



# **21st Century Criminology: A Reference Handbook**

## **Criminal Justice Ethics**

Contributors: Robert M. Worley & Vidisha Barua

Edited by: J. Mitchell Miller

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## Criminal Justice Ethics

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Ethics is the study of morality, which prescribes what comprises good and bad conduct. Ethics and morality evolve out of the human experience, beginning in childhood at home and in places of worship and religious gatherings, and advancing to more pronounced rules, regulations, and laws that one needs to abide by as he or she grows into an adult. The study of ethics comprises three branches: (1) *metaethics*, which involves the interpretation of ethical terms; (2) *normative ethics*, which determines what people ought to do; and (3) *applied ethics*, which is concerned with the practical application of ethical principles, especially in professions such as medicine and law (Pollock, 2007).

Criminal justice and ethics are closely related. According to *social contract theory*, the denizens of a country give up certain liberties to be protected by the government, and criminal justice professionals are agents of the government. Justice practitioners are expected to have a higher moral character, so that the common man can feel confident about the agents of the government that are affording them protections. Virtually all criminal justice professionals, be they police officers, judges, prosecutors, defense lawyers, correctional officers, probation officers, or parole officers, need to exercise the use of their discretion at some point or another during the course of their careers. Usually this occurs when practitioners are faced with specific ethical dilemmas, as opposed to taking a stand in matters involving broad ethical issues (Pollock, 2007). When discretionary decisions are guided by ethics, decisions can be said to be fair and just, because there are always shades of moral obligations that are higher than others (Souryal, 2006).

The awareness and importance of ethics in the field of criminal justice are increasing at a fast pace. This is because, as in virtually every other occupation, criminal justice officials also engage in unethical behaviors during the course of their 8-hour shifts. Every year there are practitioners who end their careers in disgrace by engaging in unscrupulous activities. This includes behaviors that are outright illegal, as well as those that have not been labeled as being criminal in nature. It is noteworthy that not every type of unethical behavior is necessarily illegal. In fact, criminal justice practitioners engage in many types of unethical behaviors that are not governed by the legislature and the court system.

### Ethical Systems

Plato argued that the idea of “goodness,” or the *summum bonum* of values, is a virtue even higher than justice (Souryal, 2006). This goodness lights up the minds of human beings and helps them make moral judgments. The idea of *natural law*, or self-preservation, appealed to both Plato and his student Aristotle, who sought universal qualities in human nature (Souryal, 2006). Originating from the Stoics, natural law signifies a search for moral absolutes that is identified as natural (Pollock, 2007).

Aristotle, in the *Nicomachean Ethics*, “provided the first systematic study of ethics in the history of the Western world” (Albanese, 2008, p. 15). In this book, Aristotle proposed the ethics of virtue that is concerned with cultivating virtuous habits. Aristotle suggested the intermediate path, or the *golden mean*, which strikes a balance between extreme behaviors. He prescribed 10 moral virtues or excellences that are to be cultivated: (1) courage, (2) temperance, (3) prudence, (4) justice, (5) pride, (6) ambition, (7) having a good temper, (8) being a good friend, (9) truthfulness, and (10) wittiness (Albanese, 2008). Because Aristotle’s ethics of virtue was based on the cultivation of habits over time, it did not address the specific

issue of ethical dilemmas and moral judgments (Pollock, 2007). There are several ethical systems that explain the ethicality of a moral judgment. Broadly put, the ethical systems can be *deontological* (nonconsequentialism) or *teleological* (consequentialism). A deontological ethical system is concerned with the inherent nature of an act, whereas a teleological ethical system is concerned with the consequences of an act (Pollock, 2007).

### Deontological Systems

The most prominent deontologist is Immanuel Kant (1724–1804), who propounded *ethical formalism*. Kant proposed the rational basis of moral decisions and identified that an act based on duty was truly moral. He called this the *categorical imperative* or the *supreme principle of morality*, something that one must do, a duty (Close & Meier, 2003; Pollock, 2007). The next is the *Golden Rule*. This system, found in diverse cultures, proposes the common principle “Do unto others as you would have them do unto you.” Although the reason for this behavior might be based on the consequences of the action, this system is often treated as deontological because it sets forth a fundamental moral principle (Close & Meier, 2003). Religious ethics or the *Divine Command Theory* believe that God's word is perfect and that morality is derived from the words of God, whatever the religion of an individual might be (Close & Meier, 2003; Pollock, 2007). The emphasis is on following God's commands rather than focusing on the consequences of the actions.

