Evans and MacMillan (2014) as “theories of ethics that are concerned with the norms, standards, or criteria that define principles of ethical behavior” (p.27).

Fig. 3.



<http://academic.mu.edu/phil/jonesj/courses/NORMATIVE%20ETHICAL%20THEORIES.pdf>

The most familiar examples of normative approaches are deontological and teleological ethics. The deontological approach falls under the Kantian or universally applied that simply means that it must be applied in all conduct, all circumstance and provides no wiggle room. Thus thou shall not lie or kill is an absolute Kantian conduct. In fact if a doctrine cannot be applied as a law equally to all then it should not be applied. However in the CJ application one knows this is not always the case. For example, it is legally permissible to lie to a suspect (under certain circumstances) in an attempt to gain information from the suspect relative to solving a crime. The teleological approach is utilitarian or the ends justify the means. Utilitarian often

used synonymously with Consequentialism is a doctrine that actions are right if they are useful or for the benefit of a majority (yourdictionary.com).

For example, as an undercover drug enforcement officer you are attempting to make a buy of marijuana from a dealer. You throw down your money and tell him, "I gotta bounce, my old lady is waiting for me to get back with the shit." He says, "were gonna do a number" and you tell him "No man I gotta go, she's needen me now." The next thing you hear is a click and a muzzle of a gun is stuck in your ear, and "he says, you're gonna do a number if you ain't no nark."

Well, now how stringently are you going to hang onto Kant's duty-based ethical conduct or are you to resort to a Bentham or Mills approach?

Also painfully evident is the need for criminal justice members to use deadly physical force in the protection of them self or a third person. As a young police officer I was taught that if someone is threatening your life with a gun you can, wait until you see a muzzle blast from the suspect's gun, you can wait until you feel a burning sensation in your body, or you can shoot the bad guy. These examples fit much easier under the Teleological Approach. This is construed to denote the ends justifies the means. The outcome is justified regardless of the intent. The consequentialist and teleological approaches are often confused as they hold certain qualities similar to each.

Persuasive elements used in this discussion are terms such as Duty, Honor, Oath, Character, and Courage, etc. Many professional organizations will have a Code of Ethics that offers guidance to the membership. The International Association of Chiefs of Police in 2000

instituted a Code of Ethics for voluntary adherence by all law enforcement agencies that wish to subscribe:

“On my honor,  
I will never betray my badge,  
my integrity, my character,  
or the public trust.  
I will always have  
the courage to hold myself  
and others accountable for our actions.  
I will always uphold the constitution  
my community and the agency I serve.”

(International Association of Chiefs of Police, 2000)

There resides in an “Oath of Office” the notion that the oath itself will sufficiently consume one to believe that in their current undertaking the oath shall guide personal actions in an ethical fashion. We know that from the outcomes of professional boards of inquiry that this prescription alone is inadequate. As an example in the medical field, according to the Federation of State Medical Board Report (FSMB) (2016), “in 2015, state boards received 12,555 alerts from the FSMB’s Disciplinary Alert Service” (p.18). The FSMB compiles annual disciplinary data from its 70 member medical and osteopathic boards (FSMB, 2016). Similar reporting is compiled by U.S. Department of Health & Human Services Resources and Services Administration (HHS) announced in remarks at the Tri-Regulator Symposium in 2012, “we have received 2,255 new Data Bank reports as a direct result of your compliance efforts. Those 2,000-plus new reports have been disclosed to other boards and hospitals over 3,000 times” (HHS, 2012).

In a correlational study of police agencies by Whitman (2010) compiled data from 545 police departments examining the relationship between initial ethical testing of candidates and the reduction of violations by police officers during their career. In the police profession an assumption of an Oath of Office is required for public service. The data compilation of a ten year period is: 503 disciplinary actions that did not result in termination and 506 terminations separate and apart from the first category. Each was a separate category and data request was in a format asking for data differently. The study sample was obtained from state and local law enforcement from the following regions of the U.S.:

1. Central (North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Wisconsin, Michigan, Ohio, Indiana, Illinois, Missouri and Kentucky);
2. Mountain Pacific (Alaska, Hawaii, Washington, Montana, Wyoming, Idaho, Oregon, California, Nevada, Utah, Colorado, Arizona, and New Mexico).
3. North Atlantic (Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia); and
4. Southern (West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Arkansas, Oklahoma, Texas, Tennessee, Mississippi, Louisiana and Alabama) (Figure 3.).

The equal distribution of contributing agencies prevents regional bias. The number of violations and terminations over the ten year period may not appear outrageous on its surface but what is not known is how many violations may have occurred that were dealt with informally preceding a formal action. Finally the reader should not dwell on the numbers of violation in either group illustrated but rather significant is the observation of oversight of individual members from internal and external methodologies and the tracking of the indiscretions.

In these forms of data collection, they are self-reporting and data collectors must rely on the credibility of the persona and or the agency submitting the data.

Hopefully thus far preceding sections have provided a succinct fashion to understand ethics. The systems of ethical approaches reside under two main canopies, Deontological (Absolute Ethics) and Teleological (Consequential Ethics). The readers personal intellectual curiosity is optimistically peaked at this juncture and is begun the correlational journey with ethics and law and the CJ systems. In short, all other ethical systems are found rooted in one of these two. Also recalling the four Cardinal Virtues, Courage, Temperance, Prudence, and Justice are generally thought to be in codified regulations or laws prescribing, in fact may be tempered within the delivery of enforcement of the law rather than the law itself.

#### References

- Adler, M. (1991). *Desires, right and wrong: The ethics of enough*. New York: Macmillan.
- Albanese, J.A. (2012). *Professional ethics in criminal justice: Being ethical when no one is looking* (3rd ed.). Upper Saddle River, NJ: Prentice Hall.
- Aristotle, *The Nicomachean Ethics* (330 B.C.E.). New York: Oxford University Press, (1998). p.6.
- Carr, D. & Steutel, J ( 1999). *Virtue Ethics and Moral Education*, Routledge, p. 22.
- Collins English Dictionary – Complete and Unabridged, 12th Edition 2014 © HarperCollins Publishers, 2014.
- Evans and MacMillan (2014). *Ethical Issues in Criminal Justice and Public Safety* (4th ed). Edmond Montgomery Publications, Toronto.
- Maslow, A.H. (1943). "A theory of human motivation". *Psychological Review*. 50 (4): 370–96. doi:10.1037/h0054346
- McCartney, S., & Parent, R. (2015). *Ethics in law enforcement*. Victoria, BC: BCcampus. Retrieved from <http://opentextbc.ca/ethicsinlawenforcement/>

- McInerny, Ralph and O'Callaghan, John, "Saint Thomas Aquinas", The Stanford Encyclopedia of Philosophy (Winter 2016 Edition), Edward N. Zalta (ed.), URL = [<https://plato.stanford.edu/archives/win2016/entries/aquinas/>](https://plato.stanford.edu/archives/win2016/entries/aquinas/).
- Pollock, J. (2010). *Ethical Dilemmas and Decisions in Criminal Justice*. Belmont, California: Wadsworth Cengage Learning.
- U.S. Medical Licensure and Disciplinary Information, Federation of State Medical Boards  
Published 2016 Report, *U.S. Medical Regulatory Trends and Actions*. Federation of State Medical Boards of the United States.
- U.S. Department of Health & Human Services Resources and Services Administration, Remarks to the Tri-Regulator Symposium, Administrator Mary K. Wakefield, October 17, 2012
- Utilitarian Theories - Online Guide to Ethics and Moral Philosophy.  
[caae.phil.cmu.edu/Cavalier/80130/part2/sect9.html](http://caae.phil.cmu.edu/Cavalier/80130/part2/sect9.html)
- Westgate, A. (2012). *Disciplinary-actions-against-physicians-increase*. Physicians Practice. UBM Medica Network. [www.physicianspractice.com](http://www.physicianspractice.com)
- Whitman, M.L. (2013). *Investigating the correlation between preemployment screening and predicting unethical behavior in police candidates*. Capella University Dissertation, ProQuest Dissertations Publishing ISBN:9781303151750, 1303151758.

## **Chapter 3 – Laws/Crime/Deviance & Ethics**

### **Chapter Abstract**

Chapter three addresses a brief history of law and ethical foundations for our existing laws. Citizens of the United States hold the U.S. Constitution in great reverence and respect. The founding document of government, law and liberty as we know it today is the result of forecasting by our founding fathers forethought. In this material readers should begin to decipher the value of the Constitution and any shortcomings as may be applied to the application of law or public policy.

### **Laws History**

You may have provided little, if any thought as to the origins of law. Just as sure as God made little green apples, the law did not fall from a tree. The law is man-made (Gender Neutral) and is assumed universally applied within society. The law is as obscure as man himself. You have probably been introduced to terms such as folkways and mores which are less sophisticated terms for policies and laws. Where do our laws come from? Why are there more than one type of law? How does law(s) impact us as a society? Do courts influence public policy through judicial decision or interpretation of laws? Do these many laws intersect or interact with each other in the criminal justice system? How does ethics and the law interact? How ought the law be enforced? All interesting questions that hopefully will be answered by the conclusion of this section.

Researchers have shown that in the beginning man (generic description meaning both genders) was pretty much in groups. However, the hierarchy of dominance was generally through the strongest male, usually referring to superiority through physical force. Thereby we hear the term the strongest shall survive was thought to be the law of the land. The Oxford English Dictionary defines "The law of the jungle is an expression that means every man for himself, anything goes, survival of the strongest, survival of the fittest, kill or be killed, dog eat dog, and eat or be eaten". The Law of the Jungle as "the code of survival in jungle life, now usually with reference to the superiority of brute force or self-interest in the struggle for survival."



Instinctively that which was necessary to survive (individual survival) was first and foremost on the mind of man and probably did not require a great deal of ethical foundation. Not until periods in history that illustrate tribes and clans were relevant to survival and society then, focused on folkways and mores as the rules of the day. The grouping of early man were generally for sake of survival in numbers, safety against attacks of other clans, and for hunting

purposes. Soon man began to form by clan and tribe creating societies, which became self-evident early on that some form of law was required to regulate these societies.



Initially man was nomadic, following his food and the need to flee uninhabitable lands. Then how did they convey these folkways and mores from generation to generation? They did not have the luxury of confining these rules to easily transferable stone tablet containing the Ten Commandments as preferred in the story of Moses. They could not take the etchings from the walls of the caves where they recorded history when they traveled from location to location, then how were these policies and rules passed on? Folkways were traditionally practiced behaviors and mores were offenses against the social norms that may become laws. Prior to the written word these practices were conveyed through fables, stories or parables in addition to common practice. Ethical awareness was observed in clan and tribal societies, although not specifically labeled ethics, none-the-less were witnessed in elements of life such as caring for the elderly, the young, and the group itself. Dr. Francisco Ayala, University of California, Irvine argues moral norms are culturally derived or products of evolution and not biological evolution. Dr. Ayala maintains that morality may not originate in an intellectual, well-reasoned process and ethics

commences in moral reflections from life experiences. These become rules through a social context. His theory implies ethics is at the end of the day is impacted by some form of cognitive application, as an example caring of young or the elderly or cooperative codes or policies that permits communal living.

### **Hammurabi's Code-Written Code**

Eventual formal social organizations of society required written laws. An example of early written law is Hammurabi's Code, a Babylonian King, contrived the code of law of ancient Mesopotamia, dating back to about 2100 BC. Hammurabi, enumerated laws of private conduct, business and legal precedents, of which 282 articles have survived. His code is one of the oldest journal of written laws known to man (Fagin, 2015). This is considered one of the oldest deciphered writings implying the lex talionis, law of retaliation in just deserts or scaled punishments adjusting "an eye for an eye, a tooth for a tooth" (lex talionis) as graded depending on social status, of slave versus free man or woman (Prince, 1904). Hammurabi's Code parsed out justice by class and gender. A few Examples of his laws/code are:

Slavery: Ex. Law #15: If anyone take a male or female slave of the court, or a male or female slave of a freed man, outside the city gates, he shall be put to death.

Divorce: Ex. Law #142: If a woman quarrel with her husband, and say: "You are not congenial to me," the reasons for her prejudice must be presented. If she is guiltless, and there is no fault on her part, but he leaves and neglects her, then no guilt attaches to this woman, she shall take her dowry and go back to her father's house.

Restitution: Ex. Law #196: "If a man destroy the eye of another man, they shall destroy his eye. If one break a man's bone, they shall break his bone. If one destroy the eye of a

freeman or break the bone of a freeman he shall pay one gold mina. If one destroy the eye of a man's slave or break a bone of a man's slave he shall pay one-half his price.

Facilitation: #109. If outlaws meet in the tavern and are not captured and delivered to the court/palace, the female tavern-keeper shall be put to death.

Alcohol Consumption: #110. If a holy woman opens a tavern door or enters a tavern for a drink, she shall be burned to death (N.A., Hammurabi's Code).

The assumption is that these codes were designed to be universally applied and provide equality for all members of society. Yet, Hammurabi's Code was based on economic and social status, freeman v. slave, and gender. These codes may have been thought of as ethically predisposed except that the preceding demonstrates how the law provided for the wealthy and gender distinctions were made as far back as 2100 B.C. (Prince, 1904, p. 607). The codes demonstrates both social and political policy that influences laws and their creation. Precedent setting codes and laws to what we experience in contemporary society demonstrates the ethical foundations of the codes were potentially through social experience rather than cognitive reasoning.

The code is viewed as an early example of a fundamental law, regulating a government — i.e., a primitive constitution (Thomas and Stevens, 2018). The U.S. Constitution became one of the benefactors of the historical document. Hammurabi's Code along with other preceding documents served as a precursor for America's basis of law and equal behaviors. The U.S. Constitution was settled on after a failed attempt at the Articles of Confederation. The Constitution of the United States serves as the basis for federal, state, and local laws. (See list under following link). <http://www.ushistory.org/documents/amendments.htm>

## **What is Deviance?**

Sociologists have defined expected behaviors as norms. Deviance is an action that contradicts socially accepted behaviors (McMaghy, 1979). Deviant behavior is a violation of the previously discussed folkways or mores. Then deviant behavior is any behavior that is contrary to the dominant norms of society. Deviance ultimately is judged by others in society and may not be as uncomplicated as portrayed in these first few definitions. Becker (1963) establishes deviance as a process:

“Deviance is not a simple quality, present in some kinds of behavior and absent in others. Rather, it is the product of a process which involves responses of other people to the behavior.... Whether a given act is deviant or not depends in part on the nature of the act (that is, whether or not it violates some rule) and in part on what other people do about it)” (p.14).

As previously discussed if Hammurabi's Code, as were other forms of laws, were established as a result of social influences. Then might deviant considerations be the result of social response to deplorable, intolerable, and objectionable behaviors? As an example, if one of your favorite professors was lecturing in front of the class and began to dig his index finger into his nasal passage, one may find this quite disturbing or not. Defendant upon one's social context of acceptance. I say with reasonable certitude, most would define this as deviant behavior. What is one to do about Professor Snotty? If one attempts to have Snotty arrested, what code

would support this activity? Probably none. If one decided to report Snotty to his superiors and they comment, “Ah that’s just Snotty”, satisfaction is not achievable in this scenario either. Does one influence Snottys behavior with social sanctions (embarrassment, public humiliation, or attempt to influence employment opportunities or boycott his classes) in this scenario social sanctions may be the only remedy as administrative or legal sanctions may not be available. What if Snotty is the only professor that teaches the course required for graduation?

Recall from previous sections that humans operate based on free will, happiness is the absence of pain, and humans are fundamentally rational. Humans are principally self-serving and given the opportunity will seek to enhance their well-being over that of others, hence we have provided the purpose of laws, law making, and the underlying premise of equality of enforcing laws (McMaghy, 1979).

### **What is Law?**

Is all criminal behavior deviant and is all deviant behavior criminal? A succinct definition of criminal law is:

A body of written rules governing the conduct of the inhabitants of a community, nation or society enacted by a recognized legal body, congress or parliament establishing criminal sanctions for violation of the conduct.

A criminal body of laws is the state versus the individual with the state taking enforcement action, adjudication of the offense, and punishment phase. A breach of a criminal law is a violation that may result in an enforcement action that could entail monetary loss, loss of liberty (confinement), or additional restitution. Civil law is commonly considered person against

person using similar definitions but the penalties are largely monetary based rather than incarceration. Thus lies the answer to the question, “Is all criminal behavior deviant and is all deviant behavior criminal?” All criminal behavior is outside the expected behavior of society and is deviant whereby all deviant behavior does not necessarily rise to the level of criminality. Laws then are legislative enactments intended to regulate certain human conduct. Laws are not intended to incorporate ethical principles but may be a source of ethical standards that may be sought in the enforcement of the law itself (Banks, 2017).

To begin addressing what is a law and what is an ethical ramification it is important to look at the birth of Criminal Justice (CJ) in America. Initially America was a grouping of 13 colonies and the colonist rejected English rule under a King as supreme authority beginning in 1775. During the same time the American colonist rebuffed England’s laws and the enforcement of those laws. What happened next is commonly known to even those ahistorical students of American heritage. The nation’s founders proclaimed themselves free from English rule by the issuance of the Declaration of Independence. There after ensued a long and costly war with England. However, America emerged victorious and a new sovereign nation with a new system of government, with an untested Constitution.

The grand and glorious document penned into flaming gold by James Madison and our founding fathers enumerating a division of power providing a system of checks and balance. The legislative branch enacts the law, the executive branch enforces the law, and the courts interpret the law. The crafters did not want too much authority vested in a federal government, wanting to preserve balance with states (13 Colonies) hence producing three separate but equally

strong branches of government. This required the adoption of the first Ten Amendments of the U.S. Constitution, known as the Bill of Rights.

The term strong branches of government did not come to fruition for the U.S. Supreme Court until the landmark case of *Marbury v. Madison*, 5 US 137 (1803). The decision from that case held authority of judiciary review having the power to review congressional actions and executive actions and may declare these acts illegal. Although the court was identified within the first five articles of Constitution, it was not until this ruling by the Court that seized upon its authority to render an act of Congress illegal. Note that this ruling did not occur until approximately 25 years after the ratification of the Constitution.

### **What has Ethics in Common with the Law?**

However important to mention at this juncture is the fact that the Sovereign Nation known as the United States was founded on the “Rule of Law” (Fagin, 2015). There are two dimensions of rule law:

Social order which is concerned with the extent to which law is used to provide individuals with personal security and order in their personal, workplace, and business relationships; and Prevention of tyranny which is the protection of civil liberties and the accountability of government (Hall, & Feldmeier, 2017).

The Constitution contains several clauses equally important but for this discussion the Supremacy Clause specifies the federal laws of the U.S are the supreme law of the land. This requires all judges in each state to adhere to and are bound by federal law. The 10th Amendment

of the Constitution reserves that authority not catalogued to the Federal Government are: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Through this authority and in this manner exist 50 different State Constitutions and 50 sets of accompanying laws with numerous digests of local laws. All of which are subordinate to the Federal Code.

Asserted by Fagin (2015) through scrutiny of laws by the courts has resolved benchmarks used in contemplation of the legality of a law. These are:

1. Principle legality-prevents arbitrary bias and must be published to inform of the law.
2. Ex Post Facto Laws-prevent retro-active prosecutions.
3. Due Process-prevents deprivation of life, liberty or property without having first the due process of the law and protections guaranteed to its citizenry.
4. Void for Vagueness-must have specific purpose and not open to individual interpretation.
5. Right to Privacy-being secure in person, places, and effects against unreasonable intrusion by government.
6. Void for Overbreadth-too far reaching and lacks specificity and often linked with Void for Vagueness.
7. Cruel and Unusual Punishment-a guard against punishment that does not fit the offense.

The listed principles are premised on Natural Rights. Natural Rights are inalienable and cannot be abdicated. The benefactor of the benchmarks are the citizens that reside in the multiple locations. There is one set of rules that cannot be waived by state or local authority and they

reside in the U.S. Constitution. In an effort to standardize laws, the Model Penal Code was adopted and is used by various law schools and used in law textbooks teach law (Fagin, 2015). Important to the discussion is that of ethics. Ethics are inviolate. Ethics is found, either directly or indirectly, in foundations of society, law, and government to name a few. Ethics cannot be defined to seamlessly agree with every situation in life, absolute impossibility and probably unethical to attempt. If something that is asked of someone does not feel right, it probably isn't right; in other words if it brushes up against the ethical being, then it is probably unethical.

This does not prevent delivery of a service or obligation through one of the previously discussed approaches (Deontological or Teleological). As stated earlier in the discussion the former approaches are overarching and most if not all other ethical approaches generally fall within one of the two guidelines. There is another approach that is important to service delivery and that is the Prophetic Approach. Prophetic decision making is based on the fact that not all of life's outcomes or decisions are predetermined, preordained, but rather are the result of foresight, vision, intuition, ingenuity, and emotion to seek truth. The latter is not risen to the level of philosophical acclaim, but is often taught in disciplines dealing with forecasting and planning. I offer this as an alternative for future discussions dealing with decision making. However, might this approach not prevailed in our founding fathers deliberation of our U.S. Constitution?

The U.S. Constitution is the basis of American law, the Rule of Law, and the foundation of liberties (Natural Law). Although scholars may argue that the U.S. Constitution is not the formation of ethics, and rightly so, ethics is a root proposition for the document itself and oversees our systems.

The U.S. Constitution further amplifies John Locke's premise of a Social Contract, preventing governmental over reach in some form or fashion that violates Natural Law. The Constitution should be viewed as a contract between citizenry and government, a business document if you will. Those functions citizens permit government to perform and protects those rights of the citizen that are inalienable. The founders of the Constitution never insinuated that the document in itself would provide an easier life. On the contrary because of the difficulties fore-sought in maintaining liberty and democracy our founder's provided us as citizens a seat at the table. This simply means that Americans can and should be part of the debate. Too many members of society have thought they could abdicate the responsibility to others and often the more powerful that is absolutely contradictory to ethical behaviors necessary to survive in a true democracy.

To bring the section to a close, it began with the examining of the history of laws then progressed toward the foundation of the U.S. Constitution and concluded with a look at ethics and the law. What should be abundantly clear at this juncture is that Ethics is essential in the understanding of law and the student should develop a clearer understanding of how law interacts in the CJ system. Ethics is not a buzz word used when finding fault with another's decision but rather is how "We ought to live our life; or how we ought to deliver service". Ethics must be taught as well as morals to develop principles in life. The reader should undertake this opportunity to understand terms such as principle, values, ethics, morals, and judgements in order to place the impacts of a CJ worker in perspective.

## References

- Ayala, F. (n.d.). The evolution of ethics. Center for Humans & Nature. University of California, Irvine. <https://www.humansandnature.org/the-evolution-of-ethics>
- Banks, C. (2017). Criminal justice ethics: Theory and practice (4th Ed.). Thousand Oaks, CA: Sage.
- Becker, H.S. (1963). Outsiders: Studies in the sociology of deviance. New York: Free Press. P.14
- Fagin, J.A. (2015). CJ2015. Boston: Pearson.
- Hall, D.J. & Feldmeier, J. (2017). Constitutional Law: Governmental powers and individual freedoms (3rd Ed.). Boston: Pearson.
- Law of the Jungle. Oxford English Dictionary Online. Oxford University Press. N.d. Web. 10 May 2013
- McMaghy, C.H. (1979). Deviant behavior: Crime, conflict, and interest groups. New York, NY: MacMillan
- N.A. (2011). The Code of Hammurabi. Internet Sacred Text Archive. Evinity Publishing Inc. Retrieved November 17, 2013.
- Prince, J. D. (July 1904). "Review: The Code of Hammurabi". The American Journal of Theology. The University of Chicago Press. 8 (3): 601–609.
- Thomas, W. D. (2008). What is a Constitution? p. 8. Gareth Stevens Publishing. ISBN-13: 9780836888638 ISBN-10: 0836888634.

## **Chapter 4 – Corruption in the System**

### **Chapter Abstract**

The material in this section deals with corruption, understanding life events may cause a good person to do bad things, and corruption is not a term dedicated solely to illegal acts. The Transformational Leadership Style is outlined briefly. History does not provide a direct line to current events; nor does democracy; nor does leadership techniques or skills. Each has its own ups and downs and move at the will of those in a society. Ethics follows the same path although one may think it is consistent throughout time. Transformational leadership has the best fit probability to meet the changing tide of life and history.

### **Defining Corruption**

Beginning this section with a question seems appropriate, especially since ethics and ethical decisions use differing approaches, therefore can corruption be viewed with the same vitriolic scorn in every situation? Is a free cup of coffee to a police officer being on the take? Is a favor to someone because of your position a form of corruption? Is contempt for corruption situational or exact?

According to Webster the term corruption is: dishonest or illegal behavior especially by powerful people (such as government officials or police officers): depravity; or inducement to wrong by improper or unlawful means (such as bribery) the corruption of government officials; or a departure from the original or from what is pure or correct the corruption of a text the corruption of computer files; and finally, decay, decomposition the corruption of a carcass.

Examining the definition from the viewpoint of the CJ System a derivative of the definition may fit in some form in all aspects. This includes the system as a whole, individuals as a part of the

system, leadership within the system, and government entities that may overlook the activity. However, at this juncture I caution readers to remain objective, remembering America's physical fitness program, jumping to conclusions and leaping to suppositions. What makes the decision ethical or not?

### **Corruption in a System**

Speaking to one portion of the CJ System, Prosecutor and Defense Attorney Roles Aronson, (1977) concludes that two significant models exist, they are: Situational and Systems Model. As examples of each he provides that confidentiality of attorney-client relationships or information obtained may be sacrificed when other's interest are at stake. The latter model of Systems is more absolute detailing confidentiality as a duty and would be always wrong if compromised. This is not unlike teleological or deontological approaches previously discussed. Defense attorneys must zealously approach each client's case. Their duty is to represent each client with sufficient capacity that is fair and reasonable. Nothing exhibited in an attorneys Canon of Ethics states that all defendants are innocent and it is the duty of all defense attorneys to end a trial in that result. Likewise nothing is listed that indicates a prosecutor must find all defendants charged guilty (Ortmeier, & Meese, 2010).

Continuing with defense and prosecutors to examine this ethical situation, two phrases come to the forefront. They are plea bargaining and prosecutorial misconduct. At first blush the reader may say well obviously a prosecutor not conducting her/himself appropriately is much worse (objectivity and not jumping to conclusion is necessary in this discussion). A defense attorney owes a client (particularly in a criminal case) to name a few, duty to investigate, control direction of litigation, trial conduct, appeals and plea bargaining (Ortmeier & Meese, 2010).

Prosecutors are obligated to represent the government and ensure justice, not convictions. To this end, exercise restraint in use of power, share information, base decisions on probable cause, and provide timely information to the defense. This system is considered an adversarial system. Parties to the criminal prosecution (defense and prosecutor want to win). Both entities must be cognizant of conflicts of interest and confidentiality. Influences that may enter into the defense/prosecutor discretion is political, economic, prison overcrowding, severity of the offense, public outcry to name just a few (Fagin, 2015; Pollock, 2010).

Plea bargaining is essential to the American jurisprudence system. The system would collapse under its own weight if plea bargaining was impermissible. Generally good cases do not normally go to trial as evidence may weigh against the right of a day in court. The defendant must agree and waive her/his right to a public trial. Often court dockets necessitate plea bargaining and the judicial triad (Judge, Prosecutor, and Defense Attorney) agree to pleas. Problematic to the system is that defense attorneys, especially Public Defender Offices, have extremely heavy caseloads and over whelming pressure to settle cases. Prosecutors may slide less desirable cases into the mix that may not make it through a trial. Plea bargaining is rife for unethical behaviors by both side, either in form of misconduct or neglect.

Although starting this discussion relative to the BAR (defense and prosecution attorney participation), Aronson specifies that Situational Model and Systems Model are significant to these two roles; I submit the models are a good fit, a fair representation of the over-all CJ System. Discretion in this framework is not a stranger to other systems within the other CJ system. Police are distinguished as the gate-keeper of the CJ system, (strict interpretation of the law or spirit of the law), which crime to enforce and which to provide a stern lecture. Supervisors have latitude in which policy indiscretion must receive a formal reprimand compared to a

lecture. Judges, correctional, probation and parole employees are confronted with discretionary use of authority. Sklansky (2006) maintains that diversity hiring has all but eliminated the “blue wall of silence” in the policing profession.

Courts are not immune from unethical or illegal behaviors, as seen in the “Kids for Cash” scandal in Pennsylvania Courts. A bribery scandal involving Luzerne County, Pennsylvania Judge Mark Ciavarella Jr. was sentenced to 28 years in prison in connection to a bribery scandal involving his acceptance of one million dollars in bribes from developers of private juvenile detention center. In return the judge would sentence juveniles to those private facilities in those cases that Ciavarella presided over (NPR.org). The case came to be known as "kids-for-cash."



Mark Ciavarella leaves the federal courthouse in Scranton, Pa., in February.

David Kidwell/A

## **Government Misconduct**

Albanese (2012) contends “Corruption lies at the core of virtually all major governmental problems, and ethical misconduct underlies corruption” (p.127). The misconduct can be measured in the enforcement of arbitrary laws, self-interest overriding public interest, lack of oversight, transparency, and bidding processes (Albanese, 2012). Cultural and sub-cultural philosophies may aid positively (misconduct prevention) or negatively (organizational misconduct) on this conduct. Additionally, falling prey to a group-think mentality. The term encompasses compliance and conformity to the decision making process. Originally derived from George Orwell's 1984, later researched by Irving Janis (1971) examining some of America’s well publicized blunders using the Groupthink process in decision making. Two examples is the failed Bay of Pigs invasion (1961), sponsored by the United States and the space shuttle Challenger (1986) catastrophe.

Janis developed the process incorporated in the term groupthink in groups seeking decision making consensus. Particularly those groups that agreement seeking is the prevailing factor. Groupthink has a tendency to overshadow critical thinking that ignores alternative possibilities. Janis (1971) provides seven missteps in Groupthink and these are:

1. Illusions of invulnerability-creating excessive optimism and encouraging risk taking.
2. Unquestioned loyalty- belief in the morality of the group, causing members to ignore the consequences of their actions.
3. Rationalizing warnings that might challenge the group's assumptions.
4. Stereotyping those who are opposed to the group as weak, evil, biased, spiteful, impotent, or stupid.
5. Self-censorship of ideas that deviate from the apparent group consensus.

6. Illusions of unanimity among group members, silence is viewed as agreement. Direct pressure to conform placed on any member who questions the group, couched in terms of "disloyalty".
7. Mindguards- self-appointed members who shield the group from dissenting information (p.85-88).

First in order to guard against this dynamic, leaders must insist on tell me what I need to hear; not necessarily what I want to hear theory. Second, assign a devil' advocate that will ask the tough questions in every group. Third, encourage the questioning of the group results and process. Fourth, when a leader assigns a policy-planning scenario, he/she should remain neutral and not state a preference. The group should set up outside evaluation mechanism to test the decision and finally, test it with subgroups in the organization (Janis, 1971). Government misconduct and group misconduct may be viewed as organization culture and sub-culture and the conflicts within government also follow the sub-cultures of CJ agencies.

In some instances of police use of force, testimony, falsified evidence or other questionable police conduct may fall under the term "Noble Cause Corruption" (Pollock, 2010, p. 267). Noble Cause Corruption means that a police officer may conduct them self in a fashion considered unethical. This may be due to those criteria previously discussed. Although generally accepted as reoccurring in the police profession to this date, it has been dramatically reduced. The "Blue Wall of Silence" once contributing to further enabling of police misconduct has been reduced. Again, Sklansky (2006) attributes minority hiring (Females, African-American, Gays/Lesbians, Asian populations) into the ranks of policing as a milestone in diminishing the code of silence and noble cause corruption. Prior to the diversity in hiring, policing was primarily the "Good-Ole White Boys Club". The noncompliance to old rules is

principally due to new employees do not worship at the altar of the bargaining agreement, paying homage to the group leaders and they are not going to lose their job over something that someone else has done. The Groupthink mentality was more prevalent in the 50's, 60's, and 70's than is current. However has it answered the sub-culture metamorphosis?

### **Was Hitler an effective Leader?**

The answer is yes. As was Jim Jones and Charlie Manson, Hitler was an effective leader, but each for all the wrong reasons. Albeit each operated under morally bankrupt leadership style these were all effective leaders. Perhaps each possessed traits and qualities that great leaders have in common, they seized power for immoral purpose, and they did so using coveted leadership styles (Ciulla, 1995). Each of the mass murders identified, used their influence to dominate their membership. Hitler of course gained power then crushed all opposition which converted his status to tyrant (Ciulla, 1995). Hitler not only coveted malignant views but sought methods for furthering his beliefs, first he believed that the end justified the means; second he had contempt for peace; and third his influence was in the form of propaganda embracing total distortion of reality (Gardner, 1990). Hitler distorted an entire ethnic population (Jewish) misleading the German population providing them someone to blame for their own misgivings.

Power is ethically neutral, it can be used for good or bad purposes and therefore leadership must be addressed from a moral framework (Gardner, 1990). Why is it then that so many people obey when they feel coerced? A social psychologist from Yale University, Stanley Milgram studied this very topic in 1963. He advertised for ordinary men to participate in a learning/memory experiment based on paired words (Milgram, 1974).

The participants (teachers-recruited persons) were led to believe they were assisting in an experiment that measured retention of material recently taught to a student (actor-confidant of the experimenter). What Milgram was measuring was the level of obedience to an authoritarian figure, regardless of personal convictions or personal conscience. The teacher (recruited participant) was advised to induce an electric shock to the student (affiliate) for each wrong answer from 15-450 volts. In reality the shocks were fake and in fact had they not been, they would have been fatal in the upper range (Blass, 1999).

Milgram concluded that everyday people will follow orders given by an authoritarian figure. Obedience is ingrained in humans from birth through socialization of members in society. This response to legitimate authority is generally learned from person's family, school, and workplace. Most will obey others if the authority is recognized as legitimate and morally correct and based in some legal foundation (Milgram, 1974).

### **Leadership Addressing Corruption**

The two basic types of ethical systems are deontological ethical system-intent of the act will determine whether an act was good or bad and teleological ethical system which judges the outcome of the act or end justifies the means (Pollock, 2010). The transformational leader practices the former along with his/her vision the creation of values for the organization. There are three core themes to vision construction through values and they are: High performance standards; caring about people in the organization; and a sense of uniqueness and pride (Kouzes & Posner, 2007).

Hitler was of the teleological view that the end justified the means and was willing to sacrifice all German people to save his own portrait in history. Hitler is the antithesis of the

definition of character. Character is about doing good rather than harm to others whether the harm is intentional or not (Zigarmi, Blanchard, O'Conner, & Edeburn, 2005). Although Hitler possessed many of the traits that you may recognize in respected leaders, his motives were ill conceived. Leaders of a transformational style are able to influence members to achieve the goals and vision of the organization but do so with benevolent intent rather than malignant malfeasance.

The personality traits of the Transformational Leader strikes me as the over-all style fitting for most situations, but having said that I must preface remaining remarks with the fact I feel successful leaders have co-existing styles and draw on them dependent upon the context. The transformational style is capable of producing higher level of performance than previously thought possible and by expressing personal standards are able to achieve change and unite followers (Kuhnert & Lewis, 1987).

An innovative organization engages everyone and the leader must create the atmosphere for change and develop middle management for the challenge (Behn, 1995). Different leaders can accomplish similar purposes with different strategies and styles. The preceding is intertwined with the Constructive Theory that leaders emerged from personal experience and their social and interpersonal environments is how they approach leading (Kuhnert & Lewis, 1987). The constructionist and the transformational leader are similarly situated and often in an ongoing learning experience and must be willing and fortified with the ability to subject the experience to the correct ethical approach.

A socio-psychological profile designed to afford a person of strengths and weaknesses is Dominance, Influence, Steadiness, and Conscientiousness (DISC). A self-analysis profile that provides the learner of strengths and weakness as is in my case. DISC is fashioned to arm the

leader with a better understanding of his/her strengths and weaknesses. DISC is a personality assessment with regard to leadership styles. DISC provides the opportunity for leaders to become more efficient. Leaders today may be efficient with things, but they must be effective with people, particularly in a very labor intensive environment such as the CJ system.

Motivation and influence of members is the key as police officers won't tolerate autocratic management style (ACJS, 1984). The leader that is better armed is better prepared to accept responsibility of leadership and to understand those he may lead.

An example of the DISC profile I offer myself. As a result of taking this profile on more than one occasion, I have been dubbed the Promoter Pattern. I found agreement with the majority of the analysis. What I have learned as a Transformational Leader and from frequent DISC self-analysis that my style does not fit every person I come in contact or the situation. If a leader understands self and can understand which pattern or preference the membership is situated he/she can better lead armed with this knowledge. Leadership development is self-development (Kouzes & Posner, 2007).

Personality is a combination of life experiences, a behavior manifestation of "who you Are", (Zigarmi et. al., 2004). DISC is a self-analysis that provides an opportunity to develop strengths and overcome weaknesses. The transformational leader motivates and influences members to take on the difficult and accomplish tough goals (Kuhnert & Lewis, 1987). Not every leader has developed the necessary traits to make this happen and again DISC is most helpful to further a leader's development. I find this particularly true in an ever changing environment in police leadership. Police officers will not tolerate autocratic management style (ACJS, 1984), therefore a police leader today must be cajoling, influential and a motivator. Behavioral adaptability is not selling your soul or losing your identity, but rather willingness and

ability to use behaviors not necessarily characteristic to your preference bias (Zigarmi et. al., 2004).

Your personal traits, how you as a leader can massage them and overcome weakness develop your personal style. I am of the firm belief that no one style is a standalone style but they co-exist and if not by choice then from necessity to meet each differing situation. Leaders learn to lead by understanding what is important to them (Kouzes & Posner, 2007). Thereby as a transformational leader attaches moral importance to a deontological approach, but does not necessarily prevent a quick trip to the consequentialist side for a brief stay. The successful leader may cross over to the teleological approach and move back into the deontological before it is noticed.

Police work has a broad definition. Police organizations must deal with crisis both internal and external. Contemporary organizations often are described as hostile, complex, uncertain, and changeable. The leadership that develops from crisis situations is better suited to overcome a singular crisis and how the organization prepares for the next crisis. The leader guides the internal dynamics of the group to include motivation, and communication patterns; specifically the flexible and participative leader appears more effective (Jin, Sun, & Kim, 2010). Leadership may be defined in terms of facilitation, vision, motivation, authenticity and advocacy, and encouragement of others. Role modeling is critical for the development of future leaders and the profession (Gibson, Dollarhide, and McCallum, 2010).

Assuming the reader agrees with the preceding then it should not be difficult to connect the dots between the importance of leadership style, ethical approaches, flexibility within the leader and her/his style and the ability to celebrate crises as a learning experience to build upon the next. Regardless of the type of CJ practice one may find them self. Then might one's life as

well as leadership style require the ability to move back and forth between ethical approaches from time to time?

As provided in the opening salvo, History has not provided a clear straight line from our beginning to this juncture in time. Again as previously discussed in previous sections, Plato, Socrates, and Aristotle produced in their works a philosophy that has passed the test of time. Mills, Bentham, and Locke have added to the discussion that has supplemented the original works. Certainly time has demanded the bar be raised in leadership and consistently sought characteristics desirable in a leader that is beyond what general society is willing or capable of living up to and they are willing to criticize a leader when their personal life goes awry.

Embedded throughout our discussions to this point is the fact that ethics, virtue, morality, and character are obvious in the written word of our Constitution. The founding fathers did not provide an article or section stating that the document is designed to make your life easier. However what is crystal clear is that the document provided a pathway that permits all citizens to be part of the debate. Have United States citizens demonstrated the personal and ethical courage to maintain their role in the debate?

#### References

- Academy of Criminal Justice Science (1984). Police officers will no longer tolerate autocratic leadership.
- Albanese, J.A. (2012). Professional ethics in criminal justice: Being ethical when no one is looking (3rd Ed.). Upper Saddle River, NJ: Prentice Hall.
- Aronson, R. (1977). Toward a rational resolution of ethical dilemmas in the criminal justice system. In *Criminal Justice Planning and Development*, (ed.) A. Cohn, 57-71. CA: Sage.

- Behn, R. D. (1995). Creating an innovative organization: Ten hints for involving frontline workers. *State and Local Government Review*, 27(3).
- Blass, T (1999). The Milgram paradigm after 35 years: Some things we now know about obedience to authority. *Journal of Applied Social Psychology*. 29 (5). doi:10.1111/j.1559-1816.1999.tb00134.
- Ciulla, J. B. (1995). Leadership ethics: Mapping the territory. *Business Ethics Quarterly*, 5(1), 5-28. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=5953981&site=ehost-live&scope=site>
- Gibson, D. M., Dollarhide, C. T., & and McCallum, L. J. (2010). Nontenured assistant professors as American counseling association division presidents: The new look of leadership in counseling. *Journal of Counseling & Development*, 88(3), 285-292. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com.library.capella.edu/login.aspx?direct=true&db=sih&AN=52425738&site=ehost-live&scope=site>
- Janis, I. L. (November 1971). Groupthink. *Psychology Today*. 5 (6): 43–46, 74–76.
- Jin, N. C., Sun, Y. S., & Kim, M. U. (2010). How do groups react to unexpected threats? Crisis management in organizational teams. *Social Behavior & Personality: An International Journal*, 38(6), 805-828. doi:10.2224/sbp.2010.38.6.805
- Gardner, J. W. (1990). *John W. Gardner on leadership*. (p. 169-170) New York: The Free Press.
- Kouzes, J. M., & and Posner, B. (2007). *The leadership challenges* (4th Ed.). San Francisco: Josey-Boss.
- Kuhnert, K. W., & Lewis, P. (1987). Transactional and transformational leadership: A constructive/developmental analysis. *Academy of Management Review*, 12(4), 648-657.

Retrieved from

<http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=4306717&site=ehost-live&scope=site>

Merriam Webster Dictionary. <https://www.merriam-webster.com/dictionary/corruption>.

Milgram, S. (1974). *Obedience to authority: An experimental view*. New York: Harper and Row.

Ortmeier, P.J., & Meese, E., III, (2010). *Leadership, ethics, and policing: Challenges for the 21st century* (2nd Ed.). Upper Saddle River, NJ: Prentice Hall.

Pollock, J.M. (2010). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth.

Sklansky, D. A. (2006). Not your father's police department: Making sense of the new demographics of law enforcement. *Journal of Criminal Law & Criminology*, 96(3), 1209-1243. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21820080&site=ehost-live&scope=>

Zigarmi, D., Blanchard, K., O'Conner, M., & and Edeburn, C. (2005). *The leader within: Learning enough about yourself to lead others*. Upper Saddle River, NJ: Pearson: Prentice Hall.

## **Chapter 5 – Ethical Leadership**

### **Chapter Abstract:**

Can you lead when no one is watching? Does your ethical foundations flow into your leadership style? This section examines these traits and provides leadership style that best fits the evolution of the CJ system. The following discussion is an explanation of mixed research relative to the Leader-Member Exchange defining the leader-follower requirement of leadership. The author of this discussion compares in brief form the Leader-Member Exchange (LMX) with the Social Identity Theory of Leadership and provides a view from Adaptive Theory researchers as a comparison or more to the point their interaction with each other. The Transformational and Transactional styles are compared. The LMX style closely relates to Transformational leadership due to leader follower relationship. The transactional leader may relate to the authoritarian style more closely. The trait theory is examined in the context of this styles relationship with Transformational styles.

### **Leadership Defined.**

Ethical leadership is leadership through principles that influences followers. Leaders lead through choices developed amidst moral growth enhancing values, dignity, fairness, integrity, charisma and innovation without jeopardizing how we ought to behave. The main goal of the leader of any organization is to influence the membership to achieve goals and eventually attain the vision of the organization. Ethical Leadership means that which is morally good or considered morally right; therefore teleological leadership ethics are a leaders action with no intrinsic moral status whereas deontological leadership ethics considers leaders actions to have intrinsic moral status (Kanungo, 2001).

## **Inhibit leadership growth**

Successful leaders exercise authority or power of authority in a free and pluralistic society consisting of members who choose to follow through no single code of ethics but several sets of values emanating from a variety of cultures and subcultures (Ortmeier & Meese, 2010). Leadership is about influencing and motivating and therefore as a motivator the ethical leader should seek to fit the individual member to the environment for the greater good of the organization.

Manipulation Leadership in a perfect world is motivation by bending people's pathway so that they head toward a predetermined outcome. Leaders from time to time may find the need to bend the intended paths of others for noble reasons. Then is there such a thing as an ethical manipulator? Realistically there may events that require this measure and might be for self-serving gain as well. Either way, seeking to redirect the will of others is often referred to as directing, structuring or focusing behaviors (Zigarmi, Blanchard, O'Conner, & Edeburn, 2005).

Manipulation of others may be viewed as coercive, deceptive, or self-serving by followers while at the same time might be considered by the leader as fair, motivational, purposeful, humble and honorable. However, any leadership practice that increases another's sense of self-determination, self-confidence, and personal effectiveness is practicing empowerment creating an atmosphere for success (Kouzes & Posner, 2007). Leadership has always involved politics (Gardner, 1990) and substantive leadership requires an ethical leader who possesses the philosophical and moral foundation for decision making (Ortmeier & Meese, 2010).

The motives used to influence/motivate/manipulate (interactive/co-existent terms) others are generally labeled honorable when incorporated with the intent to benefit the organization. Likewise, honorable, when increasing the ability of the member(s) in an organization through the integration of discretionary decision making, legitimacy of action and accountability. The antithesis of the honorable motivator is the unethical leader that is deceitful, inconsistent, misplace and break loyalties and are irresponsible and generally self-serving (Ortmeier & Meese, 2010). The question arises when is it in the best interest of the leader, follower, and organization to implement manipulation. Is this method justified if the original intent is for the good of the order, or if the outcome is positively viewed by the membership?

An unintended outcome of this style is that a leader may become dreadfully challenged when it comes time to withdraw the manipulation and equally challenged because it is so easy to use it for self-serving purposes. When exercising manipulative leadership, it becomes comfortable to be drawn into the Authoritarian Leader/Coercive Leader that is task oriented and is hard on followers. The autocratic leaves little or no allowance for cooperation or collaboration. Heavily task oriented modes depict the authoritarian as: very strong on schedules; expect people to do what they are told without question or debate; when something goes wrong focus on who is to blame rather than concentrate on exactly what is wrong and how to prevent it; and intolerance for dissent. In short there is no room for subordinates to develop under this style.

In summary the Authoritarian leader corrupts an environment for growth, flexibility, and change. This method has a purpose in the CJ system but generally in tactical situations and not leadership roles. Personal and organizational ethics is now in question and it takes introspection and often humiliation to snap back to a more transformational style. Leaders that have survived

Gen X, Y and Millennial time frames (not necessarily the people) have found non-authoritarian styles highly maintenance intensive, time consuming, and resource heavy to maintain.

### **Personal Courage & Organizational Courage**

Innovation and creativity is the responsibility of tomorrow's organizational leadership and I subscribe to the theory that, "Without a past, you can have no future." The problem with our traditional bureaucratic public safety organizations is the manner today's leaders have a death grip on tradition and fail to see past the industrial era of management styles. The traditional leadership and management strategies are crushing creativity under their own weight, (Stage & Dean, 2000). My experience implies that innovation and creativity do not emerge from the ivory tower of police headquarters but rather from the rank and file members performing the daily tasks. Kouzes & Posner, (2007) maintain, "Innovation requires more listening and communications than doer's routine work" (p.177).

The industrial era of leadership was designed for the purpose of getting the information flow in one direction; downward and required little if any response; and within the profession, very much like the Psychotherapy and Counseling arena the police have responded to a body of "expert knowledge" and qualification that were well guarded by the profession for the profession and not to be shared (Totten, 1999). Once a paradigm has been established, the scientist enhances her/his reputation by writing journal articles that are addressed only to colleagues within the profession (Kuhn, 1996). Furthermore, the powers to be had little time for any input outside the organization; fatal to contemporary demands for innovation and creativity. It is

critical to stay in touch with internal and external fabricators of organizational cultures in order to be a change agent (Kouzes & Posner, 2007).

