[