



***Breaking It Down:  
Justice, Law, & Society Abstracts for Policy Makers and Practitioners***

***Spring 2008***

The Center for Justice, Law, & Society, at George Mason University, links top social scientists with policy makers and practitioners in law, judicial administration, and legal development. CJLS faculty and students are drawn from multiple disciplines, all brought together by a common interest in making academe more useful to practitioners and enriching academic research with the experience of practice. CJLS has three core objectives: a) Advancing research and scholarly debate on questions of law and behavior; b) Bridging the gap between academe and practice so that policy makers and practitioners are better informed by the insights of academic research, and academicians have a better understanding of how the concepts they study behave in practice; c) Assisting policy makers and practitioners by applying empirical research to practical problems in the field.

This publication, *Breaking It Down: Justice, Law, & Society Abstracts for Policy Makers and Practitioners*, is the first publication from the CJLS abstracting service. These abstracts will help policymakers and practitioners follow contemporary academic research relevant to their work. Included articles have been published over the last year and reflect interests we believe to be most relevant to policy makers and practitioners. The journals that have been followed are:

American Journal of Sociology	Journal of Law and Public Policy
American Sociological Review	Journal of Law and Society
Court Manager	Journal of Legal Studies
Court Review	Judges Journal
Criminology and Public Policy	Judicature
Development Policy Review	Justice Quarterly
Human Rights Quarterly	Law and Contemporary Problems
Journal of Conflict Resolution	Law and Human Behavior
Journal of Criminal Law and Criminology	Law and Policy
Journal of Development Studies	Law and Social Inquiry
Journal of Empirical Legal Studies	Law and Society Review
Journal of Human Rights	Psychology, Public Policy, and Law
Journal of International Public Affairs	Punishment and Society
	Crime, Law & Social Change

For more information about the Center for Justice, Law, and Society, or to learn more about how the CJLS can help advance evidence-based research in your own work, please contact us at [cjls@gmu.edu](mailto:cjls@gmu.edu), or 703-993-8481.

Abstracts have been grouped by subject. The following table of contents outlines these subject groupings and provides direct links to the included abstracts within each group. If there are other subjects you would like to see the CJLS abstracting service include, please contact us at [cjls@gmu.edu](mailto:cjls@gmu.edu).

## Table of Contents

<u>Subject</u>	<u>Page</u>
<u>Punishment</u> .....	3
<u>Judicial Decision Making</u> .....	7
<u>Civil Justice System</u> .....	8
<u>Judicial Selection</u> .....	9
<u>Civic Networks/Society</u> .....	11
<u>Evaluation of Evidence</u> .....	15
<u>Law Enforcement</u> .....	19
<u>Court Performance</u> .....	21
<u>Legal Protections</u> .....	24
<u>Rehabilitation</u> .....	25
<u>International Crime</u> .....	27
<u>Religion &amp; Justice</u> .....	29

## Punishment

**Campbell, M.C. (2007). Criminal Disenfranchisement Reform in California: A Deviant Case Study. *Punishment & Society*, 9(2), 177-199.**

Michael C. Campbell researched the impact of litigation, legislation, and organization advocacy in overturning California's criminal disenfranchisement law. California legislators repealed this law, known as Proposition 10, at a time when criminal justice policies and laws were estimated to be the most punitive in the nation and it seemed as if the state would continue on that trajectory. As Campbell points out, the combination of litigation, legislation, and organization advocacy represented a dynamic interaction, adding California to a number of states opting to restore the voting rights of former felons. Campbell argues this dynamic interaction "... [was] driven by national-level issues, [was] embedded within an economic, political and mass media context in *state* law by providing a window of opportunity for legal change" (p. 178). According to the author, such a combination of legal actors and advocates, along with a reform climate, resulted in a window of opportunity, which is essential in order to translate ideas into policies.

California's 1974 election to repeal its felon disenfranchisement law represented an exception to the trend of punitive criminal justice policies and politics at the time. Hence, California – as a deviant case – allowed for a deviant case study analysis to be conducted. To accomplish this, the author analyzed the *Los Angeles Times* in the weeks leading up to the 1974 election on Proposition 10, "coding articles for content and...media attention to domestic issues" (p. 178). To complement this media analysis, the author also researched "relevant case law materials, legislative files, personal correspondence, other archived data, and existing social science research...to explain the processes that led to legal change in California" (p. 178). This study offers insight regarding the impact of public opinion and media content upon policy decisions about the imposition of punishment, as well as the impact of socio-economic issues and political platforms related to crime and penal policies.

For example, Campbell argues that the confluence of the Watergate scandal, government corruption, and a recessive economy – to name a few factors – allowed penal reform advocates to avoid media scrutiny in pushing for the elimination of California's disenfranchisement law. In the fog of the Watergate scandal, Proposition 10 passed with 56.3% of the vote favoring it. This provides an indication that, perhaps the commitment to punitive policies does not find its roots in public opinion, but rather stems from the 'tough on crime' ethos frequently espoused by politicians. Politics and the magnitude of media coverage may influence crime policy more than public opinion, in addition to overshadowing the perspectives of criminal justice professionals. As a result, the author argues that decisions and propositions for reform do not occur in isolation.

Controversial legal reforms are most likely to be realized when insulated from media and political scrutiny and influenced primarily by the expertise of reformers, advocates, and experienced professionals. In addition, public support for punitive policies may be overstated by some politicians, which suggests that reformers should seize opportunities to assert their policies by creating coalitions among reform-minded legislators and active advocacy groups to persistently tackle undesirable policies. Such opportunities may take the form of a referendum such as California's Proposition 10.

- Ajima Olaghere

**Miceli, T. J., and Segerson, K. (2007). Punishing the Innocent along with the Guilty: The Economics of Individual versus Group Punishment. *Journal of Legal Studies*, 36(1), 81-106.**

Since the time of the ancient Greeks, prosecutions have targeted groups for the bad behavior of their members. In modern cases, it is difficult to determine when it is appropriate to prosecute a group rather than the individuals involved in a crime.

In this article, the authors compare the costs and benefits of individual prosecution against group prosecution. For a crime committed by an unknown individual with a group affiliation, prosecutors must consider two alternatives: punishing the group to get the responsible person, or spending resources in order to find and punish the one individual.

Using economic theory, the authors conclude it is appropriate to punish the entire group when the main goal of prosecution is retribution and it is expensive to identify the responsible individual masked by group membership. When deterrence is the main goal, the authors argue that society is better served by investing the resources to identify and punish the responsible miscreant. Among other things, group punishment can subtract from marginal deterrence. However, when the crime is terrorism, the authors believe that society is willing to accept the risk of prosecuting and punishing innocent individuals in order to stop the group as a whole.

This article should be of interest to prosecutors, or anyone else who seeks to balance crime control with civil liberties.

