

Professional Ethics in Criminal Justice

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In any dictionary you open, you will see several definitions of what the word “moral” means. They all have the same basic meaning and that is to know, and understand the difference between right and wrong, and that you are able to conform to those rules in a given society. “Ethics” in any dictionary is defined as a personal system of moral principles in regards to the recognition of the rules governing a particular group or culture. In other words, morals are said to guide your personal character, and ethics emphasizes the social system to which the morals are applied (Kayne, 2009). With those definitions in mind, apply the thoughts behind each, to the political advocates, and governmental policies put in place to help administer public organizations, and of the ethics and reality of the organizations themselves. How does the moral and ethical character of elected officials and of those that administer justice in the individual criminal justice organizations affect their ability to do their job fairly, and with the public interest in mind, and what is the public’s perception of political ethics and governmental trust?

According to Kayne, 2009, “A person’s moral code is usually unchanging; the ethics he or she practices can be other-dependent: but dependant on what? I interpreted this to mean that the ethics practiced within the criminal justice system can be dependant on the politics and the reality of the system itself. In an editorial in the Journal of Legal Ethics, in 2006, Ed Cape and Julian Webb say that although the politicians that advocate for policy to reshape the criminal justice system is headed in the right direction, they must take into account the ethical consequences of these policies on the organizations they affect (Cape, et al, 2006). The author goes on to say that because of the magnitude of the changes needed, criminal justice professionals must learn to work out resolutions to ethical issues that arise from policy change.

Due to the power of government officials to advocate, and enact policy changes in a public organization, a close eye must be kept on the agenda of the elected officials to avoid their personal bias, un-ethical behavior, or possible corrupt practices. A personal agenda, instead of an organizational agenda in a politician can have a ripple effect down the ladder to individual organizations, administrations, and even lower management by the policies advocated for by said official (Pollock, 2007). Michael Walzer, author of *Sphere of Justice*, penned an opposing viewpoint in which he states that there are three values that should guide Americans in electing politicians. He says that regardless of their personal life, our leaders should be voted in based on their trustworthiness in dealing with local and foreign nations, faith in the United States Constitution, and their commitment to democracy (Walzer, 2001).

However, there are other researchers and scholars that feel the public should take into account the personal ethics and morals of elected officials in determining political honesty in office and the results they produce (Williams, 2001). For example, in another opposing viewpoint by talk show host, and syndicate columnist Armstrong Williams, it is stated that “socially, we continue to grapple with unfortunate results of governmental programs meant to assist the poor, but which in reality force families apart and trap them in poverty (Williams, 2001).” He goes on to say that this is because the public holds politicians to lower ethical standards than school teachers and priest. This has been cited as one of the reasons these governmental programs and agencies are failing at their goals.

Even though a person’s ethics and morals in their personal life is a possible reflection on their professional life, Walzer feels that this is highly unlikely. He cited serial killers and mass murderers (morally wrong) who are loving caring husbands,

fathers, and hold professional positions in the community, yet they still go out and commit horrific crimes against another human being. He also points to thieves and philanderers who have made great politicians. However, he contradicts himself in stating that “trust” in leadership is very important, and that without this trust no political promises will be kept (Walzer, 2001). This means if the politician cannot be trusted to handle his personal affairs, how can we trust him to live up to his political promises once in office. The author does not adequately define what level of trust in a politician we should have, or if we should base our trust on promises made in campaigning, or in the officials personal ethical values and home life.

Pollock, 2007, backs up this notion in saying that a person must lead by example and that political leaders who lead unethical lives are more likely to carry these practices with them into office. If we review news and media stories regarding political leaders, we can see that scandal, although not as highly reported on, is a problem in the politicians we choose. The sexual scandal of a president, the promiscuities of local state and county representatives all ended with less trust from the public they serve. This entire issue raises one very important question: what can we do fix this problem? Williams, 2001, writes that the public is more concerned with results the politician can produce, over their personal issues and unethical behavior. He asserts that one way to solve this problem is to start looking at the ethics and family morals of potential political candidates. There are very few recent studies that reflect the personal, moral and ethical character of politicians, and the results they produce while in office. However, a thorough background check and a review of any ethical complaints or scandals in the career of the potential

candidate could possibly weed out those politicians who concentrate more on the politics and less on the people they serve.