### Teleological Systems

The most common teleological ethical system is *utilitarianism*, founded by Jeremy Bentham (1748–1832). This concept was also found in the works of Cesare Beccaria (1738–1794) and John Stuart Mill (1806–1873; Albanese, 2008). Utilitarianism focuses on the good or happiness of the majority. Happiness is measured by Bentham's *pleasure – pain principle* or the *hedonistic calculus*, whereby pleasure is sought and pain avoided (Albanese, 2008; Pollock, 2007). An action will be judged by the total amount of pleasure or happiness that will be created as opposed to the total amount of pain or unhappiness that will be created (Close & Meier, 2003). Because the emphasis is on the consequences of an act, utilitarianism justifies bad actions as long as the result is good; in other words, the end justifies the means. Determining whether a specific act is morally right or wrong constitutes *act utilitarianism* (Pollock, 2007). *Rule utilitarianism* proposes that an act is morally right if it can be universally applied as a rule that is morally right.

Another teleological system is *ethical egoism*, which proposes that an action be judged by the greatest good that is produced for the person taking the action. The sole consideration is for the benefit to the egoist. *Ethics of care*, a feminine ethical system discussed in the works of Carol Gilligan, has found application in restorative justice and rehabilitation of offenders (Pollock, 2007). The focus is on relationships, the needs of the victims, and on reintegrating offenders into society after they have accepted responsibility for their actions. This can be said to be a teleological system, because it is concerned about the consequences of the actions, whether it would serve the needs of those affected by the decision.

### Ethics and the Police

There are two paradigms of policing: (1) the traditional crime fighter role and (2) the more recent public service or community policing role (Pollock, 2007). In the United States, although crime control is the major role of policing, both paradigms can be seen. The public

service paradigm is predominant in Europe. The public service paradigm can be identified with community policing, where the police are people's friends, mingling with them in the community and aiming at social peace. The spirit of service is primary. The goal is to abide by the code of police ethics and be ideal protectors of the people, as expected by social contract theory. Under this paradigm, a criminal is viewed not as a member of a distinct group but as somebody from the neighborhood who has gone astray (Pollock, 2007).

Whereas the public service paradigm is more rights based and duty oriented, as prescribed by ethical formalism, the crime control paradigm is less formal and subscribes to utilitarianism. Under the crime control paradigm the police are seen as an army to fight crime and catch criminals by whatever means necessary (Kleinig, 2008; Pollock, 2007). With the September 11, 2001, attacks on the World Trade Center and the Pentagon, the crime control paradigm has gained prominence. Criminals are viewed as enemies, and the police consider themselves as distinct from the people they serve. This gives rise to the police subculture in which loyalty is the code of honor and the "blue wall of secrecy" is maintained. "Noble cause" corruption is tolerated within the departments, thus allowing police use of excessive force, as in the film *Dirty Harry* (Pollock, 2007). The police subculture also allows officers to carry out unethical behavior at the individual level. Increasing diversity in the police force, police unions, and civil litigation are causing police subcultures to weaken (Pollock, 2007).

### The Police Subculture

It should be mentioned that subcultures are prevalent in some form in almost every police agency in the world, ranging from the United States to the United Kingdom. It is important to note that police subcultures may directly contribute to unethical employee behaviors. Unlike probation and parole officers, who may work alone, police officers are heavily influenced by their peers. Walker and Katz (2008) contended that the police subculture provides officers with rationalizations and motivations that allow them to engage in unprofessional behaviors. Some scholars have argued that there is a profound need to eliminate the negative effects associated with the police subculture (Souryal, 2006).

It is also possible that the police subculture allows law enforcement officials to commit unethical acts in the presence of other officers. Ward and McCormack (1987) stated, for example, that there are some citizens who strongly feel that "the great esprit de corps in the police force inhibits officers from investigating suspected corruption of fellow officers" (p. 21). Other scholars have noticed the lack of cooperation between officers of different ranks (Toch, 2002). Souryal (2006) argued that this builds a sense of unity among low-ranking patrolmen who may be tempted to isolate themselves from senior officers or cover up each other's mistakes. Pollock (2007) also contended that there is an enormous amount of discord between police administrators and their underlings. Some scholars also argue that the police subculture inadvertently excludes certain types of police officers (Holdaway, 1996; Miller, Forest, & Jurick et al., 2003). In the United Kingdom, discrimination has been said to exist toward other officers as an indirect result of police activities that occur outside of work, such as shift parties and get-togethers (Holdaway, 1996). According to Holdaway (1996), certain officers, usually women and members of minority groups, are excluded from these events. This is consistent with Miller et al.'s (2003) contention that homosexual police officers also have limited access to the police subculture. Even though some officers are more entrenched in the police subculture than others, much of the current literature contends that it promotes attitudes that lead to cynicism and unethical behaviors among police.

## Police Corruption

In 1972, the Knapp Commission exposed unethical behavior and police corruption at virtually every level within the New York City Police Department (NYPD). During these official proceedings, corrupt officers were considered to be either “grass eaters” or “meat eaters” (Pollock, 2007). Grass eaters were officers who accepted gratuities yet did not demand any of the services they received (Souryal, 2006). Meat eaters, on the other hand, aggressively demanded bribes in exchange for specific types of favors. The Knapp Commission discovered that both of these types of police officers permeated the entire police department.