*- Tarren Smarr*

**Steen, S., & Bandy, R. (2007). When the Policy Becomes the Problem: Criminal Justice in the New Millennium. *Punishment & Society*, 9(1), 5-26.**

In this article, Steen and Bandy argue that the criminal justice agenda has become increasingly punitive over the past three decades. The authors assert that this change has occurred at the same time as the agenda-setter role has shifted away from criminal justice experts, administrators, and professionals to legislators. Steen and Bandy devote their attention to the imposition of punishment, which is currently often based on a philosophy of retribution. The authors indicate that legislators must reevaluate the efficacy of retribution as a guiding principle for punishment given rising state and federal incarceration rates, expanding state correction expenditures, and state budgetary crises. Indeed, the authors hypothesize that questions about the economic viability of retributive policies will lead to further proposals for reform. “Legislators who spent the cash-rich ‘90s passing ‘Tough on Crime’ policies based almost exclusively on concerns about retribution and public safety are now having to revisit those policies to determine whether or not they represent a *fiscally appropriate* response to crime”(p. 6).

In order to document alterations in discourse related to sentencing policy, the authors analyzed newspaper articles during the 2003 legislative session in six different states: Arkansas, Iowa, Nevada, New York, Washington, and Wisconsin, analyzing a total of 150 articles. States were chosen based on sentencing reform activities occurring in the relevant time frame. Data derived from this content analysis was then combined with data on state prison populations, budget deficits, and correctional department expenditures and analyzed.

The timing of reform conversations is a crucial factor since politicians remain apprehensive about discussing punishment. The study’s main finding is that reformers may use budgetary crises to rethink overdependence on incarceration as the solution to crime. Indeed, Steen and Bandy highlight a statement from a professor at the University of Wisconsin-Oshkosh: “The budget is an opportunity...to begin to wean ourselves off this level of retribution that we believe is necessary” (as cited in *Associated Press* 2003, p. 15). Furthermore, overdependence on incarceration has other implications in addition to the economic strain. The strict reliance on retributive policies promulgating incarceration has jeopardized the integrity of the criminal justice system. Subsequently, the efficacy and fairness of existing sentencing laws are called into question.

Steen and Bandy’s analyses illustrate that crime policies should not cater to what people believe about punishment, but should be responsive to what punishment actually accomplishes and fails to accomplish. Current policies can be ineffective and unfair, such as those associated with the ‘War on Drugs.’ These policies fail to reduce prison and jail populations, strain constrained budgets, and disproportionately affect Latinos and African Americans. Nonviolent drug offenders take up space within prisons, leaving few spaces for dangerous offenders. Steen and Bandy point out public officials are working to redefine drug crimes in an effort to have a “more effective and less costly response” to incarceration. This reasoning is “...consistent with the trend toward managerial goals [in]...making decisions about what to do with individual offenders by looking at the criminal population at the aggregate level” (p. 22). In other words, public officials are reevaluating decisions to incarcerate by assessing the practicality of incarcerating an individual in an overcrowded facility. On a different note, their findings also emphasize the need to move away from the ethos of ‘tough on crime’ to ‘smart on crime.’ Instead, proposed reforms need to stand as productive alternatives not ‘soft’ band-aid schemes. Alternative policies need to focus on treatment and reintegration of offenders, which involves thinking about what happens with offenders when their incarceration or treatment is complete.

- Ajima Olaghere

**Jacobs, D., Carmichael, J.T., Qian, Z., & Kent, S.L. (2007). Who Survives Death Row? An Individual and Contextual Analysis. *American Sociological Review*, 72(4), 610-623.**

The authors of this study sought to provide a comprehensive and systematic account of the “political and individual factors that determine which death row inmates will be executed” and which will not. To this point, no systematic research exists which combines both political and individual-level predictors and utilizes such predictors to provide an account of the execution probabilities of death row inmates. The sentencing disparities among offenders by jurisdiction -- which may influence execution probabilities -- have lead these authors to question if the death penalty is administered impartially and also to assess the “effects of the sociopolitical environment as well as offender and victim attributes” in the manner conducted in this paper (p. 611).

The authors put forth several hypotheses, which they tested using discrete-time logit models and three existing datasets of offender information, including such variables as the state of incarceration, “...date of removal from death row, and reasons for removal,” offender race, and the date of execution. The datasets also included information for those offenders currently on death row. The data includes the years 1973 to 2002. The authors’ findings indicate:

1. The likelihood of executions is greater for African Americans on death row.
2. Hispanics on death row face higher execution probabilities than whites.
3. African American or Hispanic offenders convicted of murdering a white person are less likely than other offenders to avoid the death chamber. Victim race is a significant determinant of executions.
4. As the population of minorities in a geographic location becomes smaller, there is a greater likelihood of execution. However, as minority populations increase and pass a certain threshold where their votes may influence election results, the likelihood of executions decreases. The likely explanation for this is that the expansion of a minority population strengthens its political power.
5. Conversely, for Hispanics the likelihood of execution becomes greater as the percentage of Hispanic residents reaches a threshold, where their votes may influence election results. The modest proportions of Hispanics in all but a few states may account for this finding.
6. Executions are also less likely where liberal views dominate, as prosecutors and appellate justices are less likely to favor the death penalty in these jurisdictions.
7. Similarly, death row inmates are less likely to avoid the death penalty in states where more voters support Republican presidential candidates, most likely because prosecutors face stronger pressures to allow executions in these jurisdictions. However, the authors did not find evidence that governors and federal judges are swayed by partisanship to allow executions.
8. Executions are more likely in areas where covertly racist laws exist or where the African-American population is perceived as threatening.
9. States with higher murder rates are positively associated with greater execution probabilities.
10. Executions are less likely in states where most residents are born and tend to remain living in the same state. The likely explanation is that residents would be against imposing the death penalty upon those regarded as their neighbors.
11. States with a larger tax base are more likely to use the death penalty (p. 612-628).

The findings reported by the authors did not corroborate one hypothesis, however, that execution probabilities are greater for those with previous convictions. Nor did unemployment rates have an influence on death row outcomes. Further, the authors could find no additional significant effects by controlling for the fact that particular states are southern states.

*- Ajima Olaghere*

## **Judicial Decision Making**

**Williams, M.S., & Ditslear, C.A. (2007). Bidding for Justice: The Influence of Attorneys' Contributions on State Supreme Courts. *Justice System Journal*, 28(2), 135-156.**

Conventional wisdom holds that the influence of judicial campaign contributions adversely affects judicial independence. This study found little support for a *systematic* relationship between contributions and votes of Wisconsin Supreme Court judges; however, there was some evidence that *individual judges* were influenced by campaign contributions from attorneys who appeared before them. Using data from the National Institute for Money in Politics, the authors, assistant professors of political science at Goucher College and the University of North Texas, respectively, examined the influence of attorneys' contributions to Wisconsin Supreme Court candidates and the votes of the state's justices between 1989 and 1999. Sixty percent of the attorneys in the subject database made at least one judicial campaign contribution during the reference period, and they were the largest single source of campaign contributions to Wisconsin Supreme Court judicial elections.

By way of background, Wisconsin Supreme Court judges are elected through nonpartisan elections that are partially funded with public resources. Despite the public subsidies, these elections have become increasingly expensive over the past few years, with campaign contributions averaging \$192,642 in 1989 and increasing to \$656,202 in 1999.

The authors analyzed state supreme court campaign contributions made by attorneys who had business before the Wisconsin Supreme Court, coding for whether the contributions were made by the conservative or liberal side of a case, the relative sizes of the contributions, and whether a contribution was unusually large, among others. Controlling for such variables as the ideology of justices and intra-court influence, the authors were unable to identify a statistically significant relationship between attorneys' contributions and votes by the justices as a group, save for one finding: above-average contributions by attorneys for the liberal side of a case actually decreased the likelihood that the justices would ultimately vote for that side.

