



THE IMPORTANCE OF ETHICS IN CRIMINAL JUSTICE

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— Maya Angelou

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ABOUT THE INSTRUCTOR

Lee Pioske is a Licensed Substance Abuse Counselor with more than eight years of experience in the field. He has a Bachelors Degree in Political Science from the University of Minnesota and a Master's Degree in Addiction Psychology from Capella University. He is currently director of one of the largest and most respected recovery Transitional Living programs in the United States. He also serves as a Therapist at a local Behavioral Health hospital in Phoenix, Arizona.

Lee's story is one of great changes and comebacks. He is a recovering cocaine addict, and spent over five years incarcerated in various prisons. He has dedicated his life to helping people in recovery, especially those who were a part of the penal system. Today, he enjoys working with people interested in Criminal Justice careers, and spends a great deal of time with police, probation and parole officers. His goal is to help create a better understanding of addiction for people on both sides of the law. Lee has designed several courses for use by residents of rehabilitation programs, including Relapse Prevention classes that have been attended by more than 5000 people in recovery.

Lee is currently living in Phoenix, Arizona, with his wife Angelita.

Evolving Ethical Challenges in Substance Use Treatment

The ethical terrain for addiction professionals has grown considerably more complex since this course was originally developed. Three areas of recent research illuminate challenges that did not exist -- or existed only in nascent form -- in 2007: pandemic-era ethical dilemmas, shifting confidentiality regulations under the CARES Act, and client perspectives on privacy protections they may not even know exist.

Pandemic-Era Ethical Dilemmas

The COVID-19 pandemic forced substance use counselors into ethical situations for which no training had prepared them. McCuistian et al. (2023) interviewed 18 front-line substance use counselors and identified novel ethical tensions that emerged when practice shifted rapidly to telehealth. Counselors reported conflicts around maintaining confidentiality when clients participated in sessions from shared living spaces, managing boundary issues when seeing into clients' homes via video, and balancing safety mandates against client autonomy when pandemic restrictions limited in-person crisis intervention. These were not theoretical dilemmas discussed in classroom settings -- they were real-time decisions made under pressure, often without clear guidance from existing codes of ethics. For professionals working in criminal justice contexts, where clients may be mandated to treatment and living in congregate settings, these tensions were amplified. The research suggests that ethical training must now account for digital practice modalities as a permanent feature of service delivery rather than an emergency accommodation.

Confidentiality in the CARES Act Era

The confidentiality landscape for substance use treatment records shifted substantially with provisions in the CARES Act (2020), which began aligning 42 CFR Part 2 protections with HIPAA standards. Ivanova et al. (2022) surveyed SUD treatment organization representatives about their perceptions of the CARES Act's Part 2 alterations and identified meaningful gaps in knowledge and significant anticipated barriers to implementation. This is a striking finding for regulations that directly govern how client records can be shared. The changes carry particular weight in criminal justice settings, where information sharing between treatment providers, probation officers, and courts has historically been governed by strict Part 2 protections. Counselors who do not understand these evolving rules risk either withholding information that can now be shared (potentially compromising coordinated care) or sharing information that remains protected (violating client rights). Neither error is acceptable, and the research indicates that the field has not yet achieved adequate understanding of the regulatory changes.

Patient Perspectives on Privacy

Perhaps most important for practitioners, Aluri et al. (2025) examined how clients themselves understand and experience privacy protections for substance use disorder records. In interviews with 27 individuals with SUD, most were unaware that special federal protections for their treatment records even existed. The study also identified gender-specific patterns in stigma concerns, with women reporting distinct fears about how substance use disclosures might affect family relationships, healthcare treatment, and other life domains. For criminal justice professionals, this finding has immediate practical implications. Clients who do not understand their privacy rights cannot meaningfully consent to information sharing. Informed consent becomes a more active ethical obligation when the clinician knows the client lacks baseline knowledge about what protections exist. Additionally, the gender-specific stigma findings suggest that ethical practice may require different approaches to privacy discussions depending on the client's specific vulnerabilities and circumstances.

Implications for Ethical Practice

These three areas of research converge on a single point: the ethical obligations of substance abuse counselors are expanding, not simplifying. Digital practice is here to stay, confidentiality regulations are in flux, and clients themselves may not understand the protections available to them. Counselors working in criminal justice settings face the additional complexity of serving multiple stakeholders -- the client, the court, public safety -- whose interests do not always align. Staying current on these developments is not merely a professional development aspiration; it is an ethical requirement.

Emerging Ethical Frameworks

As the substance use treatment field adopts new clinical practices and technologies, novel ethical questions have emerged that existing frameworks do not fully address. Four areas demand attention: the ethics of harm reduction as standard of care, equity in treatment access for justice-involved clients, the ethics of electronic health record integration, and the ethical obligation to address co-occurring physical health conditions.

Lindenfeld et al. (2023) found that 44.7% of U.S. hospitals had implemented harm reduction programs, a significant increase that raises ethical questions about standard of care. As harm reduction becomes normative in healthcare settings, facilities that do not offer these practices may face ethical scrutiny regarding whether their clients receive adequate care. For ethics in criminal justice settings specifically, the question becomes sharper: if harm reduction is increasingly accepted as standard practice, do justice-involved clients have an ethical right to access these services regardless of institutional resistance (Lindenfeld et al., 2023)?

Desai et al. (2025) documented that clients referred by correctional programs were significantly less likely to attend treatment programs that used harm reduction practices such as naloxone dispensing or non-punitive approaches to toxicology screening. This finding raises fundamental equity and access concerns. If the pathway through which a client enters treatment systematically determines the quality

and type of care they receive, the ethical principle of justice -- equal treatment regardless of circumstances -- is compromised (Desai et al., 2025). Counselors working in criminal justice settings face the ethical challenge of advocating for evidence-based practices within systems that may prioritize control and compliance over clinical best practice.

Tillman et al. (2024) examined the integration of 42 CFR Part 2 substance use disorder records into electronic health records and found that tracked patients nearly tripled from 562 to 1,411 following EHR integration, while treatment retention improved from 45% to 74%. These are substantial clinical gains, but they come with ethical complexity: increased information sharing enables better care coordination at the cost of reduced privacy protections that were originally enacted to prevent discrimination against individuals seeking SUD treatment (Tillman et al., 2024). For practitioners in criminal justice settings, where treatment information may be shared with courts, probation officers, and other stakeholders, the tension between coordinated care and client privacy is particularly acute. The ethical obligation is to ensure that clients understand how their information will be used and that the benefits of sharing genuinely serve the client's interests.

Osborne and Kelly (2023) documented that untreated physical health problems undermined substance use disorder recovery by depleting resources, reducing autonomy, and limiting social connection. This finding poses an ethical question for addiction counselors: if physical health conditions demonstrably undermine recovery, do SUD treatment providers have an ethical obligation to screen for and address -- or at minimum, refer for -- co-occurring medical needs (Osborne & Kelly, 2023)? For criminal justice populations, who face well-documented barriers to healthcare access both during and after incarceration, this ethical obligation takes on added urgency. Counselors who focus exclusively on substance use while ignoring untreated medical conditions may inadvertently set clients up for failure.

Ethics Beyond the Counseling Room

The ethical questions in criminal justice extend well beyond the counseling relationship. Because this course addresses ethics across policing, corrections, and legal support as well as treatment, it is worth examining several developments that have reshaped the ethical landscape of the broader criminal justice system since the course was written -- the rise of algorithmic decision tools, the science of procedural justice, the moral toll on justice professionals themselves, the ethics of coerced treatment, and the persistence of measurable disparities.

Algorithmic Risk Assessment and the Ethics of Fairness

Criminal justice agencies increasingly rely on algorithmic risk-assessment instruments to inform decisions about pretrial release, sentencing, and parole, and these tools have introduced ethical problems that professionals must now understand. Lagioia, Rovatti, and Sartor (2023) analyzed the widely used COMPAS recidivism instrument and demonstrated a counterintuitive but mathematically rigorous result: a risk tool can be equally accurate for two groups and still fail standard fairness tests, simply because the groups have different underlying base rates. The authors show that competing definitions of fairness -- calibration, equalized error rates, and demographic parity -- cannot all be satisfied at once except under special conditions. There is no single technical setting that makes such a tool "fair" in every sense;

adopting one fairness standard necessarily sacrifices another. Compounding the problem, tools like COMPAS have relied on proprietary methods whose calculations are disclosed neither to the defendant nor to the court, raising transparency and accountability concerns that strike at the heart of due process. For the criminal justice professional, the ethical lesson is not that these tools should never be used, but that they cannot be treated as neutral, objective arbiters. A professional who defers uncritically to an algorithmic score -- without understanding its limitations, its opacity, and the value choices embedded in its design -- has outsourced an ethical judgment that remains their responsibility.

Procedural Justice as an Ethical Foundation

One of the most robust findings in criminal justice research concerns procedural justice -- the idea that how authorities treat people matters as much as the outcomes they deliver. Walters and Bolger (2019) conducted a meta-analysis drawing on 64 studies, 95 samples, and 196 effect sizes, and found statistically significant relationships across the board: when people experience fair, respectful, and transparent treatment from criminal justice authorities, they are more likely to view those authorities as legitimate, and that perceived legitimacy in turn predicts greater compliance with the law. This evidence reframes ethical conduct as more than a matter of individual integrity. Treating citizens, offenders, and clients with dignity and fair process is not simply the right thing to do in the abstract; it is functionally connected to the legitimacy of the criminal justice system itself. For police officers, corrections staff, and counselors alike, everyday interactions -- explaining decisions, listening to concerns, applying rules consistently -- carry ethical weight precisely because they shape whether the people served experience the system as legitimate. Procedural justice thus gives an empirical foundation to what ethics has always asserted: that means matter, not just ends.

Moral Injury in Criminal Justice Work

Ethical strain does not fall only on the people the system serves; it also accumulates in the professionals who work within it. The concept of moral injury -- the lasting harm that results from perpetrating, failing to prevent, or witnessing acts that violate one's moral beliefs -- has increasingly been applied to criminal justice work. Ricciardelli, Easterbrook, and Turner (2024) interviewed 93 correctional officers and found that most encountered workplace experiences consistent with moral frustration, distress, or injury. Officers described the contradiction of working in institutions that are supposed to be rehabilitative but often are not, leaving them to reconcile the gap between the system's stated purpose and its daily reality. A parallel scoping review of ethical decision-making in law enforcement by Dempsey, Eskander, and Dubljevic (2023), analyzing 54 studies, likewise identified moral injury -- particularly around lethal-force decisions -- as a central factor shaping how officers reason ethically, and concluded that gaps in training, leadership, and officer wellness must be addressed to support sound ethical practice. These findings carry an ethical implication the original course could only hint at: sustaining ethical conduct is not merely a matter of individual character but also of organizational support. Professionals who are morally exhausted, unsupported, and cynical are less able to make the careful ethical judgments their work demands, which makes attention to their wellbeing an ethical concern for the institutions that employ them.

The Ethics of Mandated Treatment

Criminal justice counselors frequently work with clients who did not choose to be there -- people mandated to treatment by a court, a probation officer, or a drug court judge. This coercive context raises ethical questions that voluntary treatment does not. Taylor, Jamakandi, and Saloner (2026) conducted a scoping review of 39 studies of participant perspectives on legally mandated substance use treatment and identified five recurring ethical tension points: whether the person had a genuine choice about participating, whether they had a say in what services they received, perceived conflicts of interest among treatment providers who also answer to the court, the involvement of judges and legal officials in clinical decisions, and the targeting of people who may not actually need treatment. Underlying all five is the fundamental tension between respecting a client's autonomy and protecting them, or the public, from harm. The review found that participants were genuinely divided -- some experienced mandated treatment as a helpful nudge toward change they might not have made on their own, while others experienced it as coercive and disempowering. For the counselor, this evidence counsels humility: mandated treatment is neither inherently unethical nor automatically benign. Its ethical character depends on how it is delivered -- whether the client retains meaningful choices within the mandate, whether their dignity is preserved, and whether the counselor is honest about the divided loyalties that a criminal justice setting inevitably creates.