Unfortunately, the discussion of morals and ethics throughout the entire organizational political spectrum in criminal justice is too vast for this paper. However, I would like to shift the focus down to the level of management that is responsible for enforcing and interpreting these policies and laws enacted by these politicians and some of the ethical issues involved in enforcement. In considering who falls under the local politician, it is felt the criminal justice workgroup that is closest to the top of the political hierarchy within the criminal justice organizations is the court systems. More specifically, what needs to be discussed is the ethics of judges and attorneys in response to policy and regulation to reduce the use of discretion of judges and the ethics of prosecutorial misconduct among attorneys because these are the adversaries that control the outcome of our experiences with the system.

If we take a close look, we will realize that we need to understand the ethics and moral values of our elected politicians, because we can then compare them to the organizational politics of the systems that these politicians govern which control our freedoms and constitutional rights, and which are also run by policies pushed through by politicians on behalf of the citizens. We may also be able to find a better, more ethical way of running these organizations for the people instead of the politics. Research has shown that because of the nature of meeting public demand for services, public organizations are closely knitted into the fabric of the political and governmental systems (Vigoda-Gadot, 2006). One would think because of this, there would be a similar political structure inside each organization of the criminal justice system. One of the reasons for

this belief is that the government provides the bulk of the money, most provided by tax payers, for these public organizations and programs. Therefore, the government has a say in the administration of public funded organizations, by the setting of regulations and policies for these organizations to follow in order to receive that money.

When investigating the ethics and morals of individual organizational leaders in the criminal justice system, specifically, within the court system, and the lead players in the courtroom workgroup, you will see that disorganization, scandal and corruption go to the highest levels of the system. If we look into corruption of judges we will see that our criminal justice system is in shambles, and rife with Scandals involving corrupt judges and lawyers, all of whom are suppose to reflect a positive, moral and ethical image to the rest of society because they are held to a higher standard. This higher standard is due to the enormous power they hold over citizens (Pollock, 2007). The abuse of judicial power, although not as publicized as other misconduct in the criminal justice system, because most issues are handled internally, is still present in the courts. A judge's use of discretion or biases in certain cases, and pertaining to certain evidence and to the behaviors of the counsels, leaves open opportunities for unethical and immoral actions on the part of the judge and attorneys whether intentional or accidental (Pollock, 2007).

It has been found that in only four instances has a judge been prosecuted for violating ethical rules where there was no statute regarding a specific behavior (Abramovsky, et al 2006). In this article, which highlights the four instances of the prosecution of judges for ethical violations, it is debated that a judge should not be prosecuted for violation of ethics, because these types of violations and penal statute violations, which demand punishment of some sort, serve different purposes. The latest

case that brought this and other issues to light is that of Justice Victor Barron in Brooklyn New York, in 2002 for demanding a bribe of over one hundred thousand dollars to sway a case in favor of an infant (Abramovsky, et al 2006). Within a few months of these charges, several judges were investigated and it was found that as many as eight judges committed acts such as receiving bribes, patronage and even moonlighting as private counsel.

The case that brought this to light involved a mother who was about to lose her child to the biological father thanks to a large bribe. Her attorney told her that if she wanted her child she would have to make a better offer. After some time and a meeting with a business woman, the county district attorney became involved (Abramovsky, et al 2006). According to the authors, this led to several recordings which did not show bribery, but did show other ethical issues including acceptance of referral fees for referring cases to a specific attorney and ex parte conversations. Cases such as this show how the ethics of a judge can, and often times do corrupt the ethics of the lawyers they befriend. While some would not see the issue with a judges moonlighting as private counsel, others may see this as a conflict of interest.