It should be noted that this study examined only eight elections among seven judges. For three of the judges, contributions, size of contributions, and the date of contribution did affect their likelihood of voting for a particular side in a case. One judge in particular appeared profoundly influenced by contributions: when the attorney for the conservative side of a case had contributed to his campaign, he had a 22% probability of voting liberally, but when the liberal side's attorney contributed more to his campaign, his probability of voting liberally rose to 97%. On the other hand, one judge appeared to vote for the side opposing the party that had made the greater campaign contribution. Given the small sample size in this study, it is difficult to draw strong conclusions. However, the study does support greater attention to the relationship between campaign contributions and judicial decision-making.

- Anne S. Douds

## **Civil Justice System**

**Helland, E., & Klick, J. (2007). The Effect of Judicial Expedience on Attorney Fees in Class Actions. *Journal of Legal Studies*, 36(1), 171-187.**

Using two class action settlement data sets, the authors examined how court congestion influenced attorney fees between 1993-2002 and 1992-1994, respectively. As court congestion increases, the study found, judges were more likely to authorize higher attorney fees in class action cases.

The authors analyzed federal cases from 1993-2002, controlling for settlement amounts; use of the lodestar method, defendant's payment of a fee independent of the settlement amount; whether the case had an appellate opinion; whether the settlement fund included soft dollar relief; the settlement class; and if a fee shifting statute applied. The dataset was supplemented by data from the Federal Judicial Center (FJC) covering all cases from July 1992 through June 1994 in the Eastern District of Pennsylvania, Southern District of Florida, Northern District of Illinois, and Northern District of California. Only variables for gross settlement amount, lodestar method, and a linear time trend were controlled. Congestion was measured by terminations per judgeship in the given court for the given year and the number of filings made in a court per the number of judgeships in that court.

Measuring congestion by case terminations per judgeship, the study found a positive relationship between congestion and attorneys' fees. When terminations per judgeship rose 1 percent, the fee amount also increased 1.5 percent on average. Using a different measure of congestion – case filings per judgeship – attorney fees increased .8 percent for every 1 percent rise in congestion. The authors found a relationship between attorneys' fees and settlement: fees as a percentage of the settlement declined as the settlement amount increased. In addition, attorneys' fees were up to 20 percent lower in cases in which the fee was determined separately from the settlement amount.

For the FJC data, the previous congestion measures as well as a congestion measure for criminal filings per judge had a positive effect, with the measure for the filings per judgeships having statistical significance. Researchers also controlled for "court fixed effects" to show that the influence of congestion was not just a result of an unobservable court effect. However, because of the small variation within district court congestion, the court fixed effect also limited the predicative power of the congestion measures. That said, study reveals a positive relationship between attorney fees and court congestion while providing additional precision in controlling for court fixed effects.

- Karen Jensenius

## **Judicial Selection**

**Streb, M.J., Frederick, B., & Lafrance, C. (2007). Contestation, Competition, and the Potential for Accountability in Intermediate Appellate Court Elections. *Judicature*, 91(2), 70-78.**

Advocates for judicial elections seek to hold judges accountable to the public, yet few scholars have explored if judicial elections promote accountability. Thirty-nine states use elections, whether partisan or non-partisan, to select judges.

In this article, the authors examined whether judicial elections have the potential to promote public accountability. The authors analyzed all 942 intermediate appellate court general elections held from 2000-2006 (412 retention elections, 389 partisan elections, and 141 non-partisan elections). To measure accountability for incumbents, researchers recorded if the race was contested, and if so, the percentage of the vote the incumbent received and if the incumbent won the race. In retention elections, the authors coded whether the judge was retained and the percentage of retaining votes the judge received.

The study found that only 27 percent of intermediate appellate court judges face a challenger, much less than in congressional (84%) or state supreme court races (65%). In open races, 97 percent of House races and 88 percent of state supreme court races have two challengers; by contrast, just 64 percent of open seats in intermediate appellate courts have multiple challengers. Interestingly, for intermediate appellate courts, partisan elections have challengers in 61 percent of races, but non-partisan elections have challengers in 86 percent of races. To the extent that elections breed accountability, the authors suggest non-partisan elections may generate greater accountability than do partisan contests.

However, intermediate appellate races appear the most competitive. House incumbents (67%) and supreme court incumbents (59%) received more of the vote than intermediate appellate court judges, who receive less than 55 percent of the vote. When challenged, 29 percent of intermediate appellate court judges lost, compared to 19 percent of supreme court justices. Also, of the 524 retention elections for both supreme courts and intermediate appellate courts, only two judges were not retained.

This study reveals that few intermediate appellate judges are challenged, but those that are challenged face tougher races when compared to congressional or state supreme court candidates.

- Karen Jensenius

**Peters, C.S. (2007). Canons, Cost, and Competition in State Supreme Court Elections. *Judicature*, 91(1), 27-35 (2007).**

In the 2002 case of *Republican Party of Minnesota v. White*, 536 U.S. 765, the United States Supreme Court struck down on First Amendment grounds an “announce clause” that prohibited state judges from making any pledges or promises about how they would vote on a particular legal or political issue. States have responded to *White* in a variety of ways. The American Bar Association and a majority of states have adopted a less restrictive “announce canon,” often phrased as a “pledges and promises clause,” which prohibits judges from making any pledges or promises about how they would vote on a particular legal or political issue.. Other states have adopted an even less restrictive “commit or appear to commit clause,” which only prohibits public commitment to a position.

In the wake of *White*, this article examines recent developments in state supreme court campaigns and the effect of states’ canons of ethics on the cost and competitiveness of those campaigns. The author, an assistant professor of political science at the University of Northern Iowa, used data from state election websites and from the National Institute on Money in State Politics to assess election outcome and judicial campaign spending in state supreme court elections between 1998 and 2004, with particular attention paid to the nature of the relevant canons of ethics in each election.

The author finds “strong evidence that restrictions on [judicial] candidates’ partisan political activities contribute to lower cost elections, and also some evidence of a similar effect for restrictions on candidates announcing [their positions on political or legal issues].” However, the author also reports that some “restrictions might be associated with . . . a decrease in competition.” Specifically, the article concludes that:

- Restrictions on partisan activity by judicial candidates are associated with less campaign spending, with restrictive states having 20% as much campaign spending as states without such prohibitions.
- An “announce clause” suppressed spending by judicial candidates, although the effect was not as statistically powerful.
- Elections in states with the “commit” clause had more than twice as much spending on judicial campaigns, primarily in partisan elections.
- Restrictions on judicial candidates’ solicitation of funds held down spending.
- Supreme court campaigns in states with an announce clause or that prohibit judicial candidates from partisan political activity were marginally less competitive than those in other states, as measured by whether the race was uncontested. However, in states with partisan elections, the margin of victory was closer when the state restricted judicial candidates from partisan political activity.

As an aside, the author provides a concise and informative overview of the issue of whether judges should be elected and the merits and disadvantages to having well-funded judicial campaigns.