Disparity as an Ethical Problem

Finally, the ethical principle of justice -- treating like cases alike -- is tested most directly by the disparities documented in the criminal justice system. The United States Sentencing Commission (2023), analyzing federal cases from fiscal years 2017 through 2021 with statistical controls for offense and criminal history, found that Black male offenders received sentences 13.4% longer than similarly situated White male offenders, and Hispanic male offenders received sentences 11.2% longer. Black males were 23.4% less likely, and Hispanic males 26.6% less likely, to receive a probationary sentence rather than incarceration. These are not the impressions of advocates; they are regression-controlled findings from the federal government's own authoritative sentencing body. For the criminal justice professional, disparities of this magnitude are an ethical problem, not merely a statistical one. They implicate the principle of justice at the system level, and they place an affirmative ethical duty on individuals within the system to examine their own decisions -- charging, sentencing recommendations, supervision intensity, treatment referrals -- for the subtle ways that bias can enter. Ethics in criminal justice cannot be confined to avoiding overt misconduct; it must also include vigilance against the patterned inequities that emerge from thousands of individually defensible decisions.

An Expanded Ethical Mandate

Read together, these developments describe an ethical mandate for criminal justice professionals that is broader and more demanding than the one in view when this course was first written. The core commitments the course teaches -- integrity, fairness, respect for persons, and fidelity to the law -- have not changed. What has changed is the range of situations in which those commitments must be exercised and the sophistication required to honor them.

Consider how the developments interlock. The spread of algorithmic risk tools means that fairness is no longer only a matter of individual attitude; it is also a property of the systems professionals rely on, and one that cannot be taken on faith. The procedural-justice evidence shows that the everyday manner of an interaction is not ethically trivial but materially shapes the legitimacy of the entire system. The moral-injury research reframes the professional not only as a moral agent but as someone who can be morally harmed by the work, which makes institutional support an ethical concern rather than a human-resources afterthought. The mandated-treatment literature complicates the counselor's role, revealing divided loyalties that honesty requires acknowledging rather than concealing. And the sentencing-disparity data insist that justice be evaluated not only case by case but in the aggregate patterns that individual decisions produce.

For the practitioner, the through-line is that ethical competence now requires ongoing learning. A professional cannot reason well about an algorithmic risk score, a coerced client, or a pattern of disparity using only the ethical intuitions that served an earlier era. Each of these areas rewards the same disciplined habits the course emphasizes -- pausing to identify the ethical question, consulting colleagues and codes, examining one's own assumptions, and choosing deliberately rather than by default. What is new is the terrain across which those habits must now operate. The ethical professional in criminal justice is not simply one who avoids misconduct, but one who stays informed enough to recognize the ethical dimensions of the tools, systems, and patterns that a less attentive colleague might not see at all.

MODULE ONE

THE IMPORTANCE OF ETHICS IN CRIMINAL JUSTICE

The study of ethics in the Criminal Justice system will be one of your most important courses. How could it not be? Think about the myriad of decisions made by counselors, police, lawyers, probation and parole officers, corrections officers, legal assistants, and other law-enforcement personnel? Hopefully, this course will not only offer you the opportunity to learn, but will also challenge your own view of situations that will most certainly arise in your life as your career in this field progresses.

THE MEANING OF ETHICS

Ethics, also known as moral philosophy, is a branch of philosophy concerned with the study of questions of right and wrong and how we ought to live. Ethics involves making moral judgments about what is right or wrong, good or bad. Right and wrong are qualities or moral judgments we assign to actions and conduct. Within the study of ethics, there are three branches: *metaethics*, concerned with methods, language, logical structure, and the reasoning used in the interpretation of ethical terms. For example, what exactly does the term “good” mean?; *normative ethics*, concerned with ways of behaving and standards of conduct; and *applied ethics*, concerned with solving practical moral problems as they arise, particularly in professions such as medicine and law. Ethics provides us with a way to make moral choices when we are uncertain about what to do in a situation involving moral issues. In the process of everyday life, moral rules are desirable, not because they express absolute truth, but because they are generally reliable guides for normal circumstances. The focus of this course is on normative and applied ethics, particularly the exploration and analysis of ethical dilemmas and conflict situations that arise within the criminal justice system.

MODELS OF ETHICAL DECISION MAKING

A. The Utilitarian Approach

Jeremy Bentham (1748-1832) developed the theory of *Utilitarianism*. Bentham held that laws should be socially useful and not merely reflect the *status quo*: that men inevitably pursue pleasure and avoid pain; that the function of law is to award punishment and rewards to maintain a just balance between them. That all actions are right and good when they promote “the happiness of the greatest

number" is the principal of utility, a phrase popularized by Bentham. Bentham's approach is referred to as the "pleasure principle". (1)

Based on his theories, Bentham developed an idea; a "model prison", which he called the "Panopticon." (Panopticon means the "all-seeing eye") The ideas for this prison would begin to form the philosophy of punishment known as deterrence. Bentham was a close friend of English philosopher James Mill, and became a mentor to Mill's famous son, John Stuart Mill (1806-1873). It was through this association that Bentham's theories were better developed and refined into a fairly systematic way of weighing goods, or "utilities." Mill's well-known work, *On Liberty*, (2) points out that no one has the "right" to, for example, smash someone in the face without provocation or justification and not face legal consequences. Without consequences, there can be no deterrence. Mill's philosophy creates parameters to individual rights as a human being. Within these parameters we start to find ethical dilemmas.

Deterrence

The root word in utilitarianism is "utility" which means "useful." If something is useful (its consequences turn out to be desirable) in the short-run, then that is called *act-utilitarianism*. If something is useful in the long-run (establishes a precedent to follow), then that is called *rule-utilitarianism*. Deterrence is likewise divided into individual or specific deterrence and societal or general deterrence.

Specific deterrence often takes the form of an older principle called incapacitation. The idea is to make it impossible for an individual to commit another crime, at least while they're in prison. Specific deterrence calls for inmates to be closely guarded and monitored at all times. Other factors are also important during incarceration, like the type of facility, the length of stay, the treatment opportunities, and the demographic mix of the prison population.

General deterrence is what most people mean when they speak of deterrence. The principle here is that others (potential criminals) will want to avoid criminal behavior because of the example provided by punishment. *A person is punished not so much because they deserve it, but in order that others will not be inclined to do the same or similar thing.* The goal is to make prisons as responsible for crime prevention as police are expected to be. Theory development has a long way to go in criminology before we can really say there's such a thing as deterrence theory, but here's a sample of some basic tenets in the principle of deterrence:

- punishment must be used to uphold society at all costs
- prisoners should be treated as means to an end
- justice employees ought to be hyper-vigilant in crime detection
- the public ought to intimately know about the penal sanction

- the threat of punishment may work as well as actual punishment

B. The Contract Approach

The contract approach was originally used by philosophers like John Locke and Thomas Hobbes to define political authority. As long as people made a “social contract” as to the means of their government, then that government could not be thought of as oppressive or tyrannical. This does not imply that governments are established by real contracts, or real agreements among citizens; the social contract is a theoretical idea, not an historical one. This theory purports that society begins in a “state of nature.” In this theoretical world, people form contracts, or governments in order to protect themselves from the total chaos of anarchy. (3)

Using this theoretical, imaginary feature of the social contract doctrine we can start to discuss the ethical basis for morality as well as for making laws. What system of justice would be rational for people to agree to? What penalties do we make for crimes? What freedoms are we willing to give up?

The basic idea of contract theory for our purpose (Criminal Justice) is that in order for people to forego the pursuit of their self-interest (to avoid criminal acts that would benefit themselves at a cost to others, such as cheating or stealing and the like), we must create a system of rationally defensible morality that provides benefits to people that makes it rational for them to conform to the constraints of society. Contract theory tries to spell out the benefits that morality offers which make it reasonable for one to accept it. This requires that the benefits be of a very general nature--such as liberty, personal security, provision of general means to pursue one's goals--that just about anyone can be expected to regard as benefits. In this way, contract theory shares with utilitarianism the focus on important and widely desired benefits. On the other hand, proponents of the contract theory insist that people as individuals would not agree to be sacrificed for the well-being of others or for the aggregate good of society. Thus, contract theory becomes a much stronger advocate for the rights of the individual, as opposed to utilitarianism, which is more concerned with the rights of the “group”.

To understand the contract theory approach, remember that all rules, decisions, and laws must be made from a theoretical place where there are no preconceived notions. Consider the light this sheds on practices such as racism or sexism. Ask yourself if you would agree with setting up racist or sexist policies or rules *without* knowing which race or sex you are? Without such knowledge, forced to judge as if one could be anyone, people will not agree to racism or sexism, since they might be the ones damaged by these practices. This shows

the unfairness of racism and sexism very clearly since these are obviously policies that could only be chosen by members of the favored race or sex.

The problems with contract theory lie in deciding who will make the rules. Realistically, can any human being put themselves in the state where they are able to have no preconceived notions? Therefore, we are left with “prejudicial” rule makers. Would we want only religious fundamentalists deciding the concept of religious freedom on our behalf? Probably not-unless you are a fundamentalist yourself! Can people with preconceived notions of what is right and wrong realistically put themselves in the right frame to make fair rules for others? Let’s take a look at one of our real and ongoing debates in the Criminal Justice world.

Crime Control versus Due Process

How do you feel about the detainees being held in Guantanamo Bay, Cuba? They are held, for the most part, without benefit of due process under our constitution. Yet, what should be done? Is it realistic to give them each an individual trial, which would probably be used as a forum to promote their agendas? If you agree with the *Contact Theory* model, you would say that their individual rights are more important than the possibility of the damage that they might do. Should we free them? Should we shoot them? Should they be tortured in order to provide information that might save lives? If you believed in *Utilitarianism*, you might say that protection of our society as a whole is more important than the rights of the detainees. This is the kind of debate that is a perfect example of the differences between Crime Control and Due Process. Is it an ethical issue? I think you might agree that it is.

These two models characterize a tension within the criminal justice system that tends to divide people in their belief about how the criminal justice system should function. The “due process model” focuses on individual liberties and rights and is concerned with limiting the powers of government. In particular, the “due process model” is concerned with decreasing mistakes in arresting and convicting innocent people. (Contract theory) The “crime control model,” on the other hand, is focused on protecting the public at all costs, even if that means sometimes innocent people are harassed, arrested, and convicted. (Utilitarianism) The due process model focuses on reliability and limiting the power of the police and prosecutors, and the crime control model focuses on efficiency and increasing police and prosecutorial powers. (4)

The crime control model is believed to have reached a peak in the 1920s when the “do-gooders” of public reform passed the 18th Amendment to the U.S. Constitution prohibiting the “manufacture, sale, or transportation of intoxicating liquors.” The demand for alcohol, however, couldn’t be curtailed and resulted in an escalating murder rate as control over the alcohol markets by organized crime

took place. During Prohibition, public officials and law enforcement agencies were highly susceptible to corruption. Currently, many see a parallel between the alcohol of the 1920s and the narcotics of today. How many of our currently high homicide rates are a result of the current “war on drugs”? (5)

In the 1950s and 1960s, Chief Justice Earl Warren (1953 to 1969) led the United States Supreme Court in what has become known as the “Warren Court” era. During this period the Court made many constitutional decisions that protected individuals from federal government intrusions. These were then extended to state governments through the use of the U.S. Constitution’s 14th Amendment “due process” clause. No part of the criminal justice system was left untouched as procedures for investigation, arrest, trial, sentencing, and punishment were changed to guarantee more rights for individuals against the government. Examples of some of the famous cases during this period were *Mapp v. Ohio* (excluding unconstitutionally obtained evidence by state government officials from criminal trials), *Gideon v. Wainwright* (declaring a right to an attorney for all defendants), and *Miranda v. Arizona* (requiring the police to give oral warnings of the right to remain silent to people when arrested). Chief Justice Warren disliked having the court give opinions with a close vote or many justices writing individual concurrences or dissents; thus the court was characterized more for its overall liberal direction than as that of voting by individual justices. (6)

In 1967 the President’s Commission on Law Enforcement and Administration of Justice made a detailed report that concluded: “Crime flourishes where the conditions of life are the worst.” Thus, the primary strategy for the reduction of crime was to put forward “an unremitting national effort for social justice.” The report essentially highlighted two things: (1) crime should be fought in a broader context than just police enforcement—it should focus on alleviating poverty, and (2) the federal government should play a strong role in promoting such a strategy. In the ensuing years, the federal government used a heavy hand in deciding national crime policy. But all levels of government generally ignored the recommendation to focus on social causes of crime. Instead the United States moved into the era known as the “war on crime” and the “war on drugs.” One of the first public acknowledgements of what was to come was presented in an October 1967 article in Reader’s Digest by Vice President Richard Nixon. On the eve of his campaign for the presidency, Nixon wrote: “Our opinion leaders have gone too far in promoting the doctrine that when a law is broken, society, not the criminal, is to blame.” He argued that the country should stop looking for the “root causes” of crime and put its money instead in increasing the number of police. “Immediate and decisive force must be the first response,” Nixon said.