Change agents or change centered leadership requires courage on behalf of organizational members, leaders, and organizational buy-in. Change Agents are also referred to as risk takers and the processes subscribes to intuitive and creative juices of the membership and leadership in conjunction with power motivated for the right reasons. That is foreseeing the urgency for change and meeting those demands through swift and thoughtful decisions (Andersen, 2000). Critical to this style is the development of the organizations members and a strong relationship between leader and follower (Andersen, 2000).

Succession planning is a process in trouble and selecting the right members for executive education requires deeper attention to existing rosters of organizations and selection of future leaders in cooperation with new vision rather than those mired in the past. Equally important is the requirement to find members with the required transformational traits to move the organization forward rather than maintain a status-quo (Haskins & Shaffer, 2010). Additionally critical is the attempt to gain ethical people from an unethical society (discussed at greater length further on in the material). In a transforming society, the leadership must be ahead of the game.

According to a recent study by the American Society for Training and Development, (September, 2010) surveying 674 senior executives of large companies across the globe indicate that they plan to rebuild their workforces to prerecession levels by 2012. Most had grave concerns of workforce capabilities and management capabilities to meet the transforming times (Haskins & Shaffer, 2010).

In summary the successful innovative leader must be caring, sharing and open to all ideas as described in the preceding as well as possessing the ability to work in teams, be creative and have a keen ability to forecast and move without hesitation.

### **Leadership Styles-Do Leadership styles require ethics?**

The true charismatic and ethical leader is forged from a set of assumption pertaining to the leader-follower relationship operating out of genuine concern for those he/she is leading as well as the organization being led (Ciulla, 1995). According to Bass and Avolio (1994) then the authentic transformational leader is guided by: charisma or idealized influence; inspirational motivation; intellectual stimulation; and individualized consideration all leaning toward personal growth through coaching and mentoring. The transactional leaders/ approach controls behaviors of subordinates through reward for service or “TIT for TAT” or the “what’s in it for me”. Transformational leaders (TF) attempt influence through communications, inspiration, and the good of the order rather than purely self-serving interest (Bass and Avolio, 1994).

The Transactional Leader (TA) will differentiate from the TF. She/he as a TA will exert influence through setting goals independent of others in the organization, clarifies desired outcomes, provides feedback and then exchanges rewards for the accomplishments of the followers. In contrast with the TF who will through additional influencing broaden and elevate followers’ goals building the followers confidence in mission and manner and ability that will propel the follower beyond the original agreement of exchange (Bass & Avolio, 1994).

### **Transformational leadership qualities**

The transformational leadership style is one that fosters the values of honesty, loyalty, fairness, authentic, morally and ethically centered and continually professes the organization values based on justice, equality and human rights. These are terms often described by Plato, Socrates, and Aristotle. In contrast the pseudo-transformational leader endorses more wicked, unreasonable and vicious values such as favoritism, special interest, and self-preservation over that of the organization (Price, 2003). The latter can serve to create divisiveness, consternation and rebellious attitudes by organizational members; in turn serving no legitimate purpose for accomplishing the organizational goals/mission. The relevance of the former describes the authenticity required of leaders today, especially in changing societies. The transformational leader and the pseudo-transformational leader may begin with altruistic values, but the pseudo leader loses perspective and falls prey to more self-serving goals.

Within any organization, specifically in a CJ system, one may find differing layers of leadership styles. This is mainly dependent upon the task at hand, tactical as compared to strategic goals, and over-all mission. More often than not, the terms of management and leadership are juxtaposed when in reality they have different purpose and the style required is relevant to task, goal and mission to accomplish and they co-exist.

Leadership is without a single definition and is a complex process of constant change from moment to moment from member (follower) to member within environments made of multiple variables in a constant state of motion. However, I have reserved my position under the transformational umbrella as my personal style, at least as a starting point due to my belief that you first build a relationship and the leadership will follow in most cases. The honest and forthright leader finds communications a critical component for the development of members, future leaders and keeping external variables informed. Regardless of the legitimate style

selected by the modern leader, there is no room for the pseudo-transformational leader in a successful venture.

Contemporary CJ leaders, as is public managers and leaders, must be flexible, adaptable, compassionate, influential, highly ethical and a good listener to point to a few differences from the old military/industrial autocratic style. The ability to align members and coordinate motivation, articulate goals, stressing values of the members, involve the members in decision making is critical (Kotter, 2001). Essential to the process is the ability of the transformational leader to energetically and enthusiastically motivate members as no human venture succeeds without strong motivation (Gardner, 1993). Bass and Steidlmeier (1999) concur with these modeling descriptors of the authenticity/transformational leadership and conclude the inauthentic leader ultimately acts against any altruistic values for the purpose of benefiting self and does so freely of choice.

Environmental considerations are essential to this proposition, it is important to understand where your members are and where they need to go in order to achieve a transforming organization. It is not sufficient to attempt leadership without a firm understanding of the generational differences compounded by economics, current events, and where an organizational member has gained their life's programming (Salahuddin, 2010). The transformational leader understands and models communications, coaching and team building. During the same time frames the leader must coordinate efforts through organizational transformation in spite of periods of disobedience and impatience (Hagen, 2010).

Consistent with the pseudo-transformational leader is the by-product of the Industrial age leadership/autocratic style and the law enforcement leader is mired in the outdated hierarchy military style of leadership, in turn creates stagnation rather than an atmosphere of achievement,

change, learning and moving their organization in a positive direction. Since the early 1970's and with the advent of bargaining units, police will no longer tolerate autocratic leadership.

Where the winds of change have not advanced then I suggest there may exist strong bargaining unions in opposition to the police chief (other than right to work states, however is constantly being challenged in legislatures across the country). In reality the new entrants into the criminal justice system arrive with the goal of becoming all you can be, meaning more than achieving rank, a leadership that clings to the old management systems is destructive and serves in most cases no legitimate purpose (generally outside police tactical implications) and is destined for failure.

Furthering the lack of courage to embrace transformational leader styles, specifically within CJ systems, may be the lack of courage to take the risks the role demands. This may require those things such as turning hiring over to human resource units, the use of hiring standards that contain not only ethical standards but also leader quality standards, and provide training and education for the development of leaders within the organization (Kouzes & Posner, 2007). If leaders lead from what they know and have never been trained differently than most will find a comfort zone that they wish to exercise authority from rather than perform their function from the ethical center and do what is right for the organization and not self.

Failing to become the new leader, the ethical leader, the change agent leader is particularly relevant to the police leader. The police leader that lacks the inability to bring about change, fosters the dissatisfaction of the rank and file, nurtures stagnation and has been the cause for rapid changeover at the top in the industry. Specifically, good leaders have been discounted

as a result of a new Mayor's/City Managers' deal with bargaining units to bring in new leadership to gain support of the police.

However when the lack of positive change is evidenced by community and external groups and the leader is without requisite skills as discussed, then the final ax shall fall. While pseudo-transformational leadership is the antithesis of transformational leadership, both may have begun the journey with altruistic values the former sought the easy path in some situations and lacked courage and stamina to carry on ethically. Leaders failing to create vision, build future leaders, create learning environments and the atmosphere for change is failing to lead, explicitly evident during periods of constant change, politically, economically, socially and environmentally.

### **Leader-Follower Theory: Concentration of LMX**

Heifetz & Laurie, (2001) contends, "Leaders who truly care for their followers expose them to painful reality of their conditions and demand that they fashion a response. Instead of giving people false assurance that their best is good enough, leaders insist that people surpass themselves, and rather than smoothing over conflicts, leaders force disputes to surface" (p. 14).

Standards create minimums, minimums create status-quo, and status-quo creates mediocrity. Leaders must set the bar (standards) as a moveable bar, in one direction, upward. To do otherwise is a disservice to the members of the organization and the community it serves. This is truer today than any other time in the history of this country. The younger generation entering the workforce wants change, they need change, and they rely on change as their only stable in life. Incumbent upon the leader is to provide this change.

In order to accomplish the leader-follower method of leadership a series of relationships must be developed. Relationships, between leadership and follow are essential for motivation. Members of an organization must have a reason for following and more important, you cannot have leaders if you have no followers (Zigarmi et al., 2004).

Hogg, (2001) defines a social identity theory of leadership as “a group process generated by social categorization and prototyped based depersonalization processes associated with social identity” (p.196). In this fashion the leader constructs a self- labeling that invests the most classical member with the appearance of having influence. Following this sequence of thought regarding LMX theory; power is not leadership, leadership is influence which will mobilize the masses (Hogg, 2001; Zigarmi et al., 2005; Graen & Uhl-Bien, 1995; Scandura, Graen & Novak, 1986; and Gerstner & Day, 1997). The remainder of this discussion will focus around the Leader-Member Exchange (LMX) behavior to further define leader follower relationships and importance.

The Leader-Member Exchange (LMX) theory is replete with operable alternatives to the traditional leadership approaches focused on trait and behaviors. Computation of over 25 years of research involving LMX findings remain enthusiastic, although there remains an ambiguity about the nature of the construct, its measurement, and its relationships with other organizational variables (Gerstner & Day, 1997). Graen and Uhl-Bien, (1995) classified the evolution of LMX theory into four stages:

1. Work socialization and vertical dyad linkage where the focus was on the discovery of differential dyads (i.e., in-groups and out-groups);
2. LMX where the focus was on the relationship quality and its outcomes;

3. A prescriptive approach to dyadic partnership building (A dyad (from Greek *dýo*, "two") in sociology is a noun used to describe a group of two people. A dyad is the smallest possible social group. (Sociology); and
4. LMX as a systems-level perspective (i.e., moving beyond the dyad to group and network levels) (p.226).

Albeit the final two stages are relatively new and the majority of the empirical data relates to the first two stages, the latter stages may offer a deeper understanding of LMX in more complex organizations. However, the LMX theory describes leadership and it prescribes leadership. Descriptively it suggests that it is important to recognize the existence of in-groups and out-groups within a group or organization (Northouse, 2010).

Prescriptively, leaders should create a relationship with all subordinates offering each the opportunity to take on new roles and responsibilities and nurture the high-quality exchange between subordinate and leader rather than restricting the leaders focus on differences between in-groups and out-groups (Graen & Uhl-Bien, 1995).

Regardless if considered descriptive or prescriptive, LMX focuses leader attention on the special relationships created between leader and follower. Although it makes sense to define workers or work groups as productive, or minimal contributors, or unwarranted existence (specifically in highly unionized settings) and rewards are distributed accordingly this may establish the perception of unequal or unfair treatment. LMX theory however validates our experience of how people within organizations relate to each other and the leader and some will contribute more than others and receive more than others accordingly (Northouse, 2010). The LMX approach emphasizes the importance of communications between the leader-member and in fact is bound by extremely high communicative measures making this approach effective and

it is the one leadership theory that has as its central concept the reality of the dyadic relationship that exists in organizations and specifically policing (Scandura, Graen & et al Novak, 1986).

Finally, paramount to this discussion is the looming alert for leaders, warning of bias decision making when determining who is invited into groups (Northouse, 2010). Specific to this point is the fact that diversity is the key to changing the cultural differences in policing today. The due process courts of the 1960's have prevailed in policing and are the singular success story for establishing more equality in police hiring via quotas. Diversity is credited with the dissolution of cultural barriers at a more rapid pace, reductions of brutality complaints and further erosion of the blue wall of silence (Sklansky, 2006). The principles outlined in the LMX approach remind leaders of fairness and equality. Herein another concern arises and that is of generational differences and how they may impact this relationship. Research according to Salahuddin, (2010) indicates that "failing to recognize generational differences do in fact impact organizational outcomes," but with aggressive communications and difference deployment (aligning the member with the correct leadership style) is indicative of the LMX approach.

### **Trait Theory.**

**Trait Theory:** Leadership based on individual attributes is known as the "trait theory of leadership." This theory does not take into consideration what kind of leadership is required or desired for a given situation, rather concentrates specifically on the leader alone. The Trait Theory emphasizes a specific profile and asserts the organization will run more efficiently if the leader possesses the profile. There exists a multitude of research supporting this style pointing to the important role of various personality traits in the leadership process and provides for the leader his/her strengths and weaknesses. A major criticism of the Trait Theory is that it fails to

take situations into account and is not useful for training and developing leaders (Stogdill, 1948). Despite the criticisms it does provide information about the leader and although the list of traits desired is an infinite list, the research does not point to specific traits in a limited fashion however it can be applied to all individuals in all organizations.

**Style Approach:** The second method discussed fails to find a universal style of leadership that could be effective in most situations and similar to the Trait Theory, failing to identify the definite personal characteristics of leaders the style approach is unable to identify a universal set of behaviors associated with effective leadership. However researchers have found this approach consists of two main behaviors which are task and relationship. In other words this approach keeps at the forefront of the leader that their actions toward others are on a task and relationship level. The task orientation has a tendency lean toward the situational leadership while the relationship orientation hints of the transformational style.

**Skills Approach:** At the heart of this model is problem-solving skills, social judgment skills, and knowledge. The model does not provide a prescription for success but rather the skills approach defines a structure for understanding of the leader (Katz, 1955). The importance of the skills model will be dependent upon which level of management the leader exists and it takes into consideration the experience rating, individual attributes and environmental influences that will impact the leader's capabilities. This is a process that research has determined as able to be learned but it is also short of predictability. The Military was the primary target of research for this particular model and how it can interplay with other organizations effectively requires greater research.

How well can each approach or style interact with the other and how well can the style interact with the leaders personal, in my opinion is the more logical question. Through my

empirical knowledge of leadership spanning nearly three decades I suggest that they all interact and have done so prior to researchers attaching naming rights. A leader's style will, at least in the police setting, interact with the other dependent upon the situation (tactical, investigative, problem solving, etc.). The leader's ability to identify which approach meets which situation is critical. Finally, selecting the style that meets the need but also meets ethical standards is substantially more critical.

### References

- Andersen, J. (2000). The weight of history: An exploration of resistance to change in Vicars/Managers. *Creativity & Innovation Management*, 9(3), 147. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=5384634&site=ehost-live&scope=site>
- Anderson, T., D., Gisborne, K., & and Holliday, P. (2006). *Every officer is a leader* (2nd Ed.). Victoria, BC: Trafford Publishing.
- Bass, B. M., & and Avolio, B. J. (1990). The implications of transactional and transformational leadership for individual, team and organizational development. *Research in Organizational Change and Development*, 4, 231-272.
- Bass, B. M., & Steidlmeier, P. (1999). Ethics, character, and authentic transformational leadership behavior. *Leadership Quarterly*, 10(2), 181. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=2406536&site=ehost-live&scope=site>

- Ciulla, J. B. (1995). Leadership ethics: Mapping the territory. *Business Ethics Quarterly*, 5(1), 5-28. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=5953981&site=ehost-live&scope=site>
- Dearborn, K. (2002). Studies in emotional intelligence redefine our approach to leadership development. *Public Personnel Management*, 31(4), 523. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=9004400&site=ehost-live&scope=site>
- Gerstner, C. R., & Day, D. V. (1997). Meta-analytic review of leader-member exchange theory: Correlates and construct issues. *Journal of Applied Psychology*, 82(6), 827-844. doi:10.1037/0021-9010.82.6.827
- Gardner, J. W. (1990). *John W. Gardner on leadership*. (pp. 169-170) New York: The Free Press.
- Graen, G. B., & Uhl-Bien, M. (1995). Relationship-based approach to leadership: Development of leader-member exchange (LMX) theory of leadership over 25 years: Applying a multi-level multi-domain perspective. *The Leadership Quarterly*, 6(2), 219-247. Doi: 10.1016/1048-9843(95)90036-5
- Hagen, M. (2010). The wisdom of the coach: A review of managerial coaching in the six-sigma context. *Total Quality Management*, 21(8791-798) Doi: 10:1080/14783363.487657
- Haskins, M. E., & Shaffer, G. R. (2010). Using executive education program rosters to identify a succession cohort. *Strategy & Leadership*, 38(5), 39-44.
- Heifetz, R. A., & Laurie, D. L. (1998). Adaptive strategy. *Executive Excellence*, 15(12), 14.

- High-performance workforce study. (2010). *American Society for Training and Development*, September
- Hogg, M. A. (2001). A social identity theory of leadership. *Personality & Social Psychology Review* (Lawrence Erlbaum Associates), 5(3), 184-200. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=4802751&site=ehost-live&scope=site>
- Kanungo, R., N. (2001). Ethical values of transactional and transformational leaders. *Canadian Journal of Administrative Sciences*, 18(4), 257-265.
- Katz, R. L. (1955). Skills of an effective administrator. *Harvard Business Review*, 33(1), 33-42.
- Kotter, J. (2001). What leaders really do. *Harvard Business Review*, 79(11), 85-96.
- Kouzes, J. M., & Posner, B. (2007). *The leadership challenges* (4th Ed.). 989 Market Street, San Francisco: Josey-Boss.
- Northouse, P., G. (2010). *Leadership: Theory and practice* (5th Ed.). Thousand Oaks, CA: Sage Publications.
- Ortmeier, P. J., & Meese, E. I. (2010). *Leadership, ethics, and policing: Challenges for the 21st century*. (2nd Ed.). Upper Saddle River, New Jersey: Prentice Hall.
- Price, T. L. (2003). The ethics of authentic transformational leadership. *The Leadership Quarterly*, 14(1), 67-81. Doi: 10.1016/S1048-9843(02)00187-X
- Salahuddin, M. M. (2010 Second Quarter). Generational differences impact on leadership style and organizational success. *Journal of Diversity Management*, 5(2), 1-6. Retrieved from AN 51469725

- Scandura, T. A., Graen, G. B., & Novak, M. A. (1986). When managers decide not to decide autocratically: An investigation of leader–member exchange and decision influence. *Journal of Applied Psychology*, 71(4), 579-584. doi:10.1037/0021-9010.71.4.579
- Sklansky, D. A. (2006). Not your father's police department: Making sense of the new demographics of law enforcement. *Journal of Criminal Law & Criminology*, 96(3), 1209-1243. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21820080&site=ehost-live&scope=site>
- Stage, B. R., & Dean, M. A. (2000). Leadership in the 21st century--unchartered waters or same drip. *PA Times*, 23(7), 4. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=3403857&site=ehost-live&scope=site>
- Stogdill, R. M. (1948). Personal factors associated with leadership: A survey of the literature. *Journal of Psychology*, 25, 35-71.
- Totton, N. (1999). The baby and the bathwater: 'professionalization' in psychotherapy and counseling. *British Journal of Guidance & Counseling*, 27(3), 313. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=2340065&site=ehost-live&scope=site>
- Winston, M. G. (1997). Leadership of renewal: Leadership for the 21st century. *Business Forum*, 22(1), 4. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=9709034342&site=ehost-live&scope=site>

Zigarmi, D., Blanchard, K., O'Conner, M., & Edeburn, C. (2005). *The leader within: Learning enough about yourself to lead others*. Upper Saddle River, NJ: Pearson: Prentice Hall.

## **Chapter 6– Criminal v. Racial Profiling & Surveillance**

### **Chapter Abstract:**

This discussion will entail both empirical data and the work experience of a thirty-eight year law enforcement veteran comparing criminal profiling with actual practice in comparison of this authors insinuation that the birth place of criminal profiling is found in Terry v. Ohio. It is the contention of this document that criminal profiling is a day to day practice of street officers and the much romanticized criminal profiling as viewed by the media is a by-product of good street cop methodology, unlike racial profiling. Readers are asked to draw a comparison between criminal profiling, racial profiling, and Homeland Security. The reader may find similarities between Chapters Six and Thirteen, although they reiterate material discussed they provide for differing contextual thinking relative to both topics discussed.

### **Homeland Security**

There cannot be Homeland Security without first Hometown Security. This discussion is premised on a number of criteria that is essential to ethical foundations in the CJ system. First, private security does not have to play by the same rules as government employees. Freedom of privacy, albeit not specific in the U.S. Constitution is defined by court rulings relative to existing language. It is further the contention of this section that profiling is used in the private security sector with impunity. For example in casinos when a private person swipes his her credit card the facility has information that a public agency does not have ready access, such as credit report, where you have lived for previous ten years, whether you own your home or rent, criminal check and if anyone in your family is in the gaming business (police background investigation requires waivers to obtain information). Therefore the bureaucratic arena that the criminal justice system

resides is drastically restricted by legal obligations and the private sector has far outpaced their governmental counterparts in the technological advances arena. To coin a phrase, “We’re so far behind we think we’re first.” First of all the private sector is generally financially better prepared to meet its needs; second the private sector does not have to deal with huge bureaucracies to gain a purchase; they are not concerned with individual liberties as the public sector employee; and finally, the private sector planning and development is not encumbered with politics.

When I speak of the private sector, I do not wish for you to envision the security guard at a gated community, although their radio equipment and surveillance equipment is state of the art, more so than most CJ practitioner. Rather I offer my comments toward the corporate security responsible for multi-continent computer security, responsible for guarding high tech industrial secrets, background investigations that make public servant checks pale by comparison, satellite positioning and bank transactions that if breached would cost this Country Billions of dollars.

The private sector is far more advanced, they have the means to provide their workforce with the most modern up to the minute equipment and they do not deal with the same impediments as the criminal justice practitioner. Further their use of obtained information is generally not subject to public scrutiny and is an actual form of criminal profiling. This is probably just one more reason why the public sector should embrace the private sector security corporations if not for their hand me downs, then for their expertise and contemporary methodologies.

Having stated the purpose of this article it is essential to provide a description of criminal profiling as detailed in current research and then the brief discussion of Terry Stops criminal profiling. According to Hatch-Maillette, Scalora, Huss & Baumgartner (2001):

Individuals who demonstrate heavy involvement with the legal system are an undeniably important population to consider in terms of economic, social, and ethical issues. To the extent that knowledge of these people can be amassed, researchers and clinicians can begin to address the financial and societal burdens experienced by those who are indirectly or directly affected by our criminal justice system. One way in which our understanding can increase is by systematically examining the thought content of criminal offenders in hopes of detecting patterns in specific categories of cognitions that are indigenous to the type of crime committed (p.115).

Criminal profiling according to Muller (2000) “is the process of using available information about a crime and crime scene to compose a psychological portrait of the unknown perpetrator of the crime (as cited in Bartol & Bartol, 2008, p.56). Criminal profiling in this fashion is instrumental providing investigators with a psychological evaluation of relevant information of offender and his/her possessions and the technique for interviews (Bartol & Bartol, 2008). Additionally, the information from a crime scene of an unsolved homicide may offer legitimate information for the investigator; however not all offenses are appropriate for criminal profiling. Crime Scene Analysis (CSA) probably the most romanticized by the media is the most popular (Bartol & Bartol, 2008).

As asserted by Ressler, Burgess & Douglas (1988) CSA “Criminal profiling is a six-stage process” (p.58). The stages: Profiling Inputs and concerns, collection of all information; Decision Process Model in which the information is analyzed; Crime Assessment or in this stage is the term, getting into the mind of the criminal; Constructing the Profile is performed in this stage consisting of age, characteristics of the offender, race general appearance of offender, relationship to victim and any other notable features; Investigation whereby the

profiler submits a report to the agency; and finally Apprehension assuming the correct offender is caught (Ressler et al., as cited in Bartol & Bartol, p.58-59). There are two other forms of profiling offered which will receive no other attention than honorable mention in this discussion are Investigative Psychology (IP) and Diagnostic Evaluation (DE) and as pointed out by Bartol & Bartol (2008) “CSA does have the potential to be scientific with some work, but the main problem seems to be that it does not want to be scientific. Unlike, CSA, IP was designed from the beginning with science in mind...IP has a great deal of potential to become a science, but it still has a long way to go before it will be recognized as a discipline in itself” (p.62).

Is criminal profiling of use to the police profession or perhaps in diagnosis of perpetrators for rehabilitation purpose, the evidence provided is scant however it does indicate promise (Bartol & Bartol, 2008). CSA is more reliant upon experience and intuition. Criminal profiling will be tested longitudinally as evaluation of offenders prove positive and providing testing is best available with the IP as more empirical studies can make its claim (Bartol & Bartol, 2008). Criminal profiling as described thus far has been primarily reserved for serial killers. Strong ethical foundational requirements of the custodians of the information is not limited to this domain.

Maillette et al. (2001) insist that “one instrument developed to measure specific aspects of criminal thinking regardless of offender type, is the Psychological Inventory of Criminal Thinking Styles (PICTS)”(p.105). The PICTS assesses eight thinking styles including: Mollification-rationalization; Cutoff-rapid elimination of deterrents to crime; Entitlement-ownership or misidentification of wants and needs; Power Orientation-aggressive behavior; Sentimentality-compensating for previous conduct; Super optimism-ego to maintain criminal life

style; Cognitive Indolence-lazy thinking; and Discontinuity-little premeditation (Maillette et al., 2001).

The PICTS instrument is a better fit than is the CSA as the former removes more of the assumptions and speculation from offender behaviors. Again as previously stated CSA is made for television and big screen as compared to the latter that is descriptive and is more open to other criminal conducts unlike CSA which is restrictive to serial killers (Bartol & Bartol, 2008). Thus is descriptive of other types of profiling and providing a segway to the next portion of this discussion.

Terry v. Ohio, 392 U.S. 1 (1968) is the Supreme Court Case that provides for police officers to use their training, experience, knowledge, skill, and observation to intercede on behalf of the public into criminal conduct. None the less it is a court sanctioned form of profiling, specifically criminal profiling that as contended early on in this discussion is the basis of other forms of profiling, both positive and negative. In brief, an experienced Cleveland police officer (detective) observed conduct of three men that rose to the level of casing a store in preparation to rob. The police officer acting on reasonable suspicion removed the trio from an automobile and patted them down. The pat down revealed what appeared to be weapons on two of the culprits and resulted in a search that confirmed the officer's suspicions. The court held that in these circumstances an over the clothes pat down to provide safety for the officer is sufficient and does not rise to the level of a seizure but rather a stop and a frisk that is not a search (White, 2007).

The preceding is descriptive of common sense police work that orchestrated profiling at differing levels. In recent years racial profiling that is perpetrated on highways and streets based solely on race is a form of police misconduct. Clearly stated racial profiling is

ethically, morally, and legally wrong. However, an officer acting on observed conduct that raises the suspicions of the police that criminality is afoot is criminal profiling and occurs hundreds if not thousands a times daily across this country. If not for profiling what would constitute a reason for a stop? How much police work would be done? It is in this manner that criminal thinking is apparent in behaviorism or mannerisms that create suspicions.

Criminal thinking is important in all fashions of profiling however the type and manner of Terry Stops is critical to day to day operations preventing crime. As an example of ethical conduct enjoined in policing; you the police officer finds a women that is scantily dressed, standing on a corner in an area of high incidences of prostitution, waiving at passing motorist. Your observations include at least two vehicles stop, the women puts her head inside the passenger window, but they move on. Finally a third vehicle stops and the women gets in. You follow from you unmarked police car at a distance until the suspect vehicle secludes itself behind an area strip mall. You approach the vehicle in the dark secluded area on foot, and find two males passionately involved. You shout bias comments at them and send them on their way, angrily thinking how much of your time they had wasted. Guess you showed them with your comments or did you? What ethical dilemma may arise in this scenario? How should you have handled this? What outcomes may result because of unethical inactions?

The longevity of CSA or IP is essential in long term investigations. Unfortunately these methods are currently without sufficient empirical studies of any magnitude; yet PICTS provides evidence that certain characteristics may be tested. It is incumbent upon police leadership to provide training and education and ethics guiding the conduct of officers so that profiling constitutes legitimate form (White, 2007).

Getting into the minds of the criminal has its place, especially in treatment of offenders but not in the fast pace of policing from the street level. Again, it has come a long way; demonstrating merit nonetheless has not passed the empirical research test to date (Bartol & Bartol, 2008). On the other hand Terry type profiling has been in place for over forty years and remains solidly situated based on court fashioned reasoning.

Privacy and being free from government overreach was a key component by the architects of the American Constitution. What is privacy and where does it apply? As previously noted, citizens have given up information when signing for a credit card and privacy of the information by citizens of the information obtained by private corporations is not totally restricted. In other words most have given up their right to the information when they sign for the card. The same applies to telephone contracts and other media devices often used in our high-tech society.

What about public spaces as it relates to privacy? There is a limited expectation of privacy in public spaces. This hold true for airwaves in social media and the courts have ruled regarding secondary data (telephone numbers) maintained by private companies. This has not been without controversy.

### **Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention-**

**(Taken directly from Urban Institute Report).**

## **Purpose**

The Urban Institute studied the surveillance systems in three cities, Baltimore, Maryland; Chicago, Illinois; and Washington, D.C. In response to this knowledge gap, The Urban Institute (UI) undertook a rigorous process and impact evaluation of the implementation and use of public surveillance cameras for crime control purposes; The results of the evaluation, funded by U.S. Department of Justice's Office of Community Oriented Policing Services (the COPS Office), illustrate the variety of ways in which cameras can be implemented and used by jurisdictions and suggest that these differences affect the degree to which cameras reduce crime (UI, 2011).

### **Working With an Outside Evaluator**

In-house evaluation provide by the COPS Office and the Urban Institute and this study relied heavily on literature review of European and U.S. cities.

### **Developing an Evaluation Plan**

The evaluation process of this study involved the synthesis of qualitative data obtained from interviews with 44 stakeholders representing the planners and public officials involved in each city's decisions to acquire and employ this technology, as well as the law enforcement officers, civilians, and other local criminal justice practitioners engaged in camera use. This was supplemented with interviews, document review relating to implementation and monitoring use. The UI team observed monitoring practices and use of the cameras by patrol, detective and supervisory personnel of the police department (UI, 2011).

Findings on the implementation and use of public surveillance systems varied from each municipality as the City of Baltimore saturated the test area and provided 24 hour monitoring of the live video stream. Chicago employed an extensive wireless network of cameras and enabled

access to all sworn officers; while Washington implemented the fewest cameras in specific high-crime areas, restricting the monitoring due to privacy safeguards (UI, 2011).

### **Identifying Goals and Objectives**

The process evaluation component of the present study is based upon qualitative data and is organized around the following research questions: Why do cities choose to invest in public surveillance technology for public surveillance purposes? What do they hope to gain from their investment? What factors play a role in decisions about the types of cameras that are purchased and how they are deployed and monitored? How is the public involved in decisions to invest in and use public surveillance cameras? How are cameras used to support real-time arrests, and how are they used for investigative purposes? What are the advantages and limitations to using public surveillance cameras for prosecution purposes?

Thus, the process measures collected during the course of this evaluation were guided by the types of information that would be most helpful to those cities that are considering investing in public surveillance technology, as well as those that are looking to improve or expand current public surveillance use (UI, 2011, p.9).

### **Evaluation Experiments**

Prior evaluations have contributed greatly to the knowledge of how best to measure public surveillance technology's impact on both crime and possible displacement or diffusion effects. The impact evaluation relies on quantitative data on reported crimes, demographics, land use, camera installation locations and types, and cost data. UI researchers used these data to

conduct both general and crime-specific time series and difference-in-differences analyses to examine the impact of public surveillance technology on crime.

Researchers also employed detailed location-specific diffusion and displacement analyses to determine the degree to which crime was reduced, diffused, or shifted to nearby areas. Stemming from findings from the impact analysis, a cost-benefit analysis of camera use was conducted in two study sites, Baltimore and Chicago. The cost-benefit analysis explored whether the costs associated with public surveillance technology are proportionate to any reductions in crime and increased efficiencies in investigations that may be attributed to the intervention (UI, 2010).

### **Data Collection**

The methodology employed in this evaluation combines the collection of both qualitative and quantitative data. The qualitative component is embodied in a process evaluation designed to document the installation and use of the public surveillance systems in three U.S. cities: Baltimore, MD; Chicago, IL; and Washington, D.C. Interviews with jurisdictional and law enforcement leaders, sworn officers, detectives, prosecutors, and civilian camera monitors, along with the review of policies, budgets, and other documents, form the backbone of the process evaluation.

As indicated above the evaluation process of this study involved the blending of qualitative data obtained from interviews with 44 stakeholders representing the planners and public officials involved in each city's decisions to acquire and employ this technology, as well as the law enforcement officers, civilians, and other local criminal justice practitioners engaged in camera use. This was supplemented with interviews, document review relating to

implementation and monitoring use. The UI team observed monitoring practices and use of the cameras by patrol, detective and supervisory personnel of the police department (UI, 2011).

### **Summary of Project**

The Baltimore study realized a reduction of crime of over 35% and the stakeholders considered the cameras an effective tool. Chicago study indicated a 20% reduction in crime and the average monthly crime counts relating to drug and robbery crimes in the highly publicized area decreased by approximately 33% and violent crimes in the camera area decreased by 20%. In both locales they had study areas that showed no decrease as well. However the drop in the crime rates outweigh the camera cost as illustrated in the Chicago study the city saved \$815,000 dollars a month in criminal justice and victim costs.

Washington, D.C. camera program was instituted in 2002 primarily for monitoring events. Due to the public outcry regarding citizen privacy the system is not monitored as the other two studies and the officers in D.C. feel it is hit or miss. The value of the comparison demonstrates the camera is smart technology and smart policing but the cameras alone are insufficient to reduce crime (mere presence). The systems must be monitored 24/7 and information gleaned from the surveillance systems must be provided to patrol officers or as in the Chicago study each patrol sector monitors camera information from their patrol vehicle.

### **Patriot Act**

The USA Patriot Act expanded the definition of terrorist organization as: “any group two or more individuals, whether organized or not, that commit or initiate to commit terrorist activity, plans a terrorist activity, or gathers information for potential targets of terrorist activity”

(Aziz, 2003). This definition imposes an ideological test for examination of any representative of a political/social group who publically supports or endorses terrorist activity. By this definition the standard only requires that the individual knew or should have known, but not actual knowledge of terrorist activity. Welcome to federal law. The above is not inconsistent to definitions of Title 18 of the United States Code, 18 U.S.C. § 1961–1968, The Racketeer Influenced and Corrupt Organizations Act (RICO) originally designed to cover activity of the Mafia in domestic criminal law (Goldsmith, 1988). Critics will argue the USA Patriot Act is [https://www.justice.gov/archive/ll/what\\_is\\_the\\_patriot\\_act.pdf](https://www.justice.gov/archive/ll/what_is_the_patriot_act.pdf) (Link to Patriot Act) applied through double standards for Israeli organizations and individuals involved in known terrorist activity in contrast to those with affiliation with Iraqi relief foundations (Aziz, 2003).

The Foreign Intelligence Surveillance Court was established in 1978 when Congress enacted the Foreign Intelligence Surveillance Act (FISA), which is codified, as amended, at 50 U.S.C. §§ 1801-1885c. The Court sits in Washington D.C., and is composed of eleven federal district court judges who are designated by the Chief Justice of the United States. Each judge serves for a maximum of seven years and their terms are staggered to ensure continuity on the Court. By statute, the judges must be drawn from at least seven of the United States judicial circuits, and three of the judges must reside within 20 miles of the District of Columbia. Judges typically sit for one week at a time, on a rotating basis (U.S. Courts. gov.). The following link is provided for rules and procedures of the court.

<http://www.fisc.uscourts.gov/sites/default/files/FISC%20Rules%20of%20Procedure.pdf>

According to Goldsmith (1988), The U.S. Supreme Court has instructed federal courts to follow the continuity-plus-relationship test in order (RICO Act Standard) to determine whether the facts of a specific case give rise to an established pattern. Predicate acts are related if they

"have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events" (p. 971).

The FBI is authorized under the Patriot Act to request, and now authorizes the court to issue search warrants for citizens believed to be involved in terrorist activity. The court is the Federal Intelligence Surveillance Court. Activities may include act such as non-violent protest against the government as covered under the First Amendment (Constitutional Foundation, n.d.).

Ethics will ultimately determine discretion, greater good in balance with being morally correct will determine accuracy; however each case will be determined by its own set of circumstances and no one definition of ethics will fit every circumstance and perhaps they may co-exist. The main question posed for citizens is whether this is too much authority by the government or is the question, if a citizen is not doing anything wrong they have nothing to worry about. Is ethics left for the eye of the beholder or is ethical conduct left for those that shall pass judgment in hind sight? This may always be the prevailing and lingering question when dealing with ethics?

## References

- Aziz, S. (2003). The laws on providing material support to terrorist organizations: The erosion of constitutional rights or a legitimate tool for preventing terrorism? *Texas Journal on Civil Liberties & Civil Rights*, 9(1), 45-92. Retrieved from
- Bartol, C. R., & Bartol, A. M. (2008). *Current perspectives in forensic psychology and criminal behavior (2nd Ed.)*. Los Angeles, CA: Sage Publications, Inc.
- Constitutional Rights Foundation (n.d.). Patriot Act: What Is the Proper Balance Between National Security and Individual Rights? <http://www.crf-usa.org/america-responds-to-terrorism/the-patriot-act.html>
- Goldsmith, M. (1988). Rico and pattern: The search for continuity plus relationship. *Cornell Law Review*, 73 (5). : <http://scholarship.law.cornell.edu/clr>
- Hatch-Maillette, M. A., Scalora, M. J., Huss, M. T., & Baumgartner, J. V. (2001). Criminal thinking patterns: Are child molesters unique? *International Journal of Offender Therapy and Comparative Criminology*, 45(1), 102-117.
- Ressler, R. K., Burgess, A. W., & Douglas, J. E. (1988). *Sexual homicide: Patterns and motives*. Lexington, MA: Lexington Books.
- Urban Institute, Justice Policy Center and U.S. Department of Justice, Community Oriented Policing Service (2011). Evaluating the use of public surveillance cameras for crime control and prevention. <http://www.urban.org/url.cfm?ID=412403>
- U.S. Courts. Foreign Intelligence Surveillance Courts. Rules of Procedure. <http://www.fisc.uscourts.gov/rules-procedure>
- U.S. Department of Justice, BJA Center for Program Evaluation and Performance Measurement

Justice Research and Statistics Association <http://www.ojp.usdoj.gov/BJA/evaluation/>

The USA Patriot Act: Preserving Life and Liberty. U.S. Department of Justice. Federal U.S.C.

Title 18 of the United States Code, 18 U.S.C. § 1961–1968 (1968).

<https://www.justice.gov/archive/ll/highlights.htm>

White, M. D. (May 30, 2007). *Current issues and controversies in policing*. Boston, MA:

Pearson: Allyn and Bacon.

## **Chapter 7 Mid-Term Evaluation. A Case Study: Building a Better York Policy:**

### Abstract

This case study examines the policy development associated with the rejuvenation of the City of York, Pennsylvania between 2003 and 2010. This is a review of York's history with the culmination of race riots in the summer of 1968 and 1969 that are recognized as the riots of 1969. The discussion is critical of a single source strategy such as COMPSTAT that is unable to serve as a standalone Community Oriented or Problem Oriented Policing strategy. Specifically, COMPSTAT is a significant strategy but without other programs or strategies simultaneously administered, COMPSTAT may be an exercise in futility. The evaluation of the York plan describes a multi-facet approach of policy development of "total community" providing examples of Community Oriented and Problem Oriented Policing along with collaboration of government, quasi-government and community. Albeit this is a multi-facet approach it also crosses numerous ethical foundations. The study serves as a review of the COMPSTAT Model and its' utility in the City of York police and community setting to develop complete community. Finally, the case study foundation resides in data use, interviews and literature review of materials related to the York's history relating to policy development. Such as programs initiated to alleviate crime and obviate the tensions realized in the 60's, and the observations of community leaders that have both a hereditary and national perspective of the right fix and in the right quantity; and what has happened on a more global framework that has been useful in York, Pennsylvania.

## **Introduction to the study**

### **Statement of Purpose:**

This discussion reviews the amalgamation of multi-governmental agencies and quasi-governmental agencies with unlikely partners such as landlords, job training providers, neighborhood groups, philanthropic, public and private resources, education systems and the police demonstrating true community policing must encompass several strategies under the philosophical tent of community policing to be effective. The study posits that community and problem-solving policing is a general philosophy (attitude modification) that must be borne by all stakeholders of a community while at the same time engaging in multi-facet strategies as discussed herein. Attitude modification is successful base upon top down and bottom up decision making from all strata of the community. This is a discussion of York, PA however it is further asserted that the strategies discussed when employed in other communities will work with sufficient alteration fitting the needs of that community.

### **Historical Perspective**

York became home for America's forefathers during the American Revolution for the period of English occupancy in Philadelphia after the start of the Revolutionary War. The Articles of Confederation were crafted and adopted in York during the period that America's leaders had fled Philadelphia and had taken refuge in the wilderness. York, PA was west of the Susquehanna River which was commonly thought to be wilderness at this juncture in American history. The document itself was not successful but did play a significant role as a forbearer of the United States Constitution and America's individual liberties. York is in a beautiful

geographical area, west of the Susquehanna River, close to major cities of the Eastern Seaboard, near the Chesapeake Bay, but also not far from the majestic Appalachian Mountains. The city is intersected by Interstate 83 (Harrisburg, PA to Baltimore, MD) north to south and U.S. Route 30 equidistant between Lancaster, PA on the east and Gettysburg, PA on the west. Once a flourishing industrial mecca, York is now saddled with rusting hulls of iron once manufacturing monasteries situated on environmentally unsound earth and economic uncertainty due to decreasing resources.

**Analysis of the social, political, legal, and economic forces that influenced the development and emergence of the policy**

**Problem Statement:**

York experienced decades of racial tension, culminating in the 1969 Riots. The causal factors of the 69 riots in York have been identified as: poor housing; jobs; education; poverty; and police abuse toward Blacks and with the blessing of the white in the community. These issues are described and discussed in a pre-riot and post-riot format indicating what was and what has been accomplished in order to prevent the event from reoccurring in York (Kalish, 2000).

The political atmosphere preceding and during this period was one of oblivion and denial, rather than confrontation of the issues of poor housing, education and employment opportunities for Black residents; much like American society of the same period. Kalish (2000) asserts “The triggers for the riots were the city’s refusal to provide recreation programs and facilities in Black neighborhoods, refusal to enforce housing codes that affected the living conditions of Blacks, the unwarranted use of police power and the arrogance of the mayor and other community leaders”

(p.72). Further highlighting the lack of policy or themes relating to race, culture and the public safety is revealed in the Investigatory Hearings into Causes of Racial Tension in York, Pennsylvania. Human Relations Commission finds York has high potential for violence due to either the inability or unwillingness on the part of the community and local government to address the grievances of the Negro residents (as cited by Kalish, 2000, Chapter 4).

The remnants of a 1969 race riot were only recently resolved in criminal trials in 2001 and 2002 convicting four persons after trial and accepting pleas from four others in exchange for their testimony. The convictions were for the murders of one black female (Lillie Belle Allen) and one white police officer (Officer Henry Schadd); one of the accused and ultimately acquitted after a nationally recognized trial, was Mayor Charlie Robertson who at the time of the riots was a York City Police Officer accused of providing bullets to white gang members.

Robertson was elected to the school board in 1975 (Bunch, 2001). He first ran for mayor in 1993, was re-elected in 1997, and was again running in 2001 when he was indicted for Murder during the 1969 Riots. Robertson was aware of the pending Grand Jury Investigation but sought a third term in 2001, and had won a tight race in the Democratic primary against city councilman Ray Crenshaw. Within two days of the election results legal charges were brought and Robertson was arrested and put in handcuffs (Cline, 2001 and Bunch, 2001). Crenshaw was the first black man to have run for mayor of York (Cline, 2001). Robertson was reluctant to withdraw from the Mayoral race but gave way through pressure by political supporters convinced him to do so "for the betterment of York"(Bunch, 2001). Fellow Democrat John S. Brenner was ultimately elected as the next mayor. He took office in 2002 and subsequently hired Mark Whitman as his Police Commissioner.

The required healing process laid in wait for nearly forty years and what must be determined if it is too late to heal (Longman, 2001; Lueck, 2002; & New York Times, 2002). Reviewing discussions of race and change since the 1950's offered by Ore (2009) appears appropriate when drawing a comparison with television sitcoms, "The five decades can be summed up in the French Phrase, Plus change, plus c'est la meme chose (the more things change, the more they stay the same)" (p. 460). The political, neighborhood, and economic leaders required new policy to break the status quo and usher in the new millennium. Mayor John Brenner, (Personal Interview, 2011) alludes to the healing process of York and improvements of relationships are based on attitude and the conduct of government.

Community Oriented Policing and Problem Oriented Policing (COP/POP) strategies became the policy of the day. In order to address concerns of racial profiling and police misuse of authority the York City Police Force designed programs meeting community needs while being sensitive to its residents was the policy of Mayor John Brenner; to name a few Nuisance Abatement, Clean Sweeps, Neighborhood Enforcement Units, Curfew Center and Civil Enforcement Units, availability of the Police Commissioner at neighborhood meetings, access to crime information on daily basis and police officers becoming more approachable. The mission of York's Community Policing Model is to preserve neighborhoods by reducing crime and eliminating the fear of crime by increased attention to quality of life issues and equality in enforcement for all residence Advance strategies that promote neighborhood stability and livability; Encourage positive activity and behaviors that contribute to a higher quality of life in the community; Eliminate community nuisance and crime problems such as public intoxication, abandoned buildings and vehicles, open drug markets and drug houses, prostitution, public gambling, loitering, nuisance dogs, loud music and unacceptable levels of garbage, litter and waste

materials on the property; Identify critical leverage points that if eliminated, diminished and/or disrupted will result in an environment where serious crime cannot flourish, close down properties with code violations; Develop and expand the number and range of strategies that are most effective at fighting quality of life crimes and abating long-term illegal conduct; and Prosecute civil code violations such as noise abatement, rigorously enforce padlock and forfeiture cases to maintain community standards and address crime problems.

### **Policy Influences:**

Present in executive decision making relative to policy making is both internal and external variables. According to Marion & Oliver (2012) “Mayors in recent years have been instrumental in the implementation of community policing with cities and towns across the United States. In many cases the ability to implement such a program begins with the hiring of a new chief and the mayor giving that chief a specific charge” (p.123). This was the case in 2003 with the hiring of new Police Commissioner that was similarly situated in ideology as was the Mayor. The COP/POP experience in York, PA was influenced by economics and the community pressure brought to bear; but more difficult to deal with for the Police Commissioner was the resistance to change and peer pressure from within the rank and file members of the police department and neighborhoods as well.

Research suggests that local governments were more likely to commit to the needs of the community than did federal officials. Furthermore, federal officials reacted toward cities based on ideology rather than need (Choi, Turner, & Volden 2002). Whenever an election was needed in a city which had a mayor-council, grants were requested in the short term due to the beneficial impacts that they often have (Choi, Turner, & Volden 2002). However, York City was

financially distressed due to shrinking tax base and being the County Seat, nearly 45% of the properties were tax exempt; therefore, became more reliant upon outside resources to address the crime issue. Second to the financial difficulty of the City was impacts by a heavily unionized police department which felt threatened by the political mechanism and feelings of indifference toward the members attempting to provide a service to the City. At the same time the community at large and certain segments of the community felt neglected by the police and was of the mind-set, crime was ok in their part of town.

Community policing style or strategies is unique to its own environment but police remain with the responsibility of enforcing the law and making arrest, which could conflict with the inter-departmental relationships between police officers and community partners (Smith, Novak, & Frank, 2001). As it relates to intra-department relationships police officers engaged in Community Oriented Policing techniques and strategies may engage in traditional police activities to satisfy their peers. Additionally, research has shown that a subculture which embraces group solidarity among the police can lead to violations of community oriented policing practices (Smith et al., 2001).

Officer discretion has become an issue in community-oriented policing. Direct and constant contact with the public can lead to abuses by officers (Weisburd, & Eck 2004). Officers could be encouraged by the public to use methods outside of their training to handle the problems that the public faces (Weisburd, & Eck 2004). Community policing places a high value on the responsiveness by police to the community needs. Arguments by opponents of COP/POP state that community policing will weaken the rule of law by the expanded use of discretion that may come from the implementation of community policing (Weisburd, & Eck 2004). Research has shown that officers rely on policing for various reasons one in which is the social activities.

