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Criminological Highlights

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Criminological Highlights is produced approximately six times a year by the Centre of Criminology, University of Toronto and is designed to provide an accessible look at some of the more interesting criminological research that is being published.

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Contents

- After this page, we have produced a two page section consisting, for each article, of a "headline" that summarizes the important points of the article. This is followed by a single paragraph "conclusion" on what one might learn from the paper. **We suggest that the busy user of this service should begin by reading the headlines** and any of the "conclusions" that seem interesting.

- Next comes the core of this document (8 pages) where we have provided one-page summaries of each paper.

Copies of articles can be obtained, at cost, from the Centre of Criminology library
(Email Tony Doob or Tom Finlay – addresses above).

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This issue of *Criminological Highlights* was prepared by Anthony Doob, Tom Finlay, Carla Cesaroni, Myrna Dawson, Rosemary Gartner, Elizabeth Griffiths, Voula Marinos, Renisa Mawani, Andrea Shier, Greg Smith, Jane Sprott, Cheryl Webster, and Kimberly Varma.

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If concerted efforts are made to reduce prison populations, it can be done. By implementing a series of policies designed to accomplish this, Finland was able to reduce its prison population by over 70%.

Finland achieved the imprisonment rate it wanted through a series of "expert driven" but broadly accepted reforms over a number of decades. No single factor appears responsible for the dramatic drop in the use of imprisonment, but it was probably necessary to have a sympathetic criminal justice climate and to have a coherent theory that, among other things, focused on costs and benefits of different policies. **(Item 1)**

Drug courts may *increase* the likelihood of recidivism on drug charges and on non-drug charges. These unfortunate effects may be caused by characteristics of the drug court themselves rather than the treatment that is supposed to flow from the drug court experience.

Just because drug courts are new and different and appear to be based on a [coerced] "treatment" model does not mean that they work. The problem seemed to be "that the drug court was far more stigmatizing than reintegrative in its orientation toward offenders" (p. 536). Offenders who go to drug courts are under intensive criminal justice supervision for longer periods of time than are non-drug court offenders. However, this court "fails to continue reintegrative efforts once the individual has graduated" (p. 537). As the authors point out, "By moving from a rigid and highly structured environment to a potentially chaotic and unstable environment in a matter of weeks, it should not be surprising that drug court graduates experience high rates of relapse and recidivism" (p. 537). **(Item 2)**

The link between youth violence and the family can be affected by public policy. Alleviating the effects of poverty on the family, for example, can reduce the risk of youth violence.

Interventions designed to improve the state of the family can have direct beneficial impacts on families and also reduce levels of violence of children growing up in these households. Hence, public health approaches, which would help reduce the stresses experienced by all families, are much more likely to have a substantial impact on youth violence than programs that target individual violent children. "Any attempt to reduce youth violence... must include a systematic effort to improve the home environments of... children and adolescents and, in particular, to engage... parents in the business of parenting.... We can do this by improving prenatal care, expanding parent education, and promoting family friendly policies that reduce poverty, prevent and treat mental health and substance abuse problems, and enhance parental effectiveness" (p.38). **(Item 3)**

Tough criminal justice policies in recent decades in the USA and the UK are the result of changes in the way in which crime is experienced, particularly by the "liberal elite."

The experience of crime – largely through the media – by the "liberal elite," has changed the way in which governments view and respond to crime. "The new strategies [in response to crime] – expressivity, punitiveness, victim-centredness, public protection, exclusion, enhanced control, loss-prevention, public-private partnership, responsibilization -- are grounded in a new collective experience from which they draw their meaning and their strength." They are also rooted in a "reactionary current of culture and politics that characterizes the present in terms of moral breakdown, incivility, and the decline of the family..." These patterns differ across countries, but they have similar origins and appear to persist even when governments change. **(Item 4)**

Most of the "promises" associated with placing young offenders in the adult criminal justice system are false. In fact, transferring youth to the adult system may, among other things, *increase* their subsequent criminality.