During the 1970s, when the “due process” members of the U.S. Supreme Court began to retire, the Court started to shift back toward the crime control model. The new Chief Justice, Warren Burger (1969 to 1986), led the court as it started chipping away at individual rights. The “Burger Court” began by attacking the

rules of federal habeas corpus, which involved the ability of federal courts to review state cases for violations of the U.S. Constitution. In addition, the Burger Court started giving the police more flexibility and allowing exceptions to the “exclusionary rule” and the giving of *Miranda* warnings. On criminal justice issues, the Burger Court usually favored the crime control model. Examples of Burger Court cases limiting individual due process rights include *United States v. Leon*, 468 U.S. 897 (1984) (allowing evidence to be included at trial even though a search warrant may be issued with insufficient probable cause if the officers enforcing the warrant acted in “good faith”); *Illinois v. Gates*, 462 U.S. 213 (1983) (allowing “probable cause” for a search warrant based on the “totality of the circumstances”); *Nix v. Williams*, 467 U.S. 431 (1984) (allowing evidence at trial found through unconstitutional means if it is deemed that the evidence would have been “inevitably discovered” anyway); *New York v. Quarles*, 467 U.S. 649 (1984) (allowing exceptions to the *Miranda* rules where public safety is a priority).

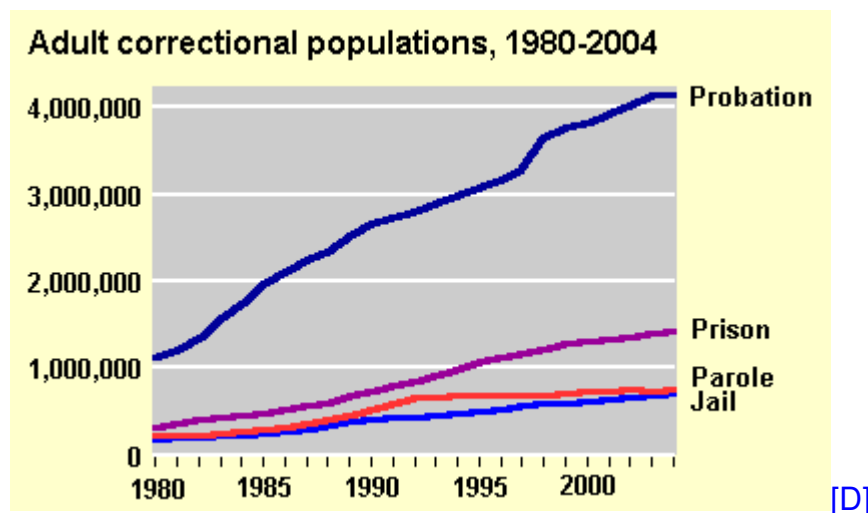
During the 1980s, after President Ronald Reagan made the conservative William H. Rehnquist the Chief Justice (1986 to 2005), and a few of the moderate swing justices were succeeded by more conservative justices, the Court was able to reach many more decisions that eroded the individual rights that had been granted during the 1950s and 1960s. The Rehnquist Court has sided with the crime control model almost all of the time.

Chief Justice Rehnquist first came to the Supreme Court in 1952 when, at the age of 27, he clerked for Justice Robert Jackson. Rehnquist had very conservative views on federal interference with states’ rights and wrote a memo encouraging Justice Jackson to vote against *Brown v. Board of Education*, stating that “*Plessy v. Ferguson* (separate but equal) was right and should be re-affirmed.” In the criminal justice system, the Rehnquist Court continued to limit federal habeas review, make exceptions to the “exclusionary rule,” and allowed more and more unconstitutional activities if such activities are deemed to be “harmless error.” In addition to the U.S. Supreme Court, federal and state legislatures have been creating new criminal laws and newer and harsher punishments from the mid-1970s to the present. Extensive literature documents the changes to a crime control model with a resulting massive increase in incarceration rates, and the large use in expenditures for police and prisons (with only a modest increase in court costs).

In 2005, Justice John Roberts was nominated and approved to become the next Chief Justice of the Supreme Court. Although he is considered to be not as conservative as Rehnquist, he is still very conservative. The makeup of the court virtually guarantees a “crime control” model for years to come.

THE RESULTS OF THE CRIME CONTROL MODEL

With police units focusing on drug crimes and the increasing length in sentences for drug offenses, prison populations have become saturated with drug offenders. In 2004, it was estimated that the United States had over 2.3 million people imprisoned in prisons and jails. Court systems have become so overloaded that many have had to turn toward “night courts” to handle the increased traffic. Between 1980 and 2004 the percentage of drug offenders among state and federal prisoners went from 8 percent to 29 percent.



Source: Bureau of Justice Statistics Correctional Surveys (The Annual Probation Survey, National Prisoner Statistics, Survey of Jails, and The Annual Parole Survey) as presented in *Correctional Populations in the United States, Annual, Prisoners in 2004* and *Probation and Parole in the United States, 2004*.

In addition to the “war on drugs,” during the 1980s and 1990s the U.S. saw mini-crime control waves against driving under the influence, “missing children,” domestic violence, child pornography, and rape. Ironically, while there was an increasing concern for children as victims, there also was an increasing focus on children as criminals. They were labeled “super predators” and laws were passed requiring juveniles to be treated like adults. (7)

WHAT IS THE REASON FOR PUNISHMENT?

There are six major reasons or purposes that society punishes a convicted criminal: (1) to deter the offender from committing that crime again (known as specific deterrence); (2) to deter others from committing that crime (known as

general deterrence); (3) to rehabilitate the person so he or she will not commit the crime again; (4) to compensate or give restitution to the victim of the crime; (5) to incapacitate the person so he or she will not be able to commit future crimes; and (6) for retribution (the offender deserves to be punished and this allows the victim to feel better, knowing that the convicted person is experiencing pain). A common denominator for all of the purposes involves some level of pain inflicted on the convicted person. Pain has been thought to be best administered at just the level that deterrence will be a success and no more, although finding that level is not an exact science. Retribution and restitution generally involve the mathematical equivalent of the pain suffered by the victim of the crime based on the concept of an “eye for an eye”.

The goals of punishment have passed through different phases during different times in history. At the advent of the first prisons in the early 1800s, prisoners were isolated and communication with others was either eliminated or limited greatly. It was hoped that prisoners would self-reflect and experience penitence in regard to their misdeeds, thus self-correcting their criminal behavior. After 1890, when people began to doubt the success of isolation, there came into existence a reformatory movement that emphasized education and encouraged the acquisition of vocational and occupational skills. In the 1920s and 1930s, when psychology became more accepted as a science, there was a shift toward a medical model of treatment with diagnosis of the prisoner and then a “treatment” prescribed for therapy and “rehabilitation.” An indeterminate sentence generally was given to a prisoner, say “five years to life,” and the prisoner was not released until psychologists deemed that the prisoner was “cured.” Then in the 1960s, the treatment model was modified to include more reintegration of the prisoner with the community.

While rehabilitation and treatment were always seen as limited in their ability to change prisoners, a 1974 study by Robert Martinson probably did more than anything else to turn people away from rehabilitation. The popular television news show “60 Minutes” did a segment on Martinson’s work and titled it “Nothing Works.” The result made an indelible imprint in the public’s mind that rehabilitation was a waste of money and effort. Martinson tried to explain that his study showed some rehabilitation programs did not work and for others there was not enough to “prove” they worked-- meaning rehabilitation might actually work if some of the studies had been conducted with proper methodologies. But the damage had been done. Combined with the popular political rhetoric that prisons were “coddling” criminals, the public quickly turned toward a punitive model with the primary goals of punishment being for deterrence, retribution, and incapacitation.

Today, with the prison population estimated to have an 80-plus percent substance abuse rate, “rehabilitation” focuses more on trying to lessen or end the use of alcohol or drugs. If substance abusers can stop using drugs, it is

assumed that they will not have to commit crime to continue getting their fix. They will be able to earn money by holding a steady job. If this happens on a large scale, the demand for drugs would decrease, thus reducing drug trafficking.

Rehabilitation programs and other reforms have also been described as having a tough time succeeding because after the initial rhetoric, putting them into practice requires continued funding and public support and motivated personnel--all of which decline as programs become overcrowded, discipline declines, and charges of official misconduct arise. Then once again new reforms are put forward and the cycle continues.

In addition to decreasing rehabilitation programs, in 1994 politicians were able to revoke educational opportunities for prisoners by disallowing Pell Grants for them--despite the fact that research shows that inmates who take educational programs while incarcerated are the least likely to recidivate.

ETHICS AND THE LAW

One of the measures of civilization in a society is to see if its laws derive from ethics or if its ethics derive from laws. It is probably accurate to say that the more advanced the society, the more its laws should derive from ethics. Another measure of civilization has always been the protection of the vulnerable within such a society, something which is closely related.

In Nazi Germany, once the Nurnberg laws (laws that defined Jews as "second-class" citizens) were passed, the holocaust became possible. The ethics of the Nazi state were set in motion by these laws. In interview after interview, Nazi war criminals said that they were "only following orders". How do we translate ethics into law? To translate ethical precepts into laws we need to meet at least two conditions. First, law should be something about which most people agree (outlawing murder might be an example); secondly it should be something which is not only held to be ethically wrong but seriously impacts the peace of society (again, murder would fit the bill). On the other hand, most of us would say that it is ethically inappropriate to lie to one's spouse. But it doesn't threaten the fabric of our society and few of us would want it made into a criminal offense. This makes lying different than murder, in that murder is a much different matter than lying and the law needs to address it as such.

Obedience to law is not absolute. When important ethical principles are jeopardized by law citizens are confronted with an ethical problem. If an attempt to alter the law fails, we can choose to disobey it, and face the consequences. Civil disobedience remains one of the corner stones of democratic process.

Henry David Thoreau (1817-1862) published a lecture entitled "Resistance to Civil Government" in 1849. He argued that there is a higher law than the civil law, and that the higher law must be obeyed even if a penalty ensues. Thoreau's "resistance" pertained to the government's endorsement of slavery and its "imperialist war" against Mexico.

Mahatma Gandhi (1869-1948) developed the practice of nonviolent civil disobedience which ultimately forced Great Britain to grant independence to India in 1947.

Martin Luther King, Jr. (1929-1968) was America's most visible civil rights leader from 1955 until his assassination in April, 1968 in Memphis, Tennessee. He advocated Gandhian nonviolent civil disobedience as a means of bringing about social change. He was awarded the Nobel Prize for Peace in 1964.

