Abstract

Ethical issues and dilemmas is an ongoing debate in the criminal justice system. All the stakeholders in the justice system including the judges, prosecutors and law enforcers are faced with ethical dilemmas. These officers are expected to uphold the highest level of ethical practice. The need to observe high level of ethical behavior is informed by the increased levels of public scrutiny. The media, society, victims of crime, defendants and government expects the justice system to act impartially yet in their favor.

Keywords: *Ethics, Ethical issues and dilemmas, Criminal justice system*

Morality, Ethics, and Human Behavior

Ethical issues and dilemmas is a prerequisite in criminal justice. There are various categories in the justice system. Each category has people exercising discretion that impacts on the fate of individuals and security of a community of state. Inappropriate laws and regulations, policies and practices result in conflict and distort the foundation of justice (Ehrenreich, 2009). These conflicts pause major ethical dilemmas. The concerned parties grapple with the appropriate course of action and the moral/ethical issues created by decisions made.

Ethics is a branch of philosophy that deals with the study of questions of right or wrong. Ethics gives guidelines on proper living. It entails examination of moral standards and how these standards influence conduct or moral principles guiding the appropriate conduct of a person or group (Kleinig, 2015). On the other hand, criminal justice ethics is the study of ethics as applied in the justice system (Cook, 1999). Agencies mandate to enforce law operate on established practices and ethical guidelines. These guidelines are aligned to community standards to ensure that law enforcers gain public trust and goodwill to carry out their duties.

The criminal justice system involves several actors who make decisions based on their interpretation of ethics. These actors are mandated with discretion to judge what is ethical or unethical. The actors include the legislators, prosecutors, probation officers and police officers (Kramer, 2020). Ethical dilemma refers to a decision-making quagmire between two possible decisions, neither of which is acceptable or preferable. Making one decision results in transgression of the other.

For example, a prosecutor may wonder whether to prosecute a case with incomplete or faulty evidence, how to wade pressure to stop prosecuting a case that presents strong evidence, or how to obtain justice, instead of conviction, in the midst of public pressure or personal affiliations towards a defendant. A police officer face difficulty deciding on the amount of acceptable force to restrain a violent suspect, make partial discussions about his/her job if addressing the media or citizens or the amount of information to disclose to the public.

Types of Ethical Issues and Ethical Dilemmas

Ethical judicial dilemmas are a common phenomenon because of the coexistence of special power and service which are both part of the judicial system. Judicial ethics is dictated by the judges’ constitutional status, their level of immunity and values and societal expectations. The societal expectation of the code of conduct of judges has raised a lot of ethical questions.

For instance, when a case involving a child is brought before a judge, judges apply legal principles in line with past events (Mlyniec, 1996). The challenge with these principles is ambiguity and vagueness. We as a society expect the judges to make ethical decisions in such cases. In the context of a child’s case, the society expect the judge to rely on his/her beliefs, our expectations and judge’s assessment. On the other hand, the affected child expects the judge to rule in favor of his/her preference. The judge might not adhere to the child’s demand because of the child’s emotional, financial and education needs in future.

A judge in the above scenario believes that the decision made is final. However, the judge is aware that such a decision might negatively affect a child. Such a child may run away from the home the judge places them. In this case, the judge should be aware that once is the case is brought before court, the child is no longer in control. The political autonomy of the child is dealt with by the legislators once they decide to forward the case to court (Mlyniec, 1996).

Sometimes, a judge’s decision about a case can be crowded by their personal feelings. A case scenario is when a case is prosecuted within the confines of the law but the judge feels that the result obligated by precedent is unfair. The public might say that the judge should not consider his personal feeling because he is obligated to act according to the law. But we all agree that such a case scenario presents the judge with a conflict of obligations.

 The judge is mandated to apply the law without partiality and at the same time be just. For example, if a judge examines a case and discovers that the evidence linking a crime to the defendant is weak and no circumstantial evidence, then he has the liberty to be just. But what if the defendant confessed in his jail cell that he committed the crime? And there is an inmate willing to testify to this effect? This is authentic information that the judge should consider. On the other hand, the testimony could be made up by an inmate seeking a plea bargain.

The law enforcement agency is one of the professions that demand a higher ethical standard. The profession calls for immeasurable dedication and ethical behavior. We as a society keenly observe the actions of the law enforcers during and after duty. This public scrutiny demands that police officers behave above reproach. Contrary to expectations, every day the public wakes up to news of police officers behaving unethically. These unethical behavior include but not limited to excess use of force, misuse of authority, and violation of rules they are meant to enforce.