As a result of social bonding police are more likely to be persuaded by peers to engage in traditional police methods rather community-oriented methods (Smith, Novak, & Frank 2001). However, community police officers respond to calls voluntarily in their district to prove legitimate among peers and have a sincere pride in doing “police work” (Smith, Novak, & Frank 2001).

Therein lays the crux of the issue for the new Police Commissioner; recrafting attitudes and developing community as part of the policing philosophies and policy. Executive policy development may look good on paper but often is not worth the paper it is written upon unless buy-in is obtained from a grassroots inception. Policy development in this situation required input from the officers performing the daily tasks of policing and restructuring management philosophies that may embrace a new direction. This is discussed in greater detail in the explanation of strategies that were developed inside the community.

### **Community Policing and Problem Oriented Policing-Defined:**

Community Oriented Policing (COP) and Problem Oriented Policing (POP) burst onto the police scene, primarily in the New York City Police Department in 1990’s touted as the “silver bullet” for addressing crime issues in the Big Apple. Community Policing was in place in many police organizations well before this, but under the guise of community service; particularly in smaller police agencies (10-25 sworn members). The increased crime notoriety and attention garnered in major cities added expediency to the issue of addressing crime in a more effective and efficient fashion; ergo the Community Oriented and Community Policing philosophies gained prominence among policy makers.

What is COP and POP? And why does it deserve attention? These are often misunderstood and considered strategies rather than as a philosophy that focuses on the way that departments are organized and managed and how the infrastructure can be changed to support the philosophical shift that may support community policing. They are both defined as a philosophy but COP is designed to build partnerships within the community that are helpful to resolve issues and problems (Goldstein, 2001 cited by Choi, Turner, & Volden, 2002). Whereas POP is a management strategy that further breaks disorder, disruption, criminal activity and criminal enterprise into more microscopic units for examination. POP utilizes crime data analysis, community input and police officer experience to develop a strategic and systemic approach to resolving the issues impacting quality of life. POP is generally employed for purpose of finality rather than simply relocating the problem. Both philosophies (strategies incorporated) place greater value on prevention through public and private collaborations for the sole purpose of increasing the quality of life while reducing crime and the fear of crime. Most often these are employed through robust strategies with a commitment to implement long-term strategy, rigorously evaluating its effectiveness, and, subsequently, reporting the results in ways that will benefit other police agencies and that will ultimately contribute to building a body of knowledge that supports the further professionalization of the police (Goldstein, 2001 cited by Choi et al., 2002).

## **Multi-Facet Policing Strategies Employed in York, Pennsylvania**

### **Community and Problem Oriented Policy:**

Since the unrest of the 60's in the United States the need for police/community collaboration was never more evident than in York, PA. The need for community-oriented policing (COP) and problem-oriented policing (POP) was not only needed but was in demand. However as in most government initiatives, resources were not readily available. An individual component of COP/POP Philosophy is the data driven information derived from community data files. Discussed as a single strategy in most situations is COMPSTAT. COMPSTAT is a statistical measure of crime used in forecasting crime and supports innovative strategies to combat future crime. Strategies commonly deal with quality of life issues, and community orchestrated programs to prevent further debilitation of neighborhoods; however, they should not be confused as standalone strategies with any efficiencies. These strategies are ineffective unless in collaboration with each other or other strategies provided as examples in this historical review of York City.

Did the need for COP/POP exist in York, PA? Mr. Bobby Simpson, Director of Crispus Attucks (Appendices C) of York (personal communication, 2011) likened the York City Police Force of the 1950's, 1960's and 1970's to those of Alabama during the Countries racial crisis. The police brutality was insidious, pervasive and had the blessing of the white community, the media at the time, and the business community. Ore (2009) maintains "This governing class maintains and manages our political and economic structures in such a way that these structures continue to yield an amazing proportion of our wealth to minuscule upper class" (p. 94). The G.I. Bill after World War II, as it relates to educational benefits, may be classified as affirmative action programs for white males because they were not extended to African Americans or women of any race (Ore,

2009). Mr. Simpson, Director of Crispus Attucks, contends that although problems remain today, overall things have improved in the City of York (personal communications, 2011).

Much of the black population considered police hostile to minorities. Police were poorly trained particularly in coping with civil disturbances. Police lacked policies dealing with canines, firearms and chemicals and The York City administration rigidly adhered to a policy of preservation of status quo and the exclusion of non-whites from policy making (PA Human Relations Commission, 1968). Mayor John Brenner issued his direction to address these and other policing policies as previously stated. The Mayor directed as part of the overarching approach of securing a greater quality of life in York is that of COP/POP policy and required the York City Police Department to devise and implement programs consistent with the needs of the community.

The police policies required triangulated data using neighborhood input, local crime data, and useable intelligence in cooperation with educational systems, job training, and neighborhood restoration projects to rejuvenate York City. In particular, local data should be the most reliable, current data, and used in an efficient manner that may produce efficiencies otherwise left to chance. COMPSTAT (Computerized Statistics) a nationally recognized program originally introduced in New York City is a strategic problem-solving system that combines “state-of-the art management principles with cutting-edge crime analysis and geographic systems technology” (Willis, Mastrofski, & Weisburd, 2004).

A COMPSTAT program has as its explicit purpose to help police departments fight crime and improve the quality of life in their communities. This is achieved by overcoming traditional bureaucratic irrationalities, such as loss of focus on reducing crime, department fragmentation, and lack of cooperation between units because of “red tape” and turf battles, and lack of timely

data on which to base crime control strategies and to evaluate the strategies that are implemented (Weisburd, Mastrofski, McNally, Greenspan, & Willis, 2003).

A Problem Oriented Policing strategy that was found useful in New York City's transition was that of the information produced by the COMPSTAT that was also used by the Police Commissioner to judge the performance of precinct commanders and by precinct commanders to hold their officers accountable. Unlike traditional police bureaucracies, the COMPSTAT is intended to make police organizations "more focused, knowledge-based, and agile" (Willis et al., 2004). COMPSTAT has proven itself, however it is posited here that COMPSTAT enacted without simultaneous strategies is nothing more than another single tool in the agency toolbox. COMPSTAT is a singular strategy that when used in concert with other COP/POP strategies will provide the intended results of efficiency and effectiveness addressing community problems and concerns. COMPSTAT as an inter-disciplinary research topic has significant impact on other criminal justice systems and one does not have to travel too far from NYPD to find such a study. A similar data collection and accountability was initiated in York City and was led by the Captain of Operations.

A similar COMPSTAT program is engineered by the New York City Department of Corrections that operates under the Total Efficiency Accountability Management Systems (TEAMS) (Horn, 2008). In addition to decreasing jail violence and improving the health and safety of the inmates TEAMS tracks data on more than 600 large and small aspects of the day-to-day life of the city's jails. These aspects range from escapes and homicides to the number of inmates regularly attending religious services and the length of time inmates must wait before they are seen for medical care in the clinic. The Department measures the time it takes to process and house a newly admitted inmate and counts searches, contraband finds, days lost to sick

leave, overtime, maintenance order backlogs and hundreds of other metrics. Knowing that information is management power; the Department even measures the cleanliness of its showers and toilets, and here too, data management and accountability have produced positive results (Horn, 2008).

Again, TEAMS is not a stand-alone proposition, but rather a strategy that is used in unison with other data/information, programs and strategies simultaneously. Management to line-officer accountability has demonstrated positive developments within the criminal justice field when used in concert with other adaptations for improvement.

Walsh and Vito (2004) contends that “COMPSTAT is a goal-oriented, strategic management process that uses information technology, operational strategy and managerial accountability to guide police operations...reduce crime and improve the quality of life” (p.57). Further bolstering the point that COMPSTAT cannot be successful without collaboration with other tactics it is asserted in the *FBI Law Enforcement Bulletin*, four crime reduction principles that create the framework for the COMPSTAT process are: accurate and timely data; effective tactics; rapid deployment of personnel and resources; and relentless follow-up (Shane, 2004).

Additionally, police have access to a closely associated by-product of the computer age, Crime Mapping, which is the implementation of geographic mapping of crime using these systems they link maps of the agency jurisdiction with other computerized police records and replaces the old pin maps (LaVigne and Wartell, 2000). Technology has advanced rapidly and continues to do so daily, however not all police agencies have access to either of these systems nor do they have the required resources required for implementation.

COMPSTAT is an important strategy for Community Oriented Policing and Problem Oriented Policing philosophy implementation. Although critical, COMPSTAT is not without

critics who have cited the program as a method of stricter control over managers and line-officers in a police organization. In practice it appears that COMPSTAT, at least so far, is just another way—albeit one that employs advanced technology and different management principles—for police leadership to control mid-level managers (precinct commanders) and street-level police officers (Moore, 2003). COMPSTAT is important to both the COP/POP as it represents accurate, timely data critical to the decision making process, particularly during resource limited situations as is the City of York’s case.

Critics argue that COMPSTAT has had the opposite effect desired in an atmosphere of Community Policing. Rather than empowering line-officers to act independent of the bureaucracy, it has grievied the line-officer to an art form of submissiveness more fearful to act. COMPSTAT represents a sea change in managing police operations, and perhaps the most radical change in history (McDonald, 2004), but remains a single tool in the tool box of COP/POP. The question remains- “Have today’s law enforcement leaders-maintained pace with the technology and information highway, altered leadership styles accordingly to more efficiently manage the organization, and empowerment of those providing the service?”

**Identification and analysis of the policy’s current outcomes and unanticipated consequences- Description of policy improvements or enhancements**

**York City Programs:**

COMPSTAT is a single strategy that is ineffective unless integrated with other programs such as nuisance abatement, civil enforcement, directed and targeted patrols (Figure 2.0-2.3, [www.yorkcity.org](http://www.yorkcity.org)). The following is a descriptive listing of programs York’s COMPSTAT strategy is interrelated:

Figure 2.0 *Nuisance Abatement.*

This program was enacted as a city ordinance; this legislation contains a host of civil and criminal activities that are considered nuisances. Drug sales, litter, excessive noise, barking dogs, unlawfully dealing with children, and disorderly bars are but a few of the topics contained in this law. Each violation carries with it a set number of points. When a property receives 12 points in a 6-month period, or 18 points in a 12-month period, both the property and business owners (where separate) are required to appear before an independent hearing officer. If the nuisance charge is sustained, the mayor has the authority to close the business for up to one year, and revoke all of the business owner's certificates to operate a business within the city. Also, the property is posted with signs that declare the location a nuisance, as well the period of closure.

Figure 2.1 *Neighborhood Enforcement.*

This police program is a proactive, coordinated approach to improving the livability of York's neighborhoods by solving multi-faceted, persistent community problems that lowers the quality of life in the City's neighborhoods. This is a proactive approach focusing on the prevention of crime, the proliferation and continued deterioration of exploited neighborhoods. A key goal of this approach is to increase the positive environments, which fosters neighborhood growth and positive perceptions of the City. This approach supports a problem solving method relating to systemic issues impacting blocks of neighborhoods, rather than merely responding to a report after problems occur. The initiative uses traditional policing, combined with code enforcement, community policing, fire inspections and animal control to eliminate the enabling conditions of the problems. It calls upon other government resources and community partners to improve neighborhood livability. Neighborhood Enforcement develops innovative strategies, which combine civil law and criminal law remedies to address quality of life and other

Figure 2.2 *Clean Sweep Details*

City workforce uses the clean sweep concept to target blighted neighborhoods in order to stop further deterioration while increasing the livability of that neighborhood. The Neighborhood Enforcement Unit prioritizes problem properties or neighborhoods using established criteria to address the concerns in the order of priority. Generally, clean sweep details encompass several city blocks at one time. This process better utilizes limited resources from all departments at one time. Abandoned vehicles (previously ticketed or tagged as abandoned) are towed, notice of violations issued and citations where warranted are issued.

Property owners are provided an opportunity to respond to the Mayor's Office within five days of notice to discuss a plan to abate the violation. Property owners are then provided a time line to complete the plan. If the plan is not provided or the violation abated prior to the re-inspection of the area, a citation is issued. Re-inspection of the neighborhood is scheduled within 10-15 days of the clean sweep detail. The properties that remain in violation or have not provided the city with a plan for abating the violation are cited and issued a complaint-tracking number and entered into the system. Nuisance Abatement points are assessed at this time and notification letters to the property owner is sent via the

Figure 2.3 *Curfew Center*

The goal of the center is to keep kids safe and to provide help to families and children in need. The York County-City and community partners are to provide a system approach of stemming the rising tide in youth violence. The Curfew Center is an approach providing a one-stop shop center to identify and assist the children. It is readily recognized that is far more efficient and cost effective for early intervention and to fill a void in the child's life now rather than pay for costly incarceration and drug treatment at a later date. "You cannot arrest your way out of the problem."

The curfew center is designed to attack systemic family and cultural issues through a collaboration of partners. The Center is a concept/facility to access help and not of a punitive measure. While the children are at the center they are under the custody of the police but they have access to counselors, mental health advocates, drug and alcohol counselors, Juvenile Probation and Children and Youth personnel.

### **Housing Strategy-Partnerships in York, Pennsylvania:**

Deteriorating neighborhoods of crime, blight, poverty and poor housing is the typical "Broken Window" scenario. The City of York in its devising and implementing COP/POP strategies found an abundance of partnerships, one being The Ole-Town East Project. Jane Conover, (personal communications, 2011) V.P. of York County Community Foundation (formerly Program Coordinator of Ole Town East-Elm Street Project) emphasized several positive aspects in current housing situations.

The Elm Street Project is a state funded project (Elm Street Funding is the name of the State Funding Program Source) that began in 2004 with numerous partners and additional funding sources. During the program's existence she notes the project has reduced criminal incidents by 39% (see policing section for programs used); made landlords more responsible and put some out of business; increased livability and quality of life in the designated area; broke down existing barriers; increased neighbor-to-neighbor visibility; increased membership in the neighborhood association; and the bringing together of a diverse neighborhood of African Americans, Hispanics, Gays and Lesbians, whites, and the elderly. (To emphasize this point, see Appendices A. - Ms. Betty's Story.).

According to J. Conover (2011) she credits partnerships for reinventing the neighborhood due to the access of the Police Commissioner and Police Command (regular attending neighborhood meetings) and has not only increased home ownership but pre-housing crash, property values increased from \$45,000 to \$75,000 (Figure 1.0; 1.1 Olde Town East reported outcomes).

Figure 1.0 *Olde Town East-Elm Street Project*

- A total of 71% of the residents plan to stay in their home, an improvement from 68% in 2008 and 67% in 2007.
- The percentage of residents reporting that crime is not a problem in their neighborhood has steadily increased since 2007.
- Feelings of safety are at the highest levels they have been since the first surveys in 2005.
- The number of criminal incidents has declined by 39%.
- The average sales price for residential property has more than doubled since 2000.

Imperative to community success requires community support and partnerships, specifically when attempting to determine which fire to put out next. Hotspots or areas of high crime or high incidents of incivility as derived from police data information system- have generated substantial debate as to how they are identified, whether it should be by data only or police officer's impressions (Hotspots, 2008).

Figure 1.1 *Olde Town East-Elm Street Project.*

<b>Project Component</b>	<b>Outcome</b>	<b>Target Completion Date</b>	<b><u>Progress This Period</u></b>  <b><u>1/30/09</u></b>
<b>Develop a Sustainable Organization</b>	1) Five new residents become dues-paying members of the neighborhood association each year	12/31/2005,06,07,08,09	19 residents became due paying members this period.
<b>Improve Neighborhood Safety</b>	1) The average score on Quality of Life surveys conducted annually among residents increases by 5% each year  2) The annual number of reported criminal incidents declines by 10% (From 321 in 2003 to 289 in 2009)  3) The number of trees in the neighborhood increases by 50% from 148 to 300 by 2010  4) A park is developed in the 200 blocks of E. Princess & Prospect Streets	06/01/2006, 07, 08, 09  06/01/2006, 07, 08, 09  12/31/2005,06,07,08,09  12/31/2006	1) The 2008 data shows that the overall quality of life index showed an improvement of 11 points (35%), from 32% to 43%.  2) Criminal incidents decreased by 25% b/w '07-'08.  3) None this period  4) Park completed.
<b>Improve Neighborhood Economy &amp; Image</b>	1) The percentage of owner occupied housing units increases from 24% of total to 27% of total by 2010, an increase of about 36 units  2) The average number of days to sell a property in the neighborhood declines	06/01/2010          06/01/2010	1) None for this period.  2) The average number of days on the market increased by 5 days between 2007-2008 (from 65 to 70 days).

	<p>by 7 days (from 74 days to 67 days) by 2010</p> <p>3) The average residential sales price increases by \$5,000 from \$26,988 in 2004 to \$31,988 in 2010</p> <p>4) The average household income increases by \$5,000 from \$24,557 in 2000 to \$29,557 in 2010</p> <p>5) The number of building permits issued for properties increases by 5% per year</p>	<p>06/01/2010</p> <p>06/01/2010</p> <p>12/31/2005,06,07,08,09</p>	<p>3) The average sales price decreased by \$8,309.85 or 33% between 2007-2008. (from \$68,135.95 to \$45,826.10)</p> <p>4) Interim census estimates showed no significant change between income in 2000 and estimated income in 2004.</p> <p>5) In 2008, the number of building permits declined, but overall, building permits have doubled since 2001.</p>
<p><b>Improve Physical Environment</b></p>	<p>1) The annual number of housing code complaints reported in the neighborhood decline by 20% by 2010</p> <p>2) The vacancy rate among housing units decreases from 18% to 15% by 2010.</p>	<p>12/31/2009</p> <p>06/01/2010</p>	<p>1) There were 34 housing code violations reported in 2008, down by 13% since 2004.</p> <p>2) One vacant building rehabbed by Habitat was inhabited this period. Unfortunately, four homes were burned this period and three families relocated.</p>

In terms of reducing crime and increasing the quality of life it is an imprecise formula and often not practical nor possible to describe and support a singular strategy to remedy the situation due to the transient nature of the problem, longevity of the problem or how the

neighborhood perceives the issue (Hotspots, 2008). As was the situation in York where resources are scant and public expectations are high. Intelligence-led policing originated in Kent Police England in the early 1990's with the sole purpose of reducing the large volumes of crime (Intelligence-Led Policing, 2008). Intelligence today have a host of origins and as many legal obstacles for mining and purging. The information garnered by the street officer is usually genuine but at times has its origins from many input areas (neighbors, school officers, gang intelligence, etc.) and must be analyzed removing supposition and conjecture. For purpose of this discussion intelligence as to type and origin are not as important as is what is done with the information.

#### **Intelligence Strategy in York, Pennsylvania:**

York City Police Department in developing COP/POP strategies utilized intelligence or data, specifically as it relates to guns, drugs and gangs have developed two types of patrol techniques. They are: Directed Patrol and Targeted Patrol. Directed patrol is generally the storm and warns type of patrol used to address a problem or may require high visibility to quell a problem or permit the officers to gain greater insight as to the systemic issues. The latter is exactly what it sounds like, Targeting the criminal enterprise or individual or establishment that is creating the problem. This technique may consume every tool in the tool box to identify players, places and ancillary groups or gangs creating the havoc.

Posited by this study and clearly supported by Eck and Maguire (2000) through their research concluding that COMPSTAT is not a stand-alone strategy; "though there is little evidence to support the assertion that COMPSTAT caused the decline in homicides in NYC, COMPSTAT is only one manifestation of focused policing in general and directed patrolling in

particular” (Cited by Weisburd et al., 2003, p.235). COMPSTAT is a goal-oriented, intelligence driven, accountability process that will work in conjunction with other strategies. As illustrated by TEAM, COMPSTAT could work in most if not all criminal justice agencies and as discussed in the preceding it provides opportunity for input from all environments involved. The result for the City of York is that from 2003 to 2010 violent crime dropped 10% and with the strategies in place and if staffing remains at least similarly equivalent, it should continue to drop as indicated in tables listed for first quarter Uniform Crime Report for 2010 in comparison with the first quarter of 2009.

As most effective solutions are multi-facet so goes the case in York, Pennsylvania; the police, albeit an important component of the strategies used is only a smaller fraction of the entire policy solution sought. The remainder of this discussion is dedicated to partnership solutions in addition to housing and neighborhood restoration already provided.

### **Poverty/Employment & Training: A strategy for healthy environments in York, Pennsylvania**

#### **Poverty Policy Influence:**

Race, Class, Sexual Preference, Gender, and age have always played a role in American life. The notion that these elements have been addressed and it is time to move on demands constant challenge. Slavery was introduced into York County in the early 1700’s and by 1772 there were 448 slaves in York, this in-spite of a Pennsylvania enactment outlawing the importation of slaves from overseas. The Revolutionary War reduced the use of slaves and with the introduction of the indentured servant. In exchange for transportation to this country a person may agree through

contract to indenture his/her service until the final debt is satisfied. By 1780 Pennsylvania was the second state to abolish slavery through the gradual-abolishment act; those slaves born after date of legislation were free as of their 28<sup>th</sup> birthday. The system of low wage servitude created the formation of a permanent underclass (Kalish, 2010).

The underclass system created in 1780 remains intact at the turn of the twenty-first century. The 2000 Census Bureau Statistics exemplify the issues of York City as compared to York County and the State of Pennsylvania. In 2000, the population of the city was 40,862, and decreased in just 2 years by 610 (1.5%) while the County had an increase in population from 381,751 to 389,289 (2%) (U.S. Census Bureau, 2000). The economic base for the city is eroding -- property values in the city are dropping, while county property values are soaring. Jobs are hard to find in the City, but the County is flourishing. York County residents all enjoy the services of the hospitals and other County-wide services whose facilities are located in the City of York, but it is the poor, struggling City that has to bear the financial burden, compensating for all of the tax-exempt properties in the City that are owned by organizations who serve the wider region. Social service needs are high in the City, but revenues do not meet the needs. As conditions deteriorate, the exodus of residents and businesses shrinks the tax base even more, increasing the burden for those least able to bear it. Crime increases and there are few resources to counter the trends.

Mayor John Brenner was critical in engaging community partners with tax exempt status to help remedy a portion of the financial burden. The Mayor instituted an in lieu of tax request generally provided increases and not to mention his famous Happy Meal tax, which was a request of all County residents to pay the City of York the price of a happy meal for use of city facilities/services (The City of York is the County Seat of York County).

Other US Census 2000 statistics show that the per capita income for City of York as of 1999 was \$13,439, compared to \$21,086 for York County (the per capita income for Pennsylvania was \$20,880.) The percentage of persons living below the poverty level was 23.8% for York City, 6.7% for the County, and statewide the percentage was 11.0%. The homeownership rate in the City in 2000 was 46.8%; York County 76.1%, and the statewide average is 71.3%. The median value for owner-occupied housing units in 2000 was only \$56,500 in the City, compared to \$110,500 for the County, and \$97,000 for the state as a whole.

These statistics are indicative of the thriving County and point to the fact that the City of York, which not only shows values and incomes that fall far below the County’s averages, but they are also much lower than the State averages (Figure 4.0 poverty statistics).

Figure 4.0 Demographic Indicators York City vs. York County.

<b>Demographic Indicators</b>	<b>City of York #</b>	<b>City of York %</b>	<b>County Data #</b>	<b>County Data %</b>
Population	40,862		381,751	
Non-white population		40.2		7.2
Home-owners’ housing costs over 35% of total income	1,211	18	12,789	13.5
Median Home value	\$56,500		\$110,500	
Per capita income	13,439		21,086	
Persons living below Poverty Level		23.8		11

### **Job Training and Support Strategy:**

Equally important to the well-paying jobs is the interim qualifiers for family development while awaiting completion of new skills or merely making ends meet when in low paying jobs. As pointed to by Lamison and Freeland (personal communications, 2011) the Employment Skills Training Program offers life coaches for the purpose of obtaining services (safety net) for completion of job training, which is supported by a study conducted by Ryan, Kalil, & Leininger, (2009), demonstrating the need for a security blanket and support for indigent families.

Qualitative research describes how merely believing relatives or friends would help if necessary can make mothers feel less hopeless, isolated, and anxious and instill a sense of belonging (Henly, 2002; House, Umberson, & Landis, 1988; Howard, 2006 as cited by Ryan et al., 2009, p. 280). Regardless that informal support is real or perceived, it is clear that the availability of a strong private safety net can bolster mothers' economic and emotional well-being in the face of financial hardship. Children's development may be negatively impacted via low income because it prevents parents from purchasing essential as well as socio critical materials, experiences or services as indicated by economic theory.

Reisig, Holtfreter & Morash (2002) contend "Generally, social theorists posit that a variety of positive outcomes is associated with healthy social networks...According to contemporary social theory, kin and non-kin social networks provide social resources that can produce a variety of desirable outcomes including employment, access to training and education, as well as instrumental, social, and emotional support" (p. 167-168).

Ryan et al. findings add to a long tradition of research illustrating the importance of social support, broadly defined, to the economic survival and emotional well-being of low-

income families (e.g., Edin & Lein, 1997; Harknett, 2006; Henly, 2002; Henly et al., 2000). The research demonstrates a significant and substantively important association between the availability of a private safety net and children's internalizing symptoms and positive behaviors. The similarity in the nature and strength of these associations across the two data sets was especially striking given the different (yet complementary) operationalizations of private safety nets in *Fragile Families* (which emphasized material support) and *National support*.

They have thus highlighted an important protective factor for children growing up in economically disadvantaged families, one that may prove especially important in the wake of welfare reform as mothers necessarily rely less on public safety nets, such as cash welfare assistance, and more on their informal networks. A note of significance is that children tend to internalize symptoms and prosocial skills strongly associated with the mother's private safety net availability than externalizing behaviors. These results indicate that children's behavioral adjustment may not respond strongly to changes in mothers' safety net levels, at least not over a short period of time (relates to York City disciplinary concerns above).

Ryan, Kalil, & Leininger, (2009) find:

A positive association between private safety nets and children's socioemotional well-being, but a different finding could have emerged. Qualitative literature on the dynamics of social support suggests that because mothers often receive informal support only on the condition of reciprocity, help from mothers sometimes can induce as much stress as it alleviates (Antonucci & Jackson, 1990; Howard, 2006) both because mothers worry about repaying their debts (financial or otherwise) and because the exchanges can complicate interpersonal relations. In these ways, mothers' private safety nets could undermine their

emotional well-being and consequently their parenting or expose children to negative relationships, either of which could disrupt children's socioemotional development (p. 294).

More broadly, the results suggest that a group of low-income mothers exists for whom social isolation and other disadvantages overlap and that children in these families may be particularly at risk for socioemotional difficulties. As more single mothers enter the labor market under Temporary Assistance for Needy Families (TANF) and it becomes increasingly critical to have a private safety net, these mothers and their children may suffer disproportionately (Ryan et al., 2009).

As pointed out by E. Lamison & B. Freeland, (personal communications, 2011) York's Job training has taken on a new perspective, setting aside the one size fits all facade, examining the persona of an individual ensuring that the person is not set up for failure. They examine language, education, criminal history, child care issues, and then provide employment coaches to provide confidence to the person entering the workforce. This is equally effective for reintegration of prisoners who leave prison with huge debts for child support and fines. The total system is designed to deal with the concerns so the individual may be successful. The Employment Skills Training Program (ESTP) offers services for income eligible residents of York County between the ages of 18 and 54 who are currently unemployed or seeking to enhance employability.

The mission is to provide motivated individuals with outdated or unmarketable skills with information, coaching, case management and employment/training opportunities to make them

viable individuals in today's job market (E. Lamison & B. Freeland, personal communications, 2011). The significance of the coaching and case management is they aide the indigent trainee to gain the support required to make it through. This support via coaching and case management include but not limited to financial assistance, child care, gaining health care etc. (B. Freeland, personal communication, 2011).

The program is in its infancy beginning in 2010, providing training needs across racial, gender, sexual or criminal history barriers with the whole persons' ability and potential as part of the training equation. According to E. Lamison & B. Freeland (2011) the potential is recognized as not simply intelligence but if the job that the trainee is working to achieve requires a criminal history background investigation and the trainee is a convicted felon and will not qualify, another job training is selected (not a program to set a person up for failure). The ESTP consists of the following core elements: Job skill assessments designed to measure foundational and personal skills as they apply to the workplace; Job analysis, which pinpoints or estimates skill benchmarks for specific job positions that individuals must meet through testing: Job searching, resume writing, and skill training to improve individual's viability; Participation in computer training class with instructor; and Access to Full-time Case Manager and Employment Coach. This is but one program offered as a cooperative effort to increase the resource dollar for the service group rather than multiple groups vying for the same resource; and does not recognize character flaws, race or gender as a barrier but rather a qualifier for the service (Figures 5.0-5.2 program outcomes for first year of program).

Figure 5.0 *Employment Skills Training Program.*

2010-To-Date:

- Number of Ex-Offenders – 256 (male and female)
- Number of Females – 257 (49%)
- Number of Males – 268 (51%)
- Total: 525
- Number of clients that has obtained employment – 85 (16%)

Figure 5.1 *Employment Skills Training Program.*

Year-To-Date Accomplishments:

- 19 Clients completed Forklift Operator Training
- 54 Clients provided resume assistance
- 8 Clients completed Nurse Aide Training
- 63 Clients completed “Principle of Construction Workshop”
- 3 Clients completed Food Safety training
- 6 Clients provided College Tuition or Textbook Assistance
- 2 Clients enrolled for Lineman Pre-Apprenticeship Training
- 14 Clients completed Home Health Aide Training

Race:

- Asian – 1
- Black – 316
- Caucasian – 66

Thus, in conjunction with the community oriented policing and problem oriented policing strategies proffered in previous sections of this study, success can only be realized when the blinders are permanently removed and attitudes are adjusted to meet community needs. Again, no one strategy is a stand-alone process and must meld with all entities to ensure a lasting outcome; such as the family safety nets and life-coaching in job training (Remember that children having children of previous decades are our debt to society in this decade).

### **Education**

An indicator frequently observed in city-suburban flight surveys is the absence of quality education and York is no stranger to this phenomenon (Simpson, Brenner, DeBord & Conover, personal conversation, 2011). The voluntary segregation of York schools leaves York precariously situated for civil unrest to return and may need for court sanctioned bussing as was

observed in the 60's unless other solutions are initiated (consolidation of school districts, charter schools or private education). The voluntary segregation differs from the forced segregation in that this is due to the flight from inner cities of the economically advantaged leaving the economically disadvantaged with no or little ability to pay for required resources.

Currently the City of York has six charter schools which are: Crispus Attucks Charter School; New Hope Academy; Lincoln Edison; Helen Thackston; International Baccalaureate Charter School; and the Logos Academy and one parochial elementary and one parochial high school. The funding mechanism for each will vary from public dollar supported to public dollar/private contribution support. According to Bobby Simpson (personal conversation, 2011), charter schools are independently run, good teachers, school board that participates and is supportive, accountable to parents and requires parents accountable to teachers and maintains the discipline of a private institution and Catholic Schools and students are more academically challenged and placed for future academic ventures, however they have yet to improve standard test scores as has Catholic or private institutions.

Numerous studies have been conducted to support Mr. Simpson's assumptions. Carbonaro's & Covay's (2010) contend "findings were consistent with prior research. First, Catholic school students experienced larger math gains from 10th through 12th grade than comparable public-school students. This finding is consistent with research from both High School and Beyond (HS&B) data set, a longitudinal sample of 10th- and 12th-grade students in 1980 and 1982.(HS&B) and National Education Longitudinal Study of 1988(NELS:88) (Bryk et al.1993; Gamoran 1996; Hoffer 1998; Hoffer et al.1985 cited by Carbonaro & Covay, 2010). Thus, changes in the Catholic and public sectors have not eliminated the Catholic advantage in high school achievement; it is now observable over a 20-year period beginning in the 1980s

through the early 2000s. Sector differences in Educational Longitudinal Studies (ELS) are substantially smaller than those found in analyses of HS&B” (p.176). Regardless, a decade of standards-based reform has not eliminated the gap in achievement growth among public and private high schools.

Second, despite standards-based reforms in the public sector during the 1990s, private school students were still taking more advanced math courses than their public-school counterparts. Perhaps more importantly, public school students were still less likely than private-secular and Catholic school students to enroll in advanced math courses even after controlling for family background characteristics and prior achievement. Thus, it appears that otherwise similar students are exposed to substantially different learning opportunities in public and private schools. Carbonaro & Covay (2010) maintains that “Sector differences in course taking were substantively meaningful: Our findings show that private school students were more likely to go much further in the math curriculum than their public-school counterparts” (p. 177). This is especially important given that math course taking in high school is an important predictor of college enrollment and completion (Adelman 1999 cited by Carbonaro & Covay, 2010). Although important it is difficult to find gains in York’s math and reading in the standardized testing without advancing students to advanced math, as indicated by York City School Statistics.

Finally, consistent with prior research of school sectors, most of the Catholic and private-secular school advantage in achievement was explained by differences in course taking among students. This finding is largely consistent with other studies that suggest that private school students benefit from exposure to a more rigorous academic curriculum than their counterparts in public school (Bryk et al. 1993; Hoffer et al. 1985 cited by Carbonaro & Covay, 2010, p. 177).

These analyses also produced some important differences with prior research on school sector and achievement. Unlike prior studies of school sector, they examined sector differences in both gain scores and specific math skills; arguing that simply focusing on gains scores provided an overly narrow view of sector differences in achievement (Carbonaro & Covay, 2010).

Carbonaro & Covay hypothesized that since standards-based reforms targeted students in the lower half of the achievement distribution, sector differences in math skills would be largest for more advanced skills. The study's findings supported this hypothesis and produced findings sector differences in those students taking advanced course paid substantial dividends for students' higher level math skills. This is especially important to recognize since students with weak math skills are more likely to take remedial courses when in college, which increases their risk of leaving postsecondary education (Adelman 2004 cited in Carbonaro & Covay, 2010).

However, it is important to note that very few students in public or private schools reached proficiency in the highest level of math skills. Thus, all schools, regardless of sector, need to provide additional resources to help students at the high end of the achievement distribution master the most challenging parts of the math curriculum. Although the curriculum is critical for challenging the masses, it is equally important to provide the resources for the disadvantaged educational campus. The correlation between private, Catholic and Charter Schools is important to York's future educational success, albeit Charter Schools were not the specific subject of studies provided by Carbonaro & Covay, they mention the charter school proposition as part of the overarching differences but statistical data specific to the charter system is not as abundant. They further contend that it is not a leap of faith to lump the three systems together as they are of similar characteristics (Carbonaro & Covay, 2010).

York has undergone an educational transformation in the past forty years from de-segregation in schools during the 1950's and 1960's to the advent of charter school systems within the York City School District According to Simpson (2011) Crispus Attucks provided the first charter school in York City (Simpson, personal conversation, 2011). York's Educational system has been the topic of reports due to a decline in resources and educational opportunities preceding the riots of 1969 and since, for example the York Human Rights Commission held numerous hearings and analysis, the Charrette at York, (1970), post-riot healing process and York Counts, 2009 has established this as one of the top three issues to address in the region (DeBord, 2011). What does persist as a disruptive issue for providing an educational environment is the disciplinary problems and dropout rates (Kalish, 2000, Simpson, 2011, DeBord, 2011) which is indicative of poverty and disciplinary issues in York City (Figure 3.0-3.1 school system statistics).

Figure 3.0 School District Drop Out Rates.

○ Drop Out Rates: 2005-06 York City Schools (grades 7-12) 4.6% vs. York Co. avg 1.9%; City rate increased from 4.0% the previous 2 yrs;			
○ Discipline Incidents:	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
Hannah Penn MS	3144	5519	5961
Edgar Fahs MS	5325	5495	4519
Wm Penn HS	8799	5231	6882
• Despite several youth being removed from the mainstream classroom to alternative schools, placement, or some form of incarceration, the disciplinary problems continue to plague the district.			
• Graduation Rate:	2005-06= 58.7%;	2006-07 = 63%	
• Free / Reduced Lunch 2006-07: 88.5% Elementary Schools 87.9% Middle Schools			

Figure 3.1 *School District Minority Breakdowns in York County.*

York City with the highest minority population.															
2002-2003															
Central York; Dallastown; Dover Area; Eastern York; Hanover; Northeastern; No. Yk.Co.; Red Lion; South Eastern; South West'n; So. Yk .Co.; Spring Grove; West Shore; West York; <b>York City</b> ; York. Suburb															
14.2%	5.9	4.0	4.5	9.2	3.1	3.4	2.5	3.4	3.7	2.4	3.0	6.4	8.8	<b>73.0</b>	12.3
2004-2005															
16.0%	8.0	5.3	5.0	10.7	6.5	3.1	3.7	3.1	5.4	3.1	3.5	7.8	12.2	<b>80.0</b>	14.6

High school dropouts are three and one-half times more likely than high school graduates to be arrested, and over eight times more likely to be in jail or prison. Across the country, 68 percent of state prison inmates do not have a high school diploma. While staying in school even one year longer reduces the likelihood that a youngster will turn to crime, graduating from high school has a dramatic impact (Lochner, & Moretti, 2004). Although York’s progress has been observed dealing with segregation issues over the past forty years the decline in quality education continues to haunt the city. This singular issue has impacted housing, flight from the city, crime and poverty (Simpson, Brenner, DeBord & Conover, personal conversation, 2011).

**Evaluation of research assessing the policy’s current outcomes and unanticipated consequences/ Description and evaluation of the research methods to assess the outcomes of proposed modifications**

**Methodology:**

The information contained is a historical review of the City of York along with contemporary studies to support the processes configured to date. A longitudinal qualitative study observing the forward momentum of the City of York is best suited for evaluation

purposes. The tumultuous bigotry of the sixties has given way to the collaborative methods pursued under the Brenner Administration. The 1960's data researched has provided a baseline for which many attempts have been administered until a more positive approach of the all-encompassing philosophical and strategic programs and methodology under Mayor Brenner. Brenner's approach is community policing; education; job training; and neighborhood improvements in parks and recreation and housing as witnessed by the East Princess Street project and now the West Princess Street project as interconnected collaborations of several strategies for the purpose of increasing the quality of life to City residents. The longitudinal observation requires data collection for a ten-year period from 2003-2013 to best analyze what works, what does not work and have attitudes been modified to the extent that true cooperation is evident from all entities and not solely reliant on police for community rehabilitation.

**Data Analysis:**

The data collection and continued observation of the west end project likened to the east end project will constitute a correlational analysis. Dependent upon the data collected may provide comparative data. The future study must understand its limitations as well, thus requiring greater scrutiny as to available resources during each project; also the length and commitment of cooperation from all participants; and the addition of any new participants. The question studied is: Will the Public Policy legacy from one administration extend into the next for embellishment or will it be terminated in favor of new administration policy that is credited solely to the new administration? In the political landscape of the past a line of demarcation between administrations and policy direction was generally tied to each administration. The study will represent a quasi-experiment as the independent variables cannot be controlled, but the outcomes certainly can be measured (East Princess Street Neighborhood restoration in comparison to West

Princess Street Neighborhood restoration; crime statistics; job training and reintegration programs progress and housing to name a few). The ability to act in unison and with collaboration of strategies may demonstrate a relationship between the successes measured; albeit insufficient to demonstrate the causal linkage.

### **Conclusion**

National studies of adults point to lower levels of trust in government among ethnic minorities when compared to the majority (Flanagan, et al., 2009). Similarly, in national studies of high school students, Latino and African American adolescents, compared to their European peers, express less trust in government and are more skeptical about the amount of attention the government pays to the average person. Attitudes towards other institutions do not fare much better (Niemi and Junn, 1998, cited by Flanagan, et al., 2009, p. 503).

Not unlike York's history, ethnic awareness also was positively related to commitments for improving race relations and especially to the civic goal of advocating for one's ethnic group. Notably, in contrast to the role of prejudice in family discussions of the personal barriers it poses and to the role of prejudice in undermining youth's beliefs in the American promise, reports of prejudice were unrelated to any of the three civic commitments. The fact that ethnically aware youth were more motivated to improve race relations and to advocate for their group is consistent with research on immigrant youth which shows that civic engagement often takes the form of assistance and advocacy for one's ethnic group (Lopez and Marcelo 2008; Stepick et al. 2008, as cited by Flanagan, et al., 2009, p. 515).

Lee (2010) contends

The ethical awareness should be included in curriculum development in schools today.

The study recognizes the generational differences between herself and the children in her

school. It is time that we're really open and aware that the America of my childhood is not the America of today." She considers that contemporary diversity is so common and natural. Today's children are accepting, and this little Caucasian boy's best friend is the little Vietnamese boy that's sitting beside him. It's natural to them (p.28).

According to Grant and Ladson-Billings (1997), the "curriculum change" approach is considered best for multicultural education, where the focus is more on transforming the curricular components including basic values, beliefs, and sociocultural assumptions. Using this "curriculum change" approach, teachers should examine their practice to consider whether their curriculum takes into account diversity by comprehending and valuing cultural pluralism and challenging or changing biases and prejudices toward other cultures (as cited by Lee, 2010, p. 26). Albeit York City has witnessed improvements if not more significant awareness within recent years Lee points to limitations of not only this review but that which is required to improve future generations in York.

In asking, "what does it mean to be an American?" Walzer (1990) notes that, although we have appropriated the adjective, there is no country called America. Our sense of ourselves is not captured by the fact of our union. Rather, we are bound by the commitment to tolerance codified in our Constitution. What makes us Americans is a commitment to respect others who are different from us and with whom we may ardently disagree. With each new generation we renegotiate the principles that established our nation and that define our collective identity (Flanagan, 2009, p. 516).

This evaluation has demonstrated the significant evolution realized by the City of York, primarily in the last ten years to build trust, the economy through job creation and job training, the police building bridges, but the school district remains in the greatest peril. York has

improved at glacier speeds and probably as human attrition occurs changes will follow. The thrust of this discussion was to demonstrate that COP is a multi-facet attitude modification philosophy that entails each segment of the area. The POP is a management philosophy based on hard, live and real time data critical to the mission. The police although important are a small portion of the puzzle and it takes an entire community to make a difference. In York's situation the missing component for growing a community is a successful educational system. A community such as York City that is reinventing itself must provide a healthy and vibrant educational system in order to support family life, vital to the COP/POP philosophy and is conspicuously absent from the equation to date. A journey is defined as the distance between two points: York has many miles traveled with many miles to go, with no end point defined!

#### References

- Blumstein, A., and Wallman, J., Eck, J., E., & Maguire, E.R., (2006). Have changes in policing reduced violent crime? An assessment of the evidence. *The crime drop in America* (pp. 207-265, Chapter 7). New York, NY: Cambridge University Press.
- Bunch, W. (September 2, 2001). "Handcuffed By History". The New York Times. Retrieved December 27, 2008.
- Burns, P. F., & and Thomas, M. O. (2005). Repairing the divide: An investigation of community policing and citizen attitudes toward the police by race and ethnicity. *Journal of Ethnicity in Criminal Justice*, 3(1/2), 71-85.

- Carbonaro, W., & Covay, E. (2010). School sector and student achievement in the era of standards based reforms. *Sociology of Education*, 83(2), 160-182. Doi: 10.1177/0038040710367934
- Chan, J. (2011). Racial profiling and police subculture. *Canadian Journal of Criminology & Criminal Justice*, 53(1), 75-78. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=57439656&site=ehost-live&scope=site>
- Chappell, A. T., Maggard, S. R., & Gibson, S. A. (2010). A theoretical investigation of public attitudes toward sex education. *Sociological Spectrum*, 30(2), 196-219. Doi: 10.1080/02732170903496117
- Choi, C., Turner, C., & Volden, C. (2002). Means, motive, and opportunity: Politics, community needs, and community oriented policing services grants. *American Politics Research*, 4,
- Clines, F. X. (May 17, 2001). "Mayor Says He Expects to Be Charged in 1969 Killing". The New York Times. Retrieved December 27, 2008423-455.
- Fagin, J. A. (2007). *Criminal justice* (2nd Ed.) Allyn and Bacon.
- Flanagan, C., Syvertsen, A., Gill, S., Gallay, L., & Cumsille, P. (2009). Ethnic awareness, prejudice, and civic commitments in four ethnic groups of American adolescents. *Journal of Youth & Adolescence*, 38(4), 500-518. Doi: 10.1007/s10964-009-9394-z
- Frey, W. H. (2011). *Melting pot cities and suburbs: Racial and ethnic change in metro America in the 2000s*. (Metropolitan Policy Program at Brookings). Brookings 1775 Massachusetts Ave, NW, Washington, DC 20036: Brookings. Retrieved from [http://www.brookings.edu/papers/2011/0504\\_census\\_ethnicity\\_frey.aspx](http://www.brookings.edu/papers/2011/0504_census_ethnicity_frey.aspx)

- Gabor, T. (1994). The suppression of crime statistics on race and ethnicity: The price of political Correctness. *Canadian Journal of Criminology & Criminal Justice*. 153-163.
- Hickman, M. J. (2008). On the context of police cynicism and problem behavior. *Applied Psychology in Criminal Justice*, 4(1), 1-44.
- Hilliman, C., Dr. (2008). *The intersections collection*. U.S.: Pearson Custom Publishing.
- Horn, M. F. (2008). Data-driven management systems improve safety and accountability in New York City Jails. *Corrections Today*, 70(5), 40-43. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=36188289&site=ehost-live&scope=site>
- Kalish, J. (2011). *The York Crispus Attucks Story: 1931 to 1996*. Unpublished manuscript.
- Kalish, J. A. (2000). *The story of civil rights in York, Pennsylvania*. York, PA: York County Audit of Human Rights.
- Lee, S. (2010). Reflect on your history an early childhood education teacher examines her biases. *Multicultural Education*, 17(4), 25-30. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=58487956&site=ehost-live&scope=site>
- Longman, J. (2001, 01 Nov 2001). A city begins to confront its racist past. *The New York Times*, pp. 18. Retrieved from <http://search.proquest.com/ezproxy.hacc.edu/docview/431926791?>
- Lueck, T. J. (2002, 20 Oct 2002). Former mayor is acquitted in '69 race riot killing; two others are convicted. *The New York Times*, pp. 1-16. Retrieved from <http://search.proquest.com/ezproxy.hacc.edu/docview/432215999?>
- Marion, N. E., & Oliver, W. M. (2006: 2012). *The public policy of crime and criminal justice* (2nd Ed.). Upper Saddle River, NJ: Prentice Hall.

- McDonald, P., P. (January 2004). Implementing COMPSTAT: Critical points to consider. *The Police Chief*, 33-37.
- Moore, M. H. (2003). Sizing up COMPSTAT: An important administrative innovation in policing. *Criminology & Public Policy*, 2, 469-494.
- New York Times. (2002, 19 Dec 2002). 2 men are sentenced for killing of woman in 1969 race riot. *The New York Times*, pp. 37.
- New York Times. (2002, 15 Aug 2002). 4 defendants reach plea agreements in race riot killing. *The New York Times*, pp. 16. Retrieved from <http://search.proquest.com/comezproxy.hacc.edu/docview/432159593?>
- New York Times. (2003, 22 Apr 2003). 2 black men draw prison for '69 killing of white officer. *The New York Times*, pp. 16. Retrieved from <http://search.proquest.com/comezproxy.hacc.edu/docview/432373265?>
- New York Times. (2003, 14 Mar 2003). Blacks convicted in '69 killing of York officer. *The New York Times*, pp. 27. Retrieved from <http://search.proquest.com/comezproxy.hacc.edu/docview/432352269?>
- Newman, D. M. (2007). *Identities and inequalities: Exploring the intersections of race, class, gender, and sexuality*. New York, NY: McGraw-Hill.
- Office of Justice Programs. (2004). *Bureau of justice statistics-crime in the U.S.* Washington, D.C.: BJA: Office of Justice Programs. Retrieved from <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/Local/JurisbyJuris.cfm?NoVariables=Y&CFID=19152804&CFTOKEN=33396494>
- Ore, T. E. (2009). *The social construction of difference and inequality: Race, class, gender, and sexuality*. New York, NY: McGraw-Hill Companies, Inc.