There are similarities and differences between legal and ethical standards as applied to Criminal Justice issues. These differences chiefly include the origins, purposes, and manner of enforcement of the laws. The type of legal standards most commonly encountered by Criminal Justice professionals are statutory law and case law. Statutes are those laws enacted by legislative bodies at the local, state, or federal level, and case law refers to precedent-setting decisions handed down by courts. Finally, we occasionally encounter administrative rules which can be similar to laws, for example, rules of a particular prison, or standards followed by probation or parole officers. These usually deal with policy implementation (e.g., rules governing the treatment of inmates)

Today, many organizations and publish their own versions of "ethical codes". Ethical codes generally refer to basic philosophical notions and professional norms about the morality of human conduct. (8) Such codes are often promulgated by professional organizations (e.g., the American Bar Association) (9) and have underscored key principles which guide most codes of ethics. These include: autonomy (i.e., respect for the right of self-determination), beneficence (i.e., the obligation of members of the profession to help others), confidentiality (i.e., preventing disclosure of information received in the context of a professional relationship), fidelity (i.e., keeping one's promises), justice (i.e., offering fair and equal treatment to all), nonmaleficence (i.e., the obligation to "do no harm"), privacy (i.e., respecting people's personal decisions about when and what information to provide about themselves), and veracity (i.e., truthfulness). The value of professional associations' ethics codes as applied to everyday practice is limited. Many groups with ethics codes have no monitoring or enforcement capability (e.g., ethics committees with investigatory and disciplinary authority). In these instances, the ethics codes are essentially educational and consciousness-raising documents for the members of the organization or statements for public relations purposes. Thus, some groups with ethics codes ignore the special interests and needs of society while others are totally toothless. Most

professional groups have no written ethics code at all. Although morals and laws often have the same goals and suggest similar underlying social values, the vigor with which they are enforced and the adequacy of the protection they afford society is highly variable.

Discussion Questions for Module One:

1. What is the difference between Utilitarianism and Contract Theory?
2. What do you think about the proposition that people are punished *more* to deter others than to punish the offender?
3. Do you favor the Crime Control approach, or the Due Process Approach? Why?
4. Would it be “ethical” to legalize drugs in order to reduce prison populations? What do you see as the difference between Prohibition and legalization of narcotics?
5. If you disagree with a law, are you willing to pay the consequences by disobeying it? As a Criminal Justice employee, will you be able to enforce laws and rules you do not agree with?

MODULE TWO

Police Ethics

Despite its failings, government through the legal system has a complex array of personnel and procedures available to enforce laws by comparison with the more limited and relatively tame resources available to those who attempt to enforce professional ethical codes. Although ethical codes may well be enforced on members of professional organizations, the ultimate sanction available is generally limited to expulsion from the group. To those of us who hold professional licenses, this may seem like a stiff penalty, but to the public it probably appears fairly mild. Despite the apparent overlap, morality is different than law, and laws frequently deal with matters that are not moral concerns at all. Likewise, many matters of morality or ethics cannot be sanctioned by law because of inconvenience or the impossibility of enforcement. Frequently, a lack of congruence exists between what is legal and what is considered ethical in terms of professional standards. For example, a policeman who is convicted of shoplifting has broken the law, but may still be an ethical practitioner of her/his profession. Likewise, a policeman may behave in ways which are unethical or potentially harmful to society, while at the same time violating no actual statutes.

Beyond question, one of the greater challenges faced by law enforcement in current times is establishing and maintaining higher ethical standards for police personnel. Whether the current level of ethical and moral behavior among police officers is any worse today than it has been in the past is sometimes hotly debated. Indeed, some observers feel that the problem of police ethics is no worse now than it has ever been, but is simply more widely publicized today than in years past.

The issue is not a trivial one. Police ethics and morals involves far more than simple issues such as whether or not a police officer should accept a cup of coffee or a free meal from a local restaurant. The dilemma runs far deeper than that. The public--aided in part by widespread media coverage -- inevitably becomes aware of incidents of incompetence, corruption, or brutality within a department. Even though only one or a few officers may be involved in a particular incident, such episodes lead the people of that community to perceive all members of that department as incompetent, corrupt, or brutal. It is a well-documented and unfortunate fact that a few incidents of corrupt or brutal police behavior can overshadow or even negate years of efficient and honest police service.

Ethical violations by the police are nothing new in our society. They are the stuff of headlines in major newspapers, magazines, and television shows on a weekly, if not daily, basis. Recently, it was former Deputy Superintendent William Hanhardt, the highest ranking Chicago police officer ever convicted of corruption,

being sentenced to more than 15 years in prison for his role in heading a mob-connected crew that stole more than five million dollars in jewels from traveling salesmen. In 1999, it was the Rampart Street scandal in Los Angeles, in which over 100 convictions were overturned due to police misconduct. Two years before, it was the brutalization of Abner Louima by some New York City police officers. Prior to that, it was Antoinette Frank of the New Orleans Police Department killing her sometimes partner, Ronald Williams, as well as two other people, while she was committing an armed robbery. Before that, it was Michael Dowd and his gang of police thugs stealing and selling and/or using drugs from street pushers in New York City. The litany is seemingly unending and obscures the fact that the vast majorities of police officers in the United States are ethical and would not, under any circumstances, engage in such behaviors. It is the few unethical officers who receive the lion's share of publicity, and that is as it should be. (10)

Factors Negatively Influencing Police Ethics

Ironically, in attempting to address the problem of police integrity, some agencies may complicate the problem if they send mixed signals to their personnel. That is, most police agencies place great emphasis on, or attach great importance to, making arrests, issuing traffic citations, or other enforcement matters. This is an issue of great political and social significance and is understandable in and of itself. The problem comes when law enforcement agencies fail to clearly draw the legal, ethical and moral lines -- in the form of clear policies and procedures, training, supervision, and discipline -- that must be followed in order to meet these enforcement objectives. This often becomes even more acute in communities that are experiencing high and/or growing crime rates and are placing greater pressure on their police agency to do something about it. In an effort to do something about crime, (and also to meet implied or formal agency performance criteria), some officers may feel compelled to bend the rules of due process in order to fulfill their perceived mission. Unfortunately, overzealous enforcement has played a significant role in many cases of alleged police brutality or excessive use of force. Likewise, informal police practices that bend, circumvent, or even overlook due process requirements in order to make a case can collectively establish an environment in which such irregularities are condoned, ignored, or even accepted under the theory that the means are justified by the ends (e.g. reduced crime). Carried to its extreme, such an environment can inadvertently support the notion among some officers that they are justified in pursuing criminal activity no matter what they have to do, and, that they are justified in protecting one another in any instances of legal rule bending or rule breaking. These are environments in which police corruption can grow or even flourish.

The Importance of Ethics Training

Ethics training in police recruit classes must be reality-based and must involve more than just a simple discussion of integrity. The training must be candid and involve a free discussion of the potential problems and pitfalls that challenge police officers on the job. It must include discussion of the temptations that they will face, the stresses of police work, the effects of a career in law enforcement on personal life, and related matters.

Once officers are on duty with the department, clear and consistent policies and procedures are essential to let these officers know what is expected from them, what the acceptable limits are on their discretion, and what means and methods are or are not permissible in performing the job. Such policies and procedures, well-drafted and evenhandedly enforced, are essential to establish acceptable behavior patterns. They also help to develop performance criteria against which personnel can be evaluated, held accountable, and, if necessary, disciplined.

Supervision, particularly first-line supervision, is a critical element in maintaining proper ethical standards among police officers. Supervisors must (a) believe in the standards set by the agency, (b) observe them personally, and (c) enforce them consistently and fairly in their departments. If first-line supervisors such as sergeants and field training officers have not themselves accepted the values established in the department's code of conduct, no effort to improve standards of departmental integrity can succeed. The implications for careful selection and training of first-line supervisors are obvious.

Holding personnel strictly accountable for their actions is the backbone of accountability. But the system of discipline must be rationally based, reasonable, and consistently and fairly administered. Perhaps even more important, the system must not only decree punishment for infractions, but must also provide rewards for positive behavior. Discipline without positive reinforcement is destructive and demoralizing. Those officers (of any rank) who violate the department's ethical standards should be disciplined; those who demonstrate the ability to do what is right should be held up as positive examples for the entire organization.

A significant ethical problem is the silence, solidarity, and secrecy that are so often evident among police officers. The community of police work and the resultant camaraderie of police officers are important sources of positive support for officers and their families. However, the negative side of this support system can be a misguided sense of interpersonal loyalty that overlooks or even covers up misdeeds and wrongdoing. The tendency to transform mutual support and feelings of kinship into mutual protectionism is understandable, but when the code of silence is invoked in the face of unethical behavior, corruption, or brutality, the culture of policing takes on a sinister and destructive character.

When officers instinctively tend to focus on protecting their coworkers, rather than on the wrong that has been done, they are abdicating their personal and professional responsibility as peace officers. Such action suggests that officers, in spite of their professed beliefs, do not believe that they are accountable to their agency, the law, or the public that has entrusted them with the power of their office. This is not the role of policing in a democracy, and it suggests problems not only for officers involved but also for the police organization as a whole.

Police organizations should take whatever steps possible to direct loyalty, fidelity, and fellowship into positive efforts to maintain the ethical standards that are so essential to law enforcement today. These efforts are not always easy and may often require major changes in organizational styles as well as management and supervisory practices. For our purposes, it may suffice to say that the police culture must be recognized as a source for positive reinforcement and support of police agency values and ethics. Ethics becomes an integral part of the police culture when officers understand the role and importance of ethics in their lives and their profession, internalize those roles, and hold their colleagues accountable to the same high ethical standards as they do themselves. Under such a system, all officers become examples to their colleagues.

Conclusion

In summary, the police working environment must be geared to encouraging -- and allowing -- all of its personnel to be examples of the best in the police profession. When the entire organization subscribes to an ethical, value-based system, all officers can serve as role models, both to their colleagues and to the community.

Module Two Discussion Questions:

1. Should police have the right to do “whatever is necessary” to apprehend criminals?
2. How do you feel about a police officer who won’t “rat” his fellow officer out when his fellow officer has broken the rules?
3. Should we hold police to a “higher standard”?
4. What kinds of ethics training would you recommend for the police academy?

MODULE THREE

Ethical Issues for Corrections Officers

The correctional system needs to be supported by a caring ethic since it takes into account offender needs and community corrections. Correctional officers, similar to law enforcement personnel, wear uniforms that represent authority within their institutions, but the authority of the uniform is not what gets anything accomplished. Personal respect and proper use of authority is what gets the job of the correctional officer done. Those officers who abuse their powers and the uniform find themselves in abusive positions. Probation and parole officers have a different type of authority and power over offenders. Their power lies in their ability to recommend release or revocation. Yet the implicit power an officer has over the individuals on his or her caseload must be recognized as an important element of the role, not to be taken lightly or misused. Under the American Correctional Association Code of Ethics, the importance of integrity, respect for and protection of individual rights, and service to the public . . . is noted. What is described in this Code of Ethics is the fact that there be respect for all individuals; that there be concern for the welfare of all persons; that there be cooperation between all agencies of criminal justice; that their positions not be used for personal gain; that there be no conflict of interest; that there be no discrimination; that the integrity of private information be preserved; where there is cause to believe that a member has acted in an unethical manner, that such behavior be reported.