For example, at the beginning of 2011, a drug task force commander and an investigator were taken in by federal agents and accused of conspiracy to sell drugs (Solanga & Fraley, 2011). Similarly, a police officer in Seattle resigned after an alleged shooting captured on the officer’s dash-cam. In the same year, a law enforcer in Dallas was laid down after evidence of him kicking a handcuffed prisoner surfaced (McNerthney & Pulkkinen, 2011). In 2017, Schupper (2017) reported that Chicago cops were accused of shooting at fleeing suspects, using force to hold back angry mob, failing to investigate reported cases of misconduct and biased investigations.

From 2012 to 2019, police officers were accused of brutal treatment of African-Americans. These allegations resulted to riots, violent retaliations by police, unrest and mistrust of police by the public. A case example is the shooting of a teenager from Miami, Trayvon Martin. However, it is alleged that the teenager was killed by a civilian not a law enforcer. However, the public argued that his death was fueled by ethnic profiling perpetrated by police officers (Schupper, 2017).

On the hand, the police officers argue that they must make decisions in situations which the law does not provide the legal guidelines to follow. On use of excessive force, the law enforces often deal with violent criminals or individuals. Sometimes they use lethal force to protect their own lives. In such a scenario, the officers make a decision based on assessment of the situation. However, criminal justice provides that use of lethal force should be a last option.

According to Braswell, B.R. McCarthy and B.J. MacCarthy (2002), police officers in the discussed situations face ethical dilemma. These dilemmas include situations where an officers is not aware of the appropriate action, or the appropriate action was difficult to execute in the given situation. Another dilemma is when the inappropriate course of action is tempting. Officers should be aware that failure to act ethically is a violation of police ethics. Unethical actions deplete public trust towards the forces and affects the officers’ ability to effectively carry out their duties in the society.

A criminal prosecutor executes conflicting roles in court. A prosecutor is expected to be an advocate for his/her client, to help the citizens get justice and also protect the defendant’s constitutional rights (C. McDonough, D. B. McDonough, Keenan, 2001). Prosecutors are powerful people in the judicial system as they have the sole mandate to start judicial action in a criminal case. The prosecutor has the sole discretion of pressing or not pressing charges against a suspect. This implies that the prosecutor makes crucial ethical and legal decision in the initial stages of a trial. Moreover, he/she must also ensure ethics is adhered to when proclaiming a suspect guilty or innocent. He/she is also a key player in negotiating for fair sentencing, lodging appeals and granting parole.

One of the ethical dilemmas facing prosecutors is the aspect of maintaining considerable convictions and executing justice. A prosecutor’s competence in a court of law is pegged on the number of successful convictions he/she makes (Donahue, 1999). The public and the media judge the prosecutors harshly, especially when dealing with high profile cases and criminal cases. Victims of crime want the crime perpetrators convicted, without concern of the ethical issues involved in the case. Similarly, the society expects the prosecutor to make as many convictions as possible. They do not expect the prosecutor to sympathize with the defendant. The public have no consideration for the defendants’ right to fair trial.

This kind of ethical dilemma can easily result in prosecutorial misconduct. On one hand, the prosecutor makes convictions to maintain the public trust and maintain his conviction records while disregarding the constitutional rights of the defendants.

Another ethical dilemma facing prosecutors is lack of defined roles. The prosecutor is not only an officer of the court but also an advocate making efforts to make a conviction. These conflicting roles makes it difficult for the prosecutor to exercise their duties. Moreover, the government has no mandate to interfere with a prosecutor’s decision to prefer charges to an individual. This lack of well-defined prosecutorial guidelines and constitutional duties are a good breeding environment of prosecutor’s misconduct.

Solving criminal ethical dilemmas can take many forms. This paper recommends the Balint, Evans & McMillan (2014) recommendations which involve a 7-step framework. The framework depicts possible actions in relation to laws and regulations, policies and procedures that can be used by the various actors in the criminal justice system to execute their work. The first step is the establishment of facts that surround the ethical dilemma. Officers must interrogate facts and avoid personal feelings and misinformation from either the media, society or other quotas.

The second step is determining the officer’s legal obligations and duties. Acting professionally helps an officer to decipher the course of action without biasness or acting on intuition. The third step is determining the ethical values of all stakeholders involved and the fourth is consideration of the normative ethical values which guide ethical behavior of professionals. The fifth step is considering the consequences of one’s actions. Judges, prosecutors, police officers should consider the effects their actions have on themselves, the victims, the public and the law.

The sixth step is consideration of actions that are ethically sound. The decisions might not auger well with the government officers but it is their duty to execute them. The seventh option is related to the consequences discussed earlier. We should evaluate our decisions to establish whether these decisions affect us negatively or positively. Decisions that have positive impact, though considered unethical may be beneficial to the parties involved.

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