Pennsylvania Human Relations Commission. (1968). *Audit on human rights*. Harrisburg, PA: PHRC.

Reisig, M.D., Holtfreter, K., & Morash, M. (2002). Social capital among women offenders: Examining the distribution of social networks and resources. *Journal of Contemporary Criminal Justice*, 18 (2), 167-187.

Ryan, R. M., Kalil, A., & Leininger, L. (2009). Low-income mother's private safety nets and children's socioemotional well-being. *Journal of Marriage and Family*, 71, 278-298.

Sklansky, D. A. (2006). Not your father's police department: Making sense of the new demographics of law enforcement. *Journal of Criminal Law & Criminology*, 96(3), 1209-1243. Retrieved from

<http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21820080&site=ehost-live&scope=site>

Smith, B. W., Novak, K. J., & Frank, J. (2001). Community policing and the work routines of street-level officers. *Criminal Justice Review*, 26(17-37)

U.S. Census Bureau (2000). [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en)

Statistics from the 2000 U.S. Census support the contention that the City is suffering severe hardships in a region of plenty. Comparisons of several demographic factors from the US Census 2000 clearly illustrate this:

Walsh, W., F., & Vito, G., F. (February 2004). The meaning of COMPSTAT. *Journal of Contemporary Criminal Justice*, 51-69.

Weisburd, D., & Eck, J. E. (2004). What can police do to reduce crime, disorder, and fear? *Annals of the American Academy of Political & Social Science*, 593, 42-65.

Weisburd, D., Mastrofski, S. D., McNally, A. M., Greenspan, R., & Willis, J. J. (2003).

Reforming to preserve: COMPSTAT and strategic problem solving in American policing.

*Criminology & Public Policy*, 2, 421-456.

Willis, J. J.; Mastrofski, S. D.; & Weisburd, D. (2004). COMPSTAT and bureaucracy: A case study of challenges and opportunities for change. *Justice Quarterly: JQ* /, 21(3), 463-496.

York Counts 2009 Indicators Report. <http://yorkcounts.org>'

## **Chapter 8: A Case Study: Pennsylvania Department of Corrections Review.**

### Abstract

The endeavor of this valuation is to provide a comprehensive review of Pennsylvania Department of Correction System (DOCS). This is a review of the Pennsylvania DOCS addressing special populations within the prison population, State Correctional Institutions (SCI), Community Corrections Programs, and comparison to existing programs elsewhere when appropriate. The review consists of secondary data and existing literature relating to the correctional system of Pennsylvania and national standards. Extrapolations are based on dated data from 2009, although trends in prison reform may be viewed with similarity.

### **Introduction**

The intent of this examination is to provide a comprehensive review of the Commonwealth of Pennsylvania's Department of Correction System (DOCS). This analysis includes a review and presentation of correctional facilities within Pennsylvania which are identified as State Correctional Institutions (SCI). The contents of this review addressed special populations, minority representation, death row inmates and executions, and special populations. Further attention is provided to newly created programs designed to curtail over-crowding and rising costs of incarceration as well as misgivings within the system was explored and recommendations for the future is provided.

This analysis included a review and a comparison of the U.S. Census Bureau aggregate population statistics for the Commonwealth of Pennsylvania that offers a breakdown by ethnic status in relation to the Pennsylvania Department of Corrections (DOCS) inmate population. The discussion embraced minority status and disparity concerns relative to inmate sentencing of those minorities.

This evaluation focused on a brief summary of the due process guarantees of the First, Fourth, and Eighth Amendments, with a discussion of the Fourteenth Amendment in its overarching application. The Pennsylvania Department of Corrections (DOCS) policy purpose resulting from the application of these amendments toward prisoners was explored.

### **Pennsylvania Department of Corrections Overview**

According to Pennsylvania Department of Corrections Annual Report (2011), DOCS operates 28 SCI's that consists of 24 male facilities; 2 female facilities; 1 young adult offender facility (YAOF); and 1 co-ed boot camp. This is further divided into 5 maximum SCI's for adult males and 1 maximum security facility young adult offenders; 1SCI is designated for diagnostic and classification of prisoners; 2 substance abuse treatment SCI's; 1 geriatric; and 1 forensic treatment SCI for the mentally ill (Appendices E-Intuitions/Designation). As of December of 2010 the DOCS housed 51,321 inmates (Appendices A-Population, Gender/Race/Age) of which 335 inmates are incarcerated for life. The annual budget request for FY 2011-2012 is \$1,880,810,000 representing an 11% increase over the previous budget of \$1,694,319,000. The inmate population has steadily increased 25% over the last seven years with FY 2004 population of 40,965 and FY 2010 inmate population of 51,321. The DOCS have incorporated innovative front end diversionary programs and alternative programs to offset the rising costs of

incarceration and overcrowding of SCI (Pennsylvania Department of Corrections Annual Report, 2011).

### **Authorization**

The Pennsylvania Department of Corrections receives their authority from the Pennsylvania Code Title 61 - PRISONS AND PAROLE and Chapter 95 COUNTY CORRECTIONAL INSTITUTIONS. The previously discussed revisions regarding reduced sentencing will be found in these sections as amended.

## **Pennsylvania DOCS Purpose**

### **Mission Statement**

The Pennsylvania Department of Corrections operates as one team, embraces diversity, and commits to enhancing public safety. We are proud of our reputation as leaders in the corrections field. Our mission is to reduce criminal behavior by providing individualized treatment and education to offenders, resulting in successful community reintegration through accountability and positive change.

### **American Correctional Association Compliance**

The PA DOCS as an American Correctional Association (ACA) accredited agency prescribes to the ethics of the ACA (Appendix C-ACA Code of Ethics). Further upon review of the following policies: 203 Searches of Inmates and Cells; 803 Inmate Mail and Incoming

Publications;819 Religious Activities Policy; 009 News Media Relations (DOCS Policy Publications. [www.cor.state.pa.us](http://www.cor.state.pa.us)). They appear to meet the requirements established in the court decisions and standards set forth and PA DOCS provides for constant updating of policy as required by the accreditation process and contemporary court decisions.

### **U.S. Census Bureau-Pennsylvania**

According to the U.S. Census Bureau (<http://factfinder.census.gov/home>) Pennsylvania's 2010 population was 12,702,379. The total population is divided into the following ethnic and percentage as reported by the 2010 census: White-10,406,288 (81.9%); African American-1,377,689 (10.8%); Asian-349,088 (2.7%); American Indian and Alaska Native-26,843 (0.2%); Native Hawaiian and Other Pacific Islander-3,653 (Z); Hispanic or Latino-300,983 (5.7%); and Two or more Races-237,835 (1.9%). The 2010 Census for the entire United States is 308,745,538. The growth in population from the 2000 to the 2010 census is a reported growth of 3.4% in Pennsylvania and a 9.7% overall growth nationwide. The total of non-white minority population represented within Pennsylvania is 18.1% or approximately 2.3 million people.

### **Pennsylvania Inmate Population**

The Pennsylvania Department of Corrections, as of December of 2010, DOCS housed 51,321 inmates of which 335 inmates are incarcerated for life. The annual budget request for FY 2011-2012 is \$1,880,810,000 representing an 11% increase over the previous budget of \$1,694,319,000. The inmate population has steadily increased 25% over the last seven years with FY 2004 population of 40,965 and FY 2010 inmate population of 51,321. The DOCS 2010 Annual Report asserts that 48,603 males were incarcerated as compared to 2,718 females incarcerated during the same time period. This represents 62% of male prisoners were minority

(50% Blacks; 11% Hispanic; and 1 % other) in comparison to 38% of White male inmates. As you can see from the census information previously provided the black population equates to 10.8 % of the total state population while accounting for 50% of the male inmate population. Further total minority populations in the state are approximately 20% but represent 62% of the inmate population among males.

The same report breaks out the females incarcerated (2,718) as 41% all minorities and 59% white females or 31% Black; 8% Hispanic; and 2% other. This is a reversal of the male inmate population however it remains that this is with a 20% minority population. The average age of those incarcerated is age 37. Disparity in sentencing may occur based on many factors such as economic means, social strata, legal representation, or environment. The next section looked at one other possible factor, PA sentencing structure.

### **Pennsylvania's Criminal Code and Sentence Minimums and Maximums: Mandatory Pennsylvania Sentences**

The Judiciary and Judicial Procedure, Title 42, Chapter 21. Sub. F. provides the authority for sentencing structures for felonies, misdemeanors, probation and parole to be established by the Commission and used in criminal proceedings for the sentencing of defendants after conviction or plea of guilty. The sentencing structures for selected offense may be seen in Appendices D-Sentencing Chart. According to the Pennsylvania Commission on Sentencing and as shown in Appendices-D those subsequently convicted of the same offense after the first conviction may receive an additional prison term.

The Commonwealth does not have a Three Strikes program but does however use habitual offender enhancements for second and third convictions for violent crimes. Habitual

Offenders 42 Pa. C.S. §9714 requires mandatory sentencing of ten years for a second conviction for a crime of violence; a third or subsequent conviction for a crime of violence requires a sentence of twenty-five years or life. The Habitual Offender section 42 Pa. C.S. §9716 further delineates that two or more mandatory minimum sentences applicable, the longest mandatory minimum applies. There exist many reasons for criminal behavior such as economic means, social strata, legal representation, or environment. The next section looks at one other possible factor and this is sentencing structure. Problematic for PA DOCS as is true for many states is the mandatory sentencing structures that have attributed to overcrowding and Constitutional concerns within the system.

PA DOCS appears to have met overcrowding issues, special population concerns, and court remedied sanctions with innovative programs which will be the topic of discussion in the remainder of this evaluation. This discussion will first address Constitutional issues and then will concentrate on the overcrowding and special populations in separate discussions contained herein.

## **Due Process Guarantees**

### **History**

The Bill of Rights are listed as the first ten amendment to the United States Constitution ratified on December 15, 1791 as a promise to those supporters of the original ratification of the U.S. Constitution in 1787 (Hall, 2012). The advent of the Fourteenth Amendment in 1868 to the Constitution revolved around due process and equal protection. The Fifth Amendment contains a due process clause of sorts in that it states “No Person shall...; as compared to the Fourteenth Amendment provides that “No State shall... deprive another of life, liberty or property without

due process (Appendices A-Constitutional Amendments). Specifically the laws and procedures that once pertained only to the Federal Government were now attached to state process.

### **Fourteenth Amendment**

The Fourteenth Amendment was ratified in 1868 as part of the Reconstruction Era providing the “Equal Protection” of state laws to its people (Hall, 2012). Through the Courts interpretation of the Fourteenth Amendment it has applied equally the first ten amendments to all states which at one time were reserved mainly for the federal government. This has had implications of due process for inmates of state correctional institutions as well as defendants not yet prosecuted as asserted by Hall (2012) “Any time an issue of fairness surfaces, due process should be examined...If the issue concerns one of improper classifications, equal protection law should be considered” (p.284). Cases dealing with religion, inmate mail, search and seizure and discipline are those selected for this discussion relative to PA DOCS Policies 203 Searches of Inmates and Cells; 803 Inmate Mail and Incoming Publications; 819 Religious Activities Policy; and 009 News Media Relations (DOCS Policy Publications. [www.cor.state.pa.us/](http://www.cor.state.pa.us/)).

In review of the DOCS policies, many contain references to the American Correctional Association (ACA) and if not directly stated, have embedded in those policies portions of the ACA’s Code of Ethics. The Pennsylvania Department of Corrections is an ACA Accredited system. The policies reviewed and discussed herein appear to meet the states interest of security and the inmate’s interest in privacy, censorship, and searches.

Finally, asserted by the courts relative to prisoner and their rights they contend in *Wolff v. McDonnell*, 418 U.S. 539, 555-56, 94 S.Ct. 2963, 2974-75 (1974) “There is no iron curtain drawn between the Constitution and the prisons of this country” (Branham & Hamden, 1997, p.

460). The courts have concluded that rights are derived from the U.S. Constitution, state constitutions, state statutes, and regulations; however the scope of those rights may be further protected or amended by the courts and correctional officials (Branham & Hamden, 1997).

### **First Amendment**

The First Amendment of the U.S. Constitution protects the right to freedom of religion and freedom of expression from government interference as well as the issue of censorship (Appendices A- Constitutional Amendments). The Court has concluded in *U.S. v. O'Brien*, 391 U.S. 367 (1968) “A government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest: if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest” (Branham & Hamden, 1997, p.476-477).

This is illustrated further in *Turner v. Safley*, 462 U.S. 78 (1987) “When a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if ‘prison administrators . . . and not the courts [are] to make the difficult judgments concerning institutional operations’” (Branham & Hamden, 1997, p.487). The court provided the following four issues critical to the evaluation of institutional policy using the balancing test:

- 1) There must be a valid rational connection between the prison regulation and the legitimate governmental interest put forward to justify it.
- 2) Whether there are alternative means of exercising the right that remain open.
- 3) What impacts will the asserted right have on guards and other inmates?

4) It must be reasonable.

In the case of *Beard v. Banks*, 548 U.S. 521, 126 S.Ct. 2572, 165 L.Ed.2<sup>nd</sup> 697 (2006) the Pennsylvania's DOCS policy of restrictions of privileges on the most incorrigible prisoners within the special segregation units of their prison system met the evaluation criteria in *Turner v. Safley*. Additionally due process was at issue as to whether Banks was provided an adequate avenue to be heard. In both instances the PA DOCS prevailed as the court recognized legitimate governmental interests in the policy and the fact Banks was represented by counsel throughout the process safeguarded the due process scheme (Branham & Hamden, 1997).

In related First Amendment decision the Freedom of Religion is decided in *Cruz v. Beto*, 405 U.S. 319 (1972) Inmates argued that they were denied Buddhist accommodation as were other recognized orthodox religions. The Court ruled that the state did not have to supply a new chapel or ministers but merely provide reasonable accommodations to exercise religious freedom guaranteed by the First Amendment (Branham & Hamden, 1997).

*O'Lone v. Estate of Shabazz* 482 U.S. 342 (1987), in this case the Court ruled that the desire to attend Jumu'ah interfered with prison security, and the limitation was constitutional on that account. "Here the District Court decided that the regulations alleged to infringe constitutional rights were reasonably related to legitimate penological objectives" (Branham & Hamden, 1997, p. 524). The U.S. Supreme Court agreed with the District Court, and it necessarily follows that the regulations in question do not offend the Free Exercise Clause of the First Amendment to the United States Constitution (Branham & Hamden, 1997).

## **Fourth Amendment**

The Fourth Amendment to the Constitution guards against unreasonable searches and seizures, and requires a warrant supported by probable cause (Appendices A-Constitutional Amendments). In the correctional facility Fourth Amendment implications usually pertain to cell and individual searches, that is, when are they constitutional by statute and prison policy to maintain a safe and secure facility.

The interest of government to maintain safe and secure prisons provides for latitude within the state province to conduct searches of institutions and inmates. Such was the case in *Hudson v. Palmer*, 468 U.S. 517 (1984) whereby the Court ruled that the Fourth Amendment has no applicability to a prison cell (Branham & Hamden, 1997). They further maintained that prisoners are not guaranteed a reasonable expectation of privacy, but at the same time it does not provide free reign by the state to violate property rights of inmates without repercussions vested in the Fourth Amendment. The Eighth Amendment always stands as a protection against cruel and unusual punishments and there are adequate state tort and common-law remedies available to respondent to redress the alleged destruction of his personal property.

The seminal case of *Bell v. Wolfish*, 441 U.S. 520 (1979) the court ruled that visual body cavity searches, strip searches, sometimes in front of other inmates, are constitutional. The majority opinion glosses over the grossness which is described in Justice Marshall's dissenting opinion. These searches are valid even with pre-trial detainees. The court, in this case, ruled that body searches did not violate the Fourth Amendment. This case was significant because it highlighted the balance between prisoner rights and prison safety and ruled that prison safety can supersede prisoner rights.

## **Eighth Amendment**

The landmark case of *Mapp v Ohio*, 367 U.S. 643 (1960) opened a Pandora's Box of Fourteenth Amendment rulings which has since flooded the courts with individual liberty cases. Cases involving inmates and the penal institutions were no stranger to the courts as a result of this ruling. Cases involving inmate criminal conduct, hearings, access to legal services-Library; legal assistance and discipline are those selected for this discussion relative to PA DOCS. Finally, restated is the assertion by the courts relative to prisoner and rights they contend in *Wolff v. McDonnell*, 418 U.S. 539, 555-56, 94 S.Ct. 2963, 2974-75 (1974) "There is no iron curtain drawn between the Constitution and the prisons of this country" (Branham & Hamden, 1997, p. 460). The courts have concluded that rights are derived from the U.S. Constitution, state constitutions, state statutes, and regulations; however the scope of those rights may be further protected or amended by the courts and correctional officials (Branham & Hamden, 1997).

The Eighth Amendment provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The U.S. Supreme in *Furman V. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972) was the seminal case deciding capital punishment as a violation of the Eighth Amendment in that conspicuously absent from the legislation were any form of standards or guidelines directing the most severe of punishment (Branham & Hamden, 1997); within four years of the *Furman v. Georgia*; *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2<sup>nd</sup> 859 (1976) the court was deciding whether the new capital punishment legislation met Constitutional muster. In *Gregg* the issue of whether the legislation violated the Eighth and Fourteenth Amendments was before the court. Unlike the concerns of arbitrary or capricious meting out of the death sentence in *Furman*, the courts found in *Gregg* that carefully

drafted statutes that ensure the sentencing authority is provided adequate information and guidance does not violate the Constitution.

The courts have since been asked to decide numerous issues relating to the constitutionality of policies and procedures dealing with due process and cruel and unusual punishment as it relates to correctional facilities. Pennsylvania Department of Corrections (DOCS) established its procedures ensuring prison security will supersede individual inmate rights based on the determining case of *Bell v. Wolfish* (411 U.S. 520, 1979). The court ruled that an inmate constitutional right can be set aside in the interest of order, discipline, and security of the prison and justifiable, when the prison is investigating a “security” issue. Alternatively, prison officials must not “harass” the inmate and conduct the search without any justification. In the case of *Beard v. Banks*, 548 U.S. 521, 126 S.Ct. 2572, 165 L.Ed.2<sup>nd</sup> 697 (2006) the Pennsylvania’s DOCS policy of restrictions of privileges on the most incorrigible prisoners within the special segregation units of their prison system met the evaluation criteria in *Turner v. Safley*. Moreover, the due process was at issue as to whether Banks was provided an adequate avenue to be heard. In both instances the PA DOCS prevailed as the court recognized legitimate governmental interests in the policy and the fact Banks was represented by counsel throughout the process safeguarded the due process scheme (Branham & Hamden, 1997).

The courts have viewed the interest of government to maintain safe and secure prisons provides for latitude within the state province as paramount to limited liberties of inmates. Particularly true in DOCS ability to conduct searches of institutions and inmates, to apply discipline in a non-arbitrary manner, provide for limited access to legal assistance in non-criminal and confront witness except in the case of confidential witnesses the hearing officer

may conduct an in-camera hearing to determine the veracity of the inmate witness. Branham & Hamden (1997) provide that in regard to procedural due process “the disciplining of inmates for their misconduct while in prison is critical to the maintenance of security and order within the institution” (p. 570). Such was the case in *Wolff v. McDonnell* 418 U.S. 539, (1984), 94 S.Ct. 2963, 41 L.Ed. 2<sup>nd</sup> 935 whereby the Court maintained that prisoners retained rights under the Due Process Clause but in no way implies that these rights are not subject to restrictions by the state (Branham & Hamden, 1997). They further rejected the lower courts assertion that “whatever may be true of the Due Process Clause in general or of other rights protected by that clause against state infringement, the interest of prisoners in disciplinary procedures is not included in that “liberty” protected by the Fourteenth Amendment” (Branham & Hamden, 1997, p. 572). The state provided a statutory realm for good time accrued by inmates, they also provided disciplinary procedures for forfeiting the good time and therefore must follow its policy. They concluded that the procedures established in the law for procedural due process as adequate providing minimum procedural due process for the circumstance and must be followed (Branham & Hamden, 1997). The Eighth Amendment serves as the vanguard against cruel and unusual punishments and there exist adequate state tort and common-law remedies available to respondent to redress the alleged destruction of his personal property.

### **Inmate Strike Index**

The Department of Corrections' Office of Chief Counsel -- in an effort to assist attorneys, the courts and the general public track prison conditions civil litigation constituting “strikes” under the Federal and State Prison Litigation Reform Acts -- has developed this website containing an Inmate Strike Index. The following is provided on [www.cor.state.pa.us](http://www.cor.state.pa.us) for further review of correctional policies relating to inmate access to the courts.

### **Federal PLRA Three Strikes Provision**

The United States Congress, through the Prison Litigation Reform Act of 1995, (Federal PLRA) Pub. L. No. 104-134, 110 Stat 1321, signed into law by President Clinton on April 26, 1996, amended 28 U.S.C. §1915 governing *in forma pauperis* status for prisoner litigation raising federal claims. 28 U.S.C. §1915(b) (4) states that [i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee. To that end, 28 U.S.C. §1915 provides a process for indigent prisoners to pay filing fees in installments. However, 28 U.S.C. §1915(g) states:

[I]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Finally, absent a showing of imminent danger of serious bodily injury, an inmate litigant loses the privilege of *in forma pauperis* status, and must pay the complete filing fee or face dismissal of the action or appeal.

([http://www.portal.state.pa.us/portal/server.pt/community/hide\\_chief\\_counsel/12356](http://www.portal.state.pa.us/portal/server.pt/community/hide_chief_counsel/12356))

### **State PLRA Three Strikes Provision**

The General Assembly of the Commonwealth of Pennsylvania and signed into law by Governor Ridge Act 1998-84 (1998, June 18, P.L. 640, No. 84), added 42 Pa.C.S.A. §6601 et

seq. (State PLRA), regarding *in forma pauperis* status for prisoner litigation raising state claims.

The State PLRA supplements other grounds for the denial of *in forma pauperis* status as set forth in the Pennsylvania Rules of Civil Procedure. 42 Pa.C.S.A. § 6602(d) (1) requires that:

[a] prisoner shall not be prohibited from filing prison conditions litigation because the prisoner has no assets or other means to pay the filing fee. This paragraph shall not prevent the court from dismissing or otherwise disposing of prison conditions litigation pursuant to this chapter or any other provision of law.

In that regard, 42 Pa.C.S.A. §6602 (e) and (f) provide, in relevant part, that:

(e) Dismissal of litigation. - Notwithstanding any filing fee which has been paid, the court shall dismiss prison conditions litigation at any time, including prior to service on the defendant, if the court determines any of the following: . . .

(2) The prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or the defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted would preclude the relief.

\* \* \*

(f) Abusive litigation. - If the prisoner has previously filed prison conditions litigation and:

(1) Three or more of these prior civil actions have been dismissed pursuant to subsection (e) (2);

or

(2) the prisoner has previously filed prison conditions litigation against a person named as a defendant in the instant action or a person serving in the same official capacity as a named defendant and a court made a finding that the prior action was filed in bad faith or that the prisoner knowingly presented false evidence or testimony at a hearing or trial; the court may dismiss the action. The court shall not, however, dismiss a request for preliminary injunctive relief or a

temporary restraining order which makes a credible allegation that the prisoner is in imminent danger of serious bodily injury.

([http://www.portal.state.pa.us/portal/server.pt/community/hide\\_chief\\_counsel/12356](http://www.portal.state.pa.us/portal/server.pt/community/hide_chief_counsel/12356))

## **Pennsylvania Special Population**

### **HIV Macro Study**

Pennsylvania DOCS considers HIV positive inmates a special population and has addressed the matter in policy and practice. HIV in prison populations is considered one of the most significant issues facing our prison administrators (Elliot, 2007). The percentage of HIV infected individuals is far greater in prison than in the general population (Elliot, 2007). Some surmise that this is in part because of the high percentage of prison population that use drugs on a regular basis. For these reasons, the corrections system must be sensitive to issues surrounding HIV policies and procedures in the prison system.

A highly influential study performed by Macalino, Sanford-Colby, Patel, Salas, Rich, Vlahov, & Sabin (2004) addressed the issue of HIV and the impact it has on the prison population. Their methodology observed the intake of 4,269 inmates at the Rhode Island Adult Correctional Institute during a two year time period of 1998-2000. The results revealed that approximately 20% of the inmates were infected with HIV; primarily associated with intravenous drug use. The study concluded a significant community health issue was the result of HIV prevalence in prison and the release of the inmate back into the civilian population,

generally with shorter sentences due to non-violent nature of the crime and recidivism statistics indicate the inmate will recommit in a short period of time. The issue of recommitting is rather vague and ambiguous in the study but it is assumed that the return to shared needles and drug use will increase the spread of HIV once released. The authors proposed that correctional administrators focus on general disease prevention efforts such as screening, education, and vaccinations.

Another study performed by McClelland, Teplin, Abram, & Jacobs, (2002) supported these findings in relation to the female inmate population. In their study, the researchers canvassed 948 female inmates and found that those with “high risk” of contracting HIV were those females that had mental disorders, were homeless, has multiple prior arrests and were arrested on drug charges. Being that these high risk females often had shorter sentences, they were released back into the community sooner, which creates a serious health risk for the general public. The authors recommended that HIV in jails become a major public health priority.

### **HIV/Psychiatric Dual Populations**

Psychiatric disorders such as bipolar disorder, schizophrenia and depression have long been associated with risk behaviors for HIV, hepatitis C virus (HCV) and hepatitis B virus (HBV). The US prison population is reported to have elevated rates of HIV, hepatitis and most psychiatric disorders (Baillargeon, Paar, Wu, Giordano, Murray, Raimer, Avery, Diamond, and Pulvino, 2008, p. 124). The US prison system has become an important front in the effort to control HIV primarily due to the increase in drug-related convictions in the US prison system

over the last 20 years. This fact alone has resulted in substantial increases in the proportion of offenders with HIV and HIV-related risk factors (Baillargeon, et al., 2008).

Psychiatric disorders including schizophrenia, bipolar disorder and major depression may underlie the high rates of HIV and hepatitis in prison populations by way of increased rates of high-risk sexual behavior and injection drug use. The elevated risk of these behaviors among patients with psychiatric disorders has been linked to a number of factors, including limited impulse control, difficulties in establishing stable social and sexual relationships, limited knowledge about HIV related risk factors, increased susceptibility to coercion and co-morbid alcohol and drug use (Baillargeon, et al., 2008).

Although previous studies have reported a strong association between psychiatric disorders and HIV infection in prison inmates (Baillargeon, Ducate et al., 2003; Treisman et al., 2001), no published research has assessed the association of psychiatric disorders and HIV/hepatitis co-infection in the correctional setting. In a recent study of non-incarcerated patients with mental illness (Rosenberg et al., 2005), HIV/HCV-co-infected patients were reported to exhibit greater severity and chronicity of psychiatric disease than their HIV-mono-infected counterparts. It is plausible that HIV/hepatitis coinfection is associated with more severe or diverse psychiatric disease by way of behavioral risk factors, although no research has assessed these underlying characteristics (Baillargeon, Ducate, Pulvino, Bradshaw, Pulvino, Murray, and Olivera, 2003).

### **Pennsylvania DOCS Approach**

PA DOCS considers special population as the following: geriatric, infirm, women inmates with special medical needs and disabled, mental-illness and Young Adult Offender Inmates (Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, and February 16, 2012). PA DOCS Policies provides the authority and general ethical intent of providing care or treatment for the categories discussed thus far. The categories are not exhaustive and are amended annually for the purposes of providing treatment and services in accordance with judicial review and legislative acts (Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012).

PA DOCS SCI's are Americans with Disability Act compliant according to Roberts and Woods (Personal Communication, February 16, 2011) to include cells, service areas, and infirmaries. Therefore most infirmaries at each institution can provide adequate care for many of the situations that arise. This is particularly true for HIV infected inmates as previously discussed. The more severe a patient/inmate health issue, they are transferred to a special housing facility for skilled care beyond the capabilities of the SCI's infirmary. In previous discussions the Death with Dignity program permits certain inmates transfer possibilities to hospice care facilities outside the PA DOC control (Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012; PA Corrections Reform-Act 81).

In addition to general health care, Roberts & Wood (Personal Communication, February 16, 2011) maintains that female inmates requiring Obstetric Care is contracted with local hospitals in the area of the SCI. This contracted service includes female inmates being

transferred to a local hospital for birthing of a child and contrary to popular belief, no child is born within prison walls in Pennsylvania unless as an emergency situation may provide. Policy dictates that all contracted services as described are provided by external health care providers. They further contend that in extreme or chronic medical care situations for inmates at SCI's outside care providers may be considered (Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012).

The table provided in Appendix A-SCI's is highlighted in red for review of the three main skilled care facilities providing services to inmates within the PA DOCS. The Forensic Unit at Waymart is the designated facility for mental-illness care beyond the capability of the SCI infirmary. The facility at Waymart as of 12/31/2011 indicates a 90% capacity rate with an inmate population of 1,458. According to Roberts & Wood (Personal Communication, February 16, 2011) the population of PA DOCS inmates requiring mental health care is misleading as a percentage of those inmates listed are healthy inmates that provide upkeep for the facility. However the unit does provide services for the more severe cases within the PA DOCS population, but the actual number of inmates requiring the advanced level of care and treatment is not available.

## **PA DOCs Substantive Policies**

### **07.04.01 Alcohol and Other Drug Treatment Programs**

The purpose of this policy is to establish a standardized method of delivering specialized Alcohol and Other Drug (AOD) Abuse Treatment Programs to all offenders who are alcohol and drug abusers, found eligible for services under the Department's supervision.

### **13.02.01 Access to Health Care**

This policy establishes procedures by which the Department of Corrections and medical vendor staff can ensure that all inmates have access to health care and provide professional health care services that comply with Department policies and procedures, ACA standards, and applicable laws.

### **13.8.1, Access to Mental Health Care**

Every inmate entering the Pennsylvania Department of Corrections shall be given a psychological assessment conducted at the Diagnostic and Classification Center (DCC). The DCC shall administer basic psychometric testing and interview the inmate upon reception and provide further assessments only for an inmate who evidences a need for more comprehensive evaluation.

## **Young Offenders**

### **11.2.1, Reception and Classification Procedures Manual**

#### **General**

The Young Adult Offenders Program (YAOP) is primarily designed for those offenders between the ages of 15-20 adjudicated as adults due to the nature of the criminal offense committed. The YAOP meets their special needs of education, adolescent development and

recreational activity, while providing a safe environment for those offenders. All Young Adult Offenders (YAO) between the ages of 15-19 ½ will be classified and transferred to a YAOP (males to SCI Pine Grove; females to SCI Muncy) unless they have a serious psychiatric condition that requires treatment in a more clinical setting (Pennsylvania Department of Corrections, 2011; Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012).

Based on an alleged separation, court order, or other needs, a male YAO may be transferred to a facility other than SCI Pine Grove. Assignment of a male YAO to a facility other than SCI Pine Grove shall require approval by the Regional Deputy Secretary. In addition, any transfer of a YAO (for the purpose of these transfers, YAO is defined as anyone under the age of 18) from SCI Pine Grove to another facility shall also require approval by the Regional Deputy Secretary (Pennsylvania Department of Corrections, 2011; Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012).

In meeting ethical considerations set forth in policy, law and ACA Standards, the PA DOCS YAOP is run as a Therapeutic Community (TC). A TC is designed to use behavior modification as a primary management tool. YAO's are encouraged to make life changes in areas of self-responsibility, discipline, respect for others and themselves, and to develop positive self-esteem. The YAO's positive accomplishments are rewarded and negative or dysfunctional behavior is discouraged (Pennsylvania Department of Corrections, 2011; Personal Communications Chuck Roberts, Dep. Asst. Administrator & Denise Wood, Records Administrator, February 16, 2012).

## Treatment Programming

The PA DOCS YAO inmate's day consists of a highly structured participation in education, leisure activities, group therapy, and program committees. The philosophy of the TC is to build self-esteem by participation in positive activities and reward for that activity. Each inmate's daily routine includes participation in group and other activities designed as part of his/her prescribed program as provided in Figure 1-Program (Pennsylvania Department of Corrections, 2011).

Figure 1-Program Development

<u>Group Therapy</u>	<u>Religious</u>	<u>Recreation</u>	<u>Education*</u>
Alcohol & Other Drugs	Musical Group/Choir	Aerobics	ABE
Anger Management	Regular Services	Approved Tournaments	GED
Citizenship	Religious Studies	Art Therapy	Library
Communication Skills	Bingo	Physical Ed.	
Daily Living Skills	<u>Employment</u>	Intramural Sports	
Family Relations	Maintenance Committee	Music Therapy	<b>*See Section</b>
Human Sexuality	Paid School Attendance	Special Exercise Classes	<b>II.A.5.b. of this manual</b>
Hygiene Group	Program Participation	Structured Card Games	
Managing Conflicts		Weight Lifting	
Parenting		Yard-Out Activities	

Self Esteem
Stress Management

(Pennsylvania Department of Corrections, 2011)

## **Education**

PA DOCS emphasizes education as the cornerstones YAO program. All participants are required to attend school for a minimum of five hours each day. The designated classes are designed to meet a wide variety of educational levels that are required by the YAO population. An inmate removed from school (generally disruptive inmate) shall result in Restricted Housing Unit (RHU) confinement and removal of all previously earned status. Participation in education in the education building is seen as a privilege by program staff. If an inmate is confined in the RHU, he/she is expected to continue with his/her studies while in the RHU by doing an in-cell study program. As required by law, any inmate under the age of 18 is mandated to be in an educational program four hours per day for an entire year (Pennsylvania Department of Corrections, 2011).

## **Death Row Populations and Executions**

### **Death Penalty Constitutionality**

The decisive case of *Furman v. Georgia*, 408 U.S.238, 92 S.Ct.2726 (1972), the court was asked to decide the constitutionality of the Georgia Death Penalty Statute. In this statute, not unlike many other states during the same period, left the unfettered discretion to impose the death sentence to either a judge or jury was a violation of the Eighth Amendment prohibition of cruel and unusual punishment (Branham & Hamden, 2009). As provided by Branham & Hamden (2009) “These statutes had resulted in such arbitrary and haphazard imposition of the death penalty that, in the words of Justice White, there was [no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not]” (p. 279). The court was again confronted with the constitutionality of the Death Penalty within four years of the Furman decision in *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2<sup>nd</sup> 859 (1976) the court was deciding whether the new capital punishment legislation met Constitutional muster. In *Gregg* the issue of whether the legislation violated the Eighth and Fourteenth Amendments was before the court. Unlike the concerns of arbitrary or capricious meting out of the death sentence in *Furman*, the courts found in *Gregg* that carefully drafted statutes that ensure the sentencing authority is provided adequate information and guidance does not violate the Constitution (Branham & Hamden, 2009).

In a related case defining sentencing structures relative to the death penalty within states, *Woodson v. North Carolina*, 428 U.S. 280, 96 S. Ct., 2978, 49 Led. 2<sup>nd</sup> 944 (1976), examined the mandatory death sentence imposed on a broad spectrum of murder cases (Branham & Hamden, 2009). The court decided the *Woodson* case upon reviewing three aspects of the North Carolina statute: (1) Was it within the limits of civilized standards; (2) Is the statute in conformance with *Furman*’s rejection of unbridled discretion of a jury in meting out the death sentence; and (3) Does the statute consider the individual or merely consider the convicted as a person guilty of a

designated offense. In all three questions the court cited the North Carolina Statute deficient and unconstitutional. Interesting enough the United States began attempting to remediate the mandatory sentencing of the death penalty in most cases as early as 1794 by Pennsylvania in that the death penalty was restricted to ‘murder in the first degree’. Primarily Pennsylvania and subsequent states did so based on societal demands and reluctance to find persons guilty of offenses with mandatory death as the outcome (Branham & Hamden, 2009).

### **Pennsylvania Death Penalty**

Pennsylvania State Court ruled in *Commonwealth v. Bradley* that the death penalty sentencing procedures were unconstitutional based on the precedence established in *Furman v. Georgia, 1972*. At that point, there were some two dozen death cases in the state prison system. All were sentenced to life (Pennsylvania Department of Corrections, 2011). In 1974, the legislature resurrected the law with amendments. At the same juncture thirteen execution cases were received by the Pennsylvania correctional system before the state's high court again declared the law unconstitutional in a December 1977 decision in the case of *Theodore Moody* (Pennsylvania Department of Corrections, 2011). The State Supreme Court, relying on *Gregg v. Georgia (1976)*, declared the 1974 version of the death penalty too narrowly limited the circumstances which the jury may consider mitigating when making its decision on capital punishment. The state legislature quickly drafted a new version. It was enacted in September 1978 and this law, which remains in effect today, has been upheld in several recent appeals to the U.S. Supreme Court (Pennsylvania Department of Corrections, 2011). The constitutional version is as follows:

- 1). The death penalty may only be applied in cases where a defendant is found guilty of first degree murder. A separate hearing is held for the consideration of aggravating and mitigating

circumstances. If at least one of the ten aggravating circumstances listed in the law and none of the eight mitigating factors are found to be present, the verdict must be death.

2). The next step is formal sentencing by the judge. Frequently, there is a delay between the sentence verdict and formal sentencing as post-trial motions are heard and considered. An automatic review of the case by the state Supreme Court follows sentencing. The court can either uphold the sentence or vacate for imposition of a life sentence.

3). If the Supreme Court affirms the sentence, the case goes to the Governor's Office where it is reviewed by appropriate legal counsel and, ultimately, by the Governor himself. Only the Governor may set the execution date, which is done through the signing of a document known as the Governor's Warrant. By law, all executions are carried out at the State Correctional Institution at Rockview.

### **Pennsylvania Execution Methodology**

In 1913 the Pennsylvania Legislature enacted electrocution as the method of execution and prior to this legislation the method was hanging. Pennsylvania was the first state to move away from public hangings in 1834 of which the method was conducted in both state facilities and county prisons. The last execution by electrocution was in 1962 of Elmo Smith for the rape and slaying of a women and this case was also one that a change of venue was granted for trial. During the period of 1915 and 1962 a total of 350 persons were executed in Pennsylvania by use of the electric chair at SCI Rockview to include two women.

### **Pennsylvania Death Row Statistics**

As previously provided by the PA DOCS 2010 annual report of inmate profile and the U.S. Census Bureau the prison inmates represented are 62% of male prisoners were minority (50% Blacks; 11% Hispanic; and 1 % other) in comparison to 38% of White male inmates. As observed from the census information previously provided the black population in Pennsylvania equates to 10.8 % of the total population while accounting for 50% of the male inmate population. Further total minority populations in the state are approximately 20% but represent 62% of the inmate population among males.

The 2009 and 2010 inmate death row profile respectfully is as follows: White-71(32.3%) and 69 (31.4%); Black-129 (58.6%) and 127 (57.7%); Hispanic-18 (8.2%) and 18 (8.2%); and other- 2 (0.9%) and 2 (0.9%) and the greatest concentration of inmates are in the 30-54 year age range (Table 3 PA DOCS, 2011). Albeit the statistics are disproportionate, ironically the last three executions in the Commonwealth were carried out against all white male inmates in 1986, 1995, and 1999 are the following:

**SCI NAME/INMATE NUMBER RACE DOB COUNTY JUDGE SENTENCED EXECUTED**

PIT ZETTLEMOYER, Keith (AK-5854); W; 06/04/1955; Dauphin; Dowling; 04/24/1981; 05/02/1995

Was convicted in Dauphin County for the 1980 murder of a friend, Charles DeVetsco, who was scheduled to testify against him in a robbery trial.

Final Meal: 2 cheeseburgers, French fries, chocolate milk, chocolate pudding.

GRA MOSER, Leon Jerome (AY-6346); W; 09/15/1942; Montgomery; Tressler; 01/24/1986; 08/16/1995

Was convicted in Montgomery County for the 1985 murders of his ex-wife, Linda, and their two daughters following Palm Sunday services at their church.

Final Meal: 2 slices of pizza, cold cuts, pasta salad, frosted cup cake, Coca-Cola.

PIT HEIDNIK, Gary M. (AS-1398); W; 11/22/1943; Philadelphia; Abraham; 03/02/1989; 07/06/1999

Was sentenced to two death sentences in July 1988 for murdering two women he had imprisoned in his home. At his conviction, Heidnik also was convicted of six counts of kidnapping, five counts of rape, four counts of aggravated assault and two counts of involuntary deviate sexual intercourse. In addition to the death sentences, he also received a cumulative prison term of 150 to 300 years.

Final Meal: 2 cups of black coffee, 4 pieces of pizza.

(07/26/1999 Press Office [www.cor.state.pa.us/](http://www.cor.state.pa.us/) )

## **Pennsylvania Execution Complex**

The execution complex is located at the SCI Rockview and in 1997 the complex was moved outside of the facility's perimeter to a former field hospital, located on prison grounds. The facility was renovated into a maximum-security building which will house capital cases for a short period of time just prior to execution. The relocation will allow officials to prepare for and carry out executions without disrupting the day-to-day operation of SCI Rockview. The relocation also enhances the safety and security of witnesses because it doesn't require them to enter the facility to view an execution (Pennsylvania Department of Corrections, 2011).

Mandated by law, individuals whose execution warrants have been signed by the governor are housed in solitary confinement apart from all other inmates. They are under constant direct supervision by corrections officers and their visits are restricted by law to immediate family, legal counsel and clergy, if they so choose. All male capital cases are housed at maximum-security facilities: SCIs Graterford and Greene. Females are housed at SCI Muncy and at a time designated by PA DOCS the inmate is transported to SCI Rockview and placed in the execution complex to await the sentence being carried out (Pennsylvania Department of Corrections, 2011).

The inmates are located in cells in the execution complex (often referred to as death row) generally the inmate is held in this setting only between their arrival and their execution. Inmates are permitted to have in their single person holding cell bedding -- a mattress, pillow, blanket and sheets; a towel and a bar of soap; institutional clothing; legal papers; limited religious materials; some personal photos; and certain consumable items -- such as cigarettes, toothbrush and toothpaste, writing implements -- which are provided as needed and returned to the officer if not consumed. Reading material is also provided as requested, one item at a time. A TV or radio may be located on a stand outside the cell, if requested (Pennsylvania Department of Corrections, 2011).

To ensure accurate identity of the inmate they are fingerprinted upon arrival at the facility and the prints are compared to on file fingerprints and photograph. The condemned inmate will eat while at SCI Rockview will be the same as eaten by the rest of the inmate population, except the individual will be permitted to request one special meal from a menu of available items. More importantly in order to receive a stay of execution or other legal halting directive, an open phone line is maintained between SCI Rockview and the Governor's Office to receive word of any last minute reprieves. That information would then be immediately given to SCI Rockview's deputy superintendent for facility management who is on an open phone line in the injection room throughout the procedure (Pennsylvania Department of Corrections, 2011).

### **Execution of Juveniles and Mentally Retarded**

The U.S. Supreme Court abolished the death penalty for juvenile offenders, citing the practice as offensive and counter to the "evolving standards of decency" that must guide interpretation of the Eighth Amendment ban on cruel and unusual punishments in their decision *Roper v. Simmons*, 2005. The decision set aside the death sentence of Christopher Simmons, a Missouri man who was a 17-year-old high school junior when he hog-tied a woman and threw

her into a river to drown after telling two friends that they could "get away with it" because they were minors. But the ruling also spares the lives of 72 death-row inmates in 19 states -- including two in Pennsylvania -- where until yesterday it was legal to execute offenders who were 16 or 17 at the time of their crimes (McGough, 2005).

The death penalty had been previously altered in 2002 when the Supreme Court reversed itself and ruled 6-3 that executing mentally retarded people was cruel and unusual punishment. The majority then cited a national consensus reflected in the fact that 16 states that had permitted the execution of retarded people in 1989 had changed their minds and outlawed the practice (McGough, 2005).

At the time of the ruling in *Roper v. Simmons* Pennsylvania was one of nineteen states that permitted the execution of juveniles. The court ruled that the age of permissible execution at the time of commission of the crime is 18. The sentences of juveniles on death row had since been commuted to Life without Parole and are the stance of Pennsylvania at this time.

### **Pennsylvania Parole Practice**

#### **Legislative Prison Package-ACT 81**

The Judiciary and Judicial Procedure, Title 42, Chapter 21. Sub. F. provides the authority for sentencing structures for felonies, misdemeanors, probation and parole to be established by the Commission and used in criminal proceedings for the sentencing of defendants after conviction or plea of guilty. On September 25, 2008, Governor Rendell signed into law 4 bills (House Bills 4-7) commonly referred to as the "Prison Package-ACT 81." The prison package significantly changed a majority of existing prison-related laws; specifically, there are substantial changes relating to place-of-confinement, aggregation, work release, early parole, parole jurisdiction,

compassionate release, State Intermediate Punishment, prisoner information, and prisoner transportation, amending the existing Title 42. This discussion will review the good conduct changes, parole and two specific programs previously discussed Recidivism Risk Reduction Incentive and the State Intermediate Punishment Program (PA Corrections Reform-Act 81).

## **Goals of the Reform**

It is important to understand the goals of the PA Prison reform package discussed and in light of the many amendments to existing laws and new provisions found in various Titles, it is helpful to understand that these reforms were designed and implemented as a collaboration with overarching public policy. These included provisions designed to: First, reduce county jail overcrowding and relieve the pressure to release jail inmates; Second, shift the burden for incarceration and treatment of serious offenders from the county system to the state system; Third, improve parole practices to ensure that public and victim safety is the primary consideration and ensure consistency and fairness; Four. improve offender treatment through centralized programs, administrative support, and specialized expertise; Five, ensure truth-in-sentencing for the victim, the public and the offender; Six, provide incentives for non-violent offenders to participate in evidence-based rehabilitative programs proven to reduce the recidivism risk; Seven, improve inmate safety through the improved exchange of information between the county and state system; Eight, provide for compassionate release of terminally ill inmates with appropriate safeguards; and Nine, reduce taxpayer costs through the centralization of treatment programs and prisoner transportation (PA Corrections Reform-Act 81).

## **Parole Reform**

The 2008 Corrections Reform Act-81 required the Pennsylvania Sentencing Commission to promulgate parole guidelines making public safety and victim safety the primary consideration in parole decisions and in line with the Act. The Act further required the Commission to use validated risk assessment tools and evidence-based practices in developing these guidelines and the guidelines would also apply to recommitments, back time, reparaoles, and resentencing. The county judges, like the Pennsylvania Board of Probation and Parole (PBPP), would be covered by the statutory requirements and parole guidelines (PA Corrections Reform-Act 81).

### **Medical Release**

Act 84 (HB7) replaces an outdated medical treatment statute, 61 P.S. § 81, that is almost 100 years old and is referred to as the humanitarian act. The amendment is designed to allow judges to place prisoners in hospitals, long-term nursing care facilities and hospice care locations. However, the requirements for such placements are quite stringent. For example, the prisoner must be: Seriously ill and not expected to live for more than one year; The facility must have agreed to accept the placement; The court must consider public safety and escape risks; and The DA and victim are entitled to notice and an opportunity to be heard prior to approval. There are also additional requirements about provisions that must be contained in the court order (Personal Communications with Denise Wood, February 16, 2012; PA Corrections Reform-Act 81).

## **Pennsylvania Department of Corrections Review**

### **Rehabilitation and Recidivism**

It is an assumption of this discussion section that any combination of social, biological or psychological factors may provide a clearer pathway of criminal conduct. Thereby based on the research provided that there is no one clearly articulated path effecting behavior of an individual but rather a maze of interconnected biological, social and psychological functions that influence behavior. Therefore the rehabilitation of an offender may not be as easy as most cookie cutter applications or “one size fits all” method that has been practiced for decades (Bartol & Bartol, 2008).