The difficulty that the correctional officer has, similar to law enforcement officials, is that we look at the ideal, which is not necessarily reality. It has been said that there exists a subculture within corrections (i.e., the enemy is the inmate; the use of force is acceptable/necessary; there is a disrespect for the supervisors; and the occasional use of deceit to cover up wrong doing is present). (12)

Consider the following scenario: A newly recruited correctional officer, Tom, overhears three other correctional officers, Fred, Bob, and Charlie, discussing arrangements to assault an inmate, Raymond, who has previously attacked another correctional officer, a close friend of the three officers. Tom is faced with a dilemma: whether or not to prevent the attack on Raymond. His dilemma is an ethical dilemma because if he does act, this will involve a conflict between himself and Fred, Bob, and Charlie. It is also an ethical dilemma because it raises issues of rights and morality; that is, the right of Raymond to safety and security even in prison, and the morality of allowing a person to be assaulted other than in an act of self-defense. In order to resolve his ethical dilemma, Tom will need to pursue a process of analysis resulting in a decision. The following process is intended to provide Tom with a method for reaching his decision:

1. He will identify the fact that he is faced with an ethical dilemma and state the dilemma clearly.
2. In his mind, he will collect the facts and circumstances so that he is quite clear about what he heard, the identities of those involved, and all other relevant information.
3. He will collect all the facts and knowledge relevant to the decision, including his own values about the issue, and the values of his workplace. He will consider his own position at the prison as a newly trained officer and the consequences of reporting the incident and of not reporting it.
4. This is an ethical dilemma, so he will call to mind his knowledge of ethical principles and theories with the aim of applying those ethical approaches to his possible courses of action.
5. Tom will now identify his available options for action. First, he could intervene in the situation by informing his supervisor of the conversation he overheard. This action will be based on his responsibility to ensure the safety and security of all inmates and to enforce the policies and rules of the institution. Second, he could choose to ignore the conversation because of his loyalty to his fellow officers and his need in the future to receive their assistance and support when carrying out his duties. Third, he could choose to intervene by talking to the officers involved in an attempt to prevent the misconduct, with the aim of minimizing the harm for all involved parties. Tom must support each alternative action with reasoning derived from ethical principles in order to give credibility to his choice of action.
6. Tom will make his decision based on his analysis of the dilemma after applying the ethical approaches to each course of action. He will choose the option that for him is the most ethically appropriate. In other words, after considering the choices according to this process, he will decide, "This would be the right thing for me to do." He therefore resolves his ethical dilemma by making an ethical decision and acting on that decision.

Tom's process for making an ethical decision seems straightforward. However, making an ethical decision may involve factors such as one's personal values, personal priorities, or how a particular decision might affect friends or even strangers. Therefore, the most ethical choice is not always clear. To act ethically is not simply a matter of deciding what is right and wrong in advance and stubbornly sticking to that position. Since there are many gray areas where there are no specific rules, laws, or guidelines that are laid out in advance, it is not always easy to know which decision is the most ethical choice.

Both correctional officers and police undergo the same "working personality" change when putting on the uniform, but correctional officers are much more likely to misperceive the bounds of their authority. The great challenge of being a correctional officer is the challenge of using personal resources -- respect and reputation -- as the basis of one's authority. Correctional ethics, however, involves much more than just personal trait psychology, as there are significant sociological forces at work. Character is not a good predictor of who will engage in correctional forms of misconduct. An ethical boss does not mean that everyone in the organization will be a moral exemplar; and the fact that the boss is corrupt does not mean that everyone in the organization will be infected with some ethical disease. Rather, it is the very nature of the captor-captive situation that begets ethical misconduct.

In a sociological sense, all who work in corrections are captives (13) and both inmates and staff constitute an "orphan group" in society. Neither groups, inmates, nor staff are significant enough to constitute a pressure group by themselves (all are transient groups in society); and it is amazing that more staff don't associate or identify with inmate causes. Strict rules against fraternization probably account for keeping this tendency in check. A wide variety of ethical misconduct occurs in prisons. A list of the most frequently encountered unethical situations in corrections has been provided by prison administrators (14) and includes the following:

- abuse of inmates
- inappropriate relationship with inmates
- smuggling contraband
- fiscal improprieties
- on-duty misconduct
- off-duty misconduct
- investigative violations or fixing a ticket for an inmate

PATTERNS OF PRISON CORRUPTION

Several of the above activities, especially abuse, are involved in what can be called prison "corruption," defined as violations of organizational rules and regulations for personal gain. (15) Corruption is perhaps the oldest ethical problem in corrections. (16) Wide-ranging acts of corruption are to be expected in prisons, if only because prisons are depressing places frequently afflicted with stress, low morale, and lack of job satisfaction. Yet, this hypothesis is impossible to prove or disprove because of the closed nature of correctional institutions. The superintendent, or director, of a Department of Corrections (sometimes along with the Governor) usually takes the lead in denying any ethics problem when an ethical scandal hits the news.

McCorkle (1970) says there are three (3) kinds of corruption in corrections: (1) corruption through friendship; (2) corruption through reciprocity; and (3) corruption through default. Each of these will be discussed in turn. (17)

1. Corruption through friendship occurs when the traditional devices fail that separate staff from inmates. The staff member finds themselves in a situation where they cannot withdraw physically (without quitting the job), cannot act through intermediaries (the inmate has seen to it that the "favor" must be done directly), and there is no way to back down from the "favor" without losing dignity. The employee becomes caught in a conflict of loyalties, and often the low-pay and poor working conditions make the employee susceptible to this kind of corruption because it is "honorable" to be associated with notorious criminals.

2. Corruption through reciprocity occurs when staff ignore minor infractions in return for what seems like good behavior on behalf of a group of inmates, especially at a time when the employee is up for promotion or a performance review. Inmates know that staff is evaluated on how well they control inmates, so they put on a "show" to make the employee look good, but only if that employee overlooks some other infractions. A variation on this is when the inmate warns an employee to earn good will among inmates because they will be looked out for, and kept safe as a hostage, when the next riot occurs.

3. Corruption through default occurs because of indifference, laziness, or naiveté on the employee's part. The inmate slowly and gradually works their way up to "trustee" status in the eyes of such an employee, innocuously encroaching upon the employee's responsibilities. In other words, the inmate starts doing some of the employee's work for them. For awhile, it seems as if a trusted inmate is helping out with clerical duties and so forth, but soon it is discovered that the same inmate is running a loan shark operation, a prostitution ring, or some other illegal enterprise within the prison.

McCarthy (1996) says there are five (5) types of corruption in prison: (1) theft; (2) trafficking in contraband; (3) embezzlement; (4) misuse of authority; and (5) a residual or miscellaneous category. Each of these will be examined in turn. (18)

1. Theft usually involves items stolen from inmates during frisks and searches. Visitors and staff also are sometimes the frequent victims of theft. Most theft is believed to be of minor, personal items, and carried out sporadically by low-level staff. Most prisons have extensive controls which prevent instances of scandalous, widespread, institutionalized theft.
2. Trafficking in contraband can involve drugs, alcohol, money, weapons, or a variety of other things. There are a variety of motives for why an employee would engage in this kind of behavior, but the usual pattern is for the employee to do it in return for some services in return by the inmate(s). Sometimes, these services involve sexual favors.

3. Embezzlement in a government job is the converting of state property to one's own use. Prison systems produce a lot of surplus property as well as partially damaged property, and it is considered relatively easy in many places to procure such property for one's own use. Larger-scale scandals have been known to exist involving the systematic stealing of money from inmate accounts or prison property located off-site.
4. Misuse of authority typically involves guards "on the take" in some sort of bribery scheme run by inmates. Other staff may be involved, too, as when, for example, payoffs are taken to receive choice cell or work assignments.
5. Residual corruption is a category for things which don't "fit" in other categories, and here might be placed examples of "nonfeasance," or overlooking illegal inmate activity, like gambling, or the more bizarre forms of rackets and conspiracies hatched between inmate(s) and staff, like counterfeiting, or running a criminal enterprise from within prison.

Most prison corruption is probably caused by opportunity. There are lots of opportunities, indeed a surplus of opportunities, within prisons for engaging in ethical misconduct. Another explanation might be that formally, prisons are operated almost entirely on the basis of coercive power, which organizational theorists say have known limits for producing conformity. (19) However, Cloward (1990) (20) most likely hit the nail on the head when he said that it's not just the formal control apparatus, but the informal development of various accommodations between keepers and the kept. The need for inmates and staff to constantly make power accommodations in keeping prison life running smoothly (and make both parties look good) seems to be the main cause of prison corruption.

THE PROBLEM OF PRISONER/STAFF FRATERNIZATION

Fraternization, which can be defined as illegal or inappropriate familiarity in a prisoner/staff relationship (21) may very well be the central issue behind most ethical problems in corrections. At least the training literature recognizes the importance of fraternization (as in "fraternizing with the enemy"), while the academic literature seems to prefer the concept of "favoritism" (22). The issue allows for the study of some time-tested techniques at recognizing and avoiding the manipulations and "con games" by inmates (23). Many state prison systems have made fraternization an important part of their anti-corruption policies, and at the extreme end, serious felonies exist making some forms of fraternization, such as sexual contact, a crime, punishable by 20 years of imprisonment or more. More extreme forms of fraternization (such as meeting with an inmate when they get out) usually result in dismissals or resignations, frequently accompanied by

requiring the ex-employee sign a form stating they will never work in a Department of Corrections again. The problem is quite prevalent, as the following numbers indicate:

- The federal BOP reported in 2001 that there were 402 investigations carried out against employees for undue familiarity issues, and 38 of these cases were for sexual relationships; 317 staff were allowed to resign, 57 staff were forcibly dismissed, and the rest were charged with felonies.
- The state of Arizona in 1994 reported 244 cases of staff/inmate inappropriate behavior, and 36 cases were of a sexual nature; 10 staff resigned, 12 were dismissed, and 4 cases involved more serious disciplinary action.

There are some technical differences between familiarity, favoritism, and undue familiarity, but it's all a matter of degree. Familiarity is something that one would want correctional employees to be good at, since familiarity means knowing the inmates' habits, demeanor, behavior, etc. Familiarity makes for better supervision. Favoritism is somewhat more questionable, as almost every correctional employee has their "favorite" inmates; ones they talk to the most, hang out on prison grounds with the most, give special or favored assignments to, or try to protect from harm or tickets by other inmates or staff. The "snitch" system that exists in correctional environments seems to reinforce favoritism, and it can further be argued that the promotional system for employees is based, in part, on developing a set of "favorite" inmates who help the employee look good at job performance. It's important to understand that none of these things occur because two or more people "like each other." The process, at base, is an integral part of the mutual need for respect, trust, and cooperation.

Undue familiarity is familiarity of a different degree. It occurs when inmates know the employee's personal business. It is the prisoner's familiarity with an employee's personal habits, demeanor, behavior, or problems. It is a breakdown in the professional and ethical boundaries between prisoners and staff. Correctional employees are highly vulnerable to certain "divide and conquer" games by inmates in this regard (24). This occurs when inmates try to use the personal differences among staff as a way to elicit the discussion of personal issues. They will use age, race, gender, religion, marital status, health, or background as "breach points" to get on a personal level of relationship. They will exploit any sense of inadequacy among staff, and will make up lies about any employee who doesn't seem to have any inadequacies. They will also exploit any job dissatisfaction among employees. They will do anything which detracts from the professional environment, including slang, stereotypes, flattering or flirtatious comments, and a highly-charged corruptive or sexualized atmosphere. Many inmate types exist in this regard, some of which are discussed below:

- *Predators* -- these are inmates who are not truly seeking relationships, but prey. It is a game to them, and their method of survival while in prison. Any staff person they have "gotten over" on is a "trophy" to them, used to obtain status among other inmates, or used to turn into the administration as a way to improve their chances for early release. This is perhaps the largest group of exploitative inmates.
- *Lookers* -- these are good-looking inmates who groom and dress well, are well-spoken, and intelligent. They will try to exploit your appearance, portray themselves as victims, and lie by half-truth or omission. Their game involves getting you to join them in pointing out the inadequacies of other staff and/or inmates, and eventually joining them on a journey to learn about each other or learning in general (education). This is the kind who makes you believe that no one has ever understood each other as much as you two have. They elicit your assistance in escape plans or in a place to live for awhile when they get out.
- *Leaders* -- these are usually inmate gang leaders with a narcissistic self-image who see themselves as different (superior) to other inmates, and they have either helped staff significantly in some way or simply have developed the admiration of staff as role models. Power and pleasure are their aims. Staff is an object to be used in their power games. They have no remorse, and are most likely to use staff to smuggle contraband.
- *Snitches* -- these sociopsychologically sophisticated types have fooled even the most experienced employee, and will turn someone over in a heartbeat. They manage to stay out of trouble all the time, operate very independently, and have their "game" down so well that it can be described as a "network" of employees being manipulated, some in short-term cons and others in long-term con games that take years to develop.