- Anne S. Douds

## Civic Networks & Society

**Baldassarri, D., & M. Diani. (2007). The Integrative Power of Civic Networks. *American Journal of Sociology*, 113 (3), 735-780.**

In “The Integrative Power of Civic Networks”, the authors begin by noting that participatory associations are not merely within a civil society—they, and the interactions between them that can overcome social cleavages, constitute the major fabric of “civil society” *per se*. That being the case, the authors see a need to study the ways in which such organizations interact, since the networks that associations form profoundly influence their behavior and capabilities.

The authors’ main intent is to develop a deeper understanding of how associations’ social networks operate and their main features. In particular, they seek to investigate the effects of two different well-known mechanisms on the shape of the association network: inter-organizational alliances (termed *transactions*) and the ties created by multiple memberships (termed *social bonds*). *Transactions* are exchanges of information, resources or expertise between groups that do not imply long-term commitment. *Social bonds* are deeper links between organizations expressed in their sharing members or in personal links between members from different organizations. Transactional links are considered “weak” ties which connect otherwise independent actors, while social bonds are considered “strong” ties that create a sense of solidarity and internal cohesion. In that sense, they involve opposite tendencies: a tendency to look outside the group and “bridge” to others, and a tendency towards dense interaction within the group. The authors want to learn how these two tendencies shape the structure of a network of associations between them.

To do this, between 2001 and 2002 the authors interview key personnel in 124 political-advocacy associations in Glasgow and 134 organizations in Bristol, focusing on organizations dealing with the environment, ethnicity and migration, community welfare, and social exclusion. These four issues were chosen because they are distinct and yet amenable to a broader encompassing agenda, such that one can expect collaboration and overlap between groups. With data from these interviews, the authors build a network map of the relationships between associations. (Glasgow and Bristol have very different socioeconomic and political profiles, so that the researchers could attempt to separate out the effects of context on the network structures, if significant differences were found.)

The authors compared the network data they collected with randomly-generated networks with the same size and network characteristics, and find that both the Bristol and Glasgow networks exhibit unexpectedly low levels of hierarchical structure. Generally, the Bristol and Glasgow networks are both *polycentric*, characterized by several dense clusters of interaction that have loose connections between clusters. This is in contrast to hierarchical networks, in which a central node or group of nodes has cascading links to all the others. Hierarchical networks can efficiently allocate resources, but are relatively fragile. In contrast, a polycentric network depends on agreement between actors to function, but is able to survive the loss of some of its nodes without disruption.

The authors found that social-bond links were relatively more likely to occur between organizations in the same cluster than were transactional links; conversely, transactional links were relatively more likely to connect different clusters than were social-bond links. Generally, they conclude that social bonds are responsible for the development of tight clusters of associations, while transactions are responsible for integrating these clusters into an interconnected “civic network”.

In their conclusion, the authors note that effective civic networks depend on a delicate balance between these two forces. If “weak” ties (i.e. transactions) predominate, then the resulting network will be purely ad-hoc and contingent, without any deep social foundations. On this topic, the authors note with concern the increasing professionalization of civic activism, which has the effect of weakening the traditional role of associations as bridges across social groups.

On the other hand, if “strong” ties (i.e. social bonds) predominate, civil society will fragment into inward-focused clusters of exclusive, opposing identities. Hence, increasing citizen involvement in associations may, in an environment with few transactional links between clusters, promote the risk of factionalism instead of promoting solidarity. Examples cited include the KKK, Weimar Germany, and the Mafia.

- *Oren Litwin*

**Espeland, W., & Sauder, M. (2007). Rankings and Reactivity. *American Journal of Sociology*, 113 (1), 1-40.**

Increasingly, public and private entities are being graded by public ranking systems that have the effect of making their subjects change their behavior in response to their grades, an example of *reactivity*. In “Rankings and Reactivity”, the authors propose that there is a great need to better understand this sort of reactivity, given the increasingly powerful effects of such reactivity on society as everything from primary schools to hospitals to corporations are now subject to independent, public measures.

The authors seek to understand the mechanisms by which public measures generate responses from their subjects, and to characterize these responses. To do this, they study the effects of the *US News and World Report’s* annual ranking of the nation’s law schools. (The *US News* scoring is weighted so that 40% of the score comes from “reputation,” 25% from selectivity, 20% from student placement, and 15% from faculty resources.) They interview key administrators, staff, and faculty from several dozen law schools distributed nearly evenly among the four tiers; this was supplemented with data about law school applications and dozens of interviews with prospective students and admissions staff. From these interviews and data, the authors develop a number of themes for understanding the topic, which they develop as follows:

Rankings are *reactive* because they change how people make sense of situations, and serve as a means to understand behavior and justify decisions. In law schools and elsewhere, rankings factor into almost any institutional decision, including whom to fund, what goals to pursue, what policies to institute, which students to admit, and which faculty to hire. In particular, the authors identify two broad mechanisms for generating reactive behavior: *self-fulfilling prophecy*, and *commensuration*.

*Self-fulfilling prophecy* is defined here as reactions to social measures (whether the measures are appropriate or not) that confirm those measures themselves and make them more meaningful. In a crucial example, a law school ranking often translates into differences in donations, so that highly-ranked schools gain more resources and lower-ranked schools are denied them; this causes a stratification of school quality, as schools judged to be poor quality often become so in truth. Changes in ranking also have large effects in the number and quality of students applying for admission, and (significantly) on the school’s reputation, itself a component of the scores.

The most profound example is in how the ranking system changes people’s conception of a good legal education. Schools change their behavior to better meet the expectations of the ranking methodology. Activities that are not graded become less important overall, regardless of their intrinsic merit.

*Commensuration*, on the other hand, is where the existence of a measurement changes the way that people think about what is being measured. The value of measurements is that they simplify complex information and allow objects to be compared to each other. Understanding is no longer dependent on expert knowledge; with the aid of measurements, most descriptive information is judged irrelevant and attention is focused on a few key elements, which can be compared by the average individual. This makes measurement important and useful to the public, even as it obscures the often-imprecise process by which the measurements were created in the first place. Measurement seeks to compare schools along a continuous scale, and qualitative differences between them are neglected or subsumed into the metric and therefore obscured. Therefore, the differences themselves become less meaningful.

The effectiveness of law schools as teaching institutions is often compromised by efforts to game the ranking system. Money is spent on marketing campaigns directed towards *US News* survey participants, employees are judged by whether they contribute to the school’s score, and students are placed in jobs that are inappropriate to

improve the school's placement ratios. The overall effect on the schools of the methodology used is essentially harmful.

In their conclusion, the authors note the tension in public life between using measurements to understand the world around us, and using them to influence behavior. Because people have a tendency to "teach to the test," it becomes crucial for the measurements used to be appropriate to the situation.

- *Oren Litwin*

## **Evaluation of Evidence**

**Sporer, S.L., & Schwandt, B. (2007). Moderators of Nonverbal Indicators of Deception: A Meta-Analytic Synthesis. *Psychology, Public Policy and Law*, 13(1), 1-34.**

It is often assumed that certain nonverbal behaviors signal an individual is lying. In particular, both lay people and professionals alike have been found to associate gaze aversion with deception. Through a meta-analysis of the literature, the authors of this study fail to confirm that assumption, although they do relate deception to other nonverbal behaviors.