Bartol & Bartol (2008) assert “in terms of interventions, as expected, family therapy and medication were seldom recommended” (p.215). However, understanding that preventing all acts of violence or criminal behavior is an unattainable goal, neuropsychological evaluations are helpful in predicting future behavioral issues and therefore should be court ordered assessments for violators of domestic abuse victims and abusers, child abuse victims and abusers and children of frequent and intense acclimation to unsavory and dysfunctional homes (Bartol & Bartol, 2008). Moreover, the application of a Multi-Systemic Therapy (MST) should be applied to the treatment of offenders. Cost is relative to exactly what you’re attempting to protect.

Recent research which focused on recidivism rates of inmate that have received educational and vocational training while incarcerated must provide attention to the skills required for job consideration when released (Hull, Forrester, Brown, Jobe, & McCullen, 2000). Their study supports the assumptions of this discussion that programs must not be generic, but specifically focused to develop skills in certain needed areas of the greater community. Correctional rehabilitation programs provided that did so found the recidivism rates of inmates were significantly less than those that did not receive training. In addition to the skills training

required of inmates, equally important are the prescreening evaluations of inmates upon entry into the system. The following sections address more contemporary research of criminal behavior and antisocial behavior that may possess keys to evaluating inmates and assessing influential rehabilitation methodologies.

### **Neurological Aspects**

Neurophysiology is the study of brain activity and neurological impairments may lead to the development of personality traits linked to antisocial behaviors; and there is now evidence that low self-control may in fact be regulated and controlled by the prefrontal cortex of the brain (Beaver, Wright & DeLisi, 2007). Dolan & Anderson (2002) assert "that aggressive personality disordered offenders show evidence of a broad range of deficits in executive and memory function, particularly concept formation and logical memory, fits with much of the existing literature in antisocial populations. However, we have shown that it is offenders with high trait impulsivity that have deficits of this nature: a finding that may have special implications for therapeutic interventions" (p. 522). The neuropsychological evaluations of sexual offenders is the most common link between brain irregularities and sexual offenses and/or deviance including diverse types of deviance and offenders such as exhibitionist, pedophiles and rapist of adults (Joyal, Black & Dassylva, 2007).

Seo, Patrick & Kennealy attest that, "Impulsive aggression has been linked to uncontrollable negative emotion, and inability to regulate aggressive impulses which can often lead to violent behaviors. Neuro-psychological literature suggests that individuals with impulsive aggression may have abnormalities in brain regions involved in the control of emotion such as the prefrontal

cortex, amygdale, and nucleus accumbens” (p. 386). Impulsive aggression has been associated with various pathological conditions to include depression, suicide and substance abuse which suggest a common biological and neurological malfunction involving serotonin and dopamine system abnormalities. Tiihonen et al. (2008, p. 206) purport “this study reports the first evidence that persistent violent offenders who fulfill the diagnostic criteria for antisocial personality disorder are characterized by abnormal brain anatomy when compared with healthy men.” Based on the previous discussion it stands to reason that correctional officials may wish to process inmates on need and expected outcome based on individual assessment of the inmate.

### **Genetic Aspects**

The gene encoding the neurotransmitter-metabolizing enzyme monoamine Oxidase A (MAOA) was found to moderate the effect of maltreatment. High levels of MAOA expression were less likely to develop antisocial problems and the inverse is true. The finding in this study will partially explain the fact that not every child subjected to maltreatment will develop antisocial mechanisms to cope (Caspi et al., 2002). “The MAOA gene is located on the X chromosome; it encodes the MAOA enzyme which metabolizes neurotransmitters such as such as norepinephrine, serotonin, and dopamine rendering them inactive...The Genetic deficiencies in MAOA activity have been linked to aggression in mice and humans” (Caspi et al., 2002, p. 582). Their study consisted of a sample of 1,037 from birth to adulthood through age 26 measuring four types of antisocial behavior and found for all four antisocial outcomes the pattern of findings was consistent with the hypothesis that the association between maltreatment and antisocial behavior is conditional dependent on the child’s MAOA genotype. The lower the

MAOA gene accompanied by maltreatment the substantial risk of conduct disorder in children to later developed antisocial personality symptoms in adulthood (Caspi et al., 2002).

Coccaro, Kavoussi and McNamee (2000) focusses on the evidence suggesting that there are biological predispositions to aggression. The authors reviewed a case in which this issue arose in a forensic evaluation and discussed the implications of these findings in criminal settings. Aggression can be verbal, directed at inanimate objects, directed at other living beings, and it can be defensive, predatory, or impulsive. Most studies point to serotonin as one of the most important central neurotransmitters underlying the modulation of impulsive aggression. These authors work points to the possible biological vulnerability to aggression due to genetic influences. The authors support genetics and aggressive and antisocial behavior due to measures of serotonin and frontal lobe studies as they observed that: One of the most reliably documented biological variables implicated in aggressive behavior is the neurotransmitter serotonin. More recently, Coccaro et al. (2000) extensively reviewed the relationship between serotonin and externally directed violence. They referenced more than 20 studies, and their results corroborated earlier findings of a relationship between low serotonin and high incidences of violent behavior. They also reported evidence where increasing serotonin levels resulted in decreased aggressive responses in males.

These assumptions have presumably led to unilateral prison reform nationally and in the PA DOCS system outlined in the previously mentioned programs. PA DOCS in comparison to other states may be held out as a leader in risk reduction programs based on behavioral based data from empirical research. Pennsylvania DOCS has several re-entry programs to assist with the transition from prison back into the community. Studies have revealed that these transition programs are successful at reducing recidivism (Listwan, Cullen, &

Latessa, 2006). Researchers will concede that there is no silver bullet to the causation of crime and requires research in most aspects of life to find the linkage. Researchers will also concede there is no one fix to offenders. Pennsylvania has committed to behavioral based and outcome based treatments in keeping with the latter philosophy.

### **Pennsylvania Specific Programs**

#### **Community Corrections**

Community corrections are half-way houses established in urban settings throughout the state. As of FY 2008 there are 14 DOCS run facilities and 38 contracted facilities operating to provide reintegration of over 3,400 inmates into society (Community Corrections Center, 2008). An inmate assigned to a community corrections facility receives continued treatment for addictions and counseling in areas of family and employment. The inmate is gradually reduced from custodial control to personal responsibility. The role of the Community Corrections Programs in the DOCS is to provide a viable alternative to incarceration, while the inmate reacclimatized to social conditions outside prison walls.

#### **State Intermediate Punishment Program**

State Intermediate Punishment Program (SIP) was enacted in FY 2004 and became effective in May 2005 in response to concerns of criminal offending while under the influence of drugs and alcohol (SIP Performance Report, 2011). SIP was designed as an alternative to determinate sentencing while enhancing public safety through a period of incarceration. The SIP Performance Report (2011) reported that as of September, 2010 there were 933 graduates from the program. Results of the SIP Program indicate that six-month and one-year re-incarceration rates are lower than non-SIP participant inmates. The cost of incarceration is approximately

\$34,190.00 annually and this is realized as a savings when in the SIP Program, thus the 933 graduates of the program saved the State of Pennsylvania \$31.5 million (SIP Performance Report, 2011).

SIP participants must apply and be accepted into a four phase program consisting of 24 months. Phase-one is a Court Determined Eligibility by statute and sentencing guidelines of which the offender is convicted of an alcohol or drug induced offense that does not include use of a deadly weapon, child molestation, incest or child exploitation, and does not have a history of violence. The offender is sentenced to 30 months per statute. Phase-two is DOC assessment at which time the offender is evaluated for treatment needs and determination of amenability to treatment. Doc provides a recommendation to the court and the district attorney and if all three components agree the offender is accepted into SIP in Phase-three. Phase-four consists of reintegration into the community for the remainder of the 24 month sentence (SIP Performance Report, 2011).

### **Recidivism Risk Reduction Incentive**

Recidivism Risk Reduction Incentive (RRRI) was established by Act 81 of 2008 providing that eligible non-violent offenders are incentivized by successfully completing program requirement in exchange for a reduced sentence. The criteria for eligibility is similar to that of the SIP Program and has a goal of creating an atmosphere of good behavior while incarcerated and to remain crime free upon release. These offenders are those that provide no reasonable indication that they pose a threat to public safety (Recidivism Risk Reduction Incentive Report, 2011). The re-arrest rate of RRRI graduates is similar to those that did not enter the program; however the longitudinal data is in embryonic stages at this time for any

statistical significance. What is significant is the approximate \$11.5 million saved through freeing bed space by approximately 127,000 less days spent in prison (Recidivism Risk Reduction Incentive Report, 2011).

## **Recidivism**

A comparison of recidivism for the Commonwealth of Pennsylvania for years 1999 and 2004 are as follows: 1999 14% were re-incarcerated for new crimes compared to 16%; 23% for technical violations compared to 24%; and in 1999 63% never returned compared to 60% in 2004. This means that Pennsylvania suffered a 37% recidivism rate in 1999 compared to a 40% recidivism rate in 2004. From 2000 through 2010, the number of parole violator admissions increased by 29.3%, from 4,348 in 2000 to 5,621 in 2010 (Pew Center-Revolving Door). This is in part and parcels the reasoning of the above reported programs to decrease re-incarceration and decrease the prison population of non-violent offenders reducing the overall cost of the DOCS.

## **Data Collection**

The Pennsylvania Department of Corrections web page may be found at [www.cor.state.pa.us](http://www.cor.state.pa.us) which provided the primary source of data in this review. The web page also provides an array of information depicting DOC policies, inmate information, institution information, executions (3 executions since 1995-present-see Appendices-D) and warrants for execution, statistical data, Mission Statement, and programs and initiatives. In review of the DOCS policies, many contain references to the American Correctional Association (ACA) and if not directly stated, have embedded in those policies portions of the ACA's Code of Ethics. The

Pennsylvania Department of Corrections is an ACA Accredited system. Personnel interviews of PA DOCS key staff personnel were another source of data for this review. Copious notes were taken by the researcher and transcribed into final form provided in this report. This researcher has no personal allegiance to PA DOCS or personal bias against PA DOCS and therefore the information provided herein is as reported. The PA DOCS data and literature research are the basis of this review.

The DOCS programs initiated within the previous ten years also signals the system is a risk taker, unafraid to tackle new ideas in providing service to community and to inmate. The newer innovative programs discussed are aimed at the less violent and shorter sentence inmates (Appendices C-Maximum Sentences) which mainly provide for reduction of cost at his juncture, without longitudinal studies but there remains a void for reducing longer sentence terms, which may just be the need to protect society from the offender.

### **Discussion and Limitations**

The PA DOCS as illustrated through their web page provides several innovative approaches to reducing costs and bed space within the system. It discusses alternatives to incarceration which have had to have the input of DOCS staff and political will on the part the legislature. Social learning should not be interpreted literally as to how criminal behavior is obtained but rather as a medium for acquisition, maintenance, and modification of behavior; more so social learning theory develops the relationship between motivation and control of criminal behavior (Cullen & Agnew, 2006). Therefore the undoing of the already learned process requires longitudinal examination. Researchers will review, study and analyze theories and questions in “macro” and “micro” clusters. The macro approach recommended for future

study is one that is broader across societies or major factions in comparison to the micro approach which is a smaller grouping. Akers (1998) argues that, “the dependent variable in macro-level theories is based ultimately on the same behavior that is the dependent variable in micro-level theories” (p. 330).

The data provided by the DOC shows a relationship of therapy and programs instrumental to the prevention of further criminal behavior by inmates. As there is not one single causation of criminal behavior, neither is the unraveling of previous criminal conduct of inmates and current indicators with any certainty as to which program will be useful to further prevent criminal conduct by the offender; therefore the data provided indicates usefulness, but longitudinal review is required.

### **Conclusion**

It is imperative that the conversation regarding truth in sentencing from the length of a sentence to the actual crime committed and the crimes sentences for are examined more closely and honestly. As an example a rapist may be permitted to plea to an assault rather than the actual rape. This may be permitted for housing and safety issues surrounding a prisoner or expediting court proceeding. Overall examination of sentencing in order to achieve a stated goal requires alteration of more basic conversation such as, what will work to change the behavior of an inmate. Incarceration reform requires stretching the imagination and reaching beyond the cookie cutter methodology currently applied and society’s willingness to call that good. The ADOC operates a correctional system that adequately protects the public from the dangers of offenders, while balancing reentry needs and providing competent reentry programming. PA DOCS has committed to restating treatment measures by housing sex offenders in specific facilities in order

to receive concentrated therapy and undergo testing in order to design the treatment plan specific to the offender. Also embedded in this assumption is that sex offenders will not be cataloged under illness with one treatment plan.

This is further echoed by Bartol & Bartol (2008) in which they contend that “a forensic psychiatric treatment community would be more suitable because it is evident that only therapeutic community treatment is effective in juveniles who are severely impaired, abused and neglected. Treatment of such juveniles should take place explicitly (at least in the initial phase) away from the influence of abusive, chaotic family and friends, even when these people are willing to change their attitudes” (p. 272). Such programs are multisystemic therapy (MST) programs which are intensive family and community based treatment for juveniles with antisocial behavior and mental health issues (Bartol & Bartol, 2008).

Finally the reality of it is that not all offenders can be saved and we as a society must accept that fact and have secure facilities for those who do not yield to treatment!

### **References**

- Abracen, Jeffrey, Looman, J., and Langdon, C, M... 2008. Treatment of sexual offenders with psychopathic traits: Recent research development and clinical implications.” *Trauma, Violence & Abuse*, 9(3), 144-166.
- Akers, R. (1998). Is differential association/social learning cultural deviance theory? *Criminology*, 34, 229.
- American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental*

- Disorders. 4th Edition. Text Revision.* Arlington, VA: American Psychiatric Association.
- Baillargeon, J. G., Paar, D. P., Wu, T., Giordano, T. P., Murray, O. R., Raimer, B. G., Avery, E. N., Diamond, P. M., and Pulvino, J.S. (2008). Psychiatric disorders, HIV infection and HIV/hepatitis co-infection in the correctional setting. *Aids Care*, 20 (1), 124-129.
- Baillargeon, J. G., Ducate, S., Pulvino, J.S., Bradshaw, P., Pulvino, J.S., Murray, O., and Olivera, R. (2003). The association of psychiatric disorders and HIV infection in the correctional setting. *Annals of Epidemiology*, 13, 606-612.
- Bartol, C. R., & Bartol, A. M. (2008). *Current perspectives in forensic psychology and criminal behavior* (2nd Ed.). Los Angeles, CA: Sage Publications, Inc.
- Beaver, K., Wright, J. P., & DeLisi, M. (2007). Self-control as an executive function: Reformulating Gottfredson and Hirschi's parental socialization thesis. *Criminal Justice and Behavior*, 34 (1), 1,345-1,361.
- Branham, L.S. & Hamden, M. S. (2009, 8<sup>th</sup> Ed.). *Cases and materials on the law and policy of sentencing and corrections*. St. Paul, MN: West.
- Caldwell, M. F., McCormick, D. J., Umstead, D., and Van Rybroek, G. (2007). Evidence of treatment progress and therapeutic outcomes among adolescents with psychopathic outcomes. *Criminal Justice and Behavior*, 34(5), 573-587.
- Caldwell, M. F., Skeem, J., Salekin, R., and Van Rybroek, G. (2006). Treatment response of adolescent offenders with psychopathy features: A 2-year follow-up. *Criminal Justice and Behavior*, 33(5), 571-596.

- Caspi, A., McClay, J., Moffitt, T. E., Mill, J., Martin, J., Craig, I. W., Poulton, R. (2002). Role of genotype in the cycle of violence in maltreated children. *Science*, 297(5582), 851
- Cleckley, Hervey M. 1941. *The Mask of Sanity*. St. Louis: Mosby.
- Coccaro, E. F.: Kavoussi, R. J.: McNamee, B. (2000). *Central neurotransmitter function in criminal aggression. the science, treatment, and prevention of anti-social behaviours: Application to the criminal justice system*. Kingston, NJ, US: Civic Research Institute.
- Cullen, F. T., & Agnew, R. (2006). *Criminological theory past to present* (3rd ed.). New York: Oxford University Press, Inc.
- Dolan, M., & Anderson, I. M. (2002). Executive and memory function and its relationship to trait impulsivity and aggression in personality disordered offenders. *Journal of Forensic Psychiatry*, 13(3), 503-526.
- Elliott, R. (2007). Deadly disregard: government refusal to implement evidence-based measures to prevent HIV and hepatitis C virus infections in prisons. *CMAJ: Canadian Medical Association Journal*, 177(3), 262-264. Retrieved from EBSCOhost.
- Hall, D. E. (2012). *Criminal Law and Procedure* (6<sup>th</sup> ed.). Clifton Park, NY: Delmar/Cengage Inc.
- Hare, R.D., Clark, D., Grann, M., and Thornton, D. (2000). Psychopathy and the predictive validity of the PCL-R: An international perspective. *Behavioral Sciences and the Law*, 18(5), 623-645.
- Hull, K. A., Forrester, S., Brown, J., Jobe, D., & McCullen, C. (2000). Analysis of Recidivism Rates for Participants of the Academic/Vocational/Transition Education Programs Offered by the Virginia Department of Correctional Education. *Journal of Correctional Education*, 51(2), 256-261. Retrieved from EBSCOhost.

Joyal, C. C., Black, D. N., & Dassylva, B. (2007). The neuropsychology and neurology of sexual deviance: A review and pilot study. *Sexual Abuse: A Journal of Research & Treatment*, 19(2), 155-173. Doi: 10.1007/s11194-007-9045-4

Listwan, S., Cullen, F. T., & Latessa, E. J. (2006). How to prevent prisoner re-entry Programs from Failing: Insights From Evidence-Based Corrections. *Federal Probation*, 70(3), 19-25. Retrieved from EBSCOhost.

Macalino, G. E., Sanford-Colby, S., Patel, S., Salas, C., Rich, J. D., Vlahov, D., & Sabin, K. (2004). Prevalence and incidence of HIV, Hepatitis B Virus, and Hepatitis C Virus infections among Males in Rhode Island prisons. *American Journal of Public Health*, 94(7), 1218-1223. Retrieved from EBSCOhost.

McClelland, G., Teplin, L. A., Abram, K. M., & Jacobs, N. (2002). HIV and AIDS Risk Behaviors among Female Jail Detainees: Implications for Public Health Policy. *American Journal of Public Health*, 92(5), 818-825. Retrieved from EBSCOhost.

McGough, M. (2005). Supreme Court bars juvenile executions. *Post-Gazette*, Pittsburg, PA. <http://www.post-gazette.com/pg/05061/464966.stm#ixzz1mZkoQbeo>.

Pennsylvania Department of Corrections, (2011). Annual Report. [www.cor.state.pa.us/](http://www.cor.state.pa.us/). Retrieved January 6, 2012.

Pennsylvania Department of Corrections, (2011). Recidivism Risk Reduction Incentive Report, 2011. [www.cor.state.pa.us/](http://www.cor.state.pa.us/). Retrieved January 6, 2012.

Pennsylvania Department of Corrections, (2011). State Intermediate Punishment Program Report . [www.cor.state.pa.us/](http://www.cor.state.pa.us/). Retrieved January 6, 2012.

Pew Center (N.D.). *The Revolving Door of America's Prisons: State by State*. [www.pewcenteronthestates.org/initiatives\\_detail.aspx?initiativeID=85899358534](http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=85899358534)

Treisman, G.J., Angelino, A.F., & Hutton, H.E. (2001). Psychiatric issues in the management of patients with HIV infection. *Journal of the American Medical Association*, 286, 2857\_2864.

U.S. Constitution. <http://www.archives.gov/exhibits/charters/constitution.html>

Zajac, G. (2009). Psychopathy: Etiology, Diagnosis and Treatment. *Research in Review*, 12 (1) Pennsylvania Department of Corrections.

## **APPENDICES**

**Appendix A-PA DEPARTMENT OF CORRECTIONS-STATE CORRECTIONAL INSTITUTIONS, P.O. Box 598, Camp Hill, PA 17001-0598**

Revised: 12/15/11

SCI Albion-Male Medium

Supt. Michael Harlow

10745 Route 18

Albion, PA 16475-0001

(814) 756-5778

SCI Cambridge Springs-Female

Supt. Rhoda Winstead

451 Fullerton Avenue

Cambridge Springs, PA 16403

(814) 398-5400

SCI Camp Hill-Diagnostic and Classification

Supt. Richard Southers

P.O. Box 8837, 2500 Lisburn Road

Camp Hill, PA 17001-8837

(717) 737-4531

SCI Chester-Substance Abuse Facility

Supt. John C. Thomas

500 E. 4th Street

Chester, PA 19013-4551

(610) 490-5412

SCI Coal Township-Male Medium

Supt. David Varano

1 Kelley Drive

Coal Township, PA 17866-1020

(570) 644-7890

SCI Cresson-Male Medium/Minimum

Supt. Kenneth Cameron

P.O. Box a, Old Route 22

301 Corrections Road  
Cresson, PA 16699-0001  
(814) 886-8181

SCI Dallas-Male Medium

Supt. Jerome Walsh  
1000 Follies Road  
Dallas, PA 18612, (570) 675-1101

SCI Fayette-Male Maximum/newest Facility-Lifers

Supt. Brian Coleman  
50 Overlook Drive  
LaBelle, PA 15450-1050  
(724) 364-2200

SCI Forest-Female-Maximum

Supt. Debra Sauers  
286 Woodland Drive  
P.O. Box 307  
Marienville, PA 16239-0307  
(814) 621-2110

SCI Frackville-Male Maximum

Supt. Robert Collins

1111 Altamont Boulevard  
Frackville, PA 17931-2699  
(570) 874-4516

SCI Graterford-Male Maximum-PA Largest Facility

Supt. Michael Wenerowicz  
P.O. Box 246, Route 29  
Graterford, PA 19426-0246  
(610) 489-4151

SCI Greene-Male Maximum/Capital Case Inmates

Supt. Louis Folino  
169 Progress Drive  
Waynesburg, PA 15370-8090  
(724) 852-2902

SCI Greensburg-Male Medium

Supt. Joseph Mazurkiewicz  
165 SCI Lane  
Greensburg, PA 15601  
(724) 837-4397

SCI Houtzdale-Male Medium

Supt. Steve Glunt

P.O. Box 1000  
209 Institution Drive  
Houtzdale, PA 16698-1000  
(814) 378-1000

SCI Huntingdon-Male Close Security-No inmate functions outside the facility.

Supt. Tabb Bickell  
1100 Pike Street  
Huntingdon, PA 16654-1112  
(814) 643-2400

SCI Laurel Highlands-Male minimum-geriatric facility.

Supt. David Pitkins  
P.O. Box 631  
5706 Glades Pike  
Somerset, PA 15501-0631  
(814) 445-6501

SCI Mahanoy-Male Medium/Minimum

Supt. John Kerestes  
301 Morea Road

Frackville, PA 17932

(570) 773-2158

SCI Mercer-Male Medium

Supt. Brian Thompson

801 Butler Pike

Mercer, PA 16137

(724) 662-1837

SCI Muncy-Male Medium

Supt. Nancy Giroux

Box 180 Route 405

Muncy, PA 17756-0180

(570) 546-3171

SCI Pine Grove-Young Adult Offender-Male-Maximum

Supt. Barry Johnson

189 Fyock Road

Indiana, PA 15701-6542

(724) 465-9630

SCI Pittsburgh-Male Medium-Substance Abuse Facility

Supt. Daniel Burns

3001 Beaver Avenue

Pittsburgh, PA 15233

(412) 761-1955

Quehanna Boot Camp-Co-ed Facility

Supt. Steve Glunt

4395 Quehanna Hwy

Karthus, PA 16845-9714

(814) 263-4125

SCI Retreat-Male Medium

Supt. James McGrady

660 State Route 11

Hunlock Creek, PA 18621-3136

(570) 735-8754

SCI Rockview-Male Medium

Supt. Marirosa Lamas

Box A

1 Rockview Place

Bellefonte, PA 16823

(814) 355-4874

SCI Smithfield-Male Medium

Supt. Jon Fisher

P.O. Box 999, 1120 Pike Street

Huntingdon, PA 16652

(814) 643-6520

SCI Somerset-Male Medium

Supt. Gerald Rozum

1590 Walters Mill Road

Somerset, PA 15510-0001

(814) 443-8100

SCI Waymart-Male Maximum-Mentally Ill Treatment Facility

Supt. Wayne Gavin

P.O. Box 256 Route 6

Waymart, PA 18472-0256

(570) 488-5811

Training Academy

Director Mark Kresho

1451 North Market Street

Elizabethtown, PA 17022-1299

**Appendix B-Pennsylvania Correctional Facilities Prison Population- 2009**

Facility	White	Black	Hispanic	Other	Male	Female < 25	25-39	40 >	Total
Albion	1,045	1,133	217	17	2,412	0	219	1,238	955
	2,412								
Cambridge Springs	629	325	62	9	0	1,025	75	500	450
	1,025								
Camp Hill	1,562	1,687	511	18	3,778	0	855	1,784	1,139
	3,778								
Chester	480	604	233	6	1,323	0	184	693	446
	1,323								
Coal Township	809	1,055	220	13	2,097	0	411	986	700
	2,097								
Cresson	794	659	174	7	1,634	0	160	738	736
	1,634								
Dallas	751	1,219	230	8	2,208	0	197	992	1,019
	2,208								
Fayette	622	1,214	227	18	2,081	0	251	1,047	783
	2,081								
Forest	657	1,311	315	15	2,298	0	509	1,221	568
	2,298								
Frackville	421	568	165	12	1,166	0	98	618	450
	1,166								
Graterford	1,049	2,172	402	29	3,652	0	332	1,657	1,663
	3,652								
Greene	590	1,111	212	13	1,926	0	167	1,006	753
	1,926								
Greensburg	402	514	98	7	1,021	0	111	561	349
	1,021								
Houtzdale	875	1,219	270	14	2,378	0	630	965	783
	2,378								
Huntingdon	632	1,309	242	17	2,200	0	139	1,095	966
	2,200								

Laurel Highlands	727	512	135	11	1,385	0	119	479	787
	1,385								
Mahanoy	733	1,317	309	17	2,376	0	263	1,221	892
	2,376								
Mercer	931	593	134	15	1,673	0	137	656	880
	1,673								
Muncy	807	551	118	28	0	1,504	205	680	619
	1,504								
Pine Grove	244	654	97	7	1,002	0	693	205	104
	1,002								
Pittsburgh	746	809	134	5	1,694	0	195	902	597
	1,694								
Quehanna Bootcamp	193	179	69	0	386	55	145	237	59
	441								
Retreat	430	591	132	5	1,158	0	200	569	389
	1,158								
Rockview	973	1,040	234	11	2,258	0	212	1,084	962
	2,258								
Smithfield	353	760	127	7	1,247	0	126	704	417
	1,247								
Somerset	814	1,268	278	18	2,378	0	389	1,219	770
	2,378								
Waymart	963	416	130	10	1,519	0	66	472	981
	1,519								
C C Cs	352	171	79	1	534	69	64	314	225
	603								
Group Homes	377	425	117	1	742	178	93	507	320
	920								
Federal	3	7	0	0	10	0	0	2	8
	10								
County Jail	43	61	16	0	120	0	25	67	28
	120								
% of Total	38.8%	49.4%	11.1%	0.7%	94.5%	5.5%	14.1%	47.4%	38.5%
	100.0%								
Total	20,007	25,454	5,687	339	48,656	2,831	7,270	24,419	19,798
	51,487								

<http://www.portal.state.pa.us/portal/server.pt/community/institutions/5270>

**Appendices B-Pennsylvania Correctional Facilities Prison Population- 2010 cont.**

Facility	Race				Gender		Age			Total
	White	Black	Hispanic	Other	Male	Female	Under 25	25 - 39	40 and Over	
Albion	1,007	1,087	207	11	2,312	0	193	1,150	969	
	2,312									
Cambridge Springs	581	272	69	10	0	932	68	439	425	
	932									
Camp Hill	1,421	1,362	414	12	3,209	0	687	1,502	1,020	
	3,209									
Chester	434	546	283	4	1,267	0	164	660	443	
	1,267									
Coal Township	772	1,063	217	9	2,061	0	453	922	686	
	2,061									
Cresson	765	587	166	9	1,527	0	143	680	704	
	1,527									
Dallas	784	1,114	242	10	2,150	0	203	948	999	
	2,150									
Fayette	424	576	142	12	1,154	0	110	599	445	
	1,154									
Forest	666	1,292	316	15	2,289	0	493	1,181	615	
	2,289									
Frackville	707	1,144	196	18	2,065	0	232	1,022	811	
	2,065									
Graterford	776	1,780	309	23	2,888	0	213	1,283	1,392	
	2,888									
Greene	399	451	77	4	931	0	108	490	333	
	931									
Greensburg	589	976	210	14	1,789	0	160	915	714	
	1,789									
Houtzdale	841	1,208	234	14	2,297	0	579	970	748	
	2,297									
Huntingdon	643	1,279	221	15	2,158	0	180	1,087	891	
	2,158									
Laurel Highlands	621	451	122	8	1,202	0	92	386	724	
	1,202									
Mahanoy	827	1,250	273	17	2,367	0	253	1,187	927	
	2,367									
Mercer	817	552	119	9	1,497	0	132	614	751	
	1,497									
Michigan	325	686	152	8	1,171	0	80	557	534	
	1,171									
Muncy	794	512	109	30	0	1,445	200	675	570	
	1,445									

Pine Grove	801	730	122	5	1,658	0	202	857	599
	1,658								
Pittsburgh	201	549	73	6	829	0	542	186	101
	829								
Quehanna Bootcamp	249	106	38	3	281	115	134	196	66
	396								
Retreat	431	570	132	6	1,139	0	183	518	438
	1,139								
Rockview	866	1,018	219	9	2,112	0	236	940	936
	2,112								
Smithfield	444	762	154	13	1,373	0	174	753	446
	1,373								
Somerset	767	1,228	251	20	2,266	0	384	1,121	761
	2,266								
Virginia	285	622	97	5	1,009	0	110	456	443
	1,009								
Waymart	811	378	139	5	1,333	0	72	420	841
	1,333								
C C Cs	416	310	132	2	792	68	96	464	300
	860								
Group Homes	348	556	108	3	858	157	113	572	330
	1,015								
Federal	5	7	0	1	13	0	0	5	8
	13								
County Jail	188	333	78	8	607	0	131	307	169
	607								
% of Total	39.0%	49.4%	11.0%	0.7%	94.7%	5.3%	13.9%	46.9%	39.2%
	100.0%								
Total	20,005	25,357	5,621	338	48,603	2,718	7,120	24,062	20,139
	51,321								

<http://www.portal.state.pa.us/portal/server.pt/community/institutions/5270>

**Appendices C-American Correctional Association Code Of Ethics [www.aca.org](http://www.aca.org)**

## **Preamble**

The American correctional Association expects of its members unfailing honesty, respect for the dignity and individuality of human beings and a commitment to professional and compassionate service. To this end, we subscribe to the following principles.

1. Members shall respect and protect the civil and legal rights of all individuals.
2. Members shall treat every professional situation with concern for the welfare of the individuals involved and with no intent to personal gain.
3. Members shall maintain relationships with colleagues to promote mutual respect within the profession and improve the quality of service.
4. Members shall make public criticism of their colleagues or their agencies only when warranted, verifiable, and constructive.
5. Members shall respect the importance of all disciplines within the criminal justice system and work to improve cooperation with each segment.
6. Members shall honor the public's right to information and share information with the public to the extent permitted by law subject to individuals' right to privacy.
7. Members shall respect and protect the right of the public to be safeguarded from criminal activity.
8. Members shall refrain from using their positions to secure personal privileges or advantages.
9. Members shall refrain from allowing personal interest to impair objectivity in the performance of duty while acting in an official capacity.

10. Members shall refrain from entering into any formal or informal activity or agreement which presents a conflict of interest or is inconsistent with the conscientious performance of duties.
11. Members shall refrain from accepting any gifts, services, or favors that is or appears to be improper or implies an obligation inconsistent with the free and objective exercise of professional duties.
12. Members shall clearly differentiate between personal views/statements and views/statements/positions made on behalf of the agency or Association.
13. Members shall report to appropriate authorities any corrupt or unethical behaviors in which there is sufficient evidence to justify review.
14. Members shall refrain from discriminating against any individual because of race, gender, creed, national origin, religious affiliation, age, disability, or any other type of prohibited discrimination.
15. Members shall preserve the integrity of private information; they shall refrain from seeking information on individuals beyond that which is necessary to implement responsibilities and perform their duties; members shall refrain from revealing nonpublic information unless expressly authorized to do so.
16. Members shall make all appointments, promotions, and dismissals in accordance with established civil service rules, applicable contract agreements, and individual merit, rather than furtherance of personal interests.
17. Members shall respect, promote, and contribute to a work place that is safe, healthy, and free of harassment in any form.

Adopted by the Board of Governors and Delegate Assembly in August 1994.

## Appendices D-Court Commitments 2010

Maximum Sentence	Male		Female		Total	
	Number	%	Number	%	Number	%
Under 2 Years	16	0.2%	46	4.9%	62	0.6%
2 Years On y	1,132	11.5%	145	15.3%	1,277	11.8%
Over 2 to 5 Years	4,301	43.7%	474	50.1%	4,775	44.3%
Over 5 to 10 Years						
Over 10 to 20 Years	2,859	29.1%	207	21.9%	3,066	28.4%
Over 20 to 30 Years						
Over 30 to 40 Years	919	9.3%	55	5.8%	974	9.0%
Over 40 to 50 Years						
Over 50 Years						

Note: Total may not equal 100% due to rounding.

### Appendix E-Constitutional Amendments

**Bill of Rights:** Considered the first ten amendment to the United States Constitution

**Amendment I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Amendment II** A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

**Amendment III** No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

**Amendment IV** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Amendment V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**Amendment VII** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

**Amendment VIII** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment X** The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

**Amendment XIV Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix F-People who have been executed by the Commonwealth of Pennsylvania (May 2, 1995 to Present)

SCI NAME/INMATE NUMBER RACE DOB COUNTY JUDGE SENTENCED EXECUTED

PIT ZETTLEMOYER, Keith (AK-5854) W 06/04/1955 Dauphin Dowling 04/24/1981  
05/02/1995

Was convicted in Dauphin County for the 1980 murder of a friend, Charles DeVetsco, who was scheduled to testify against him in a robbery trial.

Final Meal: 2 cheeseburgers, French fries, chocolate milk, chocolate pudding.

GRA MOSER, Leon Jerome (AY-6346) W 09/15/1942 Montgomery Tressler 01/24/1986  
08/16/1995

Was convicted in Montgomery County for the 1985 murders of his ex-wife, Linda, and their two daughters following Palm Sunday services at their church.

Final Meal: 2 slices of pizza, cold cuts, pasta salad, frosted cup cake, Coca-Cola.

PIT HEIDNIK, Gary M. (AS-1398) W 11/22/1943 Philadelphia Abraham 03/02/1989  
07/06/1999

Was sentenced to two death sentences in July 1988 for murdering two women he had imprisoned in his home. At his conviction, Heidnik also was convicted of six counts of kidnapping, five counts of rape, four counts of aggravated assault and two counts of involuntary deviate sexual intercourse. In addition to the death sentences, he also received a cumulative prison term of 150 to 300 years.

Final Meal: 2 cups of black coffee, 4 pieces of pizza.



## Chapter 9 Social Policy in Criminal Justice Systems

### Chapter Abstract

The material provided in this chapter briefly examines topics such as moral panic, public policy, incarceration and reentry, juvenile justice, and sentencing policy. The reader should apply ethical approaches to the chapter.

### Moral Panic

Reality is the creation of mankind as the result of elaborate processes in social learning through, language, symbols, and interactions of other people. A set of shared values, beliefs, practices, rituals and myths forms a culture (Kraska & Brent, 2011). That which society deems to be outside of the cultural rituals is deemed deviant according to Howard Becker (1963). Perception is deemed to be reality. If a person does not feel safe, then they are not safe regardless of empirical data. Hence one can observe the leisure those in authority (Media, Government, Industry, and Ultra Wealthy) may prey upon the fears of lesser status in society. Those that may direct policy through financial support may do so to increase an industry, for example the Prison-Industrial Complex <https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/>. Either an intended or unintended result of the War on Drugs and public policy required tougher sentencing legislation, the U.S. experienced a growth in private sector prisons to keep pace with the rapidly expanding prison population (Mason, 2012).

Moral Panic was defined by Cohen (1972) and remains the salient standard:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person, or groups of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are managed by editor, bishops, politicians, and other right thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) restored to; condition then disappears, submerges or deteriorates and become more visible (p.9).

In other words, the key to this definition social problems such as crack cocaine may be linked to violent crime that in turn are socially constructed and perhaps overblown myths. The social contractors as described above are those that are referred to as social engineers or social entrepreneurs that craft a need for harsher penalties, thus increasing the Prison Industrial Complex, thereby increasing investors' financial gains. This thought is teased out further on in this section.

Roberts & Indermaur (2005) assert that "It is now widely accepted that the naming labeling and discussion of vilified behaviors play a vital role in the definition and sense of community. In this vein, the focus on 'moral panics' outlined by Cohen (1972) placed a strategic and perilous focus on the way issues are highlighted and used by those in authority for social purposes. The media value of a single incident or short lived incident outweighs the actual value of the offense but in the long run and generally will increase the reporting of incidence thus creating its own importance or crime wave (Roberts & Indermaur, 2005; Marion & Oliver, 2012:2006).

An increased use of empirical data could decrease sensationalism over reality. This requires informing the public of what they are actually afraid of or more so what they need to be afraid of. Therefore in addition to the Media's Code of Ethics (link attached) <https://www.spj.org/ethicscode.asp> which should be better publicized with the addition of actual bonafide data. Current data may be obtained from annual government reports such as the Uniform Crime Reports (UCR) that may or may not provide a contextual optic. Not everyone may understand the statistical data presented. As an illustration a UCR report may show that crime went up by 20%. On the surface this appears inexcusable and someone needs to take responsibility. The fact may be that crime went up by five incidents, which may account for the 20% increase. What type of crimes are represented in the increase, where did it occur in the reporting locale, and what might be social events that are associated with the increase. The 'fear of crime' is more realistically aligned with the public's 'concern for crime' (Marion & Oliver, 2012; 2006). The media has (through its own Code) an obligation to represent the facts in a fair and honest manner. However in fairness to the media, they can only report what is offered to them. Media, in any approach (print news, social, television, or video just to provide a few), is generally in business to make money, rather than for public good alone. The news media is at the center of this discussion, however the social media has an increased and significant role in factual distribution of information. One only has to recall the 2016 political debacle to justify this statement.

As a means of policy to protect the credibility, bureaucracies, both public and private, responsible for Criminal Justice should maintain a "Fact Checker". The existence of such a unit is for the sole purpose of combating the 'Fear of Crime' over the 'Concern for Crime' at a local, state and national level. Specifically, in today's high speed electronic world, crime data is

available daily if not hourly and therefore the incident based moral panic should and could be averted. Of course, unlike the serial killer or child abduction or actual gang war activity that may be impacting a community will deserve the strictest immediate attention and cooperation between law enforcement and the news media.

The proposed policy to establish a fact checker unit, the panel should consist of CJS members and media members paid for by their respective organization and publicly funded in part (staff personnel, office space, and daily expense of research) in return for a more balanced report. The ultimate goal of this policy is that hopefully it could prevent scarce resources spent on needless ghost chases. This will require collaboration of interest groups, media and CJS bureaucrats to educate the public in a public relations campaign sharing and fact checking data (Marion & Oliver, 2012:2006).

As a means to address moral panic has been increased penalties for law breakers. America has seen legislation such as mandatory sentencing, zero tolerance, truth in sentencing, and habitual offender. All of which have provided fodder for prison systems. Perhaps, those in control saw this as a means to provide numbers for private prisons or to bolster an already growing economy lodged within the Prison Industry. Have prisons now replaced some industry as an economic engine for the benefit of those at the top of a food chain and at the expense of the less fortunate at the opposite end of the chain?

### **Social/Public Policy**

The material in this section discusses the ways policy is influenced by social, political, economic, legal, and ideological forces. It should not be a secret that each of these forces plays

some role in policy formation. Marion & Oliver, (2006; 2012) assert that the formulation of policy is influenced by social, political, economic, legal and ideological factors. The reader should pay close attention to these criteria in preparation for future evaluations. According to Marion & Oliver (2006: 2012) “The end result is crime policy that is rarely about reducing crime but policy that plays well with the public and the media” (p.23). None the less formulation of policy is the choice of those in charge either by position or authority, may be the inclination of fear mongering rather than factual contextual reporting.

Social influence may be derived through polls, financial support (politician’s life blood), lobbying groups, and advocates that not only provide rhetoric for the argument but also for financial support and is taken seriously in the creation of policy. Political influence regarding crime comes down to who would vote against a crime bill, but also the personal ideology of the politician plays a role in policy development (conservative or liberal point of view). Furthermore it is critical that the politician exhibits to the constituent that he or she is listening to their concerns. The government official that is at the bidding of the public listens to those that financially support her/him. The economic influence may create a false sense of complacency on two fronts.

First, how is the policy implemented by the bureaucracy delegated for implementation? That is the governmental entity charged to fully implement public policy may be at odds with the policy itself. Especially if a new administration wishes to use the funding stream to satisfy the new agenda and as long as it remains in the spirit of law then it is generally accepted. The second issue is the funding stream may be elusive, ambiguous, and can again be diverted or reduced.

An example is the COPS program partially funding police officers for three years and then the municipality must begin to pay for the officer. The concept is flawed in that most

municipalities do not have funding mechanisms to pay for the additional officers and the strings attached by the COPS Office could make it difficult for a municipality to enter into the program. An organization or municipality that is financially troubled to begin with (generally the areas in most need of additional officers), may apply under an exception that would normally require a portion of funding for the officers up front, and the exception could waive the upfront contribution. Ethically, a law enforcement administrator should bring to the attention of the COPS Office that the municipality does not expect a significant financial improvement at the conclusion of the grant period. However, the funding source may be narrowly focused on getting 50,000 new cops on the street and by-passes the notice. An additional consideration of economics is what and by whom reaps financial gain from stricter laws and more cops on the street to enforce the laws. Could one easily assume the previous discussion may be a building block for the beforehand Prison Industrial Complex?

The legal influence is critical as the Supreme Court may issue decisions on the constitutionality of a policy becoming a political actor in the policy process. A contemporary issue of Immigration ban (2017) on certain religions or populations was considered by the courts and overturned in the newly issued Presidential Executive Order. In the case of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the court ruled Congress could not restrict the amount of money that may be contributed to a candidate. To do otherwise is a violation of the 1<sup>st</sup> Amendment prohibiting speech. Can the two previous public policies mentioned have and influence on who may be the Commander in Chief?

Finally the ideological influences may determine whether an issue makes it to the front door, let alone going through the door of the policy makers; without ideological differences there

exists no issue. The ideology of the policy maker is critical, but so is the ideology of the bureaucracy charged with its implementation (Marion & Oliver, 2006; 2012).

Helco (1994) asserts “that there are three building blocks on which our political systems shaped and formed policy, including our criminal justice system. These three building blocks are: ideas, interests, and institutions” (cited in Marion & Oliver, 2012, p. 56). In short the ideas relate the meaning of interests; interests instruct institutions on what to do; and the institutions dictate how the idea is to survive (Marion & Oliver, 2012). The reality of policy making is constructed in Helco’s theory as politics are everywhere and everything.

## **Sentencing Policies**

Consider the following three areas that have contemporary impacts on the CJ system. They are plea bargaining, truth-in-sentencing, and mandatory sentencing. This section offers a brief policy proposal on plea bargaining. The reader should consider their own policy for the remaining two that will offer guidelines to enhance the equity, efficiency, and efficacy of this policy. Truth in sentencing and mandatory sentencing is discussed further on in the material.

Plea bargaining is a main stay of the American criminal justice process, as indicated by Marion & Oliver (2012:2006) “95% felony convictions in state courts are the result of guilty pleas” (p. 343). There is nothing on the horizon to make anyone think it is going to change. The sheer volume of criminal cases in our courts daily would grind the system to a halt if plea bargaining was not permissive. One item that makes a local judge happy (Criminal and Civil) is a reduced or clean docket. There is no secret to the fact that trials are expensive and time consuming. Every citizen in the United States is entitled to their day in court, to be confronted by

witnesses against them, right to a defense, and right to speedy trial. Certainly this looks great printed in the American Constitution and defined by the high court. Albeit nice, it remains impractical. To satisfy burgeoning court dockets, the courts have fashioned plea bargaining policy. The high court has permitted a pathway to justify plea bargaining. Hearing judges may aid in the plea process with a gentle nudge through mild pressure placed on participants (Marion & Oliver, 2012:2006).

I would not change the process per se but would offer some minor tweaking. First all petty offenses of a non-violent nature would meet with administrative law judges and receive an opportunity to be heard and a civil compromise would be levied in the finding of guilt. An Administrative Law Judge (ALJ) is a legal scholar (retired judge or lawyer) with authority of a sitting criminal judge in a less formal setting (relaxed rules of evidence) not requiring a bogged down system with lawyers, as the ALJ will be the guardian of rights for defense and prosecution. A civil compromise is a finding that does not label the defendant or provide them with a criminal record, much like the traffic court system (much like a driving record there is a recording of the event but not criminal). Second, if the defendant is habitual then the system is no longer available to this person. This system is based on the ability of the accused and accuser to negotiate justice. This will be particularly effective for bad checks, code violations, traffic, public intoxication, underage drinking etc.

The actual plea bargaining process will be limited to misdemeanors and felonies of less substance (non-violent matters or identity theft or larcenies less than \$5,000) for the first time offender. If there exists a specialized court for a specific offense such as DWI Court, Drug Court, Mental Health Court, or Domestic Court, then that becomes the court of original

jurisdiction. Pleas will be categorized by type of offense, prior criminal history and victim impact statement. The ALJ retains the authority to bump an offender to a higher court.

Spohn (2000) contends in his study “The finding of this review suggest that the disproportionate number of racial minorities confined in our Nation’s jails and prisons cannot be attributed solely to racially neutral efforts to control crime and protect society. Although it is irrefutable that the primary determinants of sentence decisions are the seriousness of the offense and the offender’s prior criminal record, race/ethnicity and other legally irrelevant offender characteristics also play a role”(p. 481). Due to recidivism rate of offenders then the second offense will often require serving full sentence of first offense then plea must contain rehab criteria before release, after release and relocation from existing environment similar to witness protection. Does the ethical issue of racial disparity interact with the plea bargaining process?

### **Incarceration and Release**

The offender must be readied for return to society through programs aiding in offender growth and development which is important but equally critical is the rethinking of the entire system (Petersilia, 2000; & Travis, 2000; & Marion & Oliver, 2012:2006). Family members are impacted by the offender as is the victim and the community and they too must be made whole in a restorative justice approach (Travis, 2000). However for this post I have chosen a separate field of discussion and that is the family financial support system critical in prisoner reentry.

The behavior of offender offspring(s) is often emulated and is a consideration of the reentry program (Marion & Oliver, 2012:2006). Children’s development may be negatively impacted via low income because it prevents parents from purchasing essential as well as socio

critical materials, experiences or services as indicated by economic theory. Most offenders return with little or no money or savings (Petersilia, 2000). Reisig, Holtfreter & Morash (2002) contend “Generally, social theorists posit that a variety of positive outcomes is associated with healthy social networks...According to contemporary social theory, kin and non-kin social networks provide social resources that can produce a variety of desirable outcomes including employment, access to training and education, as well as instrumental, social, and emotional support” (p.167-168).

Ryan, Kalil, & Leininger, (2009) findings add to a long tradition of research illustrating the importance of social support, broadly defined, to the economic survival and emotional well-being of low-income. Specifically, the research demonstrates a significant and substantively important association between the availability of a private safety net and children’s internalizing symptoms and positive behaviors. Their work found the nature and strength of these associations across the two data sets in spite of difference between operation of private safety nets in Fragile Families (which emphasized material support) and National support.

