Ethical Choices and the “War on Terror”

• The threat of Terrorism
• Crime Control and “Means-End” Thinking
• Crime Control, Human rights, and the War on Terror
What is Terrorism?

- The deliberate, negligent, or reckless use of force against noncombatants, by state or non-state actors for ideological ends and in the absence of a substantively just legal process.

- Recent terrorist acts have raised the specter of ethical issues in law enforcement investigative techniques.
The Just War Debate

• What is acceptable and what is not in fighting terrorism?
  – This is not a new dilemma

• The justification for war includes:
  – The threat must be grave, lasting, and certain
  – There must be no other means to avert the threat
  – Must be a good probability of success
  – The means must not create a greater evil
The post-9/11 Shift

- Since the attacks on 9/11 there has been a fundamental shift in the goals and mission of law enforcement and public safety.
- The shift has seen a reduction in civil liberties and a nationalization of law enforcement.
  - The Patriot Act
  - Homeland Security
Does protecting freedom sacrifice freedom?

• The *Doctrine of Necessity* is a utilitarian justification for the use of torture.
  – Northern Ireland
  – Israel
  – South Africa
  – South America
    • All countries where torture and abusive interrogation practices were used.
• Will the aftermath of another 9/11 move law enforcement into operating under the Doctrine of Necessity?
• Will Americans justify or rationalize the use of torture-like techniques in preventing another catastrophic attack?
The Patriot Act is justified under a utilitarian principle that the “end” of deterring or preventing terrorist acts outweighs the following:

- Individual privacy rights
- Due-process rights
- First Amendment rights of association
- The right not to be tortured

Can you justify torture?
Justification of Police Actions in the Crime Control Approach

- The end itself must be good
- The means must be plausible
- There must be no other alternative
- The means must not undermine some other equal or greater end
- Again, can you justify torture?
The Public Service Approach

- Preserve and advance the principles of democracy
- Place the highest value on human life
- Prevent crime as the #1 operational priority
- Involve the community in the delivery of police services
Accountability to the community served

Commit to professionalism in all aspects of operations

Maintain the highest standards of integrity

Does torture fit this concept?
The major problem with the utilitarian ethical system or “means-end” thinking is that we are not able to predict the outcome of the actions. Justifying otherwise unethical means by arguing that they will lead to a good end depends on the ability to know that the means will result in the desired outcome.
Crime Control, Human Rights, and the War on Terror

- The premise of rights-based law enforcement is that some acts are never justified:
  - Slavery
  - Genocide
  - Torture

- The bottom line is the protection of human dignity and maintaining the human rights of all people.
Protect your enemy?

- To what extent does a society go in protecting those who wish to destroy it?
  - The United Nations Code of Conduct for Law Enforcement Officials is grounded in the rights-based approach.
  - The majority of European Union countries have high standards placing an emphasis on human rights.
No one is perfect

- Notwithstanding the high standards of the police in England the recent bombings in the London subways resulted in some questionable police tactics.
  - In the past the English have demonstrated noble-cause corruption in dealing with the IRA
  - The Spanish with the Basque terrorists
  - Germany with Baeder-Meinhoff
Secret Courts

- Since 9/11 the United States have increasingly used military courts to handle persons believed to be enemy combatants.
- This process circumvents the standards of the Bill of Rights afforded to citizens charged with a crime.
The danger of police/military parallels

- US policing is based on a paramilitary model
- Historically civilian law enforcement follows in the path of the military
  - Structure
  - Intelligence
  - Tactics
    - The pitfalls of each of these have proved problematic for civilian law enforcement in the past. Will the future be any different?