In the Knapp Commission inquiry, two police officers, Frank Serpico and David Durk, of the NYPD, went public with allegations of corruption and graft (Maas, 1973). During this formal investigation Serpico testified against many of his fellow police officers and helped to expose the ineffectiveness of the NYPD's internal investigation department (Maas, 1973). Not long after his testimony, Serpico was shot in the face during a routine drug bust; although his coworkers did not come to his immediate aid, Serpico survived the attack (Maas, 1973). After the Knapp Commission, the NYPD pledged to eliminate officer misconduct and corruption (Pollock, 2007).

In addition to accepting bribes or engaging in organized corruption, police officers may engage in other types of unethical behaviors during the course of their 8-hour shift. Some research, for example, has shown that police officers engage in unscrupulous sexual acts while on duty (Barker & Carter, 1994). Souryal (2006) contended that this is because police officers have a high degree of power and are relatively isolated from their supervisors. It has been well documented that some police officers have had sex while on duty (Barker & Carter, 1994; Souryal, 2006). There have even been instances in which sheriffs and chiefs of police have partaken in unethical acts. In one recent case, for example, a high-ranking police executive of Walkill County, New York, was allegedly caught having an intimate encounter in a patrol vehicle (Souryal, 2006). In other instances, however, the acts may be much more serious and are often motivated by greed and self-interest (Pollock, 2007).

## Additional Types of Unethical Police Behaviors

There are many types of unethical behaviors in which police officers engage besides sexual deviance. These acts can range from abusing sick time to brutality (Barker & Carter, 1994). Some law enforcement employees may also sleep on duty, even in instances when they are expected to be vigilant and alert (Souryal, 2006). There are also officers who may expect businesses to provide them with special perks, such as free meals and coffee (Souryal, 2006). Police officers may also be tempted to falsify reports and even commit perjury (Barker & Carter, 1994; Pollock, 2007).

It is important to note that many countries besides the United States have police officers who have acted unethically. In fact, virtually every country has had at least one type of instance in which police officers have acted unprofessionally (Reichel, 2002). Mexican law enforcement officials, for example, are perceived by many scholars to be notoriously corrupt. In Peru, it has been said that corruption is so rampant that police officers may overlook traffic violations for bribes as small as candy bars (Reichel, 2002). In other countries, unethical police behaviors are equally as serious, if not more so, and may range from torturing pretrial detainees in Egypt to trafficking child pornography in Australia (Reichel, 2002). These examples illustrate that unethical employee behaviors exist in virtually every type of police organization on a worldwide scale.

## Ethics and the Courts

Although police officers certainly engage in unethical behaviors, practitioners who work in the court also have the potential to act in an inappropriate or unscrupulous manner. This is because, to varying degrees, court personnel such as prosecutors, defense attorneys, and judges have discretionary powers. When faced with ethical dilemmas, they can take decisions one way or the other, because moral obligations have finer shades (Souryal, 2006).

### Prosecutors and Ethics

Some prosecutors, for example, may behave unethically. Prosecutors exercise a great deal of discretion as they decide which cases should go to trial and which should be dismissed. In theory, they must try to seek justice and not merely a conviction. However, on occasion they are driven by personal ambitions rather than justice. Some prosecutors treat their current jobs as stepping-stones to other lucrative jobs (Kleinig, 2008; Pollock, 2007). This might compromise their undivided service to the public. They also are greatly involved in the process of plea bargaining, where the presumption of innocence is compromised and the defendant pleads guilty in exchange for a promise of lesser charges or less sentencing. At times, another ethical issue arises when the defendant refuses to accept a plea bargain and the prosecutor acts in a retaliatory manner during the trial.

In addition to the ethical issues inherent in the plea bargaining process, prosecutors may also intentionally attempt to compromise the trial process (Kleinig, 2008). This can be done by a practice known as *jury skewing* (Kleinig, 2008, p. 126).

According to Kleinig (2008), jury skewing occurs when prosecutors seek out jurors who are partial or biased in their favor. It should be noted that although some scholars consider this practice to be unethical, it is nevertheless perfectly legal, unless a prosecutor discriminates on the basis of race, ethnicity, or gender as per *Batson v. Kentucky* (1986).

In addition to engaging in jury skewing, prosecutors may also behave unethically by withholding exculpatory information that may affect the outcome of a criminal case in favor of the defendant (Kleinig, 2008). In *Brady v. Maryland* (1863), the U.S. Supreme Court held that the suppression of exculpatory information is a violation of the due process rights of criminal defendants. Prosecutors are also likely to use questionable expertise because of the relationship the government has with forensic laboratories. Kleinig (2008) identified other examples of prosecutorial misconduct, such as coaching witnesses, overstatement about the evidence in the opening and closing statements, and zealous resistance to appeals that may reflect poorly on their work. Prosecutorial misconduct can be explained by utilitarianism and egoism, focusing on the consequences of their wrong actions, but such actions are definitely not justified by any deontological ethical system that recognizes that the inherent nature of the act must be good.