The above doesn't exhaust all the inmate types, but gives a good sampling. It may be better if more attention were focused on staff types, and the patterns which evolve among staff. Two patterns come readily to mind: the Stockholm Syndrome and the Rescuer Syndrome. The Stockholm Syndrome (a psychological response sometimes seen in an abducted hostage, in which the hostage exhibits loyalty to the hostage-taker, in spite of the danger) is usually discussed only in the context of hostage negotiation, but it must be remembered that if staff can be considered captives too, then this syndrome should exist in less extreme circumstances. In any event, most correctional officers are real persons to the inmates, not anonymous, unknown symbols of authority. Some "emotional transference" is bound to occur, according to social psychology. If two antagonistic groups are placed in a close proximity and required to accomplish a cooperative task cooperatively, the differential roles and antagonism will almost always break down (25).

Another staff pattern which results primarily from close proximity has been called the "poor devil syndrome" (26). With this syndrome, officers begin believing that

the inmate is a "victim" and begin feeling sorry for him. One officer stated, "I just wanted to keep seeing him because I realized he might get the death sentence and I felt so bad about it." A related variation is the Rescuer Syndrome, which describes why the employee became interested in corrections work in the first place, because they want to help poor, unfortunate people who just happen to have gotten into trouble with the law. All caregiver occupational groups are likely subject to vulnerability with this syndrome.

While there are certain things that training can accomplish to prevent fraternization (e.g., no first name basis; no giving out personal information), and there are certain things that an Employee Assistance Program can accomplish (e.g., getting help for a "crisis" or problem), the problem seems to call for a "team" approach, but not in the usual management sense which treats all employees as equals. First of all, all female employees of a correctional center face specific vulnerabilities, and some way to encourage these females to support one another may be needed. Likewise with race, as all employees belonging to one race have issues which are easily exploited. It is difficult to think of an ethical system, other than a Virtue Ethics (Platonic or Aristotelian) which would help accomplish the justice of "differences among differences." A utilitarian ethical system would be no help, since looking out for the most disadvantaged would likely increase the problem. The bottom line may very well be that *correctional institutions are places doomed to be without a workable ethical system*, and as dismal as that prospect sounds, it is likely to remain true until some re-examination of the whole arrangement takes place.

Module Three Discussion Questions:

1. What should Tom do?
2. Can you do your job and not be compromised by inmates, parolees, or probationers?
3. Are you in this profession because you feel sorry for those convicted of crimes and in prison?
4. Why do you think over 1000 correction employees are terminated every year for ethical violations?

Module Four

Criminal Justice Counselor Ethics

The Criminal Justice Counselor must be aware that they have ethical obligations—not only to the offender, but also to the legal system. As with any ethics field, there will be many situations that arise which do not have any clear answers. Because there will be many opportunities to cross the line, Criminal Justice Counselors must have strong individual ethics, and must be beyond temptation. As a general rule, the counselor's relationship with the offender cannot include anything but the professional services offered by the counselor. This field of counseling certainly should adhere to the general rule of no dual relationships.

Ethical Issues in Court-Mandated Treatment

Court-ordered counseling of the offenders raises three major ethical issues for mental health practitioners — informed consent, confidentiality, and potentially unethical dual relationships. The ethical principles require that the client's right to provide "free and informed" consent must be safeguarded by treatment professionals. Greenland (1988) (27) notes that informed consent has become the hallmark of ethical treatment and research. He observes that, traditionally, ethical guidelines have served a three-fold purpose — to protect patients from exploitation; to uphold the rights of the patients to make decisions about their own lives and to have access to information that is important to their welfare; and to foster, by the professional's own behavior, desirable social attitudes and actions. While these ethical standards are or should be mandatory to voluntary clients and research participants, their application to involuntary patients and prisoners creates ethical dilemmas.

Ethical Concerns in Correctional Counseling

The correctional counselor's primary mission is to assist in offender rehabilitation and reintegration. Additionally, for counselor's who work inside prisons, it is important to enhance staff and inmate safety by promoting a healthy institutional environment. The correctional counselor clearly has varied responsibilities. Their primary focus is their application of direct services with inmates, evaluation of the prison population, inmate management, and release evaluation and recommendations.

In historical times individuals felt that certain criminals, due to mental circumstances, did not deserve the same punishment as common offenders. Initially, this was first used to simply separate the mentally ill from the normal prisoner (28). During the mid-twentieth century the Federal Bureau of Prisons initiated the active use of psychologists and psychiatrists within their institutions (29). At this time a *treatment* approach was being implemented, with the professionals focused on the treatment of the individual inmate in order to create behavior change (30). By the 1970's and 1980's this treatment approach was no longer the primary focus, with the role of the correctional counselor focused

primarily on the security of the institution and community at large (31). With this new direction, and the regulations in place regarding it, a number of ethical issues have been created.

One concern with the combined treatment and institutional control role of today's correctional counselor is the potential dual relationships it has created.

A potentially important dual role, one that is consistent with nearly every relationship between a correctional counselor and their incarcerated client, is the counselor's role as both a therapist and evaluator for parole and release. The goal of the therapeutic relationship between the offender and therapist is the successful change of unacceptable behaviors so that reintegration into society can occur (32). While there is no reason to suspect that the counselor would allow his dual role as the client's evaluator of readiness for parole to effect his willingness to provide adequate treatment, one could suspect that the client would be less willing to provide the information required for an effective intervention. Additionally, it is also likely that the incarcerated client would want to misrepresent him/herself in order to be evaluated beneficially. By doing so they have erected defense mechanisms that will not allow them to release any of the crucial information required for both an effective treatment and an accurate evaluation.

Consent

Inside prisons there is always the possibility of forced consent. While it is difficult to suggest the client is being actually psychologically or physically forced into consenting to treatment, it is not an unfair assumption that an incarcerated client may fear the way not consenting to treatment may be interpreted. Many clients in the correctional system are in the process of appealing their convictions or hoping for parole, so it is reasonable to assume that they may feel, possibly realistically, that if they do not cooperate with treatment procedures they will be punished further and lose opportunities for release (33).

An important part of the correctional counselor's job is the assessment of dangerousness. Many clinicians insist that they can make competent assessments via proper training, education, and experience (34). Typically, clients desire an accurate evaluation. The correctional client, however, may feel that an honest evaluation will not aid them, but rather harm their chances of release. For this reason they may try to deceive the evaluator. Some have suggested that, in this case, a covert evaluation may be appropriate. However, such covert evaluations can only be ethically undertaken during an *emergency condition*, which is limited to life-threatening circumstances with a risk of escape or internal disorder within the prison. Arguably, one could define the release of a dangerous offender, based on an evaluation in which the client has been deceptive, a life threatening situation. However, professional ethical guidelines have always

avidly dictated the need for informed consent and such arguments seem to be somewhat unrealistic (American Psychological Association, 1992; Canadian Psychological Association, 1991). (34)

Treatment

Ethical concerns are inherent with the correctional treatment process. As the correctional institution increasingly relies on the correctional counselor to deal with population control and the institution as a whole, individuals with clearly chronic mental illnesses are being neglected. Mental health professionals continually have to intervene with angry and disruptive individuals, whether or not their behavior is the product of a chronic mental illness (35). With this approach, nearly the entire incarcerated population is the responsibility of the counselor, minimizing the availability of the mental health professional for those who have a legitimate mental illness. The sheer size and diversity of the population for which these mental health practitioners are responsible is what leads to many of the treatment problems (36). It is not the case that effective correctional interventions do not exist, but rather, that they have not found ones that can support or work with all of their clients (37).

Even within the correctional population that can be diagnosed as mentally ill, one must consider who should be treated. The predominance of clients comes from inmates diagnosed with personality disorders. They are virtually flooding the case load of the institutional psychologist, even though the outcome research on the successful treatment of such disorders is extremely limited and not at all encouraging (38). As a result, those who are experiencing the chronic mental illnesses that psychology can adequately treat (e.g., schizophrenia, mood disorders, suicide) are being forced to take a back seat to disruptive inmates who the correctional institution wants to bring under control.

Confidentiality

The therapeutic relationship in a correctional setting is greatly hindered by the limits to confidentiality. In non-correctional practice, the criminal justice system is rarely involved and for the most part the limitations to confidentiality do not hinder the therapeutic process. However, in a correctional setting the court system is involved from the very start of the therapeutic procedure. Clearly, information regarding abuse and violence towards others would be reported in either situation. However, when a client's records are available to third party evaluation, as they are in a correctional setting, ones thoughts and motivations could be held against them (39). In a non-correctional setting such information would normally not have been brought to the attention of the authorities, for they quite possibly would not have been an adequate violation of the limitations to confidentiality. Subsequently, the client may be unable to safely act in an honest manner during treatments. Such dishonesty can greatly hinder the ability for the client to be

adequately helped during treatment, and may very well explain the high rate of failure with many correctional therapeutic interventions.

Disciplinary Roles

The correctional counselor's participation on disciplinary boards that involve any of their personal clients is a clearly unethical dual role. Fortunately, there are clear enough ethical guidelines to allow a counselor's exclusion from such a situation (40). However, a counselor's participation on such boards is arguably unethical even in the absence of a dual role. Prison disciplinary boards are responsible for exacting actions that lead to an inmate's loss of privileges, transfer to a higher security prison (one arguably more dangerous), or solitary confinement. A psychologist's participation on boards that initiate some sort of punishment is highly questionable (41). However, there are no specific ethical guidelines within the literature to specify how a correctional counselor should act when asked to participate on a prison disciplinary committee.

One could also state that the counselor's participation on such boards eliminates the unique role to serve mental health needs, and thus damages the traditional professional role of the discipline via the loss of credibility among inmates and a possible adoption of a jailer's mentality.

Conclusion

Correctional counseling is clearly riddled with unique ethical dilemmas and conflicts. The primary role of the correctional counselor, consent, treatment issues, confidentiality, and disciplinary roles have all created consistent ethical issues. The fact that correctional counselor services fall under correctional administration, rather than mental health, could be a factor that is promoting the persistence of these ethical issues (42). With a number of contradictory guidelines and professional behaviors, it is difficult to ascertain what acceptable correctional practice is. Re-evaluation and interpretation of current ethical guidelines seems to be in order. Consideration, and amalgamation, of contradictory guidelines could allow for less interpretation of ethical practice. As a result, a number of dilemmas that are consistently experienced within the field could be eliminated.

Module Four Discussion Questions:

1. Correctional counselors sometimes serve two different roles-counselor and disciplinarian. How can that cause an ethical dilemma?
2. What are some of the issues a correctional counselor must face with regards to confidentiality?
3. What is the ethical dilemma with "forced consent"?
4. What are some ways that inmates, parolees, and probationers manipulate correctional counselors?

MODULE FIVE

Legal Assistant/Paralegal Ethics

My niece used to be employed by a prominent law firm in Minneapolis. She absolutely loved her work, and was being considered for a promotion. One day, while in the elevator, she made an offhand comment to a co-worker about a client who had a pending case with the law firm. Her co-worker repeated what she heard to another employee. Eventually, the information got back to one of the partners of the law firm. By doing some quick investigating, the partner traced back the information to my niece. The partner called her into his office and unceremoniously terminated her on the spot. It was a great lesson for all of us. When dealing with confidential information-and when it comes to clients of law firms, all information is confidential-we have to hold to a special, higher standard of conduct. If you are unable to keep your mouth closed, this is the wrong profession for you. The paralegal (or legal assistant) profession is one of the most needed, yet least understood, components of the legal profession. Public perception of the paralegal seems to range from viewing them as a glorified legal secretary to someone who has been to law school but has not taken the bar exam. Neither of these perceptions is correct. Outside of participating in the practice of law, a paralegal can perform most tasks an attorney would perform.