In an attempt to clarify contradictory findings, the authors, professors of psychology in Germany, examined forty-one articles published between 1981 and 2001 that dealt with behavioral changes in the head and body while an individual was either telling the truth or lying. They hope their conclusions will be useful in forensic settings such as the evaluation of defendants' and witnesses' statements during interrogations and in the courtroom.

The research showed that liars tend to nod their heads less and have decreases in hand, foot, and leg movements, but the study failed to find support for the notion that deception is related to gaze aversion and decreased eye contact. Other factors considered that did not have a relation with deception were smiles; adaptors, wherein a hand is touching another part of the body; illustrators, or gestures that accompany what is being said; and postural shifts.

This article shows that the expression of these nonverbal behaviors can vary due to the strength of the individual's motivation to lie, the content of the lie, and the amount of preparation time before delivering the lie. Because of this, it is important that practitioners consider these and other situational factors when trying to determine if an individual is lying. The authors further caution that nonverbal behaviors are not always reliable cues to deception, and warn against utilizing the newer methods of lie detection such as the voice stress analyzer and the analysis of thermal reactions in the eye, as these have not yet been experimentally studied.

The study's conclusions must be read with some caution, as the meta-analysis had to combine prior research that utilized different terms. Still, this article warns policymakers and practitioners alike about relying too heavily on nonverbal behavior to detect deception.

- *Colleen E. Sheppard*

**Garrett, B. L. (2008). Judging Innocence. *Columbia Law Review*, 108, 55-142.**

By empirically examining 200 cases of DNA confirmed wrongful convictions, and an equivalent comparison group, Brandon Garrett has investigated “the reasons why these people were wrongfully convicted, the claims they asserted and rulings they received during their appeals and post conviction proceedings, how DNA testing eventually proved their innocence, and how they were exonerated.” Based on the analysis of the resulting data, the author concludes his “study uncovers a range of areas in which courts misjudged innocence due to institutional constraints and legal doctrine.” Specifically, Garrett recommends the following reforms to address the problems discovered by his study:

- Enhance factual investigation and review during trial.
- Reform the system to enhance factual review during the postconviction proceedings.
- Make use of innocence commissions where trial courts continue to face difficulty in evaluating factual claims

Garrett’s analysis uncovered “four types of evidence [that] often supported these 200 erroneous convictions: eyewitness identification evidence [79%], forensic evidence [57%], informant testimony [18%], and [false] confessions [16%].” Although these factors have become commonly recognized elements of wrongful conviction cases, this article is one of the very few to assess their prevalence.

In addition to offering a rarely quantified analysis of the factors leading to wrongful convictions, Garrett takes his analysis further than many of the other articles on this topic. Specifically, Garrett compares the appeals of these DNA confirmed wrongful conviction cases to a body of appeals for comparable crimes. Using standard statistical comparisons, the author found that the reversal rate for appealed wrongful conviction cases was not different from the typical reversal rate for comparable crimes (14% and 10%, respectively).

The author’s analysis further demonstrates that, though the evidence offered in wrongful convictions cases is fairly common, “[e]xonerates rarely received new trials based on factual claims challenging the evidence supporting their wrongful convictions,” and that few even appeal on the issue. Garrett uses this understanding to support his conclusion that our justice system can judge innocence with greater accuracy.

- *Dave McClure*

**Charman, S.D., & Wells, G.L. (2007). Eyewitness Lineups: Is the Appearance-Change Instruction a Good Idea? *Law & Human Behavior*, 31(1), 3-22.**

In 1999, the Department of Justice released a guide for lineups that included a directive to alert eyewitnesses that the culprit's appearance might have changed since the time of the crime. This appearance-change instruction (ACI) was put forth with no prior research, in marked contrast to the instruction that the person who committed the crime may or may not be in the lineup.

This article reports the first empirical study conducted on the ACI since its inception. The researchers, professors at Iowa State University, conducted an experiment with 289 undergraduate students. The participants viewed a short video clip that depicted a criminal act committed by four individuals, each of whose face was clearly seen. The students then received instructions that they were eyewitnesses to a crime and would next see four separate lineups of six individuals each, one for each culprit. All of the participants were instructed that the actual criminal may or may not be present in the lineups, and a random sample also was given the ACI instruction, "keep in mind that the culprit may not look exactly the same in the lineup as he or she did during the crime."

In order to have four culprits with varying degrees of change from the video to the photograph in the lineup, the authors used the freshman identification cards of the four culprits (students), each of whom was at a different point in his/her college career, and thus naturally varied in the amount of aging since the photograph was taken.

The results showed that the ACI increased identifications in lineups which lacked the target, and also increased false identifications in those in which the target was present. Overall, there was no increase in positive identifications of the culprits. Further, participants given the ACI had significantly less confidence in their choices and had increased response latencies between the presentation of the lineup and the identification.

The researchers concluded that the ACI led witnesses with worse memories to make more identifications, either due to their mental mutations of what the culprit looked like, or through the use of a lower standard in the selection of an individual from the lineup as they realized it may not be an exact match due to appearance changes.

Importantly, this research points to a practice that appears more harmful than beneficial in improving the accuracy of eyewitness identifications. As the authors note, legal reform should be enacted only after empirical research confirms the efficacy of the proposal.

- Colleen E. Sheppard

**Raitt, F.E. (2007). “Robust and Raring to Go?” Judges' Perceptions of Child Witnesses. *Journal of Law and Society*, 34(4), 465–488.**

British law now treats children as vulnerable and allows for precautions in order to extract the best evidence from these young witnesses. In this study, the author interviewed judges, sheriffs, and senators in the United Kingdom to gauge their thoughts on juvenile witnesses.

The study shows that judges are unsure about current policy involving juvenile witnesses. First, there is discrepancy over the age of majority; while some legislation sets 16 as the age of adulthood, other laws term the age as 17. One judge claimed that “a witness is a witness,” and regardless of age, testifying in court is stressful for all who undergo the experience.

Since examination and, especially, cross examination are stressful experiences, the study showed that several judges in the United Kingdom employ child witness laws in their courtrooms. However, not all judges do this. In fact, the study reveals two perspectives on child witnesses: some judges see children as robust and resilient, while others envision them as susceptible and vulnerable. The study concludes that British law on child witnesses is applied unevenly.

- *Tarren Smarr*

## **Law Enforcement**

**Goodrum, S. (2007). Victims' Rights, Victims' Expectations, and Law Enforcement Workers' Constraints in Cases of Murder. *Law & Social Inquiry*, 32(3): 725-757.**

Research on victims' rights services and legislation has shown mixed effects on victims' satisfaction with the criminal justice system leading researchers to question our current policies and practices. Previously increased participation in the process has been considered to increase satisfaction in the process. From this hypothesis, victims' rights legislation has flourished, giving victims the right to be informed of all court proceedings in their case and to make a victim impact statement. Legislation rarely includes the right to be informed of law enforcement investigation status or proceedings. The author argues that this may be the missing link to victim satisfaction.

Using data from in-depth interviews and observation in a large county, this article explores bereaved victims' (next-of-kin of murder victims) perceptions of the processing of their case and the victims' services provided. These perceptions are contrasted with those of law enforcement personnel and victim advocates. The author, an assistant professor of sociology at Centre College, conducted over 40 interviews and observed the interactions of victims and law enforcement for approximately 144 hours with funding assistance provided by the National Institute of Justice. Data was collected from 1994 to 1999. Victims were recruited through mailed letters to next-of-kin listed on death certificates and in media reports. The interviews lasted approximately two and a half hours with victims and about one hour with law enforcement and advocates.