### Unethical Behaviors and Defense Attorneys

Like prosecutors, defense attorneys also have the potential to behave unethically. The job of a defense attorney is to ensure that defendants are not deprived of their due process rights. Their loyalty lies solely to their clients and not to the public. At times, however, defense attorneys pursue this goal too zealously to prove their defendants' innocence. At such a time, they should be careful not to encourage or allow perjury by their clients (Kleinig, 2008). The

attorney–client privilege is a very important aspect of the representation of a client. This confidential and loyal relationship is important to ensure proper representation of a defendant, which is possible only after a complete knowledge of the facts of the case. A defense attorney's job is not to judge whether the client is guilty or innocent but to ensure that the client gets a fair representation and that all due process rights are protected (Pollock, 2007). This confidentiality can be broken only under four circumstances: (1) The defendant can waive it, (2) by court order, (3) if the defendant expresses his intent to commit a future crime or fraud, and (4) if the defendant tries to implicate the attorney in some criminal enterprise (Pollock, 2007).

There are times when the defense attorney fails to represent his or her client effectively. Several cases alleging ineffective assistance of counsel have been filed, but this has been a ground hard to prove. In *United States v. Cronin* (1984), the U.S. Supreme Court held that a claim of ineffective assistance of counsel can be made only by pointing out specific errors made by the trial counsel. It cannot be based on an inference drawn from the defense counsel's inexperience or lack of time to prepare, the gravity of the charges, the complexity of the defense, or the accessibility of witness to counsel. In *Strickland v. Washington* (1984), the court ruled that an accused who claims ineffective counsel must show deficient performance by counsel and a reasonable probability that but for such deficiency the result of the proceeding would have been different.

There have been cases in which the defense attorney was found silent and even sleeping during the proceedings in court. In *Burdine v. Johnson* (2001), a defense lawyer for a capital offense defendant kept falling asleep during the trial. Convicted and sentenced to death, the defendant appealed, claiming he was denied the constitutional right to effective counsel. The Fifth Circuit concluded that Burdine did not have the benefit of effective counsel and therefore ordered a new trial. The U.S. Supreme Court refused to hear the case on appeal; thus, the decision to give Burdine a new trial was upheld. In *Ex parte McFarland* (2005), the court of criminal appeals held that although the lead defense attorney had slept through portions of the trial, the defendant was not deprived of assistance of counsel because his second attorney was present and an active advocate at all times.

In *Bell v. Cone* (2002), the court allowed a death sentence to stand even though the defendant's lawyer failed to make an argument to the jury to save his life. In this case, Cone was tried and found guilty of capital murder. During the sentencing stage, the sequence was for the prosecution to argue first, then the defense lawyer, and then the prosecutor again. A junior prosecutor argued first for the prosecution. The defense lawyer then decided to waive his argument, because under court rules the prosecutor could not argue a second time if the defense lawyer waived the argument. This was done by the defense lawyer as a strategy so that the senior prosecutor, who was a highly effective lawyer and who was going to give the second prosecution argument, could not say a word. The jury gave the defendant the death penalty anyway. Cone appealed, claiming ineffective counsel. The court upheld the sentence, saying that Cone's constitutional right had not been violated because what the defense lawyer used as a strategy was reasonable.

In *Mickens v. Taylor* (2002), Mickens was convicted of murder and sentenced to death. He claimed ineffective assistance of counsel because he discovered, after the trial, that his attorney had represented the victim on unrelated charges. This was never revealed to Mickens. The U.S. Supreme Court rejected his claim, saying that a defendant who claims that the right to counsel was violated because of a conflict of interest must show that the conflict had a negative effect on the attorney's representation and that there was a reasonable

probability that the result would have been different. The court concluded that “dual representation” in and of itself merely represents a “theoretical division of loyalties” and did not require a reversal of the results.

### **Ethical Issues Involving Judges**

Just as both prosecutors and defense attorneys have the potential to behave unethically, judges are also not immune to engaging in inappropriate behaviors. The most important ethical responsibility of a judge is to be impartial. For this, judicial independence and integrity are vital. Judicial independence could mean both the independence of the judiciary from the other branches of the government and the personal independence and integrity of the judges so that they are not influenced by other considerations in their function as judges (Kleinig, 2008). The Code of Judicial Conduct Canon 2 (1990) says that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. Also, as per the Code of Judicial Conduct Canon 2 (C) (1990), a judge should not hold membership in any organization that discriminates on the basis of race, religion, gender, or national origin.