Ryan et al. (2009) find:

A positive association between private safety nets and children’s socioemotional well-being, but a different finding could have emerged. Qualitative literature on the dynamics of social support suggests that because mothers often receive informal support only on the condition of reciprocity, help from mothers sometimes can induce as much stress as it alleviates (Antonucci & Jackson, 1990; Howard, 2006, cited by Ryan et al., 2009) both because mothers worry about repaying their debts (financial or otherwise) and because the exchanges can complicate interpersonal relations. In these ways, mothers’ private safety nets could undermine their emotional well-being and consequently their parenting

or expose children to negative relationships, either of which could disrupt children's socioemotional development" (p. 294).

These studies indicate that rehabilitation or treatment has been the narrow scope of reentry qualifiers as the authors intimate it is the economic safety net that must also be taken into consideration. It does not assume a free pass but would require outcomes such as the resource is available for periods of training and job seeking. The funding is allocated directly to housing or grocery or medical staff (to name a few). One may ask at this juncture why safety nets are discussed (specifically economic nets). The fact is that they are an unintended consequence of offenders incarcerated and may or may not be appreciated in the over-all calculation of the cost of crime. A second consideration in addressing safety nets is the cost of Domestic Violence in America and hidden costs.

### **Juveniles in the Justice System**

All crime is deviant but not all deviant behavior is criminal. Noted sociologist Howard Becker (1963) argues, "The deviant is one to whom that label has successfully been applied, deviant behavior is behavior people so label" (p. 9). A Crime is a violation of the more repugnant rules and enacted by those currently holding social and political power. Offenders are subject to sanctions by state authority, social stigma, and loss of status (Siegel, 2008).

The ethical and political implications through policy development to detect and prevent crime also are pervasive in legislative enactments such as: Three Strikes you're out, Mandatory/Minimum sentencing, Faith in Sentencing, or rehabilitative/reformative programs endorsed by Positivist designed to rejuvenate or reform an offender discouraging him/her from

recidivism (Lilly, Cullen & Bell, 2007, Siegel, 2008). The conservative approach tends to favor longer sentencing while the liberal view centers on treatment and rehabilitation (Marion & Oliver, 2012:2006). There is similarities between the Military Industrial Complex and the Prison Industrial Complex and the attached link provides information critical to this discussion. <https://pointsforponder.files.wordpress.com/2012/10/gilmore-nd2.pdf>

The Supreme Court through a series of decision culminating in the Roper v. Simmons (S.Ct., 2005 WL 464890) backed the Missouri's Supreme Court ruling that the execution of a person less than 18 years old was a violation of the Eighth Amendment of the U.S. Constitution. Further a litany of court cases evolving since the 1960's have provided safeguards provided an adult and the juvenile offender (Marion & Oliver, 2012:2006).

At the heart of this discussion are two differing theories of crime, first Gottfredson and Hirschi (1990) self-control theory which is "for all intents and purposes, the individual-level cause of crime" (cited by Cauffman, Steinberg & Piquero, 2005, p.232). Those with low self-control lack diligence, tenacity, and persistence, find a lack of determination to forego gratification, resolve matters in more physical rather than verbal fashion, usually do not possess or value higher education nor have cognitive abilities requisite to skills or training and lack interest in preparation for long-term pursuits and are more self-indulgent (Cauffman, Steinberg & Piquero, 2005), Second, T.E. Moffitt, (1993), provides an interesting area of study specifically with two variances of delinquency, echoing the imitation aspect in the first distinction of behavior, adolescence-limited (AL) which is antisocial mimicking, gaining instruction through peers beginning with adolescence and terminating with adulthood. The second distinction of behavior is the life-course persistent (LCP) delinquency which deals with hereditary psychiatric disorders that have worsened

with age. A third group emerged from this study, albeit small, yet significant is referred to as abstainers that refrain from antisocial behavior all together (Cauffman et al., 2005).

As asserted by Cauffman et al., (2005) “Gottfredson and Hirschi claim that a single factor, low self-control, when coupled with opportunity for antisocial activity, underlies antisocial behavior over the life course” (p. 142). They further draw a distinction between theories of Gottfredson and Hirschi, self-control and Moffitt’s AL and LCP theory claiming “that although self-control is an important individual-level characteristic which should be incorporated into models of criminal activity. It is not the only crime generating factor (especially among serious offenders). More specifically, biological and psychological/personality factors should also be directly and independently related to offending, above and beyond the impact of poor self-control” (p.139).

Moffitt, Caspi, Harrington & Milne, (2002) provides a longitudinal study relative to AL and LCP consisting of 1,037 children (52% males and 48% females) which suggests that LCP are few and persistent and AL is temporary and more common and near normative behavior. The LCP antisocial behavior began early on in life and the social environment and inherited or acquired neuropsychological severely manifests further behavioral problems. The transaction of poor family environment, poor relations with people in the form of peers and teachers emerge creating a deeper infinity for more aggressive behavior of which the inverse is purported for the AL delinquent.

The evolutionary path for understanding criminal behavior has often been misjudged, misguided or misplaced by political/partisan ideologies or through policies that have developed as a result of the era or its influences (Akers & Sellers, 2009, Akers, 1990, Lilly, Cullen & Bell, 2007, and Walsh, 2000). Society has provided numerous explanations of crime, cause and effect

and to date there is no silver bullet or singular causation of criminal behavior that survives. Scholars will agree that crime does not have a specific cause in the brain nor is there a single explanation for criminal behavior (Rowe, 2002, Siegel, 2008, Fagin, 2007, Bartol & Bartol, 2008)

Regardless of society's attempts to prevent juvenile crime through the use of a juvenile justice system developed for rehabilitation and treatment of an offender, juveniles sometimes commit very serious offenses. Their act demands prompt and even handed justice taking into account all available variables (Marion & Oliver, 2012: 2006). A justice system is in place to safeguard the rights of the juvenile offender and in order to transfer a case from the juvenile section to adult criminal courts generally requires a separate hearing to determine the merits. With this established there still resides the controversy of how much punishment and for how long. It has been suggested that with the newer technology perhaps the brain studies may become more useful in the criminal justice field and particularly in the juvenile sector (Dolan & Anderson, 2002).

At this juncture it is critical to think over the influences of policy on crime such as money, politics, ideology, social influences and media. The lack of funding for support of families with an incarcerated member or a domestic violence situation or the children involved. Take a moment and reflect on ethical issues that pertain. What questions may arise at this juncture?

### **Sentencing Disparities-Crack v. Powder Cocaine**

The following material examines sentencing disparities. The sentencing disparities around crack and powder cocaine, pointing out the differences and similarities between sentencing practices used by the federal government and the State of Pennsylvania. What factor(s) might account for the disparities observed in the federal sentencing guidelines?

Crack cocaine and powder cocaine remains cocaine, so why is such a disparity in sentencing and why such a disparate impact on minorities? Researchers will often examine the environmental impacts that create disillusion with current laws and debilitation of neighborhoods. Based on material presented thus far could it simply be that those with political and economic means (major political contributors) lobby sufficiently to get tough on crime laws that will support the Prison Industrial Complex?

As asserted by Tonry (1994) “First, conservative Republicans in national elections “played the race card” by using anticrime slogans (remember Willie Horton?) as a way to appeal to anti-Black sentiments of White voters. Second, conservative politicians of both parties promoted and voted for harsh crime control and drug policies that exacerbated existing racial disparities” (p. 475). The police are the first line of defense against crime and the effectiveness of the police are generally measured by reported crime data in comparison to arrest data; however there is no real measure of overall success (Skogan, 1999).

More recently researchers have been driven by observations and the impact of quality of life enforcement or an ecological approach, still there remains the perception that drug dealing and drug proliferation are in direct proportion to the debilitation of neighborhoods, which holds some truths but in reality is a part of the problem not the whole problem. Indicated by other English speaking countries, they have disproven assertions that harsher punishments significantly increase public safety (Tonry, 1994).

Although treatment and school based prevention programs have demonstrated greater promise to intercede the drug epidemic, America has remained with drug control policies that are a major cause of racial disparity in prisons (Tonry, 1994). Pennsylvania and New York are similarly situated based on personal experience of the author. However, Pennsylvania is the subject material used in this comparison.

In the U.S. today, more than 2.3 million adults are in American jails or prisons and as the Pew Center on the States has reported, that amounts to more than one in every 100 adults in an American jail or prison nationwide. While dangerous criminals should be behind bars, high incarceration rates cost taxpayers \$50 billion per year (Pew Center, 2008). In Pennsylvania, over 87,000 adults are behind bars, meaning that one in every 111 Pennsylvania adults are in prison. Incarcerating one of these prisoners costs \$98 per day or over \$35,000 a year. State corrections costs alone in Pennsylvania exceed \$1.8 billion annually (Pew Center, 2009).

Pennsylvania Corrections Data

Total Number of prisoners	Average Cost per state prisoner	Total annual state corrections costs in Pennsylvania
87,363	\$35,000 per year	\$1.8 billion

Tonry (1994) maintains that “There is no valid policy justification for the harsh drug and crime control policies of the “Reagan and Bush administrations...The justification is entirely political” (p.488). However it is argued that it is sometimes unfair to blame national Republican policy; political leaders have followed the will of the people; and to ignore that crime may be interracial and to ignore it would have an adverse impact on the Black victims. Non-the-less,

crime control effectiveness should not be politically motivated and disregard flexible public objectives that can be measured and evaluated in order to alter course for the best interest of those we serve.

Finally, this chapter afforded pathways to examine decision making relative to influences on public policy. The War on Drugs is posed in a fashion that alludes that drugs are the target of the enforcement and not the offender. The insidious crack cocaine epidemic has been associated with crimes of violence, which is accurate, but it remains that cocaine is cocaine in any form. The inner-city populations have sensed disparate impacts resulting in increased incarceration of minorities and deterioration of neighborhood quality of life issues. In the end one can argue that the get tough on crime policy and increased prison populations were resultant of deviant behaviors rising to the level of crime. One can also conclude that the public policies devised by government may have been influenced by campaign contributions for the benefit of the Prison Industry Complex. At the end of the day, the reader must decipher and equate ethics and ethical or non-ethical influences portrayed as a benefit to society or for only the profiteering segment of society. What is of interest is where ethical decision making in day to day CJ practices become tainted by public policy involving influences that may or may not be ethically founded.

### **References**

- Akers, R. L., & Sellers, C. S. (2009). *Criminological theories (5th Ed.)*. New York: Oxford University Press, Inc.
- Akers, R. L., & Jensen, e. G. F. (2006). Social learning theory and the explanation of crime: A guide for the new century. *Advances in Criminological Theory*, 11

- Bartol, C. R., & Bartol, A. M. (2008). *Current perspectives in forensic psychology and criminal behavior (2nd Ed.)*. Los Angeles, CA: Sage Publications, Inc.
- Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance*. New York: Free Press.
- Cauffman, E., Steinberg, L., & Piquero, A. R. (2005). Psychological, neuropsychological and physiological correlates of serious antisocial behavior in adolescence: The role of self-control. *Criminology*, 43(1), 133-176.
- Cohen, S. (1972). Folk devils and moral panics: The creation of the mods and rockers. In Peter B. Kraska & John J. Brent, 2011, (2nd Ed.) *Theorizing Criminal Justice: Eight Essential Orientations* (pp. 151-155 & 302-303). Longrove, Illinois: Waveland.
- Dolan, M., & Anderson, I. M. (2002). Executive and memory function and its relationship to trait impulsivity and aggression in personality disordered offenders. *Journal of Forensic Psychiatry*, 13(3), 503-526. Doi: 10.1080/0958518021000019452
- Kraska, B. & Brent, J.J. (2011), *Theorizing Criminal Justice: Eight Essential Orientations* (2nd Ed.) Longrove, Illinois: Waveland.
- Marion, N. E., & Oliver, W. M. (2006: 2012). *The public policy of crime and criminal justice* (2<sup>nd</sup> Ed.). Upper Saddle River, NJ: Prentice Hall.
- Mason, C. (January 2012). Too good to be true: Private prisons in America. *The Sentencing Project*: 2–4.
- Lilly, J. R., Cullen, F. T., & Ball, R. A. (2007). *Criminological theory (4th Ed.)*. Thousand Oaks, CA: Sage Publications, Inc.
- MacKenzie, D. L., Gover, A. R., Armstrong, G.S., & Mitchell, O. (2001). A national study comparing the environments of boot camps with traditional facilities for juvenile offenders. *National Institute of Justice Research in Brief*, OJP, Washington, DC.

- Masten, A. S. (2001). Ordinary magic: Resilience processes in development. *American Psychologist*, 56, 227-238.
- Marion, N.E. & Olive, W.M. (2012). *The Public Policy of crime and Criminal Justice* (2nd end). Upper Saddle River, NJ: Prentice Hall
- Moffitt, T. E. (1993). Adolescence-limited and life-course persistent antisocial behavior: A developmental taxonomy. In Ronald L. Akers & Gary F. Jensen, biology and crime *Psychological Review*, 100, (pp. 674-701. Los Angeles, CA: Roxbury Publishing Co.
- Moffitt, T. E., Caspi, A., Harrington, H., & Milne, B. J. (2002). Males on the life-course-persistent and adolescence-limited antisocial pathways: Follow-up at age 26 years. *Development and Psychopathology*, 14, 179-207.
- Pew Center on the States. (2008). One in 100: Behind bars in America. Washington, D.C.: Author. Retrieved on July 27, 2009 from [http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf); The Pew Center on the States. (2009). One in 31: The long reach of American corrections. Washington, D.C.: Author. Retrieved on July 27, 2009 from [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_1in31\\_report\\_FINAL\\_WEB\\_3-26-09.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf)
- Pew Center on the States. (2009). 1 in 31: The long reach of America corrections – Pennsylvania. Washington, D.C.: Author. Retrieved on July 27, 2009 from [http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact\\_Sheets/PSPP\\_1in31\\_factsheet\\_PA.pdf](http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_PA.pdf); Pennsylvania Governor's Budget Office. (2009). Current and proposed Commonwealth budgets. Harrisburg, PA: Commonwealth of Pennsylvania.

- Petersilia, J. (2000). When prisoners return to the community: Political, Economic, and social consequences. *Sentencing & Corrections*, 9, 1-8 Office of Justice Programs. U.S. Washington, D.C.: NIJ: Office of Justice Programs.
- Reisig, M.D., Holtfreter, K. & Morash, M. (2002). Social capital among women offenders: Examining the distribution of social networks and resources. *Journal of Contemporary Criminal Justice*, 18 (2), 167-187.
- Robertson, D. L., & Indermaur, D. (2005). Social issues as media constructions: The case of 'road rage'. *Crime, Media, Culture*, 1, 301-321.
- Ryan, R. M., Kalil, A., & Leininger, L. (2009). Low-income mother's private safety nets and children's socioemotional well-being. *Journal of Marriage and Family*, 71, 278-298.
- Siegel, L. J. (2008). *Criminology (4th Ed.)*. Belmont, CA: Wadsworth.
- Skogan, W. G. (1999). Measuring what matters: Crime, Disorder and fear.
- Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing. *Process, Policies, Processes, and Decisions of the Criminal Justice System*. 3. <http://www.justicestudies.com/pubs/livlink3-1.pdf>
- Toffler, A. (1990). *Powershift: Knowledge, wealth and violence at the edge of the 21st century*. Bantam Books.
- Tonry, M. (1994). Racial politics, racial disparities, and the war on crime. *Crime & Delinquency*, 40:4, 475-494.
- Walsh, A. (2000). Behavior genetics and anomie/strain theory. *Criminology*, 38, 1,075-1,108.

## **Chapter 10 Public v. Private Policing: The Ethical Dilemma**

### **Abstract**

This section furthers the discussion in preceding chapters of individual liberty and ethics and the private versus public policing discussion.

### **Introduction**

Policing in the United States has undergone a metamorphosis since its inception. The Metropolitan Police Acts of 1829 in England had begun the modeling of modern day policing in this country. The Acts provided a blue print and policing in this country has been in a transformational period since. The primary reason for change generally surrounded protection of citizens (Urbanization), service delivery, crime, and global issues. These restructuring exercises have been expedited in the last thirty years, specifically due to the indoctrination of technology in society.

Public policy must be responsive to the needs of its citizenry. With recent special crimes such as Identity Theft, Cyber Stalking, Cyber Bullying, and most notable the 2016 Presidential election whereby a foreign government may have had influence on the elections. In concert with mitigating illegal acts through cyber technology rises the issue of individual privacy rights. Further complicate the enforcement with Constitutional concerns such as guarding against unreasonable intrusion by government into private citizen person, places and effects.

Enter into this discussion, private security and public policing. Although both often find themselves providing similar service or tasks, they do contrast each other in very distinctive

practices. I have frequently been asked about “Big Brothers” over reach. I must ask whom are they speaking? More often than not, the response is government. The following link provides information relative to the two enterprises. <https://www.ncjrs.gov/pdffiles1/nij/247182.pdf>

The ordinary person that purchases a cellular telephone instructively clicks on the “Accept” button indicating that the person agrees with the privacy of information and additional requirements by the supplying company. I suggest that the reader of this material has not taken the time to read the small print. Rather they click accept so they have that article of instant gratification in their hot little hand. The same is generally holds true with most social media packages.

### **Protecting Privacy and Individual Liberties**

*“Progress is impossible without change, and those who cannot change their minds cannot change anything.” ~ George Bernard Shaw.* Ergo if enforcement is going to demonstrate progress in light of new technologies and citizen complacency then the collaboration of private and public entities must be realized. Big brother is not government but rather those that citizens have willy-nilly provided their private information. Private companies have almost exclusively insinuated a pact of information protection between the customer and the service deliver, such as Google, Facebook, Instagram, or Twitter. However, at the moment a person loses her/his identity through theft they turn to the public police. Frequently the local policing entity is ill-equipped to handle the theft.

Highly trained and technologically savvy personnel are required for these types of investigation. Local police regularly find they are underfunded and without proper resources to handle the investigation. The federal law enforcement find itself under siege by the utter

numbers of complaints. This is not a new dilemma we find ourselves in. At the turn of the century, auto theft and bank robbery were largely handled by federal agencies because of crossing state lines and the restricted jurisdictional boundaries of local and state law enforcement. As the states became more sophisticated in enforcement efforts, these crimes were relegated to the local jurisdiction. The same is true with computer crimes. As state and local policing efforts gain the high-tech qualifications the more of the enforcement is donned onto them. Would this be as necessary in the volume of cases had the individual been careful with their private information to begin with? Has society become so complacent that nary a thought is provided to potential outcomes? I had heard on more than one occasion that you can't fix stupid!

Private security in these companies can track offenders and assist local law enforcement in their efforts. Public policing has rules that restrict the type of efforts they may employ. Those rules are generally found in the U.S. Constitution and State Constitutions. Private companies, not so much. However is it legal to accept illegally obtain information? If you find yourself investigating an identity theft and you call the company that the breach took place and they provide you information that you would otherwise require a search warrant to obtain the information; is it ethical to take the information?

### **Impacts of Organized Retail Theft**

Another type of crime that has lasting impacts on society is that of Organized Retail Theft (ORT). This illegal enterprise is an estimated loss of \$30 Billion-a-year having a significant negative economic impact on the consumer. It also has safety implications in safety issues that it brings to unsuspecting consumers. The black marketing of baby formulas, or medicines is not foreign to this country in light of rising costs of each. These criminal

enterprises have potential link to other criminal enterprises and terrorism. Gangs consistently steal high-value merchandise for resale with considerable profit.

<https://archives.fbi.gov/archives/news/stories/2007/april/retail040607>

### **Targets of ORT**

The stores targeted for theft run the gamut—from grocery and major department stores to drug stores and specialty shops (FBI, 2011). Targeted areas often consist of ship yards, shipping containers, rail cars and load docks. The receiving area for goods frequently have an inside person dealing with a false bills of lading.

Medications, infant formula, razor blades, apparel, camera film, batteries, DVDs, CDs, and smoking cessation products. Thieves may resell infant formula and pharmaceuticals among other things after not storing them correctly – or after altering expiration dates. These illicit acts result in the loss of revenue and taxes, support terrorist groups, and organized crime.

### **Proactive Devices to Combat ORT**

There is no single *Silver Bullet-No one technology* that is a savior. Items that may assist are protected delivery zones such as items of significance place in secure area, electronic article surveillance, double check system on bills of lading and delivery. The greater the cost of doing business illegally (paying off numerous inside persons) may deter some of the illicit acts.

Another ploy is Crime Prevention by Environmental Design. This means creating an environment less inviting for the thefts such as: clean parking lots that is vast spaces between loading area and personnel parking, limited truck entry into load area, limited loading and unloading, electronic surveillance in multiple locations, electronic fences that disable shopping carts from leaving shopping area; and vet personnel more thoroughly.

**Who's Job is it?**

**WHO'S JOB IS IT??**

**THIS IS A STORY ABOUT FOUR PEOPLE NAMED EVERYBODY, SOMEBODY, ANYBODY AND NOBODY. THERE WAS AN IMPORTANT JOB TO BE DONE AND EVERYBODY WAS SURE SOMEBODY WOULD DO IT. ANYBODY COULD HAVE DONE IT, BUT NOBODY DID IT. SOMEBODY GOT ANGRY ABOUT THAT, BECAUSE IT WAS EVERYBODY'S JOB. EVERYBODY THOUGHT ANYBODY COULD DO IT BUT NOBODY REALIZED THAT EVERYBODY WOULDN'T DO IT. IT ENDED UP THAT EVERYBODY BLAMED SOMEBODY WHEN NOBODY DID WHAT ANYBODY COULD HAVE DONE.**

The fact remains that ethically, morally, legally, all topics in this discussion remain within the purview of each and every one of us. Complacency, defined as: a feeling of smug or uncritical satisfaction with oneself or one's achievements, is a real enemy to our well-being. The term stokes the fires of apathetic behaviors that result in finger pointing. This collection of discussions is squarely situated in putting ethics back into everyday living. Waiting until the fit hits the shan, is inviting disaster into one's life. Good people do some dumb things, just ask me,

I have a litany of dumb things I could share (but I won't). This does not mean the person has become a bad person, but rather lapses of judgement infect us all. The opportunity for self-reflection is embedded in every hour of every day. Each decision is wrought with ethical decision making. Awareness of individual self-purported importance is a highly sought after attribute that the individual must be able to account for each day she/he looks into the mirror. If that person is not satisfied with whom is looking back, reorganize.

Being ethical does not require abstinence from mainstream life style, but does require thoughtful obligation to actions.

#### References

Combating organized retail crime: The role of federal law enforcement: Statement Before the House Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security, Washington, DC, November 05, 2009. (Testimony of David Johnson, Section Chief, Criminal Investigative Division, Federal Bureau of Investigation.

Federal Bureau of Investigation (2011). Organized retail theft: A \$30 billion-a-year industry.

U.S. government, U.S. Department of Justice. Retrieved from

[http://www.fbi.gov/news/stories/2011/january/retail\\_010311](http://www.fbi.gov/news/stories/2011/january/retail_010311)

How to Fight Back Against Organized Retail Theft Rings. (2003). Security Director's Report, 3(2), 11.

Private Sector and Law Enforcement Collaborate to Deter and Investigate Theft. (2011). GAO Reports, 1-44.

## **Chapter 11- Police Programs and Homeland Security/Hometown Security**

### **Chapter Abstract**

An interesting feature to remember in this discussion is that Homeland Security cannot happen without Hometown Security (IACP, 2009). This sections material examines programs at the federal state and local level. A point of interest at this juncture in this discussion is to call upon your own knowledge as to who provides Homeland and Hometown Security. What may come to mind at first blush is the military and the police. Yet in reality there are several divisions within the Department of Homeland Security (DHS) alone that support security efforts on a state and local parameter. Although it was initially conveyed that private information is considered personal, to what degree might one consider their personal information private, albeit it may have been cut loose though some form of social media.

### **Information**

This remains a hot button topic in our courts. Information that is gleaned through some form of investigative work in the CJ system, it is also shared with the federal government. Local CJ systems are aided in control of terrorism and crime through information sharing. The federal programs like Fusion Centers assist local hometown security efforts across the United States. What are Fusion Centers? Fusion centers operate as state and major urban area focal points for the receipt, analysis, gathering, and sharing of threat-related information between federal; state, local, tribal, territorial (SLTT); and private sector partners (DHS.gov). This section serves to examine a few of the Hometown Security programs. How does ethical conduct aid or impede these functions. While someone may have the authority to gain private information

without jeopardy does it mean they should? The old adage”Just because you can don’t mean you should” comes to the forefront in this section.

### **Information gathering/deciphering**

Information that is freely bounding through the troposphere is literally at will for those that wish to mine it. Information that was given up through social media, cellular telephones, or the WEB. Key words or phrases that may be overheard through surveillance techniques may trigger additional scrutiny. Privacy issues are hotly contested over ownership and to what degree privacy rights should prevail is an ongoing question. An unintended consequence of technology is the abundance of information and its availability with little to no protection of privacy.

The federal government has been partners with local policing and correctional agencies under the Department of Justice COPS Programs. Another agency supporting state and local security functions is the Department of Homeland Security (DHS). Provided is a link to the Organizational Chart of DHS and a link for a description of the DHS mission:

<https://www.dhs.gov/organization> <https://www.dhs.gov/our-mission>

Support for intelligence gathering and analysis and information sharing may be viewed through DHS Fusion Centers. In addition to many DHS enforcement and investigative units, there are many Fusion Centers located throughout the United States and not to mention the numerous federal and state and local agencies that have Homeland Security operations within.



Fusion centers became reality resulting from 9/11. Information or intelligence was pigeon holed by a multitude of agencies and was never shared. The attack on the United States on 9/11 changed the intelligence landscape. As an example, if a terrorist fighter in Afghanistan was taken and he had a note in his pocket “Panel truck full of explosives, Anytown, USA, 4th of July” and you are the police chief in the community of Anytown, USA, you probably want that information. How the fighter was captured, is not pertinent, but the intelligence located on his person is critical (Should that fighter have been tortured to gain the information; does it remain pertinent?). The scenario may seem fictional beyond belief but it does illustrate the silo of information that once existed. What would possibly be the purpose for not sharing that information? The former establishes the necessity of fusion centers. The issue becomes have they overstepped their original authority.

The National Network of Fusion Centers (National Network) collects, collates, and analyzes data providing value to homeland security and law enforcement that no other federal or local organization can replicate. The below link provides DHS/Fusion Center description.

<https://www.dhs.gov/state-and-major-urban-area-fusion-centers>

### **Unique Information**

Fusion centers are information sharing hubs that provide comprehensive and appropriate access, analysis, and dissemination that no other single partner can offer.

### **Unique Perspective**

Independence from federal partners allows fusion centers to provide partners with a unique perspective on threats to their state or locality, contributing to the national threat picture.

### **Unique Role**

Fusion centers are the primary conduit between frontline personnel, state and local leadership, and the rest of the Homeland Security Enterprise, filling a significant security gap identified by the 9/11 Commission. The foregoing is a description from DHS Fusion Center.



Barn sky (2015) writing in the Brookings reports that not all work performed by the centers are not readily accepted, nor are they free of civil liberty allegations of abuse.

Critics of Fusion Centers like the ACLU and Government Oversight Committee's It argued that fusion centers provided low-quality intelligence to the federal government and were not contributing in a meaningful way to counterterrorism efforts (para 5).

Further, more than 40% of the centers are not reviewing their analytical products for civil liberty infringements—a large enough number to raise eyebrows (para 9). Find the link to the full article below.

<https://www.brookings.edu/blog/fixgov/2015/03/17/fusion-centers-whats-working-and-what-isnt/>

Information ownership has taken on new meaning and a reluctance not to share is eliminated to some extent. The handling of intelligence is a tricky wicket. The need for dissemination may be fundamentally sound when dealing with homeland security issues, while the method of discovery material may be questionable to some. Fusion centers have alleviated the fears of inaccurate or invalid information being circulated on a need to know basis. This has not been without issues and concerns. Although the centers became reality resulting from 9/11, the need of individual privacy protection remains at large. The attack on the United States on 9/11 changed the intelligence landscape and probably the mood toward strict privacy but remaining is the prevailing concept “just because you can don't mean you should.”

### **Community Oriented Policing (COP)/Problem Oriented Policing (POP) Defined**

COP is an acronym for community-oriented policing. POP is an acronym for problem-oriented policing. The tenets of each is to provide police with new partners and attacking

problems outside the traditional way, hence, “Thinking outside the Box.” Before going forth, the term thinking outside the box is a sound bite that may conger up many interpretations. This drives me nuts! Why, would such an innocuous term drive a person of reasonable sanity over the edge? First, what is the box? This has several meanings and unless all concerned are on the same page then one may find herself/himself chasing their tail. Exactly what are the items of concern, who will it take to resolve the issue, how much additional resources are required, and when might you pull the trigger on a resolution rather than procrastination through planning. Second, the term is succinct but one cannot lead from sound bites. Third, the term is cute, but cute does not identify systemic issues and the hard work required to identify the issues. Vigor, imagination, dedication and innovation are the true tools required and not the proverbial box. The stakeholders (internal and external) associated with the problem need to be linked, ground rules established and get down to the hard work.



**COPS**

*Community Oriented Policing Services  
U.S. Department of Justice*

The basic precepts to each is that the community police relationships are fostered in order to achieve goals such as maintaining order, reducing crime, the fear of crime, and the quality of life in neighborhoods. Problem-oriented policing requires the use of a broad range of information, identification and analysis of information used in addressing specific crime and disorder issues through innovative strategies.

Pre-Community Policing Era (late 1970s-early 1980s) and 2015 Intelligence, Data Driven, Predictive Policing

---

**Goldstein** and the **Problem Oriented Policing** – from **Reactive to Proactive**  
**The SARA Model**  
**Scanning**  
**Analyzing**  
**Responding**  
**Assessing**



The Center for Problem-Oriented Policing was established in 1999 with funding from the Office of Community Oriented Policing Services, U.S. Department of Justice, which supported the center through to the end of 2013. Hosting of the web site is currently supported by funding from The School of Criminal Justice, University at Albany, State University of New York (Center for Problem-Oriented Policing). Herman Goldstein (2001) defines POP as:

Problem-oriented policing is an approach to policing in which discrete pieces of police business (each consisting of a cluster of similar incidents, whether crime or acts of disorder, that the police are expected to handle) are subject to microscopic examination (drawing on the especially honed skills of crime analysts and the accumulated experience of operating field personnel) in hopes that what is freshly learned about each problem will lead to discovering a new and more effective strategy for dealing with it. Problem-oriented policing places a high value on new responses that are preventive in nature, that are not dependent on the use of the criminal justice system, and that engage other public agencies, the community and the private sector when their involvement has the potential for significantly contributing to the reduction of the problem. Problem-oriented policing

carries a commitment to implementing the new strategy, rigorously evaluating its effectiveness, and, subsequently, reporting the results in ways that will benefit other police agencies and that will ultimately contribute to building a body of knowledge that supports the further professionalization of the police (Web).

### **Community Oriented Policing/Problem Oriented Policing**

Policing is an establishment of fragmented systems consisting of over 18,000 local, county, state and federal agencies. Concurrently policing is undergoing a paradigm shift. One of the new models of police operations and court functions include programs such as Community Oriented Policing, Problem Oriented Policing, Compstat, and Community Courts and Corrections. These have been widely touted as an effective and efficient method of delivering police services and offender adjudication. In spite of the public approval, several of the police programs have been critiqued and criticized by police scholars. Although methodologies have been criticized and real outcomes questioned relative to the police models, the thrust of the COP/POP Models is neighborhood livability. The quality of life issues are the essence of livability in a neighborhood and in turn the community (Walsh & Vito, 2004; Marion & Oliver, 2012:2006; & Kelling & Wilson, 1982). Livability encompasses factors such as but not limited to crime, corruption, housing, diversity, and equal justice.

The major problem existing in a highly technologically advanced society is that the reliance upon technology has buffered the reality of the data provided with the lack of partnerships required to make the new advances work appropriately. Specifically, no one program or process is a standalone process that is independent of the other (Walsh & Eck as cited by Walsh & Vito, 2004). The uses of the programs in order to achieve maximum benefit

require development by a police department in concert with a plethora of neighborhood associations (residents) and governmental entities and not-for-profit organizations.

The following examples are strategies embraced by police agencies that were developed during my tenure as the Police Chief or Police Commissioner. These program strategies were used in differing cities in two separate states between the years of 1996-2010. The main impetus of the following programs was to perform CPR on identified neighborhoods. That is to first stop the bleeding and start the breathing within sections of the cities that impacted the remainder of the community. Targeted systemic issues were abandoned buildings, junk filled vacant lots, slum lord running amuck, crime reduction coupled with a policy of containment and abatement. The objective was to identify the systemic issues that initially eroded neighborhood livability that supplemented further blight and crime. The strategies were the result of best practices of other communities, neighborhood meetings of residents, and stakeholders in the community. The following are a few of the program strategies instituted with the gainful insight of neighbors, community leaders, not-for-profits, and government:

### **Nuisance Abatement**

This program was enacted as a city ordinance; this legislation contains a host of civil and criminal activities that are considered nuisances. Included in the list of offenses are drug sales, litter, excessive noise, barking dogs, unlawfully dealing with children, and disorderly bars are but a few of the topics contained in this law. Each violation carries with it a set number of points. The list of offenses had points attached for each individual violation. A property owner or business owner was assessed points as a result of an enforcement action (arrest or citation issued). Points could not be assigned for an enforcement unit merely being dispatched to an address.

A property which receives 12 points in a 6-month period, or 18 points in a 12-month period, both the property and business owners (where separate) would be required to appear before an independent hearing officer. If the nuisance charge(s) were sustained, the mayor then would have the authority to close the business for up to one year, and revoke all of the business owner's certificates to operate a business within the city. Also, the property is posted with signs that declare the location a nuisance, as well the period of closure. Important to note is that points expire one year after issuance. A closure can only be based on the previous 12 months.

Prior to the enactment of Nuisance Abatement legislation, a landlord would remain at arm's length from any form of enforcement action. She/he would argue that once the property is rented, it then becomes the domain of the renter and they are responsible for all conduct therein. In short, the landlord would absolve them self of legal liability in this format. The landlord would simply remain collecting rent with impunity. Some landlords would provide minimal repair to a building required to meet the minimum code. One of the issues discovered through neighborhood meetings was that some tenants were held hostage by the landlord. Due to economic means a tenant was unable to complain of livability of the premise or exterior activity for fear of being evicted. This class of tenant may have had limited opportunities to rent due to economic barriers, immigration status, language barriers, or criminal record. Often it was easier to exist, rather than complain. The silence was deafening once investigators and neighborhood advocates began digging and uncovering the onslaught of systemic issues.

In many, if not most states in the U.S. have a form of licensing and regulations regarding landlord/tenant obligations. The landlord is issued a certificate of occupancy (generally through fire codes and may have other names for the occupancy) that specifies the dwelling or building has been inspected, meets specific standards, and is approved for occupancy. A certificate of

Occupancy is a license to operate issued by a local, county or state agency. The certificate is issued much like a U.S. Supreme Court Justice, during periods of good behavior. The certificate also falls under administrative codes with the jurisdiction that issues the license. The agency that issues the license, may suspend or revoke the license, provided agency policy is followed. In other words, He who issues, is he who may take away. However, due process must be provided for as was the case in this legislation (Hearing Process).

The landlord was thusly held responsible for whom they rented to, conduct within the premise, they were provided notification of enforcement action at the property, and they were expected to take remedial action. A simple, "I told them to behave or I would evict them", did not qualify as remedial. The action had to be documented, authentic, have repercussions for failing to heed the warning, and have some overt action on the part of the landlord. Landlords were under greater scrutiny and held to a higher standard. One which aided to raise the standard of living in a neighborhood, rather than add to its deterioration.

As one may imagine, the program was not embraced by all landlords. The stiff resistance was not only voiced at meetings of Landlord/Relator Associations that the Police Chief was required to present and address concerns of the association or meetings in the neighborhoods that tenant felt they would come under fire from landlords in some form of extortion or intimidation. In one location a landlord/tenant advisory panel was formed to address ongoing issues of real or perceived abuses (By landlords, government, tenants). At the conclusion of the first year a survey of landlords by the panel was conducted and the majority of landlords felt the legislation helped them with tenants, eviction processes due to violations, and provided the ability in some cases to renovate property and increase rent. Certainly the minority was equally vocal with disdain for the legislation. During the first year of operation generally two or three residential

rental properties or a business was closed. Compliance with the legislation was prompted by enforcement.

One key components of the legislation was that the points for a violation are attached to a property, not the landlord. Regardless of the owner. For example, Person “A” gets close to a shut down due to point violations, he then sells the property to his spouse, Person “B” thinking the points dissipate at that juncture. Not so. The points follow the property until they reach the expiration date. In most states, Real Estate Laws require notice by the seller to a buyer of hazards and suits against the property.

Putting this piece of legislation into perspective, you Officer are called to a location in tough love neighborhood and you find several violations of civil codes. A single mother from Hatti with five small children reside therein. The mother rents the property from a known slum lord that has several properties in disrepair. You alert the mother that you are going to report the violations to code and take civil action against the slum lord. She immediately breaks down crying, begging you not to do so for fear of the landlord reporting her to the Immigration authorities. She is a contributing member of the community working three jobs and raising her five children in the American way. Her pleas are taking toll on your emotions. What are you going to do and how in the world can you justify your actions?

### **Neighborhood Enforcement**

This is a proactive police program. A coordinated approach to improving the livability of neighborhoods by solving multi-faceted, persistent community problems that lowers the quality of life in the City's neighborhoods. This is a proactive approach focusing on the prevention of crime, the proliferation and continued deterioration of exploited neighborhoods. A key goal of

this approach is to increase the positive environments, which fosters neighborhood growth and positive perceptions of the City.

This approach supports a problem solving method relating to systemic issues impacting blocks of neighborhoods, rather than merely responding to a report after problems occur. The initiative uses traditional policing, combined with code enforcement, community policing, fire inspections, probation, parole, drug enforcement units, state liquor authorities and animal control to eliminate the enabling conditions of the problems. It calls upon other government resources and community partners to improve neighborhood livability. Neighborhood Enforcement develops innovative strategies, which combine civil law and criminal law remedies to address quality of life and crime problems.

### **Clean Sweep Detail**

City workforce uses the clean sweep concept to target blighted neighborhoods to stop further deterioration while increasing the livability of that neighborhood. The Neighborhood Enforcement Unit prioritizes problem properties or neighborhoods using established criteria to address the concerns in the order of priority.

Generally, clean sweep details encompass several city blocks at one time. This process better utilizes limited resources from all departments at one time. Abandoned vehicles (previously ticketed or tagged as abandoned) are towed, notice of violations issued and citations where warranted are issued. Property owners are provided an opportunity to respond to the Mayor's Office within five days of notice to discuss a plan to abate the violation.

Property owners are then provided a time line to complete the plan. If the plan is not provided or the violation abated prior to the re-inspection of the area, a citation is issued. Re-

inspection of the neighborhood is scheduled within 10-15 days of the clean sweep detail. The properties that remain in violation or have not provided the city with a plan for abating the violation are cited and issued a complaint-tracking number and entered into the system. Nuisance Abatement points are assessed at this time and notification letters to the property owner is sent via the U.S. Mail.

A risk of implementing any innovative program is initially the buy-in. Buy-in by the identified partners requires ground up development; Mark Twain said' "Everything is a Crank; until it works" and this is no stranger to local initiatives as everyone wants to support a winner, no one wants to be identified as associated with a loser. This is a mountain to overcome and requires resilience, stamina and deep belief on all participants but particularly from local leaders. The reliance of the politician upon the local police chief to bring home the winner is an enormous pressure and as soon as one innovation is brought home they expect the next one to follow right behind.

Finally, the quality of life enforcement activities stops further debilitation of the area, provides unification of needed partnerships, utilizes data driven enforcement, which in turn justifies actions to residents and is tempered with equal enforcement and positive rather than negative enforcement. In short, not only is enforcing the small stuff critical it is a foundation for all other forms of enforcement in order to build trust and momentum for eliminating crime (efficiently as possible) and not merely moving crime (Blumstein &Wallman; Eck & Maguire, 2006).

**Intelligence Led Policing/CompStat a POP strategy**

A definition of Intelligence Led Policing (ILP) is a strategic, future-oriented and targeted approach to crime control, focusing upon the identification, analysis and management of persisting and developing problems or risks. In essence, it is a model of policing in which intelligence serves as a guide to operations, rather than the reverse (McGarrell; Freilich; & Chermak, 2007). The most comprehensive of ILP is the CompStat strategy introduced most prominently in New York City by Commissioner Bratton. CompStat is short for Computerized Statistics that uses computerized information to develop statistical analysis of crime problems that form the basis of police action (Schick, 2004).

CompStat (Computerized Statistics) is a nationally recognized program originally introduced in New York City is a strategic problem-solving system that combines “state-of-the-art management principles with cutting-edge crime analysis and geographic systems technology” (Willis, Mastrofski, & Weisburd, 2004). Compstat is a single POP strategy used in conjunction with other COP programs with the intended results of securing data driven results.

According to Walsh and Vito (2004, p.57) “CompStat is a goal-oriented, strategic – management process that uses information technology, operational strategy and managerial accountability to guide police operations...reduce crime and improve the quality of life.” Further bolstering my point that CompStat cannot be successful without collaboration with other tactics it is asserted in the FBI Law Enforcement Bulletin, four crime reduction principles that create the framework for the CompStat process are: accurate and timely data; effective tactics; rapid deployment of personnel and resources; and relentless follow-up (Shane, 2004). Technology has provided a closely associated by-product of the computer age. This is geographic mapping of crime. The combination of the two systems link maps of the agency jurisdiction with other computerized police records that replaces the old pin maps (LaVigne and Wartell, 2000). It is

worthy of note that not all police agencies have access to either of these systems nor do they have the required resources to implement the procedures if they had.

Unlike traditional police bureaucracies, the CompStat is intended to streamline, create a sharper focus, greater knowledge base and agile (Willis et al., 2004). CompStat has proven itself, however it is posited here that CompStat enacted without simultaneous strategies is nothing more than another single tool in the agency toolbox. Weisburd, Mastrofski, McNally, Greenspan, and Willis, (2003) contends the purpose is to fight crime and improve the quality of life, while at the same time have the ability to overcome traditional bureaucratic irrationalities. This includes conquering parochial attitudes, meaningless boundary lines and turf battles, barriers that prevented cooperation and ability to cut through red tape.

Thus technology as noted here has some real benefits to the security of homeland and hometown security. However, the least suspicious of intent and good will still remain unnerved with personal information and a government mix. Past conduct of those that have charge of the benefit and the minority that has misused the trust have made the concern omnipresent, where once ignored. What remains unknown is how the courts will deal with privacy issues and the “Duty to preserve safety and security”.

### **Hometown Security means what to Homeland Security?**

<https://www.pbs.org/wgbh/pages/frontline/shows/sleeper/inside/profiles.html>

The above link provides one example of the nexus between local law enforcement and Homeland security. A small cell located in the suburbs of Buffalo, NY. This enforcement was the combined effort of local and federal authorities. This illustrates that law enforcement,

regardless of local, state or federal, must work in conjunction with each other to achieve security. Historically, enforcement efforts reserved for federal agencies have since been relegated to local law enforcement, such as auto theft, bank robbery, drug enforcement, and kidnapping. Information being the lifeblood of enforcement activities it is abundantly apparent that information sharing is required. This is not restricted to the law enforcement agencies but is the responsibility of community itself to authorities. The previously discussed strategies toward Community Policing are avenues for intelligence gathering and sharing opportunities. Ethically, how should one agency deal with the information? When a change in administrations occurs (Generally Federal Level) previously engaged programs are often scrapped for a newer, shinier model. In short, if it works, get rid of it because it is not ours. The COPS effort has surpassed this obstacle and remains intact today, but at what level and at what degree of efficiency?

### **Who is going to take over when the adults leave town?**

Government resources are scarce even in good economic times. The COPS Office has received numerous reformations dependent on public policy. They began during the Clinton Administration (50,000 New COPS) a funding mechanism to bring new police officers into the profession during very difficult economic times. The Officers, depending on economic situation of the community, were funded by a formula that after a five year period they were funded in full by the local municipality. The COPS office remains in operation today but with differing programs, but remains dedicated to its original mission of supporting local police.

The purpose of programs may lose its meaning or because it was from a previous administration the public policy becomes tainted and may be bastardized. Webster defines bastardized as: to reduce from a higher to a lower state or condition. This means to debase,

corrupt, contaminate or weaken or dilute "it is unthinkable that I would bastardize my values". The COPS program remain relatively intact and is administered as a component within the U.S. Department of Justice dedicated to community policing. The ethics of public policy may not reside in the long term planning of communities as in this example of the COPS program. Albeit they remain in operation, as crime has reduced the money allocated to the program diminishes. Can crime increase as fast as it decreased? When public officials find themselves embroiled in public policy skirmishes over ownership or find a need to weaken something that works due to who may have originated the concept, often the public benefactors are the victims. Might short sightedness be an ethical violation of voluminous proportions?

Certainty, many of the COP/POP programs have intended remedial impacts both strategic and long-term. With limited resources facing communities of all size and particularly in policing, programs such as community based initiatives requires the public to afford maintenance when the storm and warn programs (Immediate pinpointed focus) and interactive programs (Police & Community) have achieved its goals. The police are hard pressed to maintain sufficient presence in all areas and must rely on a community response in the on-going maintenance effort. During this decade the political landscape has driven home the need for ethics, but also at the grassroots level. Ethical foundations is an expectation and responsibility of each citizen.

A legitimate question posed at this juncture may be; has sound thinking and programmatic ventures been scrapped for overzealous egos of a new administration? Has the ethical basis of the original idea been dissolved due to previous packaging and sale of the idea is not that of the new leader in town? Does the tax payer suffer by losing an effort that demonstrated sound results for the sake of a new ego in town? If it works, get rid of it!

## References

- Blumstein, A., Wallman, J., Eck, J., E., & Maguire, E., R. (2006). Have changes in policing reduced violent crime? An assessment of the evidence. *The Crime Drop in America* (p. 207-265, Chapter 7). New York, NY: Cambridge University Press.
- Barnosky, J. (2015). What's working and what's not. *Brookings*.  
<https://www.brookings.edu/blog/fixgov/2015/03/17/fusion-centers-whats-working-and-what-isnt/>
- Department of Homeland Security (2013). <https://www.dhs.gov/state-and-major-urban-area-fusion-center>
- Fagin, J. A. (2007). *Criminal Justice (2nd Ed.)* Allyn and Bacon.
- Goldstein, H. (2001). What is Problem-Oriented Policing? *Center for Problem-Oriented Policing*  
<http://www.popcenter.org/about/?p=whatispop>
- Kelling, G.L., & Wilson, J.Q. (1982). Broken windows: The police and neighborhood safety. *The Atlantic*,
- Marion, N.E. & Olive, W.M. (2012). *The Public Policy of crime and Criminal Justice (2nd end)*. Upper Saddle River, NJ: Prentice Hall
- McGarrell, E. F., Freilich, J. D., & Chermak, S. (2007) "Intelligence-led Policing as a framework for responding to terrorism," *Journal of Contemporary Criminal Justice*, Vol. 23, 2:142-158.

- Walsh, W. F., & Vito, G. F. (February 2004). The meaning of CompStat. *Journal of Contemporary Criminal Justice*, 51-69.
- Weisburd, D., Mastrofski, S. D., McNally, A. M., Greenspan, R., & Willis, J. J. (2003). Reforming to preserve: Compstat and strategic problem solving in American policing. *Criminology & Public Policy*, 2, 421-456.
- Willis, J. J., Mastrofski, S. D., & Weisburd, D. (2004). CompStat and bureaucracy: A case study of challenges and opportunities for change. *Justice Quarterly: JQ* /, 21(3), 463-496.

## **Chapter 12-Finding Ethical People from an Unethical Society**

### **Abstract**

This Chapter provides readers a look at Noble Cause Corruption and how it may facilitate itself among police officers. This section also provides reprinted portions of the author's research on pre-employment testing of police candidates. The section illustrates that police agencies that use the processes provided herein generally have a good fit employee that is generally ethically fit for the position. Readers should identify and evaluate gaps from pre-employment testing to the systemic issues that may lead to a lapse in ethical judgement. This material albeit subscribes to criminal justice members, it may be applicable to other disciplines.

