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Lawmaker's Cookbook: A Recipe for "Tough-on-Crime" Laws

April 15, 2014 · by Stephen Butts · in GGU Law Review.

Many "tough-on-crime" laws have been enacted over the past fifty years. These laws impose harsh sentences and severely restrict offenders' civil liberties (<http://www.ushistory.org/gov/10.asp>) under the guise of preventing crime. Sex offender laws (<http://ojp.gov/smart/legislation.htm>), Three Strikes law (<http://statutes.laws.com/3-strikes-law>), zero tolerance laws (<http://definitions.uslegal.com/z/zero-tolerance-law/>), and mandatory sentences (<http://famm.org/mandatory-sentencing/mandatory-minimums/>) are examples. "Tough-on-crime" laws are economically unfeasible (<http://www.usnews.com/opinion/articles/2013/08/29/eric-holder-and-congress-role-in-reforming-the-criminal-justice-system>), ineffective, and unjust; yet their creation continues. Chelsea's law (http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1844_cfa_20100419_102425_asm_comm.html), the newest "tough-on-crime" law, was enacted just over three years ago.

Unfortunately, "tough-on-crime" laws are a lot like chocolate cupcakes at a soccer mom bake sale (<http://www.kingarthurfLOUR.com/blog/2011/01/20/0120-star-of-the-bake-sale-fast-fudge-cupcakes/>). When they're just an idea, everyone loves them. They're the "talk of the town." Upon presentation, eyes grow wide. People begin to salivate. They seem so appealing. People don't realize just how bad an idea they are until they've had time to digest one. Once the high is over, the reality sets in that they just make everyone feel bad and weren't very good to begin with. A "tough-on-crime" law is similar, and it's an easy dish to create if you have the right ingredients.

Like flour, the base ingredient for a "tough-on-crime" law is public fear. It has been said: "Behind every bad law [there is] a deep fear. (<http://www.goodreads.com/work/quotes/3093704-the-wordy-shipmates>)" In the context of criminal laws, this fear is of a monstrous villain, and three types of villains are most often cited: sex offenders, drug addicts, and career criminals. Of these choices, sex offenders are the fiend du jour, with child molesters being more villainous than rapists. Sex offenders are seen as monsters and despised by society. Even in prison, "a society unto itself, (<http://www.prisonlawblog.com/blog/politics-prison-sex-offenders-federal-bureau->

prisons#.UzoF8VfeR9A)" sex offenders have the lowest rank in the social order. The public views sex crimes as the most morally reprehensible crimes and, therefore, sex offenders create a moral panic. Sex offenders may garner the most attention, but drug addicts and career criminals are also vilified. Drug addiction is seen as a "moral failing (<http://www.indystar.com/story/opinion/readers/2014/03/25/drug-addiction-disease-moral-failing/6877207/>)," with drug addicts being confined to prisons rather than treated for a chronic brain disease (<http://somatosphere.net/2010/05/drugs-addiction-and-society-special.html>). While some drug laws have been reformed, the "War on Drugs (<http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>)" rages on. Only certain career criminals are seen as villains, though. If an offender's rap sheet is long enough and sufficiently disturbing, he can become a very powerful villain. A rape, murder, or kidnapping can transform a petty criminal into someone to be feared.