Judicial accountability is yet another aspect that holds judges responsible for their actions. Judges are to disqualify themselves from cases in which their impartiality might be questioned, as in cases in which they might have a financial or other interest (Barua, in press). This was reinforced by the approval of the Judicial Conference Policy for Mandatory Conflict Screening on September 19, 2006. This policy mandated an automated conflict screening to identify any financial conflict that federal judges might have in cases that come before them. Besides this, judges are often invited to attend educational trips sponsored by certain organizations. This sometimes gives rise to an ethical issue that judges would be biased toward the sponsors of these programs or toward corporations in which they might have a financial interest.

It is more the appearance of impropriety than an actual unethical action of a judge that creates concerns (Barua, in press). On September 19, 2006, the Judicial Conference Policy on Judges' Attendance at Privately Funded Educational Programs was released. It mandated that a federal judge should not accept travel, food, lodging, reimbursement, or anything that would be considered a gift under the Judicial Conference Ethics Reform Act Gift Regulations for attending a private educational seminar, unless its sponsor has filed a public disclosure statement on the content of the program and all sources of funding for the judges' expenses. These two policies were aimed to allay the fears of unethical behaviors that the public might have about federal judges (Barua, in press).

The two areas where judges exercise their discretion are (1) interpretation of the law and (2) sentencing (Pollock, 2007). While interpreting laws, judges can get caught up in hypertechnical application of laws at the cost of equity and fairness (Pollock, 2007). Before the federal sentencing guidelines, sentencing disparities existed because of different sentencing patterns of individual judges (Hofer, Blackwell, & Ruback, 1999). Whatever may be the situation and the case, judges are expected to be fair, just, and impartial and to mete out equal treatment to all and sundry, upholding the neutral position of the judge and behaving in a manner that behooves a judge and the pristine judicial office. As this section of the chapter has shown, however, some judges may behave unethically. Like other practitioners who work in the court, judges also have the potential to behave irresponsibly or in an unprofessional manner.



## Ethics and Correctional Officers

Although very little literature has systematically addressed the types of unethical behaviors in which correctional officers engage, at least a few studies have addressed these issues. One of the most common areas of ethical concern pertains to excessive uses of force that occur in penal facilities. Morris (1988) portrayed a classic depiction of abuse as he described the events that led up to the infamous 1980 New Mexico prison uprising. Morris gave a detailed account of the “goon squads” that were led by guards and designed to systematically abuse offenders as a means of achieving control. Ultimately, it was this informal control mechanism that was one of the major factors that led to one of the most devastating riots in American prison history.

It has been almost 30 years since the New Mexico prison uprising, yet there is still reason to believe that correctional officers use excessive force against inmates. In August 2005, for example, two female jail employees were arrested for conspiring with an offender to assault another inmate (Hales, 2005). In this incident, the guards were apprehended for utilizing offenders to punish a female inmate who was incarcerated for committing sex crimes against her son. The mistreatment of offenders by prison employees may occur in institutional settings besides state and local correctional facilities. For example, similar acts of brutality have been committed against Iraqi detainees by U.S. military prison personnel. In recent memoranda to the Armed Service Committee, one military employee stated, “We would give them [prisoners] blows to the head, chest, legs and stomach, pull them down, kick dirt on them. This happened every day” (Serrano, 2005, p. A-1).

In addition to physical brutality that is directed toward inmates, there have been cases in which male and female guards have acted unethically by sexually assaulting the inmates they are paid to protect. Welch (2004) described a well-documented 1998 incident in which three female prisoners were sold as “sex slaves” to male inmates at a federal penitentiary in Pleasanton, California. Ultimately, this led to a federal lawsuit, and the Federal Bureau of Prisons settled the suit for \$500,000 (*Lucas v. White*, 1999). The prison agency also agreed to drastic changes in order to curtail the sexual abuse of female inmates.

While the preceding case represents one of the most horrific examples of sexual abuse directed at female inmates, there have been other examples in which it may seem less obvious as to whether a sexual assault even occurred. In *State v. Cardus* (1997), a male prison guard developed a rapport with a female inmate for whom he was performing favors. This led to a friendship, followed by a physical relationship. Sexual contact occurred, but only on one occasion, and was limited to oral sex. To complicate matters even further, court documents indicate that there were strong feelings of attraction on the part of the inmate (*State v. Cardus*, 1997). She later admitted in an official proceeding that her actions were voluntary. The inmate gave the following testimony: “I wanted to do it being incarcerated for about a month then, and prior to being incarcerated, I wasn't having sex ... I did want it” (*State v. Cardus*, 1997, p. 429). Despite this testimony, the Intermediate Court of Appeals ruled that the “consent” of an incarcerated person was “ineffective consent,” and it affirmed the defendant's conviction of second-degree sexual assault. In the *Cardus* case, the correctional officer was behaving in both a criminal and an unethical manner.