Transfer of youths to the adult criminal justice system "appears to be counterproductive: transferred youths are more likely to reoffend, and to reoffend more quickly and more often than those retained in the juvenile justice system" (p. 149). These effects may be caused by the more "caring" attitude of those in the juvenile system and/or the impact of the programs used in youth facilities, some of which have been shown to be effective. Making it easier or automatic to transfer youths to adult court does not act as a deterrent to crime. **(Item 5)**

Women who call the police in cases of wife assault do not necessarily want their abuser arrested. Their decisions to invoke the law are part of a process in which they negotiate their own safety and that of their children. Thus, they are active agents who make decisions about the most effective response to their situation. As a result, intervention in these cases – legal and otherwise – needs to be perceived as a process instead of a single event that encompasses brief or sporadic contact between these women and the criminal justice system.

This research demonstrates that abused women want protection and deterrence in conjunction with rehabilitation of the abuser. This cannot be provided by legal intervention alone. Future research and policy should consider how sets of interventions – legal structures, social welfare services and support of informal networks and communities – can work simultaneously to provide a unified, effective response to men's violence against women.
(Item 6)

The question is not whether we should have DNA databanks. The question is whether massive expansion of DNA databanks will be cost effective for apprehending offenders. At this point, the answer appears to be "No": massive DNA databanks do not constitute a cost effective place to invest scarce criminal justice funds.

Beyond the use of DNA testing for "known suspect testing" and "post-conviction relief" from a false conviction, this paper suggests that "the spreading craze over DNA databases as a crime control measure" does not deserve similar support (p. 686). DNA databases do not, at this point, appear to be "the most effective way to spend scarce criminal justice resources" (p. 688). As people realize that DNA databases are both "expansive" and "expensive," it is possible that "there will be much greater scrutiny accorded to the supposed benefits which many law enforcement and other elected officials are quick to claim but slow to demonstrate" (p. 690).
(Item 7)

Judges, like anyone else, can be affected by election year rhetoric. A US federal district judge reversed his own controversial decision in a 1996 drug case as a result, apparently, of pressure from, among other people, President Clinton who had appointed him. Even judges who are not directly accountable to an electorate can be affected by electoral politics.

Obviously, this is only one case. But the reversal appears to have been brought about by public pressure from exactly those people whom one might have thought would have defended the judge and highlighted the importance of judicial independence. The fact that it was announced that "if the Bayless ruling was not reversed, the President might ask for [the judge's] resignation" suggests that the importance of an independent judiciary pales in comparison to election year politics. Can we expect better behaviour from our own politicians? Are judges in Canada better insulated from these kinds of pressures than their American counterparts? **(Item 8)**

If concerted efforts are made to reduce prison populations, it can be done. By implementing a series of policies designed to accomplish this, Finland was able to reduce its prison population by over 70%.

Background. In the early 1950s, Finland's incarceration rate was about 190 per 100,000 inhabitants, about four times the rate of the other Nordic countries. Policy debates that started at that time rejected both repressive policies and "treatment" ideologies that helped support high incarceration rates. These were replaced with a policy of "general prevention." This policy is very different from "deterrence" in that the idea of general prevention is to focus on the moral-creating and value-shaping effect of punishment and to aim for the internalization of the values implicit in the laws. Hence the purpose of the criminal law is to influence value systems of people such that they refrain from illegal behaviour not because they might experience punishing consequences if apprehended, but because the behaviour itself is regarded as blameworthy (p.28).

The reduction of the Finnish prison population appears to have come about as a result of a conscious, long-term, and systematic criminal policy that was supported by the judiciary. (p.37). The policy was designed largely by experts who had "close personal and professional contacts with senior politicians... Crime control has never been a central political issue in Finland" (p. 37). Furthermore, "the media have retained a fairly sober and reasonable attitude toward issues of criminal policy" (p. 38). Like Canada, Finland has a relatively low crime rate. However, these changes were accomplished at a time when reported crime was increasing (in Finland and in the other Nordic countries). The elements of the policy shift appear to be the following:

- Cost-benefit analysis was made part of criminal justice policy thinking. "The role of punishment came to be seen as relative" (p.29). Benefits of criminal justice approaches to crime control were compared with the benefits of other approaches.
- The courts themselves appeared to shift away from the use of prison sentences, generally, and toward shorter sentences in those instances when imprisonment was ordered. These changes were consistent with those in the Nordic countries which Finland compared itself to.
- The legislature endorsed the view that prison was not necessarily the best criminal justice policy. The most important change was that the legislature gave the courts in 1977 "general guidance" in handing down punishments for all offences. This general guidance has been described as constituting "a coherent and consistent unity with clear aims and systematic strategy" (p. 32).
- Community service was implemented (in practice and in legislation) and a form of "conditional sentences" reduced the use of short stays in prison.
- Special, more lenient, sentencing rules were developed for young offenders.

Conclusion. Finland achieved the imprisonment rate it wanted through a series of "expert driven" but broadly accepted reforms over a number of decades. No single factor appears responsible for the dramatic drop in the use of imprisonment, but it was probably necessary to have a sympathetic criminal justice climate and to have a coherent theory that, among other things, focused on costs and benefits of different policies.

Reference: Lappi-Seppälä, Tapio. The fall in the Finnish prison population. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 2000, *1,* 27-40.

Drug courts may *increase* the likelihood of recidivism on drug charges and on non-drug charges. These unfortunate effects may be caused by characteristics of the drug court themselves rather than the treatment that is supposed to flow from the drug court experience.

Background. Drug courts evolved out of a concern that neither formal criminal justice processing nor voluntary treatment appeared to address drug offending. In the U.S., support for drug courts came in part from the realization that a high proportion of both state and federal prison populations are drug offenders. In addition, drug offenders in many states, and under federal law, are often subject to very long (and expensive) terms of imprisonment.

Drug courts are sometimes structured in such a manner that defendants are "constantly reminded of their deviant act and face disapproval from the judge, who chastises and condemns their drug use and lawbreaking behaviour. However, this 'shaming' experience is complemented by efforts to reintegrate the defendant back into society" (p. 524). The empirical question, then, is whether this process is more stigmatizing than reintegrative and, therefore, whether it reduces or increases drug use. The evaluations of drug courts have yielded "mixed results about their effectiveness" (p. 527) in part, perhaps, because proper comparison groups have often not been used.

This study examined the Las Vegas drug court which is patterned after Miami's drug court, one of the oldest in the U.S.A. It compared all 301 offenders who had gone through the drug court in 1995 to a sample of non-drug-court offenders who had similar drug charges. Recidivism in 1997 was examined since some of the offenders were under criminal justice control (jail or probation) in 1996 as a result of their 1995 charges. Statistical methods were used to "control for" pre-existing differences between the two groups.

The results were not encouraging. "Drug court participants had substantially higher recidivism risks than non-drug [ordinary] court participants. Overall, drug court participants had a recidivism rate of 26% compared to the non-drug court participants' rate of 16%. This findings "is generally maintained across different types of offenders and drug charges" (p. 535). These results hold when one looks at recidivism for drug charges as well as non-drug charges.

Conclusion. Just because drug courts are new and different and appear to be based on a [coerced] "treatment" model does not mean that they work. The problem seemed to be "that the drug court was far more stigmatizing than reintegrative in its orientation toward offenders" (p. 536). Offenders who go to drug courts are under intensive criminal justice supervision for longer periods of time than are non-drug court offenders. However, this court "fails to continue reintegrative efforts once the individual has graduated" (p. 537). As the authors point out, "By moving from a rigid and highly structured environment to a potentially chaotic and unstable environment in a matter of weeks, it should not be surprising that drug court graduates experience high rates of relapse and recidivism" (p. 537).

Reference: Miethe, Terance D., Hong Lu, and Erin Reese. Reintegrative shaming and recidivism risks in drug court: Explanations for some unexpected findings. *Crime and Delinquency,* 2000, *46,* 522-541.

The link between youth violence and the family can be affected by public policy. Alleviating the effects of poverty on the family, for example, can reduce the risk of youth violence.