The author finds that there are two main points of conflict with victims and professionals: 1) a conflict over the loved one's body, and 2) over the flow of information in the case. The author names the first conflict as "the body as a loved one vs. the body as evidence". Following a murder, law enforcement are trained to view the body as evidence and must follow strict guidelines to preserve evidence. Victims revealed specific reasons for wanting to see the body of a loved one: to verify there was not a mistake and to say goodbye. While law enforcement participants' primary concern was evidence preservation, they were also concerned about the negative effects a victim may experience if they viewed the body before the body was prepared for viewing. The second point of conflict the author found was over the flow of information. Victims had problems offering information to law enforcement they felt would be useful in the investigation, and receiving information from law enforcement regarding the status of the investigation. While law enforcement officers appeared sympathetic of these needs, they revealed a need to conduct a timely investigation that flows organizational and legal procedures.

The result of these conflicts is often victims who feel powerless because law enforcement workers control the process. This research illustrates how the victims' rights legislation needs to be closely examined to ensure that victims have rights throughout the process, including with law enforcement and that these rights address the needs of the victims. The author notes that the direct implication of this research is the extension of victim rights legislation to the law enforcement stage. However, the author also notes that including victims in law enforcement procedures can be problematic for the preservation of evidence and timely case processing. To have a large effect on victims' satisfaction, law enforcement organizations may have to modify their response to victims and allocate additional resources to ensure victims' needs are met without compromising law enforcement's investigation.

*- Holly R. Stevens*

**Willis, J.J., Mastrofski, S.D., and Weisburd, D. (2007). COMPSTAT and Organizational Change in Three Police Departments: A Theory-Based Analysis of Organizational Change. *Law and Society Review*, 41: 147-188.**

COMPSTAT, the latest innovation in American policing, has been widely heralded as a management and technological system whose elements work together to transform police organizations radically. Skeptical observers suggest COMPSTAT merely reinforces existing structures and practices. However, in trying to assess how much COMPSTAT has altered police organizations, research has failed to provide a broader theoretical basis for explaining how COMPSTAT operates and for understanding the implications of this reform. This paper compares two different perspectives on organizations—technical/rational and institutional—to COMPSTAT’s adoption and operation in three municipal police departments. Based on field work, the analysis suggests that relative to technical considerations for changing each organization to improve its effectiveness, all three sites adopted COMPSTAT in response to strong institutional pressures to appear progressive and successful. Furthermore, institutional theory better explained the nature of the changes observed under COMPSTAT than the technical/rational model. The greatest collective emphasis was on those COMPSTAT elements that were most likely to confer legitimacy, and on implementing them in ways that would minimize disruption to existing organizational routines. COMPSTAT was less successful when trying to provide a basis for rigorously assessing organizational performance, and when trying to change those structures and routines widely accepted as being “appropriate.” The authors argue that it will take profound changes in the technical and institutional environments of American police agencies for police departments to restructure in the ways anticipated by a technically-efficient COMPSTAT.

## Court Performance

**Ostrom, B. J., & Hanson, R. A. (2007). Implement and Use Court Performance Measures. *Criminology & Public Policy*, 6(4), 799-805.**

Though it is a frequently held view “that courts are too decentralized and fragmented to allow comparison along common dimensions,” the authors of this article contend that courts have enough in common to compare their differences. For instance, the distribution of case types and processing time are fairly *proportionate* from one courthouse to another, even though the *actual* case volume and processing times vary between courthouses. The authors advocate the use of performance measures, specifically the ten *CourTools* measures developed by the National Center for State Courts, to assess difference, such as “access and fairness and a generally broader notion of accountability than implied by timeliness alone.” By implementing such measures, the authors expect the court to realize the following benefits:

1. A connection between advertised goal statements and the actual results of the court’s operation, which will help indicate whether specific goals are being achieved and to what degree, as well as providing a justification for budget expenditures and future requests.
2. An emphasis and demonstration of the benefits to various stakeholders by describing specific outcomes relevant to individual groups (such as litigants, attorneys, witnesses, jurors, the public, and funding authorities), and a precise framework of expected results for court staff.
3. The establishment of a basis for “an enduring approach to long-term reform.”

This last benefit has been achieved in multiple jurisdictions by: 1) determining the performance objectives; 2) setting the priorities to be measured; and 3) presenting the results.

The ten *CourTools* performance measures include: (1) Access and Fairness; (2) Clearance Rates; (3) Time to Disposition; (4) Age of Active Pending Caseload; (5) Trial Date Certainty; (6) Reliability and Integrity of Case Files; (7) Collection of Monetary Penalties; (8) Effective Use of Jurors; (9) Court Employee Satisfaction; (10) Cost Per Case. These measures are supposed to provide indications of a court’s performance that can then be compared across courthouses.

In addition to setting performance measures, the authors remind courts that it is essential also to establish the framework to collect data through *CourTools* and analyze the results. For more information on *CourTools* the authors recommend [www.courtools.org](http://www.courtools.org).

- Dave McClure

**Devine, D.J., J. Buddenbaum, S. Houp, D.P. Stolle, N. Studebaker. (2007). Deliberation Quality: A Preliminary Examination in Criminal Juries. *Journal of Empirical Legal Studies*, 4(2), 273-303.**

Research on jury deliberations is rare but has shown that the dynamics of the deliberation process does influence jury decisions. However, most of this research is conducted with mock juries which may yield results that are not generalizable to real juries. As part of a larger project on jury decision making, the authors explore deliberation quality and its impact on jury verdicts.

Trial court judges from Marion County and Allen County, Indiana, were recruited for this study. After each criminal trial that a participating judge presided over, the jurors were given a brief description of the study and a questionnaire was distributed. The questionnaire asked jurors to provide the specific charges in the case, information regarding deliberation, and the trial outcome. The section of the questionnaire related to deliberation asked jurors to answer questions about evidence review, instruction comprehension, the extent the juror focused on facts of the case, and how jurors participated in the deliberation process. The authors collected information related to the charges and strength of the prosecution's evidence from the attorneys and the judge involved in each case. General questions about the size of the jury and the gender of the foreperson were also asked. Jurors and legal professionals from 179 trials returned the distributed paper-pencil questionnaires via U.S. mail.

The study's main findings are divided into two sections. First, regarding deliberation quality, the majority of juries reported reviewing evidence thoroughly and understanding the instructions provided by the court. The participation of jurors was uneven and not systematic though six-person juries were more likely to go around the table and ask each person to contribute to the discussion in comparison to twelve-person juries. This is consistent with prior research on the topic. Deliberation style was also examined as an indicator of deliberation quality. Previous research suggests that an evidence-driven deliberation style is desirable as jurors scrutinize the evidence more carefully and focus on establishing case facts. This style contrasts with the verdict-driven style, which is characterized by early preliminary voting. Twenty percent (20%) of juries reported taking an initial vote before discussions of evidence and over two-thirds of the juries (69%) did not talk about the evidence before the first vote. Taking an early first vote was negatively associated with indicators of evidence review.