### Inappropriate Relationships with Prison Inmates

Some of the more recent literature on unethical behaviors that occur in prison settings relate to the inappropriate relationships that can develop between inmates and staff members. Few

studies have been conducted in this area, and this is still largely uncharted territory. An incident that one scholar might call an “inappropriate relationship” may be labeled by others as a form of economic exploitation, or even sexual abuse. One thing is certain, however: These behaviors are certainly unethical and should not be tolerated in a correctional environment. Worley, Marquart, and Mullings (2003) provided a definition of inappropriate relationships:

Personal relationships between employees and inmates/clients or with family members of inmates/clients. This behavior is usually sexual or economic in nature and has the potential to jeopardize the security of a prison institution or compromise the integrity of a correctional employee. (p. 179)

Although some research on the forbidden relationships between correctional staff and inmates focuses disproportionately on sexual situations involving male officers and female offenders, the majority of inappropriate relationships occur between male inmates and female correctional officers (Worley et al., 2003; Worley & Cheeseman, 2006). This makes sense when one considers that female inmates make up only 7.3% of the state prison population and 7.5% of the federal prison population (Clear, Cole, & Reisig, 2009).

There may be a perception that only low-ranking correctional employees are likely to have inappropriate relationships, but even prison administrators are not immune from behaving unscrupulously with inmates. Recently, for example, Christine Achenbach, an executive assistant and fourth in command at a federal prison in Colorado, was convicted of having sexual relations with a prison inmate (Hughes, 2002). During the course of her sexual relationship with two offenders, Achenbach was even believed to have warned her inmate “boyfriends” when their cells would be searched (Hughes, 2002). Both of these offenders were members of the infamous Crips gang (Hughes, 2002). One of Achenbach's inmate lovers, during the trial, described how he wooed her into having a relationship and said: “I felt that [Achenbach] was vulnerable and that she could be compromised if a person were to be sensitive and take time with her” (Hughes, 2002). In 2002, a judge sentenced Achenbach to 4 years of probation; she was also required to register as a sex offender for life (Abbott, 2002). It is clear from this example that even upper echelon correctional administrators have the potential to engage in unethical behavior.

### **Contraband and the Prison Economy**

It is important to note that in addition to having sex with inmates, correctional officers can also act unethically by providing offenders with contraband. According to some scholars, the recent anti-tobacco policies of many prison agencies have contributed to correctional officer misconduct (Silverman, 2001). Some employees may see nothing wrong with smuggling in tobacco, because it is not a mindaltering substance and has only recently become restricted, but Silverman (2001) argued this point:

Since the ban in Texas, tobacco has become the number one contraband item. Moreover, many [correctional officers] and other staff members are smokers, and some do not feel that bringing tobacco in is “really a violation,” because they disagree with the ban. For some, throwing a carton of cigarettes over the wall to make an extra \$100 is more of a game than a law violation. It presents staff with an easy way to supplement their income without really feeling guilty that they are violating the law. (p. 240)

As this quote illustrates, some correctional officers may see an enormous opportunity to conspire with inmates in order to provide a much-needed commodity to the prison population. Vermont, the first state to outlaw smoking, had to lift its ban after offenders began soliciting staff members and even having sex with other inmates for cigarettes (Blood, 1996; Silverman, 2001). There is no question that a few officers have been tempted by inmates to smuggle contraband into penal facilities.

### **Unethical Behaviors and the Prison Guard Subculture**

Although there is very little literature pertaining to the types of unethical behaviors in which correctional employees engage, much more research has examined and been published on prison guard subcultures. This literature may give invaluable insights into the unethical behaviors of correctional officers. The prison guard subculture, like the police subculture, manufactures negative images of the “client” (Kauffman, 1988). Irwin (2005) contended that the most crucial aspect of the guard subculture is the hatred and moral superiority that most keepers have toward the kept. Even though the guard workforce has become much more diverse, most correctional employees view inmates as “worthless, untrustworthy, manipulative, and disreputable deviants” (Irwin, 2005, p. 64).

Like the police subculture, the prison guard subculture may also provide officers with rationalizations for behaving unethically. Pollock (2007) contended that veteran guards initiate newer officers into the subculture. Kauffman (1988) argued that new officers quickly learn from other guards not to be a “rat” (a prison employee who informs on his or her coworkers). Prison custodians are taught by other staff members to never cooperate with superiors by participating in any activities that would be detrimental to another officer (Kauffman, 1988). Pollock (2007) also believes there are sanctions if an officer is viewed as a rat by his fellow employees. Some scholars have argued that because of this guard subculture a tremendous amount of employee misconduct, such as theft and brutality, tends to go unreported in prison agencies (Irwin, 2005; Souryal, 2006). Other research indicates that the tendency for officers not to “rat” also contributes to an enormous amount of sexual abuse that is prevalent in female institutions and committed by male guards (Human Rights Watch Women's Rights Project, 1996).