Background: In the U.S., as in Canada, there is no conclusive evidence that youth violence (in schools or in society generally) is increasing. In fact, the increase in homicides attributed to youths that occurred in the U.S. during the period 1985-1993, and the decline thereafter, were largely due to changes in homicides with firearms.

Family dysfunction is important in understanding violence. Whether it is due to exposure to violence within the family, biological factors (e.g., prenatal effects of alcohol), untreated mental health problems, or "negative" parenting, the family is a site where intervention can have positive impacts. Parents who are hostile to their children, for example, appear to be more likely to have aggressive children. Furthermore "engagement in school is a strong protective factor against anti-social behaviour, and positive family relationships are predictive of school engagement" (p. 34). "Children from homes characterized by negative parenting were at risk for problems regardless of their ethnicity or income and regardless of whether their parents were married, divorced, single, or remarried" (p.35). "Parental engagement in their children's lives is one of the most important... contributors to children's healthy psychological development" (p.36).

Negative parenting, however, is, to some extent, a result of social policy. "By far, the most insidious cause of negative parenting is poverty. Economic stress... increases the risk for negative parenting, which in turn increases the risk for youthful violence" (p.36). "Parents under stress, because of deteriorating housing, inadequate childcare [and]... terrible schools... cannot parent as effectively as those who live under more benign conditions" (p. 36). These are, however, "*risk factors* for the development of youthful violence, but they are not infallible predictors... The majority of those who have aggressive, hostile, or disengaged parents are *not* violent... [Thus] attempts to identify potentially violent young people before they have committed acts of violence will prove unsuccessful. The vast majority of children we would identify as potentially violent on the basis of background factors will never commit an act of violence, and, consequently many youngsters would be unfairly stigmatized under any such screening system."

Conclusion: Interventions designed to improve the state of the family can have direct beneficial impacts on families and also reduce levels of violence of children growing up in these households. Hence, public health approaches, which would help reduce the stresses experienced by all families, are much more likely to have a substantial impact on youth violence than programs that target individual violent children. "Any attempt to reduce youth violence... must include a systematic effort to improve the home environments of... children and adolescents and, in particular, to engage... parents in the business of parenting.... We can do this by improving prenatal care, expanding parent education, and promoting family friendly policies that reduce poverty, prevent and treat mental health and substance abuse problems, and enhance parental effectiveness" (p.38).

Reference: Steinberg, Laurence. Youth violence: Do parents and families make a difference? *National Institute of Justice Journal,* April 2000, 31-38.

Tough criminal justice policies in recent decades in the USA and the UK are the result of changes in the way in which crime is experienced, particularly by the "liberal elite."

Background. Over the past 40 years, strategies of crime control have changed in many countries (e.g., the UK and the USA) as a result of the perceived inability of penal-welfare policies to deliver adequate levels of security. The result has been a shift to two distinct lines of government action: enhanced control and expressive punishment ("punitive segregation") on the one hand, and the "withdrawal of the state's claim to be the chief provider of security" in favour of a strategy of prevention and partnership on the other (p. 348). "The new penal ideal is that the public be protected and its sentiments expressed" (p. 350).

The experience of crime has changed in recent decades. In the past 30 years, it is the experience of crime by the "liberal elites" that has changed most dramatically. This group has shifted from being the strongest supporters of "welfarist and correctionalist objectives" in the 1950s to being strong supporters of these new approaches. The middle class has, historically, been insulated from the problems of crime. In the 1960s, however, "crime became a prominent fact of life" for the middle class (p. 359). Work and family patterns have changed such that "crime has become one of the threats that the contemporary middle class household must take seriously" (p. 362). A crime control deficit was identified and was perceived as a threat to those who previously were not affected directly by crime. The mass media, and TV in particular, have *institutionalized* the experience of crime by providing us with "regular, everyday occasions in which to play out the emotions of fear, anger, resentment and fascination that crime provokes" (p.363).