The paralegal profession is also one of the least regulated professions in the United States. In fact, although most states have instituted laws concerning the unauthorized practice of law, many states do not even define what a "paralegal/legal assistant" is.

Definitions

Since most states do not have their own definitions, let's try and find some common working ground. Legal assistants and paralegals are individuals who assist lawyers in the delivery of legal services. Legal assistants and paralegals cannot give legal advice to consumers of legal services. Legal advice may only be given by an attorney. All states require attorneys to be licensed and most have statutes imposing penalties for the unauthorized practice of law. The following definition was adopted by the National Association of Legal Assistants (NALA) membership in 1986:

Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which

qualify them to do work of a legal nature under the supervision of an attorney.

In recognition of the similarity of need for one clear definition, in July 2001, the NALA membership approved a resolution to adopt the definition of the American Bar Association as well. The ABA definition reads as follows:

A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible. (Adopted by the ABA in 1997)

Both definitions recognize the terms "legal assistant" and "paralegal" as identical terms.

A legal assistant/paralegal cannot give legal advice, represent a client in court, set a fee, or accept a case, which functions are generally considered the practice of law. Working under the supervision of an attorney, the legal assistant's work product is merged with and becomes part of the attorney work product. In communications with clients and the public, the legal assistant's non-lawyer status must be clear. A legal assistant may perform any function delegated by an attorney, including but not limited to the following:

- Conduct client interviews and maintain general contact with the client, so long as the client is aware of the status and function of the legal assistant, and the legal assistant works under the supervision of the attorney.
- Locate and interview witnesses.
- Conduct investigations and statistical and documentary research.
- Conduct legal research.
- Draft legal documents, correspondence and pleadings.
- Summarize depositions, interrogatories and testimony.
- Attend executions of wills, real estate closings, depositions, court or administrative hearings and trials with the attorney.
- Author and sign correspondence provided the legal assistant status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice.

Professionally, a paralegal's time for substantive legal work (as opposed to clerical or administrative work) is billed to clients much the same way as an attorney's time, but at a lower hourly rate.

The legal assistant concept began to develop in the late 1960's when law firms and individual practitioners sought ways to improve the efficient and cost effective delivery of legal services. Other factors entered into the development of the legal assistant field including the growing volume of work due to increased public awareness of legal remedies.

National associations, bar associations, legislatures and supreme courts have addressed the definition of legal assistants and paralegals. Through discussions within each group, similarities in the identification and duties of legal assistants are emerging with routine consistency. The common threads in these definitions and discussions are:

Legal Assistants:

- 1) have received specialized training through formal education or many years of experience;
- 2) work under the supervision and direction of an attorney; and
- 3) perform non-clerical, substantive legal work in assisting an attorney.

Standards

A legal assistant should meet certain minimum qualifications. The following standards may be used to determine an individual's qualifications as a legal assistant:

1. Successful completion of the Certified Legal Assistant certifying (CLA) examination of the National Association of Legal Assistants;
2. Graduation from an ABA approved program of study for legal assistants;
3. Graduation from a course of study for legal assistants which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of 60 semester hours of classroom study;
4. Graduation from a course of study for legal assistants, other than those set forth in (2) and (3) above, plus not less than six months of in-house training as a legal assistant.
5. A baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant;
6. A minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a legal assistant; or
7. Two years of in-house training as a legal assistant.
- 8.

For purposes of these Standards, "in-house training as a legal assistant" means attorney education of the employee concerning legal assistant duties. In addition to review and analysis of assignments the legal assistant should receive a reasonable amount of instruction directly related to the duties and obligations of the legal assistant.

In addition, NALA members and Certified Legal Assistants/Paralegals are bound by the "Code of Ethics". Violation of this Code may result in suspension of NALA membership, or suspension of the certification credential.

A legal assistant must adhere strictly to the accepted standards of legal ethics and to the general principles of proper conduct. The performance of the duties of the legal assistant shall be governed by specific canons as defined herein so that justice will be served and goals of the profession attained.

The canons of ethics set forth hereafter are adopted by the National Association of Legal Assistants, Inc., as a general guide intended to aid legal assistants and attorneys. The enumeration of these rules does not mean there are not others of equal importance although not specifically mentioned. Court rules, agency rules and statutes must be taken into consideration when interpreting the canons. (43)

Canon 1.

A legal assistant must not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.

Canon 2.

A legal assistant may perform any task which is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, and assumes professional responsibility for the work product.

Canon 3.

A legal assistant must not: (a) engage in, encourage, or contribute to any act which could constitute the unauthorized practice of law; and (b) establish attorney-client relationships, set fees, give legal opinions or advice or represent a client before a court or agency unless so authorized by that court or agency; and (c) engage in conduct or take any action which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

Canon 4.

A legal assistant must use discretion and professional judgment commensurate with knowledge and experience but must not render independent legal judgment in place of an attorney. The services of an attorney are essential in the public interest whenever such legal judgment is required.

Canon 5.

A legal assistant must disclose his or her status as a legal assistant at the outset of any professional relationship with a client, attorney, a court or administrative agency or personnel thereof, or a member of the general public. A legal assistant must act prudently in determining the extent to which a client may be assisted without the presence of an attorney.

Canon 6.

A legal assistant must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal service.

Canon 7.

A legal assistant must protect the confidences of a client and must not violate any rule or statute now in effect or hereafter enacted controlling the doctrine of privileged communications between a client and an attorney.

Canon 8.

A legal assistant must do all other things incidental, necessary, or expedient for the attainment of the ethics and responsibilities as defined by statute or rule of court.

Canon 9.

A legal assistant's conduct is guided by bar associations' codes of professional responsibility and rules of professional conduct.

Ethical Dilemmas

In 2003, an advertisement appeared on eBay™ for a "Home-Based Independent Paralegal (form prep) Business (No Degree Needed)." The package sold for \$2,995. The advertisement stated that this was an inclusive package and that the business could easily bring the buyer \$25,000 - \$50,000 per year working no more than 15 - 20 hours per week. The advertiser stated that she had "seen first-hand how much attorneys charged their clients, and how most of the work was done by paralegals. Much of the work involved filling out complicated forms; but once you did it a few times, it was easy."

At first glance, it would not appear that such a promotion poses a problem. What could be so wrong about having an individual prepare a form for a client? There are several problems with the practice of preparing forms for clients, even if a paralegal knows precisely which form to prepare and how to prepare the form. A paralegal cannot assist clients with selecting forms without advising them. Advising clients constitutes the unlicensed practice of law. In addition, telling clients what information goes into the particular blanks on a form the clients have selected also requires advice. This again constitutes unlicensed practice of law.

A well-educated paralegal knows this, and would never purchase a package such as the one discussed above. An individual who is uneducated concerning the unlicensed practice of law or other ethical practices would be unaware of this and could leave himself open to both civil and criminal penalties.

In March of 2001, a federal judge recommended closure of a Florida-based "paralegal kit company" such as the one discussed above. The closure recommendation came after several complaints were filed with the Federal Trade Commission. The complaints were filed after purchasers were promised a paralegal diploma and client referrals. The Federal Trade Commission determined that the defendants were engaged in deceptive trade practices, failed to address complaints made by purchasers, failed to determine the legality of their own dissemination of business opportunities because the business was not properly registered and failed to educate the purchasers concerning the unlicensed practice of law.

What is most disturbing about this type of "kit" is having the public believe that by merely purchasing a kit an individual could become capable of providing the services of a paralegal. Becoming a competent, educated paralegal requires some form of education, provided by quality paralegal studies programs, and supervising attorneys. Regulating the paralegal profession could assist in ending this type of misleading trade practice.

In addition, regulation could protect the public in other ways. By prohibiting a kit such as the one discussed above from being sold, the public can be protected against having an uneducated paralegal preparing legal documents for them. Although legal documents are often prepared by paralegals, an attorney always reviews any legal documents prepared by a paralegal. Thus consumers can end up with a document that has been incorrectly prepared and with little recourse against the unlicensed individual who prepared it.

Although regulation can protect, regulation can also hinder. Without regulation, an attorney is free to hire any individual the attorney believes can function as a paralegal, whether or not the individual has had formal education. As long as the attorney supervises the employee's work, the employee can work as a paralegal, and use the title of paralegal. Regulation would prevent the attorney from continuing this practice. In some fields, such as real estate, the attorney may be more concerned with a prospective employee's experience in the real estate field than as a paralegal. In addition, regulation might hinder a paralegal from securing employment in another state.

Regulation also brings a new set of policing problems. Should paralegals be regulated by the state's bar association or would a new agency have to be created? How often would a paralegal have to reapply for certification? How would attorneys be certain they are hiring a certified paralegal? Would a new credential have to be created? Would the paralegal or some regulatory agency have to provide an employer with a certificate?

Competence

There is a general expectation that individuals and organizations that offer legal services meet the ethical and professional requirements of the local bar authorities. While this expectation applies mainly to attorneys, the line differentiating attorneys and paralegals is often unclear to the non-legal community. As a result, the public has a similar expectation of paralegal competence. Recently, this has caused bar authorities and paralegal associations to consider proposals for setting specific paralegal standards and establishing formal registration and licensing requirements for those seeking to enter the paralegal profession. These standards of competence may take the form of minimum requirements of formal education, apprenticeship or training, or actual work experience. Local bar authorities, paralegal associations, educational institutions, or other organizations offering training for paralegals may formulate them. Local bar authorities in many jurisdictions require that attorneys attend a certain number of hours of continuing legal education ("CLE") programs in order to remain in good standing. The standards of competence that may be established for trademark paralegals might likewise include requirements for CLE training. For CLE programs for attorneys, the institution or other educational organization offering the program must be accredited or otherwise recognized by the local bar authority, and courses and programs must be approved in advance before credit will be given for attendance. The purpose of this is to ensure that legal professionals obtain quality education or training. It is likely that similar restrictions will apply to CLE programs directed towards paralegals. As discussed elsewhere in this paper, it is the paralegal's responsibility to monitor the requirements for practice in his or her jurisdiction and to ensure that all such requirements are fully met. Programs and requirements of this nature assist the public and employers of paralegals in assessing the competence and abilities of paralegals. Irrespective of requirements for registration, paralegals are always encouraged to participate in CLE and other training programs in order to keep abreast of current legal, technical, and general developments in law and practice. Currently, standards of competency do not require that paralegals have all of the requisite knowledge needed to handle a matter before taking on that matter. Rather, the ethical requirements of competence are met if the paralegal is able to consult with another paralegal or attorney having the relevant knowledge or if he or she can acquire the knowledge in a timely fashion through preparation and study. For example, ethical requirements are met when the paralegal has a good faith belief that he or she can become qualified to work on a project through study and investigation, and the preparation will not result in unreasonable delay, expense, or prejudice to the employer and/or client.

Personal and Professional responsibility

Both attorneys and paralegals are equally responsible for acting in a manner that builds and maintains the perception and trust of the public for the legal profession. For paralegals and attorneys, this applies to both their personal and professional activities. In each of these arenas, a paralegal must seek to maintain a high level of personal and professional responsibility. Furthermore, in all aspects of his or her employment, a paralegal must conduct business in a manner that is in fact honest, ethical, and professional.

Professional Conduct

As discussed above, a paralegal is responsible for maintaining a high level of conduct in performing his or her professional duties. This responsibility includes the obligation of avoiding impropriety and any appearance of impropriety both personally and when acting at the direction or on behalf of his or her employer. A paralegal is also obligated to be aware and respectful of all applicable rules and procedures. In this regard, a paralegal must refrain from offensive conduct of any type. A paralegal must also avoid all acts of discrimination towards others including, but not limited to, acts based on race, gender, religion, sexual orientation, and national origin.