There is clearly an abundance of literature devoted to the correctional officer subculture. By examining this, scholars may be able to better appreciate why some correctional officers behave unethically.

### **Ethics and Probation and Parole Officers**

As previously mentioned, unethical acts are committed by employees in virtually every type of law enforcement endeavor. This is true even in the field of probation and parole, where employees are presumed to have one of the highest levels of education and job training (Souryal, 2006). Probation and parole officers have the potential to engage in many different types of unscrupulous behaviors. Some probation and parole officers, for example, may conduct personal business on state time. This can include anything from grocery shopping to getting a haircut while on duty. There are also employees in community corrections who claim that they make field visits when in fact they do not (Souryal, 2006).

In addition to these types of unprofessional behaviors, probation and parole officers may also act in an unethical manner by discriminating against clients solely on the basis of race, gender, or age (Souryal, 2006). Also, probation and parole employees may engage in sexual

deviance. One type of sexual deviance, for example, may include sexual harassment that occurs in the workplace. Recently, an Alaskan probation officer filed a lawsuit against his female superior alleging that she permitted a sexually charged, hostile work environment (Carroll, 2005). He maintained that one of his female coworkers had pinched his nipples repeatedly, even after being told to stop. In addition to engaging in sexual harassment, probation and parole employees may also behave unethically by having sexual relationships with either their clients or their clients' family members (Souryal, 2006). Like police officers, prison guards, and court employees, these practitioners also have the potential to behave unethically during the course of their careers.

## Conclusion

Based on social contract theory, criminal justice professionals have been given a certain authority and power by the government, as its agents, to protect the inhabitants within a particular jurisdiction in exchange for a few liberties given up by these residents. This sets them apart from the general populace. Armed with the responsibility to guard the populace, criminal justice professionals are expected to have higher moral standards so that the people can trust them with the power they have to protect. Occasionally, instead of honoring the position and trust given to them, these professionals get distracted and use their discretion as they deem fit. This leads to a collapse of the social contract theory, often leading to disastrous consequences.

When the consequences of a decision are bad, the teleological or consequentialist ethical system does not support it. Oftentimes such decisions are motivated by personal gain following the ethical system best characterized as egoism. Because the essence of criminal justice is the service and protection of society, this is definitely at odds with the concept of egoism. The police officer, or the probation officer, or the judge who accepts bribes and gratuities, or engages in sexual relations with clients, begins his or her moral career that leads to higher forms of corruption and unethical behaviors (Pollock, 2007). Such corruption is engaged in solely for the purpose of personal gain and is condemned by most ethical systems, such as ethical formalism (deviating from duty), utilitarianism (not good for the majority), teleological (bad consequences), deontological (the act itself is bad), natural law (aimed at personal happiness rather than self-preservation), religious ethics (not supported by God), Plato's *summum bonum* (against the principle of the ultimate good), Aristotle's ethics of virtue (not a virtue or excellence), the Golden Rule (the corrupt would not want to be a victim of corruption), and the ethics of care (corruption does not show care). The only ethical system that justifies the unethical behavior of criminal justice professionals is egoism, which is focused on the self and happiness for oneself. Just as no act can be absolutely selfless (e.g., even charity gives self-satisfaction), no selfish act can bring ultimate happiness to the doer. As such, unethical behavior is going to cause more pain than pleasure in the long run, according to Bentham's hedonistic calculus (Pollock, 2007).

On one final note, it is important to mention that there is at least one additional type of unethical behavior in which criminal justice professionals engage that can be explained as corruption for the good of the organization and not for personal gain. An instance of this might be an excessive use of force, as when a police officer tries to catch a crook by whatever means necessary or a when a correctional officer who uses it to teach a criminal a lesson. Another example could include a prosecutor who uses dubious evidence when he or she is convinced that someone has committed a crime and should not be allowed to be free. Even though these are guided by a noble cause—to rid society of the “bad guys”—such behavior might be problematic (Kleinig, 2008). Nevertheless, such corruption is often tolerated by

individual departments. Other than civil litigation, the only way to check such unethical behavior within the agencies is to have ethical leaders who will not tolerate such actions by their subordinates. In sum, it is a matter of concern that unethical behavior is prevalent in all areas of criminal justice, be it among police officers, court personnel, or corrections officers. A strict adherence to the ethical codes, an ethical leadership, and a pride in their professions and the spirit it upholds are important steps toward addressing this issue.