The results of these changes are that we have developed a "repertoire of private security arrangements." Daily routines have changed, especially for those who can afford to change, in the face of a society that is perceived to have changed. We have, then, a distinct cluster of beliefs around crime which include high crime rates, highly politicized and emotive representations of crime, and the perception of state inadequacy. Crime becomes part of daily consciousness for the middle class that previously lived lives that were insulated from crime. Support for 'understanding' the offender is replaced with condemnation of offenders. Reintegration of offenders is perceived as less realistic or morally compelling (p. 368).

Conclusion. The experience of crime – largely through the media – by the "liberal elite," has changed the way in which governments view and respond to crime. "The new strategies [in response to crime] – expressivity, punitiveness, victim-centredness, public protection, exclusion, enhanced control, loss-prevention, public-private partnership, responsibilization -- are grounded in a new collective experience from which they draw their meaning and their strength." They are also rooted in a "reactionary current of culture and politics that characterizes the present in terms of moral breakdown, incivility, and the decline of the family..." These patterns differ across countries, but they have similar origins and appear to persist even when governments change.

Reference: Garland, David. The culture of high crime societies: Some preconditions of recent 'law and order' policies. *British Journal of Criminology*, 2000*, 40*, 347-375.

Most of the "promises" associated with placing young offenders in the adult criminal justice system are false. In fact, transferring youth to the adult system may, among other things, *increase* their subsequent criminality.

Background. The ability of judges to transfer youths charged with offences to adult court has always been part of most US states' juvenile justice laws. More recently, however, many state legislatures have *required* certain categories of youth to be tried and sentenced in adult court or have given control over to prosecutors. The result is that it is estimated that over 200,000 youths are prosecuted in America's adult courts (p.97). [Canada typically transfers fewer than 100 youths per year to adult court.] "For all offence types, all age categories, and all years, black youths were more likely to be waived [transferred] to [adult] criminal court than their white counterparts" (p. 102). More than half of the transferred youths receive harsher sentences than they would have in juvenile courts, the others apparently receiving sentences more or less in the range they would have received in juvenile court (p.114). Transferred youths are typically put in the normal adult prisons without programs designed for youths (p.123).

The effects of the transfer of these youths are just beginning to be understood and generally do not support the conclusion that treating young offenders as adults is a good strategy. Among the findings are the following:

- There is no general deterrent effect. For example, one study of the change in New York's law, which was accompanied by a lot of publicity, showed no measurable change over time or in comparison to a jurisdiction where the law did not change. Similar findings have been reported for other jurisdictions: bringing in harsh transfer laws does not reduce youthful offending.
- Youths who are transferred are, if anything, *more* likely to reoffend than those who are dealt with in youth court. One study, for example, showed no difference between transferred and non-transferred youths for burglary, but for robbers "transfer was associated with a higher prevalence of rearrest" (p. 131). Similar findings appear in other studies. One study showed that in five of seven comparisons of transferred youths vs. youths dealt with in juvenile court, transferred youths were more likely to reoffend.
- Youths, even those transferred by juvenile courts, describe juvenile court in more favourable terms than the adult criminal courts. "Most believed that the juvenile court judges were motivated to help them" whereas adult court judges were seen as showing "little interest in them or their problems" (p.136).
- Youths in adult prisons appear to be more likely than their counterparts in youth facilities to be victims of violence (including sexual assaults) from other inmates and staff.

Conclusion. Transfer of youths to the adult criminal justice system "appears to be counterproductive: transferred youths are more likely to reoffend, and to reoffend more quickly and more often than those retained in the juvenile justice system" (p. 149). These effects may be caused by the more "caring" attitude of those in the juvenile system and/or the impact of the programs used in youth facilities, some of which have been shown to be effective. Making it easier or automatic to transfer youths to adult court does not act as a deterrent to crime.

Reference: Bishop, Donna M. Juvenile offenders in the adult criminal justice system. *Crime and Justice: A review of research. Volume 27*. Michael Tonry (ed.). University of Chicago Press: 2000.