Second, regarding the deliberation's impact, the foreperson's initial verdict stance and the presence of a pro-acquittal leader had a strong and consistent relationship with jury verdicts. Convictions are much more likely when the foreperson initially thought the defendant was guilty and less likely when a juror emerged as the leader of a group arguing for a verdict of 'not guilty.' The magnitude of these relationships did not change when the strength of the evidence was controlled for. In addition, discussions of reasonable doubt and a detailed review of exhibits and witness testimony were negatively associated with conviction.

While the authors note the importance of replicating this study in multiple jurisdictions and other regions, the authors also recommend several practical changes that may assist in achieving better quality jury deliberations. Juries can be instructed to: 1) refrain from taking an early vote; 2) focus on establishing the facts of the case before discussing any specific verdict option; and 3) take active steps to ensure that every member of the jury is heard from on the important issues of the case.

*- Holly R. Stevens*

**Neeley, E. & Tomkins, A. (2007). Evaluating Court Processes for Determining Indigency. Court Review, 43(1) 4-11.**

Under the Sixth Amendment, a criminal defendant deemed “indigent” may be eligible for court-appointed counsel. However, most U.S. jurisdictions do not have clear guidelines or standards to help judges determine who qualifies under this provision. The absence of rules designed to limit discretion increases the potential that judges will show bias or prejudice toward a particular defendant. This article evaluates a pilot program designed to make judges’ assessments of the eligibility of defendants for court-appointed attorneys fairer and more streamlined and to reduce costs.

The three-year program was implemented in Lincoln, Nebraska in January of 2001 and contained three core elements: (1) a uniform rule for judges to follow, (2) a standardized form that judges were required to complete; and (3) a staff position created to screen the financial information of defendants and to verify its accuracy (“Defense Eligibility Technician” or “screener”). Through the use of the standardized form, a defendant seeking, or being evaluated for, court-appointed counsel was assigned to one of three categories based on economic criteria. Aside from the screener staff position, which cost approximately \$50,000 per year, the program was free.

The research examined whether the application of these three core elements would (1) *decrease* the number of non-eligible defendants from obtaining court-appointed counsel, and (2) *increase* the likelihood that those eligible defendants who may have been refused an attorney under previous (non-standardized) practices received proper counsel.

Since there were no data available before the start of this program, the researchers were unable to make pre/post comparisons. Their methodology consisted of administering a qualitative questionnaire to key stakeholders (i.e., judges, prosecutors, public defenders, court administrators, county commissioners, and court staff). The questions focused on stakeholders’ reactions to the program’s core elements and their estimates of time spent assessing whether a defendant was indigent, the percentage of defendants seeking court-appointed counsel, and the proportion of cases for which defendants gave erroneous information. Quantitative data was also collected on the total number of court cases, the percentage of defendants seeking court-appointed counsel, and the percentages of cases where judges did or did not assign a lawyer to a particular defendant.

The authors concluded that the project clearly increased consistency in appointing counsel based on a defendant’s indigent status. In particular, the use of the uniform rule and the standardized form improved fairness and streamlined decision making. However, the authors found no real savings benefits from the program and considered the \$50,000 annual cost for a screener to be an unnecessary expense. The reasons appear to be two-fold: (1) the screening/verification process did not expose a significant number of defendants who were attempting to defraud the court for free counsel; and (2) judges seemed to err on the side of caution and be more generous in their allowance of court-appointed counsel for defendants in borderline cases and in cases where the defendants were expressly against having a lawyer. The authors suggest that localities attempting to implement such a program use existing staff to obtain and verify financial information, thereby eliminating the need for an official screener position. However, the authors also speculate that a court system handling a high case load may expose more fraud, which may justify the expense of a full-time screener salary.

~ Scott Liverman

## **Legal Protections**

**Pridemore, W.A. & Freilich, J.D. (2007). The Impact of State Laws Protecting Abortion Clinics and Reproductive Rights on Crimes Against Abortion Providers: Deterrence, Backlash, or Neither. *Law and Human Behavior*, 31(6), 611-627.**

In this article, the authors examine state protective laws for abortion clinic workers and patients, examining whether such laws deter those who would commit crimes against the clinics or rally those opposed to abortion to commit crimes against abortion clinics and patrons. Up until now, this debate has been largely theoretical without empirical data available.

To examine this question, the authors used self-report victim surveys from abortion clinics provided by the Feminist Majority Foundation. These surveys cover 361 abortion clinics in 48 states. Dependent variables included acts of violence, vandalism, and harassment, while independent variables examined state legislation protecting abortion clinics as well as laws that protect or restrict a woman's access to abortion.

The authors found that state laws neither protected clinics and patients, nor did legislation rally opponents to commit violence. Hence, though these laws may have symbolic value, they have little practical effect. This does not mean that symbolism is unimportant, say the authors, but legislators should be aware of the influence (or lack thereof) of legislation on clinic violence.

- *Hillary Taliaferro*

## **Rehabilitation**

**Cauffman, E., Piquero, A.R., Kimonis, E., Steinberg, L., Chassin, L., & Fagan, J. (2007). Legal, Individual, and Environmental Predictors of Court Disposition in a Sample of Serious Adolescent Offenders. *Law and Human Behavior, 31*, 519-535.**

This article examines sentencing policy in juvenile court, seeking to determine whether judges examine each youth's rehabilitative needs, or whether, like adult court, judges rely heavily on the juvenile's criminal record.

The authors examined the cases of 1,355 juvenile offenders enrolled in the Pathways to Desistance program in Phoenix, Arizona and Philadelphia, Pennsylvania. The subjects, who ranged in age from 14-18 years, had been found delinquent for violent, property, weapons, and sex crimes. Researchers were interested in examining judges' sentencing decisions. They included such independent variables as offenders' demographics, gang involvement, mental health, psychological evaluations, IQ, environmental factors, and legal considerations (including the charges filed, total number of court referrals, and probation status).

The study found that legal factors were most associated with juvenile sentencing, especially the offender's criminal history. At the same time, the authors argue that juvenile court judges should take greater account of factors not linked to sentencing in the current study, including a juvenile's mental health and psychological evaluation. The authors are concerned that juvenile court not become a version of adult court for children.

- *Hillary Taliaferro*

**Tyler, T., Sherman, L., Strang, H., Barnes, G.C., and Woods, D. (2007). Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders' Psychological Mechanisms in the Canberra RISE Drinking-and-Driving Experiment. *Law & Society Review* 41(3), 553–586.**

The number of new publications in the fields of criminology and criminal justice that address restorative justice (RJ) is striking. Advocates of restorative justice submit that RJ conferences can effectively engage offenders through the psychological mechanisms of reintegrative shaming. Developed by Braithewaite (1989), these processes are not concerned with attempting to force offenders to feel shame by having them stand in a corner, pick up trash or wear demeaning signs. Instead, the goal of the process is to create the conditions by which offenders, embarrassed by their actions, fear losing their status and the respect and affection of those to whom they have a personal connection.

A common concern highlighted in various publications critical of RJ, however, is the lack of empirical studies that support this model. Through the Australian Reintegrative Shaming Experiments (RISE), this paper presents longitudinal data drawn from pre and post interviews about how attitudes to offending were affected by court-based procedural justice mechanisms and the procedures and processes involved in one's participation in RJ conferences. While this paper suggests that RJ conferences cannot be shown to reduce recidivism per se, they did affect people's orientations toward the law. Those who attended conferences later viewed the law as more legitimate than those who went through the court process and believed that future lawbreaking would create further problems for them.