Robert M. Worley and Vidisha Barua *Pennsylvania State University Altoona*

### References and Further Readings

- Abbott, K. (2002, December 5). Inmates, guards testify in sex trial. *Rocky Mountain News*, p. 22A.
- Albanese, J. S. (2008). *Professional ethics in criminal justice: Being ethical when no one is looking*. Boston: Pearson Education.
- Barker, T., & Carter, D. (1994). *Police deviance* (3rd ed.). Cincinnati, OH: Anderson.
- Barua, V. (in press). Accountability and transparency of the federal judiciary. *The Criminal Law Bulletin*.
- Batson v. Kentucky, 476 U.S. 79 (1986).
- Bell v. Cone, 505 U.S. 685 (2002).
- Blood, M. (1996, February 26). Rikers is joining ranks of smokefree prisons. *The (Newark, NJ) Star-Ledger*, p. 37.
- Brady v. Maryland, 373 U.S. 83 (1963).
- Burdine v. Johnson, No. 99–21034 (5th Circuit, 2001).
- Carroll, T. (2005, September 16). Man alleges harassment, sues state. *Juneau (Alaska) Empire*, p. 1A.
- Clear, T. R., Cole, G. F., & Reisig, M. (2009). *American corrections* (8th ed.). Belmont, CA: Thompson Wadsworth.
- Close, D., & Meier, N. (2003). *Morality in criminal justice: An introduction to ethics*. Belmont, CA: Thompson Wadsworth.
- Ex parte McFarland, 163 S.W.3d 743 (Tex. Crim App., 2005).
- Hales, D. (2005, August 24). Jail employees arrested for conspiracy to assault inmate. *Muskogee Daily Phoenix and Times Democrat*, p. A1.
- Hofer, P., Blackwell, K., Ruback, B. The effect of federal sentencing guidelines on inter-judge sentencing disparity. *Journal of Criminal Law and Criminology* 90 (1999). 239–321. <http://dx.doi.org/10.2307/1144166>
- Holdaway, S. (1996). *The racialisation of British policing*. Basingstoke, UK: Macmillan.
- Hughes, J. (2002, December 5). Ex-colleague to tell of alleged trysts at prison inmate: Official seen having sex. *Denver Post*, p. B2.
- Human Rights Watch Women's Rights Project. (1996). *All too familiar: Sexual abuse of women in U.S. state prisons*. New York: Human Rights Watch.
- Irwin, J. (2005). *The warehouse prison: Disposal of the new dangerous class*. Los Angeles: Roxbury.
- Kauffman, K. (1988). *Prison officers and their world*. Cambridge, MA: Harvard University Press.
- Kleinig, J. (2008). *Ethics and criminal justice: An introduction*. Cambridge, UK: Cambridge University Press.
- Lucas v. White, 63 F. Supp. 2d 1046, N. D. Cal. (1999).
- Maas, P. (1973). *Serpico*. New York: Harper.
- Mickens v. Taylor, 535 U.S. 162 (2002).
- Miller, S. L., Forest, K. B., Jurik, N. C. Diversity in blue: Lesbian and gay police officers in a masculine operation. *Men and Masculinities* 5 (2003). 355–385.

<http://dx.doi.org/10.1177/0095399702250841>

Morris, R.(1988).The devil's butchershop: The New Mexico prison uprising. Albuquerque: University of New Mexico Press.

Pollock, J. M.(2007).Ethical dilemmas and decisions in criminal justice (5th ed.). Belmont, CA: Thompson Wadsworth.

Reichel, P.(2002).Comparative criminal justice systems (3rd ed.). Upper Saddle River, NJ: Prentice Hall.

Serrano, R. A.(2005, September 24).More Iraqis tortured, officer says the 82nd Airborne is accused of abuses in 2003 and early 2004. Los Angeles Times, p. A1.

Silverman, I. J.(2001).Corrections: A comprehensive view. Belmont, CA: Thompson Wadsworth.

Souryal, S.(2006).Ethics in criminal justice: In search of the truth (4th ed.). Cincinnati, OH: Anderson.

State v. Cardus, 86 Haw. 426(1997).

Strickland v. Washington, 466 U.S. 668(1984).

Toch, H.(2002).Stress in policing. Washington, DC: American Psychological Association.<http://dx.doi.org/10.1037/10417-000>

United States v. Cronin, 466 U.S. 648(1984).

Walker, S., & Katz, C. M.(2008).The police in America: An introduction (6th ed.). New York: McGraw-Hill.

Ward, R. H., & McCormack, R.(1987).Managing police corruption: Internal perspectives. Chicago: Office of International Criminal Justice.

Welch, M.(2004).Corrections: A critical approach. New York: McGraw-Hill.

Worley, R. M.Cheeseman, K. A.Guards as embezzlers: The consequences of “non-shareable” problems in prison settings. *Deviant Behavior*27(2006). 203–222.

<http://dx.doi.org/10.1080/01639620500468592>

Worley, R. M., Marquart, J. W., & Mullings, J. L.(2003).Prison guard predators: An analysis of inmates who established inappropriate relationships with prison staff, 1995–1998.

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- prisoners
- prosecutors
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- subcultures
- police officers
- defendants

<http://dx.doi.org/10.4135/9781412971997.n98>