According to Abramovsky, the New York Code of judicial conduct prohibits ex parte advice and the lending of the prestige of judicial office for private purposes. However the defense for the judge cited a 1979 case with similar facts and says that “the actions constituted a violation of the code of judicial ethics, and therefore of a duty clearly inherent in the nature of the defendants office (Abramovsky, et al 2006).” The defense goes on to say that none of the current statutes have ever been used as a basis for proceedings against a judge to enforce ethical standards.” What this means is that because

of the nature of ethics, all issues should be handle by internal investigations such as those by the American Bar association. This is due to the lack of statutes, which should be updated to reflect a new era of ethics. One of the reasons I chose lawyers and judges for this review is because often you will find that judges and lawyers who commit unethical acts, do so in conjunction with each other.

An attorney's unethical behavior can have a multitude of consequences if not checked by the judge in the trial process and this could raise ethical issues on the part of the judge and the participating attorneys. In one article found during research, questions were raised: Is it moral or ethical for judges to name attorneys in an opinion only in cases of misconduct, or should the names always be included/excluded in opinions, and, do these opinions mask misconduct by excluding names? Well to answer that question we need to understand that the ethics of attorneys truly fighting on behalf of their clients can sometimes get construed when caught up in the action in the courtroom, and the attorney may not pay attention to important details that could later harm a case. Found was very few research studies done on the matters of deliberate prosecutorial misconduct, but what I did find references instances where some attorneys deliberately refer to untrue facts, or "forget" to reveal crucial evidence, or even misstate the laws and facts (McKee, 2006).

In one study conducted by Susanne Williams for the Center for Public Integrity in 2003, it was found that the most common error cited in appeals is prosecutorial misconduct (Williams, 2003). According to the author, more than half involved the prosecution withholding exculpatory evidence from the defense and is cited as one of the biggest problems with prosecutors. In an article by McKee, he refers to several instances where prosecuting attorneys have committed blatant prosecutorial misconduct that

sometimes went unchecked by the judge, yet was later discovered on appeal. For example, in one notable California case *People v. Hill* in 1998, in a 53 page ruling, the US Supreme Court called into light, “the mountain of deceit and unethical behavior” of California prosecutor Rosalie Merton whom knowingly intimidated witnesses, invoked the bible in her prosecutorial strategy, and even referred to facts not in evidence which resulted in a reversal of the death penalty (McKee, 2006). The author goes on to state that lawyers look at this example as the “pinnacle” of prosecutorial misconduct rulings.

Were these errors committed on purpose or was this just an honest error, or misinterpretation of law? Did the attorney act in an unethical manner, and if so, did the Supreme Court have the right to call them out in the public light, possibly damaging their reputation and undermining their skills as an attorney? One law professor from Santa Clara University says names should be used sparingly when judges write their opinion of prosecutorial misconduct, because misconduct has consequences of its own on an attorney in that they could be reprimanded or disbarred from practicing law (McKee, 2006). He goes on to say that from a due process perspective, it has a great impact on the reputation of an attorney, and that the attorney does not have a chance to respond or explain themselves in the opinion. Others, such as Oakland California’s Appellate Specialist Jon Eisenburg feels that prosecutors should only be named in instances where they intentionally stepped over the line, or have committed prosecutorial misconduct more than once (McKee, 2006). Be it unethical, or personal writing styles of the opinion writers, all scholars agree that naming in opinions should be saved for those who have blatantly and deliberately crossed the line of conduct.

However, prosecutorial misconduct and deals struck with judges are not the only ethical problems attorney's face. The ethics behind prosecutors and plea bargains is another hot issue that is always under debate. A question that arises here is: do prosecutors who coerce a plea bargain on someone by threats of harsher punishment if taken to trial, overstep the ethical line? There are differing opinions on this subject, Pollock, for example believes that forcing a person to confess to a crime they did not commit is unethical and morally wrong (Pollock, 2007). The other issue in this debate that needs attention is that of prosecutors making deals with witnesses for testimony for leniency in their own cases. In an article in Duke Law Journal, author Eli Mazer, in 2002 says that the Supreme Court does recognize that plea deals create and motivate persons to lie, especially if this lie will provide a small chance of leniency (Mazer, 2002).