### **Introduction**

Readers are advised that for this material to make sense to them, it is essential that they do not park their brains at the door! Simply put, bring forth knowledge obtained from previously engaged disciplines of Sociology, Psychology, Anthropology, Criminology, and History to name a few. There is no one single silver bullet that provides a simple answer to social issues. Simply put the etiology of ethics is tangential at best.

The awesome responsibility of local, state and federal governments to provide safe environments for its citizens is greater than one can imagine, but is often taken for granted and more so often generates a sense of complacency by citizens. No greater responsibility is vested in persons to carry out the function of protection and safety than on the members of the United States Military and the police officers within the near 18,000 police agencies in this country (Reaves, 2011). Generally this task is fused within statutory authority, partially due to the

reasonable societies entering into the social contract theory. The social contract theory can be found in the early writings of philosophers such as Aristotle, Socrates, and Plato, into the social contract thinker era of Thomas Hobbes (1651), John Locke (1689), and Jean-Jacques Rousseau (1762), and within the fabric of our justice system (Albanese, 2012; Pollack, 2010).

The Social Contract theory institutes a suitable affiliation between members of society and their government. Social contract argues that individuals willingly relinquish certain freedoms and unite into political societies, abiding by common rules, and accepting the corresponding duties of providing protection from one another and other types of harm. The social contract theory provides that law and political order are the creation of man and contrived for the purpose of public tranquility administered by government (Albanese, 2012; Pollack, 2010).

The United States is a country that is governed by the “Rule of Law.” Government in the U.S. gains its statutory authority through the U.S. Constitution, which further organizes and structures societies into state governments with State Constitutions, which is further subdivided into smaller units of governmental municipalities with local codes. The social contract theory, vests in police the authority to address public behaviors, laws and norms on behalf of societal members. This means that society have given up the right to address grievances against them (Pollock, 2010). Through the social contract theory the police are willingly provided their authority and power by its citizenry. At the same time, society has expected and continues to expect the highest degree of integrity, professionalism, accountability, and trustworthiness, and ethical behavior from their police during the process (Conditt, 2001; Seron, Pereira, & Kovath, 2004).

The ethical make-up of police officer candidates, which eventually become police officers, is critical to the organizational integrity of the agency (Pollack, 2010). A significant fashion by which society measures the organizational integrity is generally through the conduct of its personnel. This dimension entails misconduct, social deviance, or misrepresentation of public trust either on duty or off duty by police officers that undermines the public's faith in its police (Palmiotto, 2001). Albanese (2012) contends,

Ethics is central to criminal justice because morality is what distinguishes right from wrong-in differentiating the government's moral authority to enforce the law from the immorality of the crime itself...Only by being moral can criminal justice be distinguished from the very crime it condemns (p. 3).

Thus far, readers have availed them self to ethical leadership, corruption, attempting to distinguish between deviance and crime, and made mention of suitable, efficient selection of police officers to perform ethically in an unethical society. This section is intended to illustrate the police officer selection process as a key component of organizational effectiveness. Specifically emphasizing the initial selection is an important phase of developing organizational integrity. This can develop the first stage of future leadership within the police organization. The police middle manager and police leaders are responsible for establishing the ethical environment and climates of their departments. The control of police corruption is virtually impossible when police management fails to address unethical behaviors of its officers (Vito, Wolfe, Higgins, & Walsh, 2011).

### **Noble Cause Corruption**

In most instances candidates of police departments are often motivated by the ability to make a difference. In other words to help the less fortunate, the injured, the victim, and overall to do so in a noble fashion. Caldero and Crank (2004) assert that “noble cause is a moral commitment to make the world a safer place “(p. 17). Again an admirable trait in which to enter the profession. The problem that arises from strict adherence to this cause is when the ends justifies the means rather than compliance with an oath of office. When the use of short cuts supersede due process on a routine basis, there exist a potential for corruption.

At this juncture I draw your attention back to the “Group Think” mentality previously cited in a previous chapter. When a police officer finds herself/himself cloaked in the deception of invulnerability; when cohesion of the group (fellow police officers) takes precedence over sworn obligation; and when he/she falls prey to a rationalization process over duty, often unethical behaviors surface. They surface in-spite of original noble purpose and good intentions that drew the officer to the police calling. Because officers are frequently dealing with violence and the seamy side of life, the rationalization process may favor closure for those victimized over due process for those that violate the law. At this juncture officers are more concentrated on an end result and they may resort to unethical and perhaps illegal methods to protect the victim.

A safeguard provided by Pollock (2010) he suggests when confronted with noble cause corruption the officer should consider the following questions:

1. Is the activity perceived as illegal?
2. Is the conduct permitted per departmental policy?
3. Is the activity perceived unethical or is the activity actually unethical?
4. Is the activity acceptable under any ethical system, or just utilitarianism?

Succinctly, if it feels unethical or illegal, than it probably is. Agency members should be cognizant that “just because you can, does not necessarily mean you should” conduct oneself in a particular fashion. Judges, Lawyers, and juries often have months upon years to examine officer behavior that is right, but perhaps find that it may not have been the correct action to take.

Josephson (1998) posits “Character may determine our fate, but character is not determined by fate” (p. 2). An alternative view offered by Punch (2009) moves away from the individualist characteristics of ethical lapses to a broader base of managerial shortcomings and systemic organizational failures. In his book, *Police corruption: deviance, accountability and reform in policing*, he provides case studies of police departments throughout the world. He briefly concludes, resulting from his examination of each agency, that in each of these events always highlight aspects systemic failure and perhaps larger governmental oversight missteps.

### **Purpose of Candidate Testing**

Police officers are not ordained nor are they introduced to a heredity purification process which uniquely qualifies them for the tasks ahead in their careers. So then how can state and local agencies ensure they will be getting the best fit candidates to fill police positions? One topic of note is the ethical foundation the entry level police officer brings into the profession after preemployment scrutiny ought to equate to the organizational integrity as a result of eliminating the candidate that is not suitable for police work. According to Albanese (2012) and Pollock (2010), character is the building block of ethics and all ethics are learned behaviors.

The following content is from the author’s research that provides a best practice for prescreening of police officer candidates. Thus, attempting to demonstrate a significant relationship between the types of police candidate preemployment testing and the negative impact of such testing on disciplinary and termination actions due to ethical violations.

Investigating the correlation between preemployment screening and predicting unethical behavior in police candidates is the main focus of the authors study. Volumes of existing literature indicate ethics is critical in policing but there is limited research to describe how ethical candidates are identified (Gardner, 1990; Ivkovic`, 2003 & 2005; Kotter, 2001; Kanungo, 2001; Kane, 2002; Kouzes & Posner, 2007; Kane & White, 2009; Wolfe & Piquero, 2011).

Previous studies have established that in many instances preemployment screening of police officer candidates occurs through such procedures such as background checks, truthfulness testing, and psychological testing that is related to uncovering pathological or criminal behavioral predictors of the candidates (Arrigo & Claussen, 2003; Banish & Ruiz, 2003). The literature is scant which examines the usefulness of the preemployment screening processes of police officer candidates in areas such as written examinations, background investigations, truthfulness testing, medical examination, and psychological testing in predicting likelihood of disciplinary or termination actions for ethical violations. Likewise, the existence of a best practice for preemployment screening of police officer candidates is absent in the literature. In essence what works and what does not work is not yet known. It is therefore important to investigate the prescreening process of officers hired over a ten-year period of prescreening candidates in comparison to the actual number of ethical violations resulting in a disciplinary hearing and/or termination.

Whitman (2013) maintains his work may be important to the policing industry as it may provide an effective correlational measurement of ethical profiling of candidates reducing liability for the police organization and leadership as well as reducing loss of costly and highly trained members of the police organization due to ethical violations. Police officer selection is paramount for the organizational and the community effectiveness, integrity, and legitimacy.

The selection process is the first phase of developing organizational integrity and is likely the initial building block for developing future leaders within the police organization. Also vital to the integrity of each police agency is not only the proper hiring of personnel, but the retention, training and discipline of its members in order to maintain qualified members who will act ethically and responsibly (Vito, et al., 2011). This is further chief to ensure an adequate defense in the case of law suits against agencies. Whitman's study is an investigation of existing practices of police agencies during the hiring phase (prescreening) and its negative impact on ethical violations of the police officer after hire. This quantitative investigative study was designed to research the correlation between the preemployment screening processes and examine which processes result in the least disciplinary actions.

These works of collective scholars provide the backdrop for this research in that deviant, criminal, and violent behavior predictors may require mining from multiple sources of the police officer candidates social setting, mental health, personality, and genetics in order to gain the most fit candidate for the police officer position. The outcome of ethical behavior is learned over a police officer candidate's life-time and thus the theoretical framework selected as the best fit for this study is Akers Social Learning Theory.

## **The Study**

### **Study Population**

The population selected for this study is the law enforcement executives of a notable police chief's organization (NPCO) charged with the responsibility of hiring police officers. Purposive sampling was the best fit for this study because people or other units are selected due

to a specific purpose they fulfill. The participants' involvement in the study was completely voluntary.

The cross-sectional study was limited to law enforcement executives (Police Chief, Police Commissioner, Director or Superintendent) of police organizations within the United States (excluding federal and international members) with general law enforcement jurisdiction. Although not longitudinal, data reports from participants spanned a ten year period. The participating agencies voluntarily submitted data in the questionnaire that identified the organization by state agency (state police organization with statewide jurisdiction), municipal agency (towns, village, city or tribal police are defined within this category), regional agency (county police are defined in this category), or campus police (full police authority limited to campus jurisdiction) as well as the number of sworn members.

### **Data Collection**

This study is a non-experimental and cross-sectional correlational study. The self-administered survey/questionnaire was electronically administered by Survey Monkey to the identified police agencies. The participants were solicited from the membership list of a leading police leadership organization in the United States with an anticipated return of 250 participants from the potential of 5,049 members that meet the definition of Agency Head for this research. Bordens & Abbott (2011) contend "there is significant advantage to using the internet to conduct a survey or recruit participants: You can reach a large body of potential participants with relative ease...Data can be collected quickly and easily, resulting in a large data set" (p.270). The police agencies returning completed surveys ranged in size (sworn police officer strength) from small (less than 50 members), medium (51-500 members), and large agencies (500 and up members)

representing differing geographic regions across the United States. All agency participant information was submitted without an identifier of any type.

The research letters requesting participation made it abundantly clear that no participant identification would be included in the survey/questionnaire and data would be analyzed in aggregate format. The survey design selected provided a quantitative or numeric description of trends, and the population from a sample of that population. The data collection method was selected in order to generate data about the preemployment testing procedures and the number of ethical violations recorded and processed since the inception of the current preemployment screening process used by the responding participant.

This research explored the relationship between police officer candidates' ethical orientation by identifying predictors during the preemployment testing process and the number of ethical violations resulting in a hearing or termination of the police officer having been subjected to the preemployment testing. The research design employed a correlational statistical analysis technique to examine the influence of variables. The methodology and design in this study is similar to that put forth by Creswell (2009) which investigated a dominant variable that is influenced by multiple independent variables.

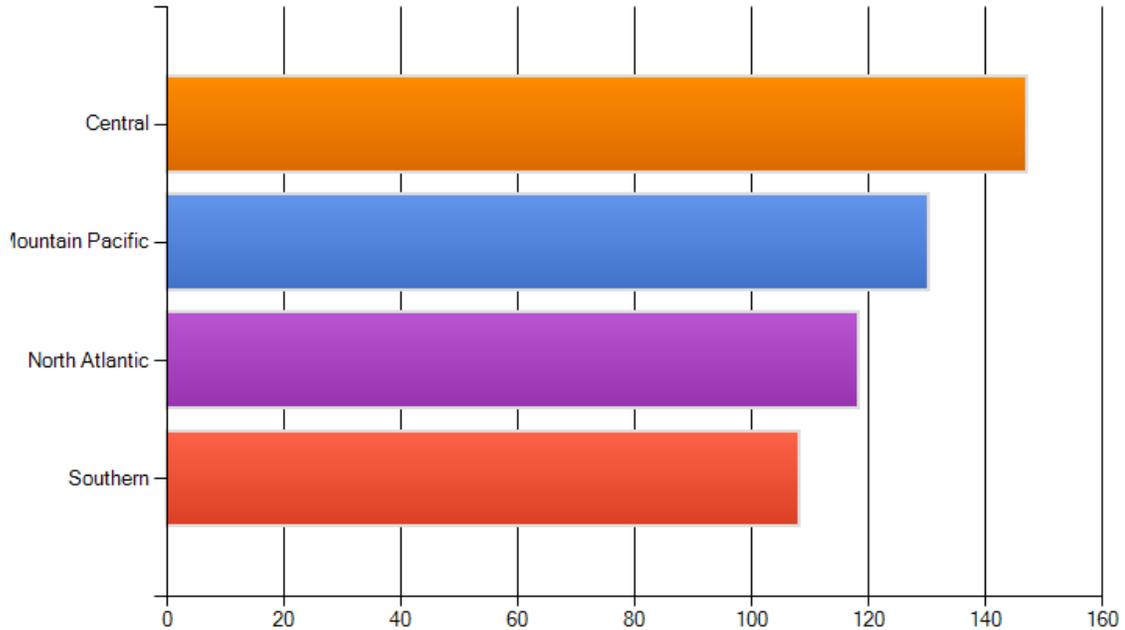
The purposeful sample for this study was pulled from the membership of a NPCO. All active members meeting the definition of Agency Head were solicited to participate. The expected return rate was 250 participants providing an adequate sample size for measuring the correlation between preemployment screenings of police officer candidates and the number of disciplinary and terminations as the result of ethical violations. The actual return rate of the survey was N=609 and after examination of each submission for completeness of information N=545. The original return of 609 surveys represents a return rate of 12% of the potential 5,049

eligible participants. The returned survey was scored by SPSS version 20. Each of the N=545 participant surveys yielded a quantifiable numeric score representing the number and type of preemployment screening methodologies performed as well as a numeric score assigned for ethical violations during the specified research period.

Based upon demographics, preemployment screening methodologies of the participants was further divided for additional comparison among groups with multiple preemployment screening methodologies (zero preemployment tests, one-three preemployment tests performed, four preemployment tests performed, and five or more preemployment tests performed). A second separate numeric code was established indicating the number of disciplinary actions and the number of terminations as a result of disciplinary action due to unethical behavior. A data subset was established reflecting the region of the United States participants represented and using the FBI Uniform Crime Report data the population of the number of police officers impacted was identified and evaluated in aggregate format.

The regions of the United States are those assigned by the NPCO within the State Association of Chiefs of Police Division: North Atlantic; Southern; Central; and Mountain Pacific Regions each consisting of 12 or 13 states and the District of Columbia (IACP, 2012).

The IACP uses the following region designations within the United States. The regions are: Central (Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin); Mountain Pacific (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Washington and Wyoming); North Atlantic (Connecticut, the District of Columbia, Delaware, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont); and Southern (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia). What is the geographical region of the United States is your police organization located? Please indicate your area.



### Data Analysis

The data collected were analyzed using the Statistic Package for Social Science (SPSS) with prearranged separation of the data. Agencies were categorized by number of sworn members, the number of preemployment testing measures, and the number of disciplinary and termination actions that have resulted in the ten year period using their preemployment process. A predetermined numeric score was assigned to each preemployment testing procedure used by each agency. The number was then used for comparison against the number of ethical violations and terminations reported by the participant.

The hypothesis that the preemployment testing using the selection process (psychological, background investigations, written entrance exam, truthfulness and medical

testing) will reduce the number of ethics violations and terminations of hired police officers was tested by comparing the number of ethical violations and terminations in the group of agencies that use no preemployment tests to those that use all five preemployment tests. A correlational research technique was used to examine a relationship between two or more variables investigating the surface relationship.

The testing technique employed was not to probe for causal reasoning, but correlation only. Both parametric and non-parametric statistics were calculated to identify statistically significant differences between the two groups. Parametric statistics are based on certain assumptions about the nature of the population and that the population is evenly distributed. This is not the assumption of the non-parametric statistic which may be better suited to identify direction and used with ordinal data or when the data is severely skewed. The specific analysis technique engaged in this study is explained in greater length in Chapter 4 of the original study, but not relevant for this discussion. Additionally, descriptive demographic information is used to establish comparability of the two groups to eliminate the possibility of contaminating variables such as geographic location or size of the agency.

The hypothesis asserts that an increase in the number of prescreening tests will be associated with a decrease in the number of ethical violations and terminations of post-hire police officers. The first and second research questions address whether the type and number of prescreening test is differently associated with number of ethical violations resulting in disciplinary action or termination. The third research question addresses best practices of preemployment screening of police officer candidates. A correlational analysis was the primary statistical test used to determine the relationship between the types of prescreening tests (psychological, medical, background investigation, psychological or entrance exam) and the

number of ethical hearings and terminations. In the event an inverse direction was determined in the initial analysis, a regression technique would have been applied to determine strength of the relationship.

Additionally, this research provides a rich data set of descriptive statistics describing the components of the police background investigations and the personality and behavior components of the psychological testing used. Demographics of the police organizations collected include allocated sworn strength, geographical region of the USA, and, police organization designation.

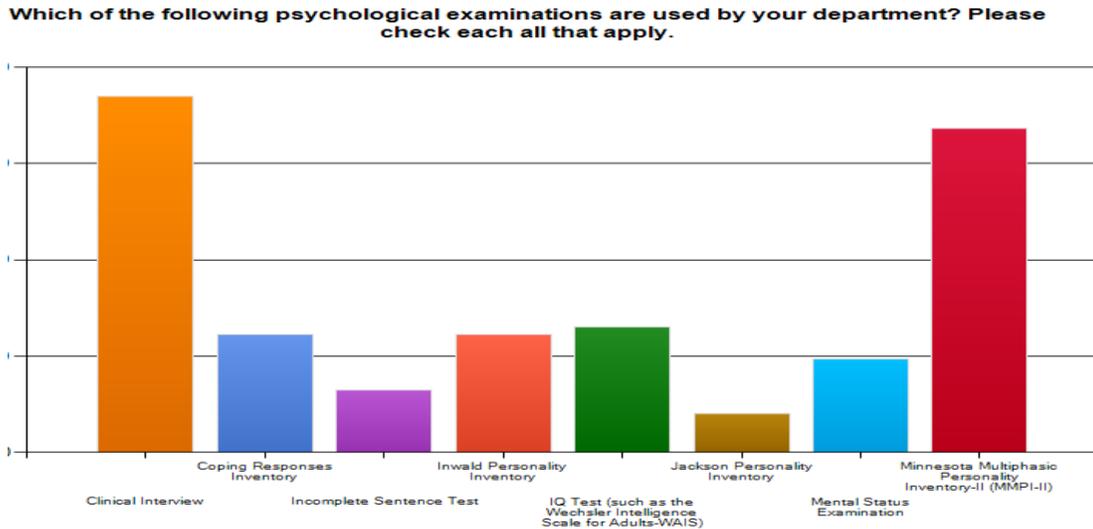
The researcher solicited an independent analyst to enter the data from the study using SPSS in order to preclude inferences of data manipulation on the part of the researcher. Survey Monkey provided the descriptive analysis of testing mechanisms and demographics.

### **Instrument**

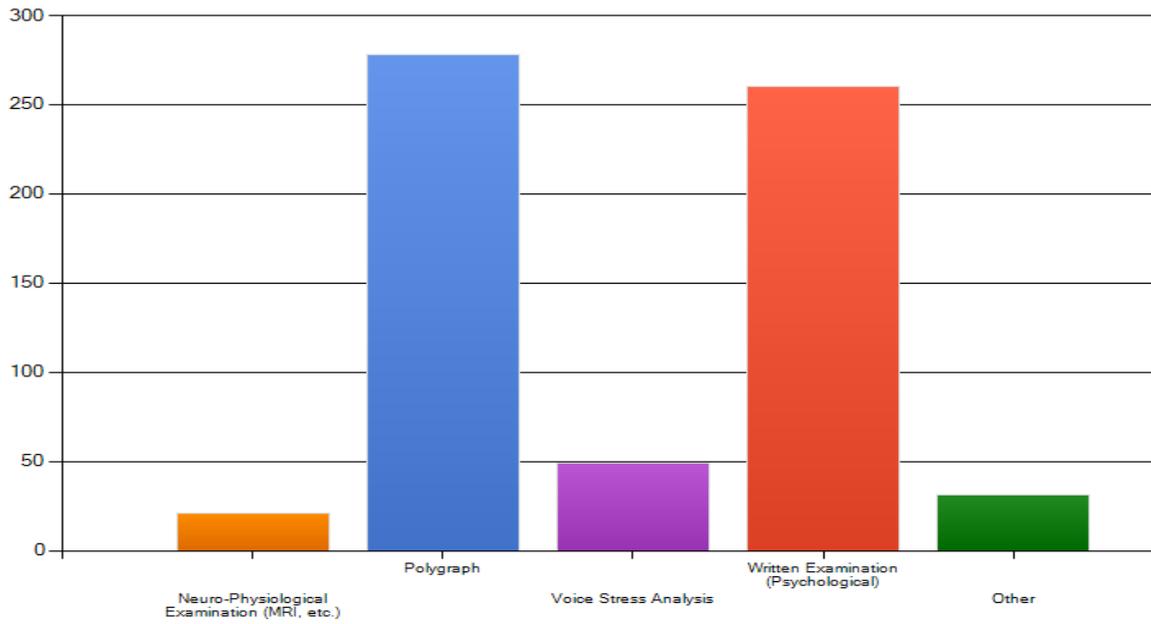
Participants were sent a self-reporting questionnaire online administered through SurveyMonkey. The instrument targets the identified sample group. The survey questions attempts answers for the research questions using proper analysis and due to the uniqueness of this study the validity of the instrument will not be known until the instrument is used in other research; all research is knowledge (Personal Communication, Andrew Ryan, PhD, March 2, 2012; Susan Gray, PhD, February 16, & 27, 2012). The survey instrument is researcher developed for this study and was reviewed by participating experts within the police field, establishing face validity of the instrument.

Variables included types of preemployment tests used for psychological evaluation and duration (predicting individual make-up and if he/she is a fit for law enforcement); types of truth

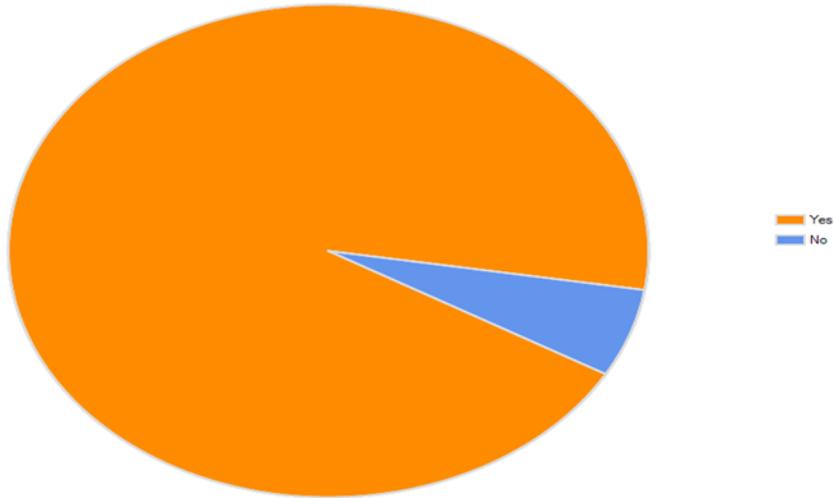
verification tests and duration (polygraph, voice stress analysis, or other examination); types and duration of background investigations (seeking critical competent information divulging social evolution of the candidate); medical and physical agility skills testing (determine capability to perform the essential job functions); and criteria and timing of a decision to conduct a psychological examination provided (after conditional offer of employment or as part of the background investigation). The following charts are of the type of testing provided to candidates and type of agency.



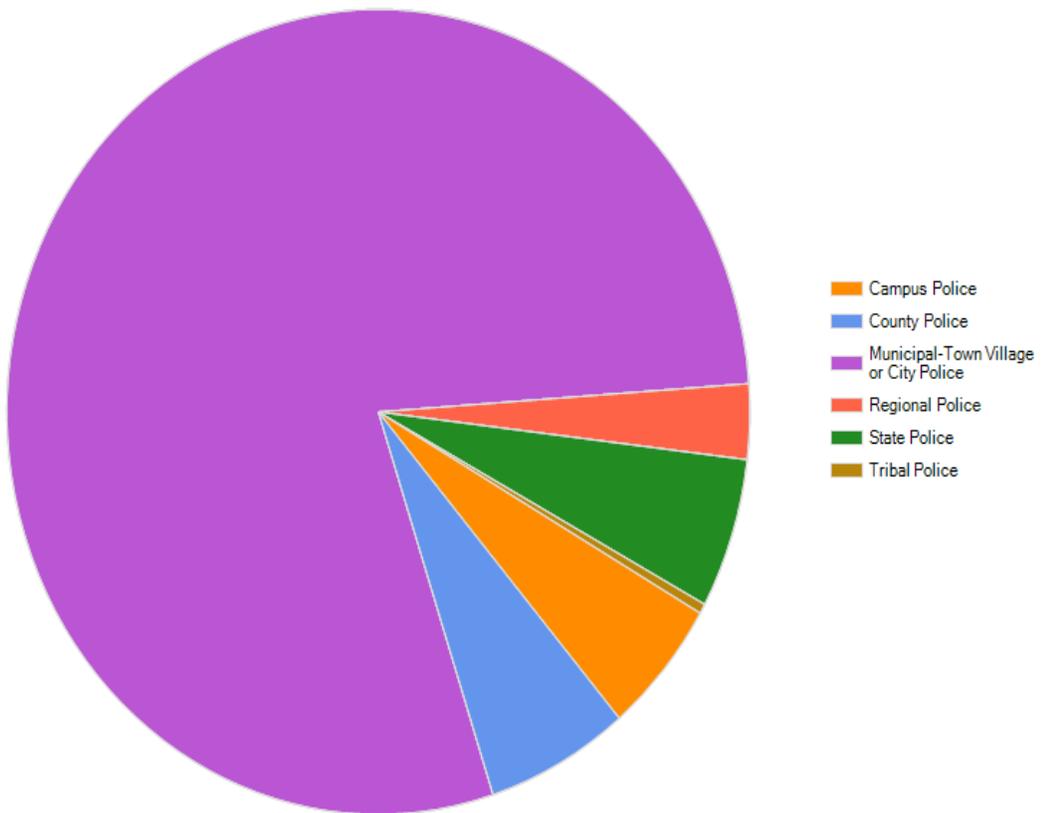
Please indicate which of the following types of truthfulness tests are used by your police organization. Please select all that apply. If you have selected other, please specify.



Does your police organization have general police jurisdiction?



Which of the following is your police organization designation?



The data collected was used to test the hypotheses stated predicting the correlational relationships of independent variables impact and the dependent variables. The results of the study are intended to provide a best practice model based on empirical evidence establishing a significant relationship between preemployment testing and ethical behavior of police officers. Subjected to correlational analysis data were insufficient to reject the null hypothesis or to support the alternative hypothesis and therefore further testing was unwarranted at this juncture as illustrated in the limitation section.

The validity of the questionnaire is determined from three forms of validity: content validity, criterion-related validity, and construct validity. In a questionnaire, content validity assesses whether the questions cover the range of behaviors normally considered to be part of the area being assessed; construct validity may be recognized by demonstrating that the results of the questionnaire agree with predictions; and criterion-related validity of the questionnaire involves correlating the questionnaire's results with those from another recognized measure (Creswell, 2009; Leedy & Ormrod, 2010; and Bordens & Abbott, 2011).

Essential to systematic research is the control of internal and external validity. Internal validity refers to those portions of the study that may interfere with the cause-effect among the independent and dependent variable (Glickens, 2003). Other concerns impacting the internal validity, test-wiseness or knowing how to take a test of police officer candidates could be alleviated through the multiple testing processes of police candidates. There could be other influences which could impact the testing results of the police officer candidate during an actual

preemployment testing process. This is not a significant methodological concern for this dissertation because the questionnaire is completed by the proper sample group (Police Chiefs) acting as informants on the types of testing performed in their agency and the number of ethical violations resulting in discipline or termination. Each item on the survey is clearly worded removing ambiguity in defining ethics or a violation resulting from abridging ethics. To increase confidence in construct validity the questionnaire was field tested by experts within a NPCO research committee. Comments were received and the questionnaire was amended prior to distribution of the actual survey being conducted.

### **Feasibility**

The problems anticipated in survey completion by the law enforcement executive requiring additional research for certain existing documents including the possibility of needing to request additional information from the Human Resources component of the agency was apparently not an issue as demonstrated by the response rate. In the case of psychological testing, the executive may have needed to obtain additional information from the psychologist that administered the evaluation; however this too did not appear to hamper participant completion of the survey instrument. The anticipated survey completion was 250 agencies, but again due to the interest in this study the size of the sample did not suffer a reduction but rather a significantly greater response of actual N=609.

As part of the ongoing professional efforts, this study supports the efforts of law enforcement executives to provide public security through processes to obtain the most credible personnel. The benefits as already provided should be obvious to the participants of the study;

however the greatest benefactor will be the research community. The limitations expressed will provide avenues for future research. The final study analysis will be shared with the participants and the NPCO for benefit of all law enforcement

The results of this investigation cannot statistically reject the proposed null hypothesis and is unable to support the alternative hypothesis. It does provide meaningful quantitative data that adds to the existing body of knowledge relative to police unethical behavior. The present study demonstrates that increased preemployment screening of police officers by means of the measures discussed in this study will have an increase on the number of unethical hearings and terminations rather than a negative impact as originally hypothesized. In other words greater preemployment testing of police officer candidates will result in a greater number of ethical hearings and terminations. This information gleaned from the study and the works of Sklansky (2006) demonstrates that today's members of police agencies are less likely to look the other way. They will report the incidents of substantial magnitude but may remain silent on minor matters. Inferences from this study are statistically agreeable in a bond between the individual, the police structure, while exhibiting a departure of old police subcultures, and an allegiance to noble cause corruption summarized in the discussion.

The outcome of this research stresses the importance of the scholarly works cited in the original study. Of significance is data that indicates a shrinking of the "Blue Wall of Silence" or the interaction of organizational influences and individual factors that may result in lapses of ethical judgment. Police officers who feel the system in which they are employed is just and fair will report ethical violations.

Explicitly stated throughout the first three chapters of the original research is that no single cause for unethical behavior exists. A covenant between the individual, the organization

structure and the police subculture establishes conditions in which police misconduct can occur. The sociological vetting methodologies of police organizations were measured as the focus of the study, although the police subcultures and organizational structure cannot be discounted. Conclusions of this study illustrate the need for police organizations to continually introduce ethical police officers into the membership in order to further erode the long standing police culture and misconduct that has been condoned through “Noble Cause Corruption”.

Results detailed in this research are plausible, particularly as concluded by Sklansky (2006) that the police departments of the 1950s and 1960s are not reflective of today’s police departments. In Sklansky’s research the integration of personnel through diversification is tantamount to change in police departments, further diminishing the “Blue Wall of Silence”. Sklansky provides three main categories of hiring within police departments that are primarily responsible for the breakdown of this wall of silence. They are race, gender and sexual preference. He is further resolved that the monolithic police subculture is slowly disappearing due in part to social fragmentation of police membership through court sanctioned diversification and the generational differences removing personnel from the old cry “it’s all about the job” (Sklansky, 2006). His research attributes departmental changes to the competency of new members, the effects the community and police share as a result of diversification and the altering of organization internal dynamics. The social fragmentations within the rank and file membership of police departments today is a departure from the past primarily due to diverse membership being sought by police professional and fraternal organizations formed based on gender, ethnicity, or sexual preference (Sklansky, 2006).

These factors has aided the decline of insularity of the membership where homage and loyalty was once limited to a police bargaining unit such as the Fraternal Order of Police or The

Police Benevolent Association. Police officers today maintain interests outside of police work rather than the memberships being solely about “the Job” (Sklansky, 2006; Salahuddin, 2010). Today’s police officer has a life after shift work and they will judge the fairness level of the agency of which they are a member to determine what and how much misconduct will get reported.

A study by Wolfe & Piquero (2011) of the Philadelphia Police Department provides an explanation of police misconduct, more specifically the organizational justice system as it is perceived by police. This examination of the Philadelphia Police Department depicts how personnel view the organization in structure and fairness of disciplinary application. The study included a random survey of 483 police officers employed by the Philadelphia Police Department. The results show that police officers who view their department as fair and just in its managerial practices are less likely to involve themselves in police corruption or hold fast to the code of silence or unethical behaviors such as noble cause corruption. If fair and equitable managerial procedures are practiced consistently, the more likely misconduct will result in an officer’s willingness to report (Wolfe & Piquero, 2011).

Chappell and Piquero (2004) claim that a deviant peer association is an important factor in predicting police misconduct. These authors suggest that officers, who associate with peers demonstrating deviant behavior, are themselves more likely to subscribe to the code of silence. These points are critical within the framework and conclusions of this study. Police leadership must import into the rank and file only the most ethical police officer in order to prevent contamination of peers.

Adams, Tashchian and Shore (2001) argue that structural influences can predict individual ethical behavior and moral decisions made in organizations. They also maintain that

unethical and deviant behavior may be the result of situational factors that are as equally important as individual characteristics. Still, it remains their contention that ethical lapses in behavior are better explained as a merger of individual and organizational makeup rather than as independent elements (Adams et al., 2001). The concept that police corruption may be the result of social structure and police department malady is not a new proposition (Sechrest and Burns, 1992). These scholars suggest that ethical persons may have an ethical lapse of judgment as a result of life situations.

This more complex explanation is further supported by Gottschalk (2011). His work puts forward police management's responsibility to examine both the rotten-apple (individual) and the rotten-barrel (systemic issue) because police misconduct has consequences for both. Therefore controlling the misconduct within a police organization requires examination of the individual and systemic concerns because corrupt cops are made, not born (Gottschalk, 2011). Police leadership must be able to simultaneously direct and lead across multiple generations; generations with differing values and having differing outlooks on what is right (Salahuddin, 2010). These scholars provide an avenue to better understand today's police department member. Collectively they suggest through a general agreement for concerted attention to establishing an ethical environment for attracting the ethical individual, adhering to ethical organizational practices, and the elimination of unethical police subculture.

Research conducted by Whitman (2013) adds to the existing body of knowledge supporting the importance of examining both the individual and the system, which are not mutually exclusive. His work exercises the opportunity to combine methods to provide a more ethical candidate rather than merely justifying misconduct a single bad apple or a bad barrel approach for assigning culpability for unethical conduct.

## References

- Adams, J. S., Tashchian, A., & Shore, T. H. (2001, February). Codes of ethics as signals for ethical behavior. *Journal of Business Ethics, 29*(3), 199-211.
- Albanese, J.A. (2012). *Professional ethics in criminal justice: Being ethical when no one is looking* (3rd Ed.). Upper Saddle River, NJ: Prentice Hall.
- Arrigo, B. A., & Claussen, N. (2003). Police corruption and psychological testing: A strategy for preemployment screening. *International Journal of Offender Therapy and Comparative Criminology, 47*(3), 272-290.
- Retrieved from <http://ijo.sagepub.com/content/47/3/272>
- Bannish, H. & Ruiz, J. (2003). The antisocial police personality: A view from the inside. *International Journal of Public Administration, 26*, (7), 831–881.
- Chappell, A. T., & Piquero, A. R. (2004). *Applying social learning theory to police misconduct. Deviant Behavior, 25*, 89-108. Doi: 10.1080/01639620490251642.
- Conditt, J. H., Jr. (2001). Institutional Integrity. *FBI Bulletin, 70* (11), 18-22.
- Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches*. (3rd Ed.). Thousand Oaks, CA: Sage.
- Gardner, J. W. (1990). John W. Gardner on leadership. New York: The Free Press.
- Glicken, M. D. (2003). *Social research: A simple guide*. Boston, MA: Allyn and Bacon.

- Gottschalk, P. (2011). Management challenges in law enforcement: The case of police misconduct and crime. *International Journal of Law and Management*, 53 (3), p. 169-181. Doi 10.1108/17542431111133409
- Ivkovic, S. K. (2003). To serve and collect: Measuring police corruption. *The Journal of Criminal Law and Criminology*, 93(2-3), 593-649.
- Ivkovic, S. K. (2005). *Fallen blue knights: Controlling police corruption*. Oxford, UK: Oxford University Press.
- Ivkovic, S. K. (2009). Rotten apples, rotten branches, and rotten orchards. *Criminology and Public Policy*, 8, 777-785.
- Josephson, M.S. (1998). *The power of character*. San Francisco, CA: Jossey-Bass.
- Kane, R. J. (2002). The social ecology of police misconduct. *Criminology*, 40, 876-896.
- Kane, R. J., & White, M. D. (2009). Bad cops: A study of career-ending misconduct among New York City police officers. *Criminology and Public Policy*, 8, 735-767.
- Kanungo, R., N. (2001). Ethical values of transactional and transformational leaders. *Canadian Journal of Administrative Sciences*, 18(4), 257-265.
- Kotter, J. P. (2007). Leading change. *Harvard Business Review*, 85(1), 96-103.
- Kouzes, J. M., & Posner, B. (2007). *The leadership challenges* (4th Ed.). San Francisco, CA: Jossey-Boss.
- Leedy, P. D., & Ormrod, J. E. (2010). *Practical Research: Planning and Design* (9<sup>th</sup> Ed.). Upper Saddle River, NJ: Pearson.

- Palmiotto, M. A. (2001). Can police recruiting control police misconduct. In M. A. Palmiotto (Ed.), *Police misconduct: A reader for the 21st century* (344-354). Upper Saddle River, NJ: Prentice Hall.
- Punch, M. (2009). *Police corruption: deviance, accountability and reform in policing*. Collumpton, Willan Publishing, 281 pp., ISBN 978-1-8439-2410-4
- Pollock, J.M. (2010). *Ethical dilemmas and decisions in criminal justice*. Belmont, CA: Wadsworth.
- Reaves, B.A. (2012). Hiring and retention of state and local law enforcement officers, 2008 (NCJ 238251). U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4333>
- Salahuddin, M.M. (2010). Generational differences impact on leadership style and organizational success. *Journal of Diversity Management*, 5(2), 1-6.
- Sechrest, D. K., & Burns, P. (1992). Police corruption: The Miami Case. *Criminal Justice and Behavior*, 19 (3), 294-313.
- Sklansky, D. A. (2006). Not your father's police department: Making sense of the new demographics of law enforcement. *Journal of Criminal Law & Criminology*, 96(3), 1209-1243. Retrieved from <http://ezproxy.library.capella.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21820080&site=ehost-live&scope=site>
- Vito, G. F., Wolfe, S., Higgins, H.E., & Walsh, W.F. (2011). Police integrity: Rankings of scenarios on the Klockars Scale by "Management Cops". *Criminal Justice Review*, 36 (152). DOI: 10.1177/0734016810384502

- Westmarland, L. (2005). Police ethics and integrity: Breaking the blue code of silence. *Policing and Society*, 15(2), 145-165.
- Whitman, M. (2013). Investigating the correlation between preemployment screening and predicting unethical behavior in police. *Capella University Dissertation*.
- Wolfe, S. E. & Piquero, A. R. (2011). Organizational justice and police misconduct. *Criminal Justice and Behavior*, 38, 332-350.

## **Chapter 13 Criminal Profiling: The Good, the Bad and the Ugly**

### **Abstract**

This discussion entails both empirical data and the work experience of a thirty-eight year law enforcement veteran. The section compares criminal profiling with actual practice. The author contends that the birth place of criminal profiling is found in Terry v. Ohio. This section suggests that criminal profiling is a day to day practice of street officers and the much romanticized psychological criminal profiling, which is relatively new, is a by-product portrayed in the media. Policing tactics and methodologies dealing with criminal behaviors, unlike racial profiling, is generally recognized as an acceptable process. Whereas racial profiling, is immoral, unethical, and illegal. The public often has a problem differentiating between the two, specifically in light of highly publicized episodes of police use of deadly force. The reader will synthesize the impacts of the 9/11 Terrorist attacks on America and profiling. Readers are encouraged to create a creative works that provides avenues that overcome the two issues.

### **Criminal Profiling Defined**

Criminal profiling is synonymous with offender profiling both of which are useful investigative tools used in policing (Woodhams and Toye, 2007). Profiling's purpose is to identify likely suspects that are correlated with criminal characteristics and patterns. Berg (200) maintains that a Psychological profiler relies heavily upon perpetrators methods of operation or evidence left at a crime scene to identify a person's personality or state of mind. The process is not new and dates back to the Jack the Ripper murder campaign in 1888 and has evolved to

applications including but not limited to predictive profiling, sexual assault offender profiling, and behaviors recognizable and related to criminal conduct (Canter, 2004).

### **Racial Profiling Defined**

Racial profiling is stereotyping. In short, racial profiling is the act of suspecting criminal activity based solely on the color of person's skin or their minority status or their ethnic origin (Warren, & Farrell, 2009).

According to the [American Civil Liberties Union](#) (ACLU):

'Racial profiling' refers to the practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin. Criminal profiling, generally, as practiced by police, is the reliance on a group of characteristics they believe to be associated with crime. Examples of racial profiling are the use of race to determine which drivers to stop for minor traffic violations (commonly referred to as 'driving while black or brown'), or the use of race to determine which pedestrians to search for illegal contraband.

### **Terry v. Ohio, 392 U.S. 1 (1968)**

Terry v. Ohio is the Supreme Court Case that provides for police officers to use their training, experience, knowledge, skill, and observation to intercede on behalf of the public into criminal conduct. None the less it is a court sanctioned form of profiling, specifically criminal profiling that as contended early on in this discussion is the basis of other forms of profiling, both positive and negative. In brief an experienced Cleveland police officer (detective) observed

conduct of three men that rose to the level of casing a store in preparation to commit a robbery. The police officer acting on reasonable suspicion removed the trio from an automobile and patted them down. The pat down revealed what appeared to be weapons on two of the culprits and resulted in a search that confirmed the officer's suspicions. The court held that in these circumstances an over the clothes pat down to provide safety for the officer is sufficient and does not rise to the level of a seizure but rather a stop and frisk is not a search (White, 2007).

The preceding is an example of descriptive common sense police work that orchestrated profiling at differing levels. In recent years Racial Profiling is on highways and streets solely based on race which is a form of police misconduct. However an officer acting on observed conduct that raises the suspicions of the police that criminal activity may be afoot is criminal profiling and occurs hundreds if not thousands a time daily across this country. If not for profiling what would constitute a reason for a stop? How much police work would be done? It is in this manner that criminal thinking is apparent in behaviorism or mannerisms that create suspicions. Further criminal thinking is important in all fashions of profiling however the type and manner of Terry Stops is critical to day to day operations.

Since Terry, the court rendered rulings regarding stops based on race, ethnic origin or minority status. In 1975, U.S. v. Brignoni-Ponce was decided. The facts of the case relate that Felix Humberto Brignoni-Ponce was traveling in his vehicle and was stopped by border patrol agents because he appeared to be Mexican (Oyez.org, 1974). The questioning by agents and other passengers revealed an illegal status of the occupants. The court ruled that the information gleaned from the interviews was inadmissible due to lack of probable cause by agents in the initial stop. The actions of the agents was a violation of the Fourth Amendment.

However in subsequent matters the court ruled to the contrary. The U.S. Supreme Court determined in 1993 that disparity in conviction rates is not necessarily unconstitutional unless data demonstrates that defendants of another race similarly situated are disparately impacted (U.S. v. Armstrong, 1993). In another case, Whren v United States (1996), police stopped a truck for failing to use a turn signal and upon approach of the vehicle police observed Whren in possession of crack cocaine. The court sustained the prosecution finding that police did not violate the Fourth Amendment, regardless of the pretext of the officers. An observable traffic infraction provided license and privilege for police to act.

Having stated the purpose of this article it is essential to provide a description of criminal profiling as detailed in current research and then the brief discussion of Terry Stops criminal profiling. According to Hatch-Maillette, Scalora, Huss & Baumgartner (2001):

Individuals who demonstrate heavy involvement with the legal system are an undeniably important population to consider in terms of economic, social, and ethical issues. To the extent that knowledge of these people can be amassed, researchers and clinicians can begin to address the financial and societal burdens experienced by those who are indirectly or directly affected by our criminal justice system. One way in which our understanding can increase is by systematically examining the thought content of criminal offenders in hopes of detecting patterns in specific categories of cognitions that are indigenous to the type of crime committed (p.115).

## **Types of Profiling**

Criminal profiling according to Muller (2000) “is the process of using available information about a crime and crime scene to compose a psychological portrait of the unknown perpetrator of the crime (as cited in Bartol & Bartol, p.56). Criminal profiling in this fashion is instrumental providing investigators with a psychological evaluation of relevant information of offender and his/her possessions and the technique for interviews (Bartol & Bartol, 2008). Additionally, the information from a crime scene of an unsolved homicide may offer legitimate information for the investigator; however not all offenses are appropriate for criminal profiling. Crime Scene Analysis (CSA) probably the most romanticized by the media is the most popular (Bartol & Bartol, 2008).

As asserted by Ressler, Burgess & Douglas (1988) CSA “Criminal profiling is a six-stage process” (p.58). The stages: Profiling Inputs and concerns, collection of all information; Decision Process Model in which the information is analyzed; Crime Assessment or in this stage is the term, getting into the mind of the criminal; Constructing the Profile is performed in this stage consisting of age, characteristics of the offender, race general appearance of offender, relationship to victim and any other notable features; Investigation whereby the profiler submits a report to the agency; and finally Apprehension assuming the correct offender is caught (Ressler et al., as cited in Bartol & Bartol, p.58-59).

Is criminal profiling of use to the police profession or perhaps in diagnosis of perpetrators for rehabilitation purpose, the evidence provided is scant however it does indicate promise (Bartol & Bartol, 2008). CSA is more reliant upon experience and intuition. Criminal profiling will be tested longitudinally as evaluation of offenders prove positive and providing testing is best available with the IP as more empirical studies can make its claim (Bartol & Bartol, 2008). Criminal profiling as described thus far has been primarily reserved for serial killers.

Maillette et al. (2001) insist that “one instrument developed to measure specific aspects of criminal thinking regardless of offender type, is the Psychological Inventory of Criminal Thinking Styles (PICTS)”(p.105). The PICTS assesses eight thinking styles including: Mollification-rationalization; Cutoff-rapid elimination of deterrents to crime; Entitlement-ownership or misidentification of wants and needs; Power Orientation-aggressive behavior; Sentimentality-compensating for previous conduct; Super optimism-ego to maintain criminal life style; Cognitive Indolence-lazy thinking; and Discontinuity-little premeditation (Maillette et al., 2001).

The PICTS instrument is a better fit than is the CSA as the former removes more of the assumptions and speculation from offender behaviors. Again as previously stated CSA is made for television and big screen as compared to the latter that is descriptive and is more open to other criminal conducts unlike CSA which is restrictive to serial killers (Bartol & Bartol, 2008). Thus is descriptive of other types of profiling and providing a segway to the next portion of this discussion.

The longevity of CSA or IP is essential in long term investigations; however currently are without empirical studies of any magnitude; yet PICTS provides evidence that certain characteristics may be tested. It is incumbent upon police leadership to provide training and education and ethics guiding the conduct of officers so that profiling is of the legitimate form (White, 2007).

Getting into the minds of the criminal has its place, especially in treatment of offenders but not in the fast pace of policing from the street level. Again, it has come a long way; demonstrating merit nonetheless has not passed the empirical research test to date (Bartol & Bartol, 2008). On the other hand Terry type profiling has been in place for over forty years and remains solidly situated based on court fashioned reasoning.