Women who call the police in cases of wife assault do not necessarily want their abuser arrested. Their decisions to invoke the law are part of a process in which they negotiate their own safety and that of their children. Thus, they are active agents who make decisions about the most effective response to their situation. As a result, intervention in these cases – legal and otherwise – needs to be perceived as a process instead of a single event that encompasses brief or sporadic contact between these women and the criminal justice system.

Background. Since the early 1970s when public awareness grew about the problem of domestic violence in our society, a number of legislative and policy changes have been implemented to improve legal responses to these crimes. What is striking about much of the research that examined the effects of these changes is the absence of the main actors' voices – the women who experience the violence. When women have been asked about their satisfaction with legal interventions, the primary research focus has been on the outcome of the intervention. It is often the case, however, that when the outcome is viewed as negative by those who engage the law, the entire process is automatically deemed to be negative as well. This precludes the recognition that women's use of the law may be prompted by various concerns and objectives, only one of which is the arrest of their abuser.

The Research. Two studies address the neglected question of why abused women invoke the law, focusing on them as active agents rather than passive victims. Landau showed that a large group of women (40%) did not have arrest on their minds when they called the police (p. 147). Rather, both studies indicated that women reported a variety of reasons for calling the police, ranging from protection (warning the abuser against further violence, removing the abuser from the home or helping the woman leave safely) and prevention (deterrence through charging) to rehabilitation (medical or psychiatric care for the abuser or counseling for both parties). Their interest in protection, prevention and rehabilitation generally did not include a desire for their abuser to be punished. Instead, Lewis *et al.* suggest that these women are engaging in a "process of negotiating their own and their children's safety during which they make decisions based on judgements about the more effective responses" (p. 191). In addition, Landau indicated that "many (women) wanted to work together on changes in their relationship that would put an end to the violence and keep the family intact" (p. 150). Criminal prosecution was perceived as a threat to this end.

Conclusion. This research demonstrates that abused women want protection and deterrence in conjunction with rehabilitation of the abuser. This cannot be provided by legal intervention alone. Future research and policy should consider how sets of interventions – legal structures, social welfare services and support of informal networks and communities – can work simultaneously to provide a unified, effective response to men's violence against women.

References. Lewis, R., Dobash, R.P., Dobash, R.E., & Cavanagh, K. (2000). Protection, prevention, rehabilitation or justice? Women's use of law to challenge domestic violence. *International Review of Victimology* 7: 179-205. Landau, T.C. (2000) Women's experiences with mandatory charging for wife assault in Ontario, Canada: A case against the prosecution. *International Review of Victimology* 7: 141-157.

The question is not whether we should have DNA databanks. The question is whether massive expansion of DNA databanks will be cost effective for apprehending offenders. At this point, the answer appears to be "No": massive DNA databanks do not constitute a cost effective place to invest scarce criminal justice funds.

Background: DNA data banks, like fingerprints, are here to stay. Will widespread collection of DNA samples for these banks turn out to be the most effective way of apprehending and prosecuting offenders? Like police helicopters, DNA databases have contributed to some spectacular successes in apprehending offenders. The argument that "one life saved" justifies such tools ignores, of course, the possibility that two or more lives could be saved through investment of similar amounts of money in something else. The justification for creating DNA databases is that DNA collected at the crime scene will help increase the number of "cold hits" – where a suspect is identified purely on the basis of the DNA. This is a completely different matter from using DNA collected at the crime scene to link an identified suspect with a crime.

The limits on DNA databanks have to do with efficiency rather than effectiveness:

- To get a "hit", DNA needs to be collected at the crime scene. Although some have suggested that it is likely that there are DNA traces (hair, skin flakes, etc.) at some or most crime scenes, it is unlikely that police will have the resources or the motivation to search in most cases. DNA "mining" therefore will not have much impact in solving most crimes.
- At present, if a sample is found at a crime scene, the cost in the USA to create a profile is about $50. Although this number is likely to be reduced over time, it means that a substantial amount of money is needed to collect the data, and even more to create a workable computer system to make such data accessible. [Canada's experience in various areas demonstrates the unpredictability of costs of such databases.]
- The effectiveness of databases in creating "cold hits" increases with the size of the database, yet the marginal utility of increasing the size or scope of the database decreases as one moves from "known serious offenders" toward capturing the DNA from "all" offenders or suspects.