Confidentiality

The obligation of a paralegal to maintain the confidentiality of client information is the same as the obligation of the attorney with whom the paralegal works. This obligation to maintain confidentiality extends beyond protecting information provided by the client and includes, for example, maintaining the confidentiality of information relating to the client's case that may be obtained from other sources. In this regard, a paralegal must take care to preserve and protect all confidential information obtained during the course of a professional relationship. Furthermore, any confidential or other information obtained must not be used to the disadvantage of the client. It follows, of course, that this information must also not be used for the benefit of the paralegal or for the benefit of any third party. There are exceptions to the confidentiality requirements. In addition, rules regarding confidentiality in the legal setting change frequently and may vary from jurisdiction to jurisdiction. It is therefore necessary for the paralegal to keep current on all applicable rules and requirements that may apply to their particular situation.

Unauthorized Practice of Law

A paralegal is barred, both legally and ethically, from the unauthorized practice of law. Due to the environment and manner in which many paralegals perform, however, the line between the practice of law and the work of a paralegal is often blurred – it is often quite difficult to distinguish between attorney services

and paralegal services. As a result, a paralegal must vigilantly ensure that their activities and the perception of those activities do not drift inadvertently into the unauthorized practice of law. In particular, a paralegal must take care not to perform duties that only attorneys are permitted by law to perform. Further, a paralegal must take care that they do not engage in, encourage, or contribute to the performance of any duties that attorneys are not permitted by law to perform. For their own protection and the protection of their employment and employers, paralegals should be diligent in keeping themselves, as well as their colleagues, aware of all applicable legal authorities that may govern the unauthorized practice of law by paralegals and others. For example, a paralegal should not accept cases, set fees, give legal advice, or appear in court unless such actions are authorized by local rules. Essentially, paralegals must act within the bounds of the law, solely for the benefit of the client, and should not involve themselves in compromising influences and loyalties. A paralegal is not permitted to establish attorney/client relationships and should take regular steps to ensure that clients or other persons with whom he or she may be working are aware that such a relationship does not exist. The existence of the attorney/client privilege with respect to a given communication is a matter of law, not ethics. Also, a paralegal is prohibited from acting independently in matters involving professional legal judgment. In sum, in every situation, a paralegal must act in a prudent manner in determining the extent to which a client may be assisted by the paralegal without the presence or involvement of an attorney and must refrain from acting when there is any doubt. Likewise, a paralegal must refrain from rendering independent legal judgment in the absence of an attorney.

Tasks

A paralegal is permitted to perform all manner of legal tasks when an attorney delegates those tasks to the paralegal and an attorney supervises the paralegal's performance. The supervising attorney, however, remains primarily responsible to the client for whom the tasks are being performed. The attorney must also maintain a direct relationship with the client while the tasks are performed by the paralegal. Finally, the supervising attorney must assume full professional responsibility for all work product created by the paralegal at his or her direction.

Title

As discussed above, a paralegal is permitted to perform most any legal task while under the supervision of an attorney. As a result, the client and other members of the public may mistakenly assume that the paralegal is acting as an attorney while he or she is performing those services. It is imperative that the paralegal takes all steps necessary to avoid such confusion. The client for whom these services are performed must be made fully aware of the

paralegal's title and status from the outset of any such relationship. The paralegal must also ensure that the client and any other persons with whom the paralegal comes into contact during the performance of the tasks is aware that the paralegal is not acting as an attorney. Furthermore, any title under which the paralegal operates must clearly convey his or her status as a paralegal, legal assistant, or administrator and this title must be disclosed in all business and professional communications. This title should also appear prominently on business cards, letterhead, directories, announcements, advertisements, etc. disseminated by the paralegal or on his or her behalf.

Conflicts of Interest

Any potential conflict of interest involving a paralegal should be immediately reported by the paralegal to his or her employer. In fact, paralegals, like attorneys, are bound by the ethical requirement to act in a manner that avoids even the appearance of impropriety such as a conflict of interest.

A paralegal must be loyal to his or her clients. This requirement of loyalty precludes the undertaking of representation directly adverse to a client without that client's informed consent. For example, a conflict of interest occurs when:

(1) an attorney is asked to represent two or more clients with conflicting interests; (2) an attorney is asked to successively represent a client whose interests conflict with those of a former client, or (3) an attorney enters into certain personal business transactions that conflict with the interests of the client. Again, while the rules of ethics were originally drafted to apply to attorneys, paralegals are held to the same standards in many jurisdictions. Paralegals have a continuing obligation to avoid compromising the legal representation of clients of the firms and attorneys for which they work.

Public Interests

Members of the legal profession, including paralegals, are expected and required to serve the public interest. A paralegal may meet this obligation by contributing to the delivery of high quality services and by working towards improving the legal system. In this role, a paralegal must be sensitive to the legal needs of the public, and he or she should be cognizant of opportunities to promote the development and implementation of programs to meet those needs. A paralegal is also expected to support efforts to provide legal services for those that need but cannot afford legal help. In other words, a paralegal is expected to participate in *pro bono* projects. Finally, in addressing the needs of the public for qualified trademark paralegal services, a paralegal should seek out opportunities to assist, mentor, and advise other paralegals.

Criminal Justice

Paralegals may work in many different area of the Criminal Justice field. They

certainly may work for Criminal attorneys, both defense and prosecution. However, they may also work for probation and parole department, prisons, court systems, and local and national law enforcement agencies.

It is sometimes difficult for paralegals in this field to remain unbiased. Yet, that is exactly what is required. Paralegals in this field will encounter criminals of many kinds, and it will be hard not to form opinions and biases. Paralegals who work for defense attorneys must maintain the same attitude that is expected of attorneys-fair and unbiased treatment of the accused. There can be no predisposition to guilt.

Module Five Discussion Questions:

What is the real difference between a lawyer and a legal assistant?

What does the “unauthorized practice of law” mean regarding a legal assistant?

When can a legal assistant dispense legal advice?

What is the proper way for a lawyer to supervise a legal assistant?

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Appendix A: Post Test and Evaluation

Importance of Ethics in Criminal Justice

Directions: To receive credits for this course, you are required to take a post test and receive a passing score. We have set a minimum standard of 80% as the passing score to assure the highest standard of knowledge retention and understanding. The test is comprised of multiple choice and/or true/false questions that will investigate your knowledge and understanding of the materials found in this CEU Matrix – The Institute for Addiction and Criminal Justice distance learning course.

After you complete your reading and review of this material, you will need to answer each of the test questions. Then, submit your test to us for processing. This can be done in the following manner:

Submit your test via the Internet. All of our tests are posted electronically, allowing immediate test results and quicker processing. First, you may want to answer your post test questions found at the end of this appendix. Then, return to your browser and go to the Student Center located at:

<http://www.ceumatrix.com/studentcenter>

Once there, log in as a Returning Customer using your Email Address and Password. Then click on 'View Lesson Quiz' and you will be presented with the electronic exam.

To take the exam, simply select from the choices of "a" through "e" for each multiple choice question. For true/false questions, select either "a" for true, or "b" for false. Once you are done, simply click on the submit button at the bottom of the page. Your exam will be graded and you will receive your results immediately. If your score is 80% or greater, you will receive a link to the course evaluation. You will also receive a link to the Certificate of Completion. This is the final step in the process, and you may save and / or print your Certificate of Completion.

If, however, you do not achieve a passing score of at least 80%, you will need to review the course material and return to the Student Center to resubmit your answers.

NOTE: THE EXAM QUESTIONS AND /OR ANSWERS MAY BE IN A DIFFERENT ORDER IN THE ONLINE EXAM

Answer the following questions by selecting the most appropriate response.

1.The study of ethics is a branch of:

- a. history
- b. philosophy
- c. biology
- d. political science

2.Applied Ethics is concerned with:

- a. problems of behaviors
- b. problems of justice
- c. problems with crime
- d. problems with morals

3.Utilitarianism was developed by:

- a. Jeremy Bentham
- b. John Mills
- c. Abraham Lincoln
- d. Sigmund Freud

4.The “Panopticon” is a:

- a. school
- b. eyeglass
- c. prison
- d. rocket ship

5.Crime Control in the 1920’s produced:

- a. Al Capone
- b. The 18th Amendment
- c. Religious freedom
- d. The “Tommy gun”

6.The Chief Justice of the U.S. from 1953-1969 was:

- a. Earl Warren
- b. Warren Burger
- c. William Rehnquist
- d. John Roberts

7. In 2004, the U.S. had this many people incarcerated:
- a. 1.2 million
 - b. 3.5 million
 - c. 2.3 million
 - d. Less than 200,000
8. What percentage of the prison population has a substance abuse problem?
- a. 15%
 - b. 50%
 - c. 62%
 - d. 80%
9. What was the name of the laws that defined Jews as second class citizens in Nazi Germany?
- a. The Berlin Mandates
 - b. The Jewish "solution"
 - c. The Nurnberg Laws
 - d. The Hitler Directives
10. Who developed the practice of "Civil Disobedience"?
- a. Mahatma Gandhi
 - b. Martin Luther King
 - c. Timothy O'Leary
 - d. Wayne Dyer
11. Which of the following are easier to enforce?
- a. ethics
 - b. laws
 - c. morality
 - d. rules
12. Morality is:
- a. The same as law
 - b. The same as ethics
 - c. Different than law
 - d. Different than ethics

13. A great challenge of law enforcement is to:

- a. Establish ethical codes for police
- b. Put all criminals in jail
- c. Help prosecutors do their job
- d. Teach police how to legally accept bribes

14. Correctional Officers wear uniforms to establish:

- a. Difference between them and the inmates
- b. Look like police officers
- c. Authority
- d. Superiority

15. Most prison corruption is a result of:

- a. Opportunity
- b. Selling drugs
- c. Taking bribes
- d. Playing favorites

16. The most prevalent ethical violation of Correctional Officers is:

- a. Lying
- b. False reports
- c. Abuse of inmates
- d. Using state cars for personal use

17. Inmates who are seeking “prey” are referred to as:

- a. Predators
- b. Panthers
- c. Skin-Heads
- d. Gang-bangers

18. An illegal or inappropriate prisoner/staff relationship is called:

- a. Brown-nosing
- b. Sucking-up
- c. Nepotism
- d. Fraternization

19. The Criminal Justice counselor has dual obligations to:

- a. The judge and prosecutor
- b. The law and society
- c. The legal system and the offender
- d. Both the offender's parents

20. Court ordered counseling raises all the following ethical problems except:

- a. Dual relationships
- b. Confidentiality
- c. Reporting to the prosecution
- d. Informed consent

21. Confidentiality is difficult in correction settings because:

- a. Counselors are not well trained
- b. Inmates believe the information may not be all that confidential
- c. Others inmates will find out about them
- d. They will get new charges

22. The Correctional Counselor's primary mission is to assist with the inmate's rehabilitation and:

- a. adjustment to prison
- b. reintegration into society
- c. psychological state
- d. drug dependencies

23. The Correctional Counselor's participation on disciplinary boards is:

- a. allowed by law
- b. ethical
- c. required by job description
- d. unethical

24. Another name for legal assistant is:

- a. little lawyer
- b. legal secretary
- c. paralegal
- d. legal researcher

25. Legal assistants help lawyers:

- a. Sue people
- b. Collect money
- c. Deliver legal services
- d. Chase ambulances

26. A legal assistant cannot:

- a. do research
- b. fill out forms
- c. represent client in court
- d. file legal papers

27. Two large ethical problems for legal assistants are:

- a. sexual harassment and bribery
- b. litigation and torts
- c. conflict of interest and unlicensed practice of law
- d. practice without a license and concealment

28. The primary purpose of erecting an ethical wall is to:

- a. protect the client's confidences and secrets
- b. keep other lawyers off the property
- c. understand the difference between good and bad ethics
- d. clearly know when you have crossed an ethical line

29. The Canon of Ethics of the NALA is:

- a. the law
- b. part of the Catholic church
- c. written by the American Bar Association
- d. a guide for legal assistants and attorneys