Mazer (2002) goes on to say that although there are procedures in place to promote justice and accuracy in the plea deal, these safeguards fail to protect the rights of the accused and the integrity of the court. He states that a prosecutor can create a rational expectation of leniency within the mind of the witness, and that the witness who testifies without an agreement is aware of the importance of their testimony (Mazer, 2002). In his research, Mazer found that because the accomplice has plead guilty and openly admits their role in a crime, the falsehoods and blame shifting might appear more persuasive to a jury. He also found that "the fifth amendment's due process clause requires the government to disclose to the defense and to the trial jury the existence of plea bargaining negotiations with a key witness (mazer, 2002)." This gives the defense a chance to cross examine the witness to show how the witness is trying to protect themselves by expecting leniency. Without this adversarial approach, miscarriages of justice on a global scale

would be a bigger problem than they are now. So what does all of this have to do with the ethics of prosecutors and plea bargains?

Prosecutors use these plea bargains to avoid a trial that could cost a large sum of money to conduct at the taxpayers' expense, not to mention plea deals frees up the courts for those crimes that are serious enough to go to trial. The ethics involved in offering a plea deal has not been measured by studies as far as can be found, but the whole idea to is unethical. Coercing someone to take a plea deal for a crime they might not have committed for fear of a harsher punishment is not ethical. As Pollock, 2007, and others have stated, such incidents are viewed as assembly line justice. Pollock assert that although most people who are offered plea deals are guilty, and the prosecutor's office usually has enough evidence to go to trial, the avoidance of a trial will not bring out misconduct, because the facts will never come to light. Research and Scholarly opinions are not the only opinions that matter in the rebuilding of the justice system. We must also consider in this research, the perception of the public on our government's administration of public organizations.

To measure this, a study was done to capture citizens' perceptions of the ethics and politics in the public administration systems. One of the things this study found was that "public perceptions about ethics and fairness of public officers and agencies are positively related to the public's level of satisfaction with services received from them (Vigoda-Gadot, 2006)." In other words, the experiences of citizens, through friends, media, or personal experiences with public organizations influence and guide the public's feelings toward governmental public agencies. If the citizen had a bad experience with a

public agency, then their opinion of the fairness and ethics of the organization will be negative.

There are authors and scholars that debate over the issue of personal morals and ethics, and the effects they have on lawyers, judges and politicians, and citizen perception of services, and believe that a person's personal values and ethics do carry over into their professional and even political life. The public, one author summarizes, should elect official with higher moral and ethical standards. The reason our government fails is because we put too much emphasis on their personal scandals than on the results the politician can produce (Williams, 2001, Walzer, 2001). Although the components that make up the criminal justice system have the common goal of "rehabilitation" for those that can be helped, the rules and regulations of each organization often conflict with each other's organization's goals and policies. This creates ethical situations that must be handled effectively and diligently, and on an organization-wide scale.

To conclude, there is no one solution to the ethical problems that plague the criminal justice system and its organizations. We must first realize that the morals and ethics of the political leaders we put in charge of advocating for the justice system must be of the highest standards. Without personal morals and ethics, politicians can and sometimes pursue their own agenda in the system instead of the agenda of the people the system itself is supposed to protect. Because the government provides the majority of funds for public programs, they have a say in the making of policy and directives. This creates the political atmosphere within these organizations, modeled after the beliefs and regulations of the government itself. As long as the elected official keeps this in mind, and practice moral and ethically sound decision making, the ripple effect mentioned

earlier in this paper will go down to organizational managers in a positive light and could possibly eliminate some of the conflicts that exist within the politics of the competing organizations.

When it comes to judges and lawyers, watchdog groups and internal investigators must work diligently to curb judicial and prosecutorial misconduct. More stringent ethical codes or harsher sanctions for violating current ethical codes of conduct could be adapted to fit where cases of misconduct in the courtroom are the biggest problems. As for what drive the ethics of a person in general, one may never know. I believe it is the way the individual was raised, the work habits of the person, and even the status one achieves through life experiences. There are still numerous questions but very little answers do to the lack of research in this area. More research needs to be conducted in relation to misconduct in the criminal justice system, and the results of that misconduct on the system itself. Most of the information available at the moment is just instances of misconduct throughout courts across the country, but no real research into ways to solve these problems have been made available.

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