The next and most important ingredient, like the sugar in a cupcake, is the media's continual stream of fear appeals (<http://www.aabri.com/manuscripts/11907.pdf>). Fear appeals persuade action by highlighting threats to public safety. The strongest fear appeal is provided by the media's spotlight on the rape or murder of a white child, preferably a female. Many "tough-on-crime" laws have been named after the children whose murders inspired the legal causes: Chelsea's law (http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1801-1850/ab_1844_cfa_20100419_102425_asm_comm.html), Megan's law (http://leginfo.ca.gov/pub/03-04/bill/asm/ab_0451-0500/ab_488_bill_20040924_chaptered.html), Jessica's Law (http://vote2006.sos.ca.gov/voterguide/pdf/prop83_text.pdf), Marsy's Law (<http://igs.berkeley.edu/library/elections/proposition-9>), the Adam Walsh Act (http://www.justice.gov/olp/pdf/adam_walsh_act.pdf), and the Jacob Wetterling Act (<http://www.gpo.gov/fdsys/pkg/BILLS-103hr3355enr/pdf/BILLS-103hr3355enr.pdf>). California's Three Strikes Law was enacted in response to the media-incited public fear after the murder of Polly Klaas (<http://tformjournal.com/v2n2/theinfluenceofthedia.html>). During the War on Drugs, there were no specific horrendous incidents for the media to amplify. Instead, yellow journalism (<http://library.thinkquest.org/C0111500/spanamer/yellow.htm>) was used. From Reefer Madness (<http://www.britannica.com/blogs/2010/10/reefer-madness-and-the-prohibition-of-marijuana-in-the-united-states/>) to reports that African-Americans who used cocaine were raping white women, the media used its power to garner support for "tough-on-crime" legislation. As the focus of the media's fear appeals has changed, so have the villains. From the 1870s until the 1990s, drug addicts were the main villains. In the 1990s, career criminals were the focus. Since 1994, sex offenders have been the focal point.

Similar to our addiction to sugar, people are addicted to the media, and the media continually spoon-feeds these fear appeals to the masses. Unable to abstain from viewing, fears are aroused. This arousal is uncomfortable. To correct this emotional dysregulation (<http://www.pchtreatment.com/emotional-dysregulation/>), humans instinctively react to the perceived need to protect themselves by pressuring politicians for change. Politicians are also controlled by fear. In fact, it is largely due to their fear of not being re-elected that politicians have enacted these unnecessary laws.

Without the addictive media, there would be no "tough-on-crime" laws. For example, a year before Polly Klaas's murder inspired California's Three Strikes Law, Kimber Reynolds, another young white girl, was murdered by a career criminal (http://articles.latimes.com/1993-12-09/news/mn-65402_1_mike-reynolds). But, no one supported the Three Strikes Law Kimber's father was promoting because there was no media attention surrounding her murder.

While a personal or political agenda can be helpful in the creation of a "tough-on-crime" law, it is simply icing on the cupcake. An agenda can have a strong influence on public perceptions. The media can then promote the agenda. For instance, yellow journalism was used to support Richard Nixon's "War on Drugs" political agenda and the media promoted Marc Klaas's personal agenda (<http://www.klaaskids.org/about/ourstory.html>) to rid the streets of career criminals. Once the media has galvanized the public, pressure can be put on politicians to enact legislation. Politicians, whose primary agenda is re-election, worry they'll look "soft-on-crime" unless "tough-on-crime" laws are passed.

Unfortunately, after a "tough-on-crime" law is enacted, it can take decades before the ramifications are fully digested and people recognize how bad the law was in actuality. Once the public realizes the ineffectiveness and vindictiveness of "tough-on-crime" laws, the laws are usually reformed. Forty years after the "War on Drugs" began, the focus on drug policies is slowly changing (<http://www.whitehouse.gov/ondcp/drugpolicyreform>) from incarceration to treatment. Almost twenty years after California's Three Strikes Law was implemented, it was reformed (<http://www.law.stanford.edu/organizations/programs-and-centers/stanford-three-strikes-project/three-strikes-basics>) to focus on serious or violent felonies.

A "tough-on-crime" law is a simple dish with only two main ingredients: our fear of villains and the media's fear appeals. The media has a debilitating effect on our independent thinking because it spoon-feeds us fear appeals. To regulate our fear, the public creates fear in politicians. These ingredients are perfect for a "tough-on-crime" law. Due to their simplicity, these laws will continue to be created. It is only by abstaining from our mindless consumption of the media's fear appeals that laws will transform from being reactive to proactive.

Tags: fear appeals, mandatory sentences, sex offender laws, three strikes laws, tough-on-crime, zero tolerance laws

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