The authors do well to note several important design limitations. The most important is the lack, and thus non-participation, of identifiable victims in the conferences. Since reintegrative shaming requires the perpetrator to feel remorse and guilt surrounding the impact of the criminal event on specific victims and their families, this failure limits the research. In sum, this paper may be most usefully seen as emblematic of the challenges associated with measuring the impact of psycho-sociological processes and the need to consider carefully the design of empirical studies.

*- Johannes Wheeldon*

## International Crime

**Rehman, J. (2007). Islam, “War on Terror” and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism in the Aftermath of the London Bombings. *Human Rights Quarterly* 29(4): 831-878.**

This article provides a critical and in-depth analysis of the issues confronted by Muslim communities, primarily in Britain, since the September 11 attacks and July 7, 2005 London bombings. The author argues that increasing skepticism of multiculturalism as a result of these events has damaged a view of Muslims as essentially peaceful. The basis for this skepticism lies in the tendency of critics to focus narrowly on Islamic extremist groups rather than on Muslims as a whole. As a consequence, many Muslims feel compelled to hide their religious beliefs due to fear of retribution and of being treated as second-class citizens within their British communities.

Religious intolerance has been a source of antagonism and war throughout history, yet the Quran and Sunna, like other Holy texts, provide moral, ethical, and religious codes of behavior. Unfortunately, as with all religions, extremists can find ways to interpret what is sacred to justify harmful behavior towards others. The paths of Islam and terrorism are not mutually exclusive, but Islam in its purist form teaches understanding. Unfortunately, there are those believers who portray Islam as a religion of intolerance and advocate its conquest over all other faiths. These groups interpret *Jihad* to mean world conquest and conversion through the use of force, in essence Holy War. While one limited aspect of *Jihad* is the aggressive use of force, a broader and more widely accepted non-violent interpretation promotes the use of dialogue, debate, and persuasion.

According to the author, legislation in Britain to protect Human Rights, such as the Race Relations (Amendment) Act (2000), Anti-Terrorism, Crime, and Security Act (2001), and blasphemy laws, has been used unfairly against members of Muslim communities. Based on their religion, British Muslims have been the victims of ethnic profiling, including being subject to more frequent stops and searches, targeted policing, and higher numbers of arrests. This has caused many to feel ashamed of their beliefs. Finally, while the Muslim prison population has dramatically increased, prisoners are not being provided with religious accommodations, such as adequate prayer facilities, Halal food, and rehabilitation based on Islamic teachings.

What then can be done to stop these iniquities? The author notes that the roots of persecution lie in groups being fearful of one another's differences and until the basis of this fear is tackled, persecutions will undoubtedly continue. To address this, the author proposes the provision of more education that promotes mutual understanding and “difference” as positive for all. There needs to be a recognition that extremists exist in every culture (not just Islam) and that history will continue to repeat itself if tolerance and understanding are not taught to children at an early age. Greater tolerance could be encouraged through schools, community programs and leaders, and media, to name a few possible institutions. By teaching the importance of tolerating other cultures and religions in schools, and then following up through local community and media outlets, such an approach could reach people who vary in age and in their social, cultural and religious backgrounds. If individuals are taught to embrace the differences in life through schooling and/or through those they respect, i.e. community leaders, this will increase the likelihood that they will begin to lose their fears and become more tolerant of one another.

- Tamara Stoner

**Dandurand, Y. (2007) Strategies and practical measures to strengthen the capacity of prosecution services in dealing with transnational organized crime, terrorism and corruption. *Crime, Law and Social Change*, 47(4-5), 225-246.**

While it is clear that criminal activity is increasingly occurring across borders, a gap appears to exist between these threats and the ability of individual states to effectively respond. This paper suggests that international cooperation has become an urgent necessity to address transnational organized crime, corruption and terrorism. Despite the challenges posed by varying standards, approaches and legal bases in different countries, a central assumption here is that capacity building activities can assist countries with different legal traditions to better work together.

Based on the proceedings of the 2007 Second World Summit of Attorneys General, Prosecutors General and Chief Prosecutors, this paper suggests that even in systems where police undertake the investigative role, prosecution services are an integral agency within justice systems. By building investigative and prosecutorial capacity through inter-agency cooperation, developing multi-disciplinary teams and establishing mechanisms to for better cooperation between law enforcement and prosecution. As states begin to work more closely together, this paper also suggests that this cooperation will provide a means to assist countries to bring legislation into compliance with international norm and standards.

As a useful contribution to the growing body of literature concerned with how to promote justice when crimes cross borders and boundaries this paper highlights the importance of sharing best practices abroad. While effective cooperation will require longer-term engagement and broad based capacity building in a variety of countries, this paper presents prosecutorial services in developing countries as a useful and logical place to begin the kinds of processes required to better address transnational crimes and criminality.

*- Johannes Wheeldon*

## Religion & Justice

**Philpott, D. (2007). What Religion Brings to the Politics of Transitional Justice. *Journal of International Affairs*, 61 (1), 93-110.**

Professor Daniel Philpott of Notre Dame University contends in this article that religion has played a far larger role in the selection of transitional justice alternatives than is normally recognized by past research.

The term “transitional justice” refers to efforts to deal with the past in governments that have moved out of authoritarian control or civil war and into democracy. These efforts include truth commissions, national trials, international tribunals, reparations schemes, apologies, forgiveness, memorials, museums and other commemorations of losses suffered by victims of human rights abuses.

In the deliberations about which transitional justice mechanisms are most effective, two paradigms have emerged. The human rights paradigm has, at its core, the notion that perpetrators ought to be punished and victims vindicated. The religious paradigm, emerging from the Abrahamic traditions, centers its work on achieving reconciliation. The human rights community fears that reconciliation implies amnesty, while the religious community fears that prosecution and punishment leaves societies divided. The imagined goal of the human rights paradigm is that citizens will come to respect one another’s human rights and deliberative capacities. The religious paradigm envisions apology, forgiveness and empathy, thus transforming enmity.

Philpott makes a persuasive case that religious leaders have been prominent in the selection of Truth and Reconciliation Commissions as a mode of transitional justice and have also influenced how these commissions work. Less persuasive is his argument that reconciliation is primarily a religious paradigm.

Philpott cites several examples of religious leaders having influence within their countries on the selection and operation of a truth and reconciliation commission as a transitional justice mechanism. In eight cases – Guatemala, Brazil, Chile, South Africa, Sierra Leone, Timor-Leste, Peru and Germany, religious leaders who remained independent from the state government were able to shape decision making. They shared a theological commitment to reconciliation as well as independence from government. But these two variables also were present in El Salvador and in Northern Ireland, and the clerics were not so influential there. He concludes from this that these two variables are necessary, but not sufficient to ensure that reconciliation is favored. Philpott takes this thesis no further.

Philpott’s piece does not address those scholar/practitioners who are secular advocates of reconciliation, such as Johann Galtung, John Paul Lederach, Herbert Kellman and Christopher Mitchell. The reconciliation paradigm is a strong force, and while religious leaders have been advocates of it, they have had many secular allies who have made it a much broader-based view point.

- Nancy Beiter