There are also other concerns, among them the use of DNA databases for civil purposes (e.g., screening for insurance acceptability). Given privacy concerns that exist in most western countries, laws in some U.S. states that allow the collection of DNA from anyone *arrested* for offences as minor as a common assault are problematic in terms of effectiveness, and worrisome in terms of their collateral impacts.

Conclusion: Beyond the use of DNA testing for "known suspect testing" and "post-conviction relief" from a false conviction, this paper suggests that "the spreading craze over DNA databases as a crime control measure" does not deserve similar support (p. 686). DNA databases do not, at this point, appear to be "the most effective way to spend scarce criminal justice resources" (p. 688). As people realize that DNA databases are both "expansive" and "expensive," it is possible that "there will be much greater scrutiny accorded to the supposed benefits which many law enforcement and other elected officials are quick to claim but slow to demonstrate" (p. 690).

Reference: Tracy, Paul E. and Vincent Morgan. Big Brother and his science kit: DNA databases for 21st century crime control? *Journal of Criminal Law & Criminology,* 2000, *90*, 635-690.

Judges, like anyone else, can be affected by election year rhetoric. A US federal district judge reversed his own controversial decision in a 1996 drug case as a result, apparently, of pressure from, among other people, President Clinton who had appointed him. Even judges who are not directly accountable to an electorate can be affected by electoral politics.

Background: In January 1996, a federal district judge in New York, Harold Baer, ruled that incriminating evidence in a drug case should be excluded because the police had conducted an unlawful search and seizure. In his original decision, the judge had ruled that the police officers who had stopped the defendant, Carol Bayless, had no reasonable suspicion that she had been involved in a crime. Furthermore, the judge indicated that on some key issues, he did not believe the arresting officer. Since the only incriminating evidence came from this search, the drug possession charge was thrown out. Not surprisingly, the judge was criticized, in particular, for his statements concerning the police officer. Much of the criticism came from William "Broken Windows" Bratton, then New York's Commissioner of Police who indicated that Judge Baer should no longer hear cases involving police officers. Nor was it terribly surprising that presidential candidate Bob Dole and Newt Gingrich referred to the judge's attitude as "pro-drug-dealer, pro-crime, anti-police, and anti-law enforcement" (p. 30). More surprising was the criticism from Democratic politicians (e.g., New York's Democratic Senator Moynihan) who had originally recommended the judge for office. Since it was an election year, the Clinton administration joined the Republicans in criticizing Judge Baer. The judge granted a hearing to hear "new" evidence. Judge Baer reversed his ruling and, in effect, apologized to the police for his statements. The legal community's concern was that the federal judge had caved to political pressure.

What can be said about the nature of the pressure to change the decision? Baer was appointed by a democratic president, Clinton. The argument was that such appointees are "soft on crime." It turns out that, in fact, like most of Clinton's appointees, Baer almost always ruled against defendants in criminal cases. This was his *only* pro-defendant ruling in a criminal case. Generally speaking, in New York, judges appointed by Democrats are no more likely than judges appointed by Republicans to decide in favour of defendants in criminal matters. In other words, there was no evidence to support the assertion that this judge was really any different from any other judge. And his *reversal* appeared to raise more legal questions than his original ruling.

Conclusion: Obviously, this is only one case. But the reversal appears to have been brought about by public pressure from exactly those people whom one might have thought would have defended the judge and highlighted the importance of judicial independence. The fact that it was announced that "if the Bayless ruling was not reversed, the President might ask for [the judge's] resignation" suggests that the importance of an independent judiciary pales in comparison to election year politics. Can we expect better behaviour from our own politicians? Are judges in Canada better insulated from these kinds of pressures than their American counterparts?

Reference: Segal, Jennifer A. Judicial decision making and the impact of election year rhetoric. *Judicature,* 2000, *84,* 26-33.