There are two other forms of profiling offered which will receive no other attention than honorable mention in this discussion. These are Investigative Psychology (IP) and Diagnostic Evaluation (DE) and as pointed out by Bartol & Bartol (2008) “CSA does have the potential to be scientific with some work, but the main problem seems to be that it does not want to be scientific. Unlike, CSA, IP was designed from the beginning with science in mind...IP has a great deal of potential to become a science, but it still has a long way to go before it will be recognized as a discipline in itself” (p.62).

### **Private Sector**

Private sector security is not to be minimized. Do not envision the security guard at a gated community, although their radio equipment and surveillance equipment is state of the art, more so than most CJ practitioners. Rather corporate security must be provided respect in the hierarchical plateau. The private security component is responsible for multi-continent computer security; guarding high tech industrial secrets; background investigations that public servant background investigations pale by comparison; satellite positioning; and bank transactions that if breached would cost this Country billions of dollars. The private sector is far more advanced, they have the means to provide their workforce with the most modern up to the minute equipment and they do not deal with the same impediments as the criminal justice practitioner. In most cases they do not work within the confines of the U.S. Constitution. Their use of obtained information is generally not subject to public scrutiny and is an actual form of criminal profiling. This is probably just one more reason why the public sector should embrace the private sector security corporations if not for their hand me downs, then for their expertise and contemporary methodologies.

Further the contention of this section is that profiling is used in the private security sector with impunity. For example in casinos when a private person swipes his her credit card the facility has information that a public agency do not have ready access (police background investigation requires waivers to obtain information), such as credit report, where you have lived for previous ten years, whether you own your home or rent, criminal check and if anyone in your family is in the gaming business. Therefore the legal and bureaucratic arena that the criminal justice system creates an uneven playing field and may limit the technological advances available to the private sector. To coin a phrase, “We’re so far behind we think we’re first.” First of all the private sector is generally financially better prepared to meet its needs; second the private sector does not have to deal with huge bureaucracies to gain a purchase; third they are not as concerned with individual liberties as the public sector employee; and finally, the private sector planning and development is not encumbered with politics.

### **9/11 Attacks**

In *The 9/11 Commission Report*, the commission concluded that one of the failures of public safety was the failure of public safety officials’ “imagination.” Moving forward, how should public safety officials address public safety threats using unconventional or nontraditional methods? After reviewing chapters 11 and 12 in *The 9/11 Commission Report* and the follow-up report about successes and challenges, readers should postulate a personal discussion as how success in the war on terror can be measured quantitatively. Consider the role of individual rights in conducting and measuring the war on terror.

In researching the posed questions, on the surface they appear nearly inseparable. As such, the reader may find them often intersecting. Although issues that intersect may cause

convoluted issues, this may provide a wholesome approach, challenging personal innovative juices toward solutions. Differing issues often reside in the grey area, clarity of issue may be elusive, as may seem resolution. Thus imagination, creativity, and innovation are critical to solving issues. Repetition may slow down the process but at the same time provides avenues to rethink ourselves and perhaps even provide a different image to the world. An image this author suggests must contain the truth. The truth of challenges that lay ahead, truth in ethical behaviors, truth of remedies, truth of longevity of a remedy, and truth of failure. Political correctness has a place in society but not to the point it distorts truth, facts, and circumstance.

Although the majority of America's efforts to thwart terrorism have been abroad, the U.S. must not lose sight of those that are amongst us. Having said that, the onetime bureaucratic systematic, silo of information and jurisdictional feuds and total lack of imagination on the part of leaders in critical positions have slowly eroded. The erosion has given way to new forms of thinking. As an example during the Y2K crisis the walls fell between agencies and the cooperation was second to none. The crisis was based on the theory that information networks that controlled power grids, information networks, banking institutions and governmental institutions would collapse. The information networks would be unable to transcend the cross over from years 1999 to 2000. A great deal of human manipulation and interagency cooperation transpired to make a smooth transition.

Once the crisis had passed, without the world collapse due to information networks inability to make the change from one century to the other and terrorist attacks on infrastructure did not occur, this nation went back to business as usual. In short America can no longer remain complacent to global concerns. America cannot rest on its laurels and be a nation of reaction, the

new world order requires a proactive nation to take away the threat prior to the threat gaining momentum and support.

As illustrated in Chapter 11 of *The 9/11 Commission Report*, Al Qaeda used trucks, cars, boats and trains as suicide vessels, why would they not use airplanes? Specifically, when Al Qaeda could speculate with reasonable certainty based on American Ideology that if they were found out before they could carry out the suicide by airplane attack; we as a country would be hard pressed to shoot a plane load of civilians from the sky.

The following is a list of ten suggested steps that may be taken to impede the terrorist abroad and amongst us. First, a need to continue with the Community Policing aspect of law enforcement in this country and gain more involvement of citizens. Citizen vigilance is critical to the safety of our nation both on the domestic and international front. Second, a need to hold politicians and bureaucrats feet to the flame to ensure continuity of viable recommendations and they are provided resources to fruition. Third, America can no longer be seen as merely taking the high road in all situations. This country requires a reputation and respect retaliation in kind, tenfold when attacked. This includes having the intestinal fortitude to kill terrorist by whatever means necessary and not from behind the curtain but out in the open. Terrorist are not psychopaths, they are criminals. Criminal during a time of war and should be dealt with as any war criminal and America needs get over some its ideological policy dealing with terrorist in the American Justice System rather than as war criminals.

Fourth, America should remain with international alliances that have created strength through unity and build on greater relationships. These alliances should be empowered to act against terrorist, based on legitimate profiles of terrorist. These allies should be required to seize all assets from terrorists and put the assets into the coffers to help pay for the fight against

terrorism. Fifth, bureaucrats or allies that withhold critical information from another entity in the fight against terror should be held responsible, civilly and criminally. Certainly standards are required to determine when bureaucrats or outside entities knew or should have known of the information and of its importance. Subordinates that had same information should be held to the same standard. Legislation in this context is not groundbreaking, similar but not the same are Domestic Violence Legislation in New York State made it a misdemeanor for police officers to ask a victim if they wanted the aggressor arrested in a domestic incident. They are under legislative mandate to mandatory arrest policy and only a judge will determine thereafter.

Sixth, continue through diplomatic channels to create the unholy alliances that at one time were thought of as distasteful to this nation. I believe the guide in this instance needs to be the old adage, “keep your friends close, but your enemies closer.” Seventh, foreign states providing safe havens for terrorist should suffer sanctions and time frames to adequately address the issue. Should this fail then force may be an alternative. If the sovereign nation giving aid to terrorist happens to be an oil producing state then perhaps an asset forfeiture program for taking control of their oil fields are in order. Eighth, continue to develop a form of democracy where possible without fear of retribution from terrorist. The elections in recent time in the mid-east have proven invaluable. Ninth, as America builds schools for war torn countries, a multi-national military presence may be necessary to prevent propaganda seeping into the school system. Tenth, use what means deemed acceptable by the professionals in government and American allies to secure weapons of Mass Destruction and eliminate by what means possible those who propagate the use of these weapons against the United States and U. S. allies.

The suggested list would seem aggressive and in part a hard liner approach. In short, it will be much better for a foreign nation to be America’s friend rather than a suspected foe. If

bureaucrats or their organizations feel an action is in the interest of national security and passes muster through a layer of review (review team consisting of national and international membership) without unnecessary delay (prevent terrorist from slipping away) it should be implemented without fear of character assassination and propaganda retribution. America must realize that this is not our playing field; it is now a transnational field whereby the only rules are is that there are no rules. Domestic terrorist if acting under a transnational influence should be dealt with in the same fashion. Domestic terrorist that fall within our judicial system due to the type of crime and limited access to the transnational arena remains criminal actions over terrorist warriors.

### **War on Terror**

The 9/11 Commission Report,(p.364) indicates that quantitative measurements are unnecessary for review of progress made or measuring success against the struggle against terrorism. The author submits that qualitative measurement through benchmarks, using a vaguer goal attainment is practical and more plausible due to the type of offense attempting to measure. The report is replete with the statement that, “America is safer, but not safe,” should be an indicator of the inability to measure success to the inch degree. The fact is that this country will never eliminate all acts of terrorism, domestic or abroad, as indicated in this report. Substantial progress has been made to date but more is obviously required. The greatest enemy faced in this nation is that of “complacency.” This nation must recognize the need for vigilance and personal involvement the U.S. cannot achieve our goals of being safer (both criminal and terrorist activity).

When discussing civil rights and abuses this nation need to take a step back and examine the constitution. America's forefathers, in their creation of the grand and glorious document that was penned into flaming gold, never promised citizens that the document would make things easier, but rather directly or indirectly through its construct ensures it's citizens they have access to the debate. The debate can be of government, legislation, human rights, civil rights, etc. Individuals must take stock in what is important to them as individuals, what is important as a free nation and finally make a determination or come to the realization that free is not necessarily free. During the research for this discussion and through practical experience, terrorist investigations mirror many of the daily criminal investigation. The overly abused term of racial profiling can only be applied where it is clear that race is the sole determination for the police intervention. Undeniably there have been abuses, and there have been severe response by local, state and federal governments when determined to be legitimate. The distinction between race and criminal activity is required and should be promoted for greater understanding by the community being policed.

Criminal profiling is found in the landmark decision of Terry v Ohio that has been the basis for police stop and frisk for years, not to mention incorporated in most police training. The Supreme Court recognized early on there are real and significant indicators of criminal activity or criminal activity afoot. The Courts further found a need for public and officer protections that required limited police intrusions in order to determine what is going on and safety simultaneously. The Terry decision came to being during the Warren Courts of the sixties, the reality of its interpretation is that it dealt with criminal behavior easily recognizable by a trained, experience and articulate police detective. What is important in this discussion is to admit that race has played a role in the decision making of some police officers. History will demonstrate

that in fact race had determined policy for some police agencies. For the most part either an individual officer or an agency inappropriately dealing with citizen's base on race they have been dealt with in some fashion. The penalty may be in form of fines or some form of federal or state monitoring or both. Not all rights violations by police have been based on race. As is the case of NY v Ingle and Delaware v Prouse, both dealing with car stops and neither based on race but rather Fourth Amendment violations lacking probable cause in search and seizure. Ingle was a white male, long haired, micro minivan driving individual that during the time period equated to drugs. In the Prouse case a pedestrian stop by an astute police officer that generally knew who belonged in his patrol area stopped Prouse because the suspect just did not fit in. Each case went down on separate issues but both had one common denominator, police must act based on reasonable suspicion/probable cause, not because they simply fit a self-determined profile; as remains the criteria today.

The U.S. Constitution should be viewed as business document and not simply a collection of individual rights. A business document detailing what government can do and cannot do. A contract between a government under the rule of law and its citizenry. The business of government is open to public review and criticism without retribution from the government as well as input through those elected. An agreement as to how government is created and conducted (open for debate but a salient point of governmental review). Therefore, as the business of this nation changes, government should change accordingly and one would reasonably expect at the same rate of change. Perhaps this may be a flash point for discontent. However, each individual living under the cloak of freedom provided by the U.S. Constitution must take stock in personal responsibility, personal behaviors, personal accountability, and personal involvement, particularly during periods of ethical uncertainties. Citizens of America

should expect government to get out of its way without sacrificing individual rights, recognizing the overarching rights of society when dealing with terrorism. Terrorism is a relatively new business for America to recognize (albeit terrorism has been around for centuries but not here), fully understanding that terrorist may want to kill Americans for no other reason than being an American. This is in uniform or civilian attire anywhere in the world and at any time.

New rules require new thinking and perhaps those as submitted in this or previous discussion, terrorism will require a new set of rules.

#### References

- Bartol, C. R., & Bartol, A. M. (2008). *Current perspectives in forensic psychology and criminal behavior* (2nd Ed.). Los Angeles, CA: Sage Publications, Inc.
- Berg, B. L. (2008). *Criminal investigation*. Boston: McGraw-Hill Higher Education. ISBN 9780073401249.
- Canter, D. (January 2004). Offender Profiling and Investigative Psychology. *Journal of Investigative Psychology & Offender Profiling*. 1: 1–15. doi:10.1002/jip.007. Retrieved November 19, 2015.
- Cornell Law School. Law.cornell.edu. Retrieved 2013-08-13.
- Hatch-Maillette, M. A., Scalora, M. J., Huss, M. T., & Baumgartner, J. V. (2001). Criminal thinking patterns: Are child molesters unique? *International Journal of Offender Therapy and Comparative Criminology*, 45(1), 102-117.
- Racial Profiling: Definition. *American Civil Liberties Union*. Retrieved 2015-11-04.

- Ressler, R. K., Burgess, A. W., & Douglas, J. E. (1988). *Sexual homicide: Patterns and motives*. Lexington, MA: Lexington Books.
- United States v. Armstrong, 517 U.S. 456 (1996). *Justia Law*. Retrieved 2018-03-06.
- United States v. Brignoni -Ponce." *Oyez*, <https://www.oyez.org/cases/1974/74-114>. Accessed 5 March 2017.
- Warren, P. Y. & Farrell, A. (2009). The environmental context of racial profiling. *The Annals of the American Academy of Political and Social Science*. 623: 52–63.
- White, M. D. (May 30, 2007). *Current issues and controversies in policing*. Boston, MA: Pearson: Allyn and Bacon.
- Woodhams, J., & Toye, K. (February, 2007). An empirical test of the assumptions of case linkage and offender profiling with serial commercial robberies. *Psychology, Public Policy, and Law*. 13 (1): 59–85. doi:10.1037/1076-8971.13.1.59.
- Whren v. United States." *Oyez*, <https://www.oyez.org/cases/1995/95-5841>. Accessed 5 March 2017.

## **Chapter 14 An Examination of the 14th Amendment of the U.S. Constitution: Has it Aided Crafting Social Policy in America, Specifically Equally?**

### **Abstract**

This collection of historical events is an examination of the 14th Amendment of the U.S. Constitution, existing literature, and the impacts on social policy relative to privilege and power. This discussion provides information that may add to understanding of the question posed: Since the ratification of the 14th Amendment in 1868: Why has it taken 100 years to bring about any meaningful judicial and social reform? In hind-sight the 14th Amendment has aided in crafting social policy; not all policy consideration resonated equally under the protection of law. The struggle to maintain power and privilege is the result of many years of complicated issues accompanied by complacent behaviors and the human rationalization process. Specific to this review, complacency and the rationalization process is promulgated by those that enjoy privilege and power either wittingly or unwittingly. This is in stark contrast to those that have waited for equality through hundreds of years of ancestry disadvantage. The intent of the 14th Amendment to the U.S. Constitution and Social Policy provides an exercise in critical thinking and conclusions through personal research.

Key Terms: Power and Privilege, Complacency and Rationalization, Discrimination, Public Policy and Equality.

### **Introduction:**

AMENDMENT XIV-Section I:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (Hall & Feldmeier, p.604, 2017).

The historical review of the 14th Amendment of the United States Constitution ratified July 9, 1868 is provided in a fashion to answer one question. That is, since the inception of the 14th Amendment, why has it taken nearly 100 years for social and criminal justice to gain a foothold in public policy? The purpose of the following text is submitted for the sole purpose of energizing intellectual thought. In preparation for your final course assessment. Who can tell me what if any significant events occurred in the mid 1860's? Yes, that is correct this country was just emerging from one of the most conflict-ridden clashes executed in America.

Arguably, the bloodiest conflict ever taken place on American soil was the Civil War. Some may argue the Native American Indian massacres are equal to if not greater than the former aggression based on the magnitude of outcomes. These two historical maladies are not mutually exclusive. On the one hand the Civil War was a conflict dealing with states' rights to include the right to control slavery. The privilege of the larger wealthy and powerful to force labor and inequality from the less powerful group for the benefit of the more authoritative. The latter was the taking of native land, disavowing property rights, while rationalizing government sanctioned genocide. The property interest rights of Native Americans were well established prior to the influx of the European population. The property interests of Native American

Indians is propositioned upon consideration of equal status as their European counterpart. Both events occurred as a result of a mindset asserting authority of one group over another. However, these remain salient elements of this examination and is provided for intellectual incitement.

At this juncture you are undoubtedly questioning what in the world does the Fourteenth Amendment have in common with power and authority? Patience my mindful practitioners, your final assessment question is forthcoming but first let us collectively examine what we know. The 13th, 14th, and 15th Amendments are regularly expressed as Reconstruction Amendments to the U.S. Constitution. The Thirteenth Amendment (1865) abolished slavery, presumably freeing the Negro; The Fourteenth Amendment (1868) providing due process and equal protection of laws, two of four substantial sections that is significant to this discussion; and the Fifteenth Amendment (1870) citizens shall enjoy all rights, regardless of race or color or previous condition of servitude (Hall & Feldmeier, 2017). The 14th Amendment was a bitterly debated amendment due to the citizenship rights of equal protection of the laws set forth during post-Civil War. This amendment contains several clauses to include: the Citizenship Clause, Privileges or Immunities Clause, Due Process Clause and the Equal Protection Clause all of which are posted in the forefront of the first section of the amendment.

### **Court Doctrine:**

Important to this discussion is the requisite but brief appraisal of the Warren Courts, aptly named for the Chief Justice of the U.S. Supreme Court (1953-1969). Chief Justice Earl Warren was clearly active with both social and criminal justice reform. The Warren courts afforded individual protections in landmark decisions impacting social and criminal justice. These include: right to an attorney during an interrogation (*Miranda v. Arizona*), (*Mapp v. Ohio*)

securely linking all law enforcement efforts to the first Ten Amendments through a strong interpretation of the 14th Amendment, right to counsel during all court proceedings (*Gideon v. Wainwright*), and voting rights, civil rights, women rights to name a few. These decisions by the courts are often assessed in view of the constant flux of America's social and public policy landscape. The Warren Court and subsequent courts relied heavily on strong interpretations of the 14th Amendment to protect civil liberties against government over reach.

This amendment is conspicuous in numerous deliberations of Supreme Court Justices providing a foundation for their decisions. The amendment rationale is evident in cases such as but not limited to *Mapp v. Ohio* (1961) guard against illegal searches, *Katzenbach v. Morgan* (1966) Congress preempting states voting laws, *Roe v. Wade* (1973) regarding abortion, *Bush v. Gore* (2000) deciding the 2000 Presidential Election, *Lawrence v. Texas* (2003) dealing with privacy between consenting adults, and *Obergefell v. Hodges* (2015) regarding same-sex marriage.

These cases are examples of the previously stated clauses within the 14th Amendment that are: Citizenship Clause, Privileges or Immunities Clause, Due Process Clause and the Equal Protection Clause. These clauses are used to argue against government abridging individual liberties. Although the 14th Amendment is clearly designed to safeguard individuals from states over reach, the Court has decided cases regarding discrimination by an individual toward another individual. In other words it provides protection against discrimination by private and government entities. Since the tumultuous 60's social revolt witnessed in the United States the courts have remained somewhat consistent reviewing legislation and practice based on bias and discriminatory impacts.

Concurrent with Chief Justice Earl Warren's tenure was the enactment of substantial social justice reform legislation such as 1964 Civil Rights Act, 1968 Voting Rights, and an array of women rights. The pieces of legislation listed may be viewed as in direct conflict with Jim Crow Legislation and other equal protection abridgement endorsed during the span from 1868 to 1960 in spite of the 14th Amendment existence. A prominent factor for consideration that is incorporated further on in this discussion of a Supreme Court Justice ideology and the weight of public opinion.

### **U.S. Supreme Court Justices Demographics**

Since the dawning of the highest court of the land, it remained nearly white male and protestant for approximately 180 years. This inclination relative to the selection of Justice(s) continued until the appointments of Lewis Brandeis (1916, Jewish), Thurgood Marshall (1967, African-American), Sandra Day O'Connor (1981, Female), Antonin Scalia (1986, Italian-American), and Sonia-Sotomayor, (2009, Hispanic/Female) (A&E Bibliography). With few exceptions, the nominated justices were required to have a law degree or training in the law to secure appointment to the bench. Although no such requirement is contained in the Constitution.

Sufficient historical assessment of court membership is available to examine the nomination process through a Justices term demonstrating the majority of those confirmed are not only white males but were considered "Privileged". Not until the mid-1900's was there a concentrated effort to accrue justices of a more ethnically, racial, and gender diverse background. Preceding this time frame much of nominations could be labeled the elite class. With recent confirmations to the court the elitist sectarianism has not necessarily been dismissed. Albeit the 20th Century witnessed greater diversity in U.S. Supreme Court Justices appointed, there

remains many ethnic groups yet to be represented on the court and geographically 19 States have never yielded a Supreme Court Justice (O'Brien, 2003). Native American Indians or Pacific Islanders are visibly absent from the list even though they are determined significant to list as an ethnic identifier for census data. Nor have Korean or Vietnamese descendants been selected for the court. This is not to say that these groups have not been considered for nomination however, considered is the key word (Bryan, 2010; Taranto, 2005). The current slate of Justices are all graduates from prestigious Ivy League College/University School of Law.

At this point in the conversation it is appropriate to suggest that not unlike the courts compliment of white males until the 19th Century, so goes the Chief Executive Officer (CEO) demographics of the industrial complex, media outlets, and government. The white male remains dominate in this landscape on into the year 2012. Distinctively 74% of all CEO positions of Fortune 500 companies currently have a white male at the controls (Zweigenhaft, 2013).

### **Public Opinion or Ideology**

The election of Barack Hussein Obama II, the first African-American President of the United States (2009 -2017), was thought to be a turning point in American history. This election may suggest a softening toward the notion of desegregation in the White House. In the last two decades it appears that a new-found benevolence embracing the advances of gender and gay/lesbian rights, same sex marriage, and health care access and economic equality may now have added footing. Public opinion is extolled in favorable decisions of the court relative to these issues. The long-standing process of gender nullification in the Oval Office was thought to hit the glass ceiling with the nomination by democrats of Hillary Rodham Clinton. The celebration of equal footing for all may be a bit premature. The tumultuous winds of discord

have abruptly halted the progress, at least temporarily, in the immediate presidential election following the Obama Administration. The anticipation of the “Good Old Boy Club” (White upper class) demise seems overly exaggerated at this juncture.

Giles, Blackstone, and Vining (2008) contend that the court is affected by public opinion. This works viewed judicial decision making through two specific lenses. These are strategic behavior of the court and the mechanism of attitudinal change. If the decision-making avenue of choice is to decide cases to avoid negative reaction, it may be considered strategic. If court rulings are based on ideology or attitudinal change then prominent precedent setting case law may not impact a decision.

Using the American Health Care Act as an example (Obamacare) found an ally in the courts delineating the penalty portion of the bill as a tax rather than a penalty (Financial assessment for failing to secure health care coverage.). The court turned away challenges to the law by finding an avenue that was constitutionally permissible; Congress may levy taxes. One should expect with reasonable certainty that this debate will rage on. The court may be confronted with the conundrum of: Is health care a right or privilege? Should the court find consensus with this issue as a right then how may the court deal with funding issues through challenges of legislation that may have an adverse impact on the disenfranchised or marginalized portions of society? Generally, the courts have rendered decisions in-spite of the cost factor or creating discomfort to litigants. During the courts dismantling of segregation in schools, it implemented busing, disregarding citizen interest of a residential purchase near a school of choice or the cost of additional bussing. An unpopular ruling for certain and rendered without regard to popular opinion.

In the U.S. Supreme Court decision *Buckley v. Valeo* 424 US 936; 96 SCt 1153, decided January 30, 1976, the court ruled that mandatory limits placed on campaign contributions and campaign spending was unconstitutional. The court found campaign reform legislation in part was an abridgement of speech. In other words, money is a form of speech. Recall that the 14th Amendment provides that, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”. This decision did much to expand the growth of campaign contributions either directly or indirectly through political action committees by special interest groups that may have served to further erode access to the political system. The incumbent has an advantage to assure campaign financing while limiting the ability of a lessor funded campaign/candidate (NYT, 1998).

*Brown v. Board of Education*, decided by the Warren Courts in 1954, had far greater impacts on the south than just segregation or repeal of the separate but equal doctrine. Again, clearly outlined in the 14th Amendment, “nor deny to any person within its jurisdiction the equal protection of the laws”. This single decision shifted from a strict rights issue to social perspectives to a moral and social justice question. In this decision, the Warren Court forced the south to examine male masculinity and treatment of not only African-Americans but the treatment of gays as well (Friend, 2009).

This behavioral modification within the southern states was not established in a vacuum or necessarily the result of a single judicial decision. As outlined in the conference examining, “Beyond Brown: How the Supreme Court Shaped the Modern South” the University of Sussex, Brighton (March 2007), four significant and relevant criteria added to the southern masculine metamorphosis. These are: First, the courts handling of other race cases in the immediate shadows of *Brown*; Second, the courts attitude toward race in criminal justice reform; Third, the

Black freedom struggles on the part of activist inspired judicial expansion that protected all citizens prosecuted in the south; and Fourth, was the expansion of federal procedural protections afforded in other areas linked or not linked to federal law.

These associations were forged resultant of the Warren Courts disdain of white southern public authorities' disregard for the guarantees fundamental to the equal protection clause (Beyond Brown, 2007). Garrow (2008) supports the argument of expansion of federal judicial authority "Yet the muscular and far-reaching self-assurance that the Warren Court exhibited from 1961 until 1967 was induced not only by the malfeasance and dishonesty of white southern officialdom. It also was influenced, in equal if not greater part, by the activism and courage of newly-emboldened Black southerners" (p.37).

The Warren Court legacy (Chief Justice Earl Warren), appears to have leaped light years ahead partially filling the social and criminal justice void of the previous 100 years subsequent to the ratification of the 14th Amendment in 1868. The Burger Court (1969-1986) was less amenable. Burger was thought of as a strict constructionist interpreting the constitution and upheld Georgia sodomy laws as a sound critic of gay rights. Burger was followed by Chief Justice William Rehnquist (1986-2005). Rehnquist applied greater levels of analysis to federal legislation protecting the reconstruction amendments (Greenhouse, 2009). Notwithstanding personal ideology of Justices, a study of court rulings in comparison to public opinion in two-thirds of those cases studied, the court provided preference to much of American opinion (Marshall, 2008).

The preceding section may elucidate the attention required for on-going social and judicial researchers regarding the nomination and vetting process for members of the bench. Often the vetting process of nominees include questions of what ideological camp does the

nominee hail. Commonly previous decisions of a sitting judge in a lower prominent court sufficiently provides a road map of future decisions. The nominee's judicial history is therefore considered paramount in securing or being denied a seat on the court. A relevant issue in the process as well as expectation of justices is how the justice may resolve dissonance between ideology and public opinion.

### **Interpretation Process:**

Judicial review of contended discriminatory laws and practices are commonly resolved in some form through interpretation of the Fourteenth Amendment. The court determinations are typically controlled by either substantive or procedural due process. Substantive due process, while also based on principles of "fundamental fairness," is the measure used as to whether a law can be equitably applied by each state, regardless of the procedure applied (Justia Law, n.d.). "Substantive due process has generally dealt with specific subject areas, such as liberty of contract or privacy, and over time has alternately emphasized the importance of economic and non-economic matters" (GPO-14th Amendment, p. 1678, 2002).

The Due Process Clause of the 14th Amendment applies specifically to states in that "No State shall...." similarly located language already exist in the 5th Amendment's Due Process Clause barring unequal laws by the federal government. Nonetheless both clauses have been interpreted to encompass identical tenets of procedural due process and substantive due process (Curry, Riley, and Battiston, 2003). Constitutional experts will often argue that in theory, the issues of procedural and substantive due process are significantly affiliated. The reality is that substantive due process has had greater political significance, as considerable portions of a state

legislature's substantive jurisdiction could be circumscribed, limited, or curbed by this application (GPO-14th Amendment, 2002).

### **Political, Social, and Economic Impacts:**

Political implication may be viewed in U.S. Supreme Court cases such as, *Dred Scott v. Sandford*, 60 U.S. 396 (1857). The decision is prior to the Civil War that determined a slave was not a person under the U.S. Constitution and therefore could not bring suit to establish freedom. Exactly how did the court define a person? The normal definition of a person may consider terms such as a being, human, individual; however, in the Scott decision the black man was determined as chattel, property, or personal possession. Subsequent to the war the public policy of “Separate but Equal” doctrine was a court fashioned social policy in reaction to the 14th Amendment. The doctrine was settled public policy positioned in the case of *Plessey v. Ferguson*, 163 U.S. 537 (1897). The doctrine remained in America public policy for approximately 60 years until *Brown v. Board of Education I*, 347 U.S. 483 (1954) at which time the separate but equal doctrine appeared to have lapsed.

Based on the foregoing the immediate question may be: Has “Separate but Equal” doctrine truly ended? Perhaps, the once overt socially acceptable practices of prejudice, bias and discrimination challenging race, ethnic origin, sexual preference, education, and gender has since gone underground. Self-righteousness and rationalization have since replaced active, open, aggressively violent, and socially accepted intentional practice of discrimination. As an example, although outwardly publically accepted segregation in schools was outlawed, the reality persists that countless populations consisting of the poorest of the poor are frequently sheltered in American inner cities. Populations within inner cities largely consists of minorities,

immigrants, and economically disadvantaged creating covert segregation. Notwithstanding discrimination practices today, being covert and in many cases unintended, nonetheless it amounts to segregation. This salient point provides for the baseline discussion of America in Crisis. Perhaps contemporary discrimination in America is in denial or perhaps most have simply become complacent or in apathetic agreement with the status quo.

The momentum of the powerful and privileged, commonly thought of as white America, grew during the industrial revolution amplifying their grasp of public policy. The birth of the American Industrial Revolution primarily came about in the early 1800's. The Cotton Gin invented by Eli Whitney (1793) separated cotton from the seed at a higher rate. Whitney's invention separated the cotton at a higher rate but did not grow or pick the cotton. Thus, the Cotton Gin did not reduce the need for slavery but rather had the unintended consequence of increasing the need for slaves. Additional slaves were required as the workforce of choice to maintain sufficient inventories to keep up with Whitney's invention. By 1860 one in three included in the southern census was a slave (Educators Resource, n.d.). On the other hand, the Cotton Gin did promote the need for additional inventions that stimulated the invention of spinning and weaving machines for cotton and the sewing machine for finished products. Additional impacts such as the Embargo Act (1807) and the War of 1812 aided the development of the textile industry in the northeast (Scherr, 2007).

Eli Whitney expedited the progress of the American Industrial Revolution with the introduction of interchangeable parts in manufacturing. From this idea of interchangeable parts spawned other industries such as steel, railroad, and auto. The need for factory workers had begun to transform America from the agricultural southern life style to the industrial north. Factories required workers as 72% of all American industry resided in the northeast by 1850

(Educators Resource, n.d.). However, the mass exodus of Black America from the south to the northern cities did not actually take place until after WWII (Piven & Cloward, 1993).

The social policy of the differing eras may suggest the conscious of many white workers in America. Specifically, the Irish did not fondly look upon the Negro's emancipation for fear of a glut of workers impinging upon employment opportunities held by the Irish ethnic group. Minorities such as Negro, Mexican, and Asian workers were initially denied access to labor unions fearing these groups would inevitably degrade the quality of work (Hill, 1961; Takaki, 1993). Albeit many more African Americans have since joined the middle class after the ratification of the 14th Amendment, they do not necessarily find acceptance (Cose, 1993). There remains a vast Black populace that reside in poverty in contrast to whites as is the case for many minorities. Successful African Americans have described inclusiveness or lack thereof as issues including the inability to fit in, lack of respect, low expectations, faint praise, identity troubles, self-censorship, collective guilt, and exclusion from the club (Cose, 1993). Simplified, mere economic means does not necessarily measure equality (Amico, 2016).

What then or how much attention should be provided in this discussion regarding the plight of Native American Indians. The Indian in this discussion is an underprivileged class. One glaring contributing factor of this plight was that the value of Native American Lands was realized by western businessmen in America as early as President George Washington's first term of office (Avlon, 2017). The powerful businessmen relied heavily on Congressional Lobbyist more so during the 1880's to eliminate tribal communal living and property sharing practiced by the Cherokee Indians. The Cherokee illustration represents the intent of the businessmen to gain Indian properties. Often this plot was administered through treaties. The businessmen created a ruse, shrouding a land grab through the illusion of a feigned benefit to the

Cherokee. The deceptive con used was property allotment for each male tribal member. Each male tribal member was issued his own piece of property rather than the existing communal practice. The suggestion fostered by this scheme was that it added to Cherokee manhood. The cessions were publicized as a benevolent and compassionate means to integrate the Native American into mainstream America (Stremlau, 2009). Problematic for the indigenous population was the fact Congress or the President may invalidate treaties at will and often did. As America struggles with its relationship with slavery, little or no attention is provided to Americas first tenants or natural born citizens. Advocates enthusiastically engaging in the process are erroneously viewed as similarly situated with early abolitionist (Stremlau, 2009). Treachery between American lobbyist (at behest of the American businessman) and Congress (Congressional Acts) has landed the Indian land acquisitions at the feet of the courts, that have subsequently ruled in favor of Native Americans reparations based on treaties or contractually based legalism.

Reparations have been appropriated and distributed to members of the tribal sovereign nations (Trosper, 1994). Once fines are paid does the discussion end regarding equality for a disadvantaged group? Albeit Indian reparations have done little to resolve inequities accomplished by white America it at least provides the pretense of an attempt to right a wrong. Unlike Native Americans, descendants of slavery have no such contractual claims and thus reparations for this class is relied mainly upon the good will of Congress. Consequently, raising further conflict between races as to whom should pay, especially since most contemporary America had not directly engaged in slavery. Does Congress levy an arbitrary tax on citizens today to fund a trust account for payment to an offspring of a former slave? Thus, establishing another entitlement that seems unsavory during current public administrations. A second, and

much less desirable avenue for African American reparations is through judicial access. This avenue of relief relies heavily upon the ability for African Americans to demonstrate that their rights have been abridged by slave owners to bring suit against a slave owner's family. This avenue is a much more difficult pathway to achieve reprieve.

Concerning the topic of bias toward sex and gender may be observed in early legislation. At the turn of the 18th century several states legislated against teaching women to read, own property or vote. During the social conflict of the 60's considerable advances were experienced by women, nevertheless today's females earn approximately eighty-one per cent on the dollar in comparison of the male counterpart similarly situated in the workforce (BLS, 2013). In 2017 Congress proposed H.R. 1628, Better Care Reconciliation Act of 2017 (BCRA) that could severely undermine current conduits for women's health care. The U.S. Senate concurrent legislation proposal was rated equally devastating (NYT, June 26, 2017). These proposals could severely cripple health care access through funding cuts in proposed health care bills and future budgets in areas such as Planned Parenthood reimbursements and Medicaid. The poor, elderly, and the minorities would realize the negative impacts (H.R. 1628, BCRA, 2017; NYT, June 26, 2017).

The courts had to intervene in personal partnerships by providing an avenue for relationships between adults to take its natural course. The fact is "We are sex, we do gender". Has the latter crossed boundaries that now resonates with American society regardless of economic, social, gender, or ethnic status? Then is don't ask, don't tell now eliminated from military command consideration? The Department of Defense Directive promulgated by the Clinton Administration (1994) remained in tack until 2011. The medical fitness for duty directive prohibited questioning of military personnel regarding sexual preference. The directive

also prohibited military personnel from disclosing the information. Prior to this approach being gay/lesbian could be grounds for dismissal from the military, regardless of a sterling military record. This begs the question, had sexual preference prevented a person from being a good Soldier, Marine, Sailor, or Airman. Perhaps the lack of knowledge creates barriers as opposed to ability. The debate remains with the courts regarding Lesbian, Bisexual, Gay, and Transgender fitness for duty (Miller and Cray, 2013). The issue was further complicated by a recent tweet of the Current U.S. President denying commitment to Transgender military personnel (Personal Communication by The President of U.S., July 26-27, 2017). Perhaps the barrier may have been developed through failing to understand that a person may have been born that way (Dastagir, 2017).

According to Alesina, Glaeser, and Sacerdote (2001), unlike European counterparts, America has placed its dissatisfaction with minorities squarely in the political and racially motivated arena limiting the power of the disadvantaged. Heterogeneous traits are used to separate members of American society rather than to celebrate the differences. Doing so provides an avenue of control without accountability of purpose by the powerful and privileged class.

### **Discussion:**

Romantic accounts of constructing the U.S. Constitution are portrayed as James Madison and a Congress of likeminded men that penned into flaming gold a grand and glorious document creating liberty for all. The pinnacle of liberty, equality, and freedom of citizens was crafted within the four corners of this document standing as the guiding light for the future of not only America, but all free societies of the world. Subscribing to the perfunctory obliteration of actual events is to ignore the significance of the attending decrees referred to as Amendments. As

America matured, the grand and glorious document was modified to meet social obligations. First the tenuous infancy of this Union was insecurely structured upon frail pillars of an unsure constitutional framework. The great social experiment begins notwithstanding the ambition of the framers, who knew what would work to unite 13 differing colonial self-serving interests.

Slavery was a bitter pill for many of the framers but to address it during the initial framing of the Constitution was assuredly a receipt for disaster (Avlon, 2017). In order to gain southern states assurances of ratification of the initial document, the Slave, Negro, Black man was expressly denied inclusion into the American fabric. At least as a free person. Paradoxly the slave was considered chattel used as a bargaining chip to establish national unity expressing equality. Slavery was not limited to the black man in this country. Most if not all immigrant populations as a rite of passage to citizenship were exposed to some form of slavery.

Conspicuously absent from this examination of the 14th Amendment and social policy is the term “Diversity”. America, although much better during contemporary periods, has not fully embraced diversity. As illustrated in the previous sections, those of diverse cultures have predominately been relegated to the labor class and has experienced a glass ceiling relative to power and privilege.

The 14th Amendment and public policy is provided for your review in a historical perspective in preparation of the final assessment. The examination of materials as submitted provides a window to review historical events in the context of the courts application of the 14th Amendment and constructing or deconstructing of public policy. The court is often looked upon as the righteous vein of American life. The concept of oversight by an authoritative watchful eye to gain compliance of government rather than its citizenry is within the purview of the courts. The court has often fallen in line with public opinion but this appears more fortuitous than

planned dependent upon prominence of the decision (Giles, Blackstone, and Vining, 2008). The discerning eye of the beholder gazing into social issues at differing times of history provides a look at how or why the courts may have ruled as they did. The onerous task of resolving political, economic, and social issues in the court cannot be decided solely on what the crafters of the U.S. Constitution meant. The flexibility of government to operate is provided in the Constitution by its crafters and is likewise sewn in the fabric of society with the same consistency.

A final reflection of the amendment itself may provide insight into the perceived or actual intent and strength of the 14th Amendment. The crafters of the U.S. Constitution did so by creating the document with foresight of flexibility sufficient to deal with an ever-changing society. During the near 80 years from the inception of the U.S. Constitution until ratification of the 14th Amendment, life as known during that period was altered several times. Undoubtedly the federal government acted appropriately in its attempt to provide security, protection, and equality through an amendment considering the known prior treatment of an entire Negro population. Although the Negro population was freed, it would appear it was not the intent to permit the Negro to live among a more powerful white population.

Constitutional experts will substantively agree to the correctness and need of the 14th Amendment to at least on its face ensure equality for all. However, they are equally resonant to point out the strong-arming tactics required to gain state ratification of the Amendment. The intimidation for approval came on the heels of the deadliest conflict on America soil (Possible exception is the treatment of the Native American Indian.) that surrounded states' rights (continuation of slavery). The proposal and eventual ratifying of the 14th Amendment signaled that "No State Shall ...." abridge the civil rights of another through creation of laws.

Conspicuously absent from this obligation toward human rights was any restriction placed upon the courts to act. This point as previously provided herein did not prevent the court from protecting one class over another class interest as observed in Dred Scott or Plessey v. Ferguson. The separate but equal doctrine remained intact for approximately 100 years following these decisions. Thereby raising a pertinent question in this discussion; Has this amendment crafted social policy, negatively or positively?

#### Final Assessment:

In preparation of your response you may wish to further contemplate: Was the very powerful 14th Amendment manipulated by those in control of a nation? In a written articulation of such magnitude how then could bigotry and prejudice reside in public policy for substantial periods within civilized America? Is bigotry and prejudice a tool of the wealthy or an emotion that simply over-rides logic? Who is in control of American social policy? How is or was the American populace part of the problem or part of the solution? How has rationalization of personal bias endured? Finally, the Assessment: The Fourteenth Amendment of the U.S. Constitution was ratified in 1868. The Fourteenth Amendment contains a due process and equal protection clause guarding citizen rights against overzealous state law, to wit:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (Hall & Feldmeier, p.604, 2017).

The 14th Amendment was ratified in 1868 providing protections for citizens against civil rights abuse:

Why did it take approximately 100 years (1868-1960's) since the inception of the 14th Amendment to bring about momentous and more consistent social and criminal justice reform in the United States?

### References

Alesina, A., Glaeser, E. & Sacerdote, B. (2001). Why doesn't the US have an European-style welfare State. Harvard Institute of Economic Research: Discussion Paper 1933.

Cambridge: Harvard University Press.

Amico, R. P. (2016). *Exploring white privilege*. N.Y, New York: Routledge.

Antonin Scalia Biography (February 22, 2016) Biography.com Editors, A&E Television Networks .<https://www.biography.com/people/antonin-scalia-9473091>

Avlon, J. (2017). Washington's farewell: The founding father's warning to future generations.

NY, New York: Simon & Shuster.

Beyond Brown: How the Supreme Court Shaped the Modern South, At the conferences at University of Sussex, Brighton, 22-24 March 2007.

Brown v. Board of Education I, 347 U.S. 483 (1954).

<https://supreme.justia.com/cases/federal/us/347/483/case.html>.

Bryan, S. M. (2010). American Indians ask for voice on federal court. Associated Press. July 2, 2010.

Buckley v. Valeo 424 US 936; 96 SCt 1153.

<https://supreme.justia.com/cases/federal/us/424/1/case.html>

Bush v. Gore, 531 U.S. 98 (2000). <https://supreme.justia.com/cases/federal/us/531/98>.

Congressional Budget Office (2017). H.R. 1628, American Health Care Act of 2017 (May 24, 2017). <https://www.cbo.gov/publication/52752>

Cose, E. (1993). The Rage of a privileged class. New York: Harper Collins.

Curry, J. A., Riley, R.B. & Battiston, R.M. (2003). Constitutional government: The American experience. Kendall/Hunt Publishing Company. p. 210.

Dastagir, A.E. (2017, June 20). Born this way? Sexuality not that simple. USA Today in Rochester Democrat & Chronicle, Section B.

Department of Defense Directive 1304.26. Medical and Public Health Law Site. DOD Directives <https://biotech.law.lsu.edu/blaw/dodd/corres/html/130426.htm> Retrieved September 11, 2013.

Dred Scott v. Sandford, 60 U.S. 396 (1857).

<https://supreme.justia.com/cases/federal/us/60/393/case.html>.

Educators Resource (n.d.). Eli Whitney's patent for the cotton gin. National Archives.

<https://www.archives.gov/education/lessons/cotton-gin-patent>

Friend C., T. (2009). From southern manhood to southern masculinities: Introduction, In C.T.

Friend, Southern masculinity: Perspectives on manhood in the south since reconstruction.

Athens, GA: University of Georgia Press.

- Garrow, D. J. (2008). Bad behavior makes big law: Southern malfeasance and the expansion of federal judicial power, 1954-1968. *St. John's Law Review*, 82(1), 1-38.
- Giles, M.W., Blackstone, B., & Vining, Jr., R. L. (2008). The Supreme Court in American democracy: Unraveling the linkages between public opinion and judicial decision making. *The Journal of Politics* (70, 2), 293-306.
- Greenhouse, L. (January 8, 2009). "The Chief Justice on the Spot". *New York Times*.  
<http://www.nytimes.com/2009/01/09/opinion/09greenhouse.html?mcubz=0> October 31, 2009.
- Hall, D.E. & Feldmeier, J.P. (2017). *Constitutional law: Governmental powers and individual freedoms*. Boston: Pearson
- Hill, H. (1961). Racism within organized labor: A report of five years of the AFL-CIO, 1955-1960. *The Journal of Negro Education* (30, 2,).
- Justia Law. (n.d.) <http://law.justia.com/constitution/us/amendment-14/05-due-process-of-law.html>
- Kaplan, T. & Pear, R. (June 26, 2017). Senate Health Bill in Peril as C.B.O. Predicts 22 Million More Uninsured. *New York Times*. Politics  
<https://www.nytimes.com/2017/06/26/us/politics/senate-health-care-bill-republican.html?mcubz=0>
- Lawrence v. Texas, 539 U.S. 558 (2003).  
<https://supreme.justia.com/cases/federal/us/539/558/case.html>.
- Louis Brandeis Biography (April 1, 2014). Biography.com Editors, A&E Television Networks  
<https://www.biography.com/people/louis-brandeis-39048>

Mapp v. Ohio, 367 U.S. 643 (1961).

<https://supreme.justia.com/cases/federal/us/367/643/case.html>.

Marshall, T. R. (2008). *Public opinion and the Rehnquist court*. Albany, NY: State University of New York Press.

Miller, K. & Cray, A. (September 20, 2013). *The battles that remain: Military service and LGBT equality*. Center for American Progress.

<https://www.americanprogress.org/issues/lgbt/reports/2013/09/20/74883/the-battles-that-remain-military-service-and-lgbt-equality/>

N.A., (November 12, 1998) *Time to Rethink "Buckley v. Valeo"*. *New York Times*, Opinion page. <http://www.nytimes.com/1998/11/12/opinion/time-to-rethink-buckley-v-valeo.html?mcubz=0>

O'Brien, David M. (2003). *Storm Center* (Sixth Ed.). New York: W.W. Norton & Co.

*Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015). <https://supreme.justia.com/cases/federal/us/576/14-556/>

Piven, F.F. & Cloward, R. (1993). *Regulating the Poor*. New York: Vintage Books

*Plessey v. Ferguson*, 163 U.S. 537 (1897). <https://supreme.justia.com/cases/federal/us/163/537/>

*Roe v. Wade*, 410 U.S. 113 (1973) <https://supreme.justia.com/cases/federal/us/410/113/case.html>

*Sandra Day O'Connor Biography* (April 27, 2017). Biography.com Editors, A&E Television Networks <https://www.biography.com/people/sandra-day-oconnor-9426834>

Scherr, A. (2007). Thomas Jefferson's Nationalist Vision of New England and the War of 1812.

Historian, 69(1), 1-35

Sonia Sotomayor Biography (June 23, 2016). Biography.com Editors, A&E Television Networks

<https://www.biography.com/people/sonia-sotomayor-453906>

Stremlau, R. (2009). In defense of “this Great Family Government and Estate”: Cherokee

masculinity and opposition to allotment, (p.64-83). Southern masculinity: Perspectives on manhood in the south since reconstruction. Athens, GA: University of Georgia Press.

Taranto, J. (19 September, 2005) "Justice Dinh". Wall Street Journal Opinion. WSJ.com.

Takaki, R. (1993). A different mirror: A history of multicultural America. Boston: Back Bay Books.

Thurgood Marshall Biography.com (April 27, 2017) Biography.com Editors, A&E Television Networks

<https://www.biography.com/people/thurgood-marshall-940024>

Trosper, R. L. (November/December 1994). American Indian Reparations. Poverty & Race Research Action Council.

[http://www.prrac.org/full\\_text.php?%20text\\_id=649&item\\_id=6623&newsletter\\_id=17](http://www.prrac.org/full_text.php?%20text_id=649&item_id=6623&newsletter_id=17)

U.S. Bureau of Labor Statistics (2013). Highlights of Women's Earnings in 2012 Report.

[https://www.bls.gov/opub/reports/womens-earnings/archive/womensearnings\\_2012.pdf](https://www.bls.gov/opub/reports/womens-earnings/archive/womensearnings_2012.pdf)

US Government Publishing Office (2002). Fourteenth Amendment.

<https://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/.../GPO-CONAN-2002-9-15.pdf>

Zweigenhaft, R.L. (August 12, 2013). Diversity among CEOs and corporate directors: Has the heyday come and gone? Based on a presentation at the annual meeting of the American Sociological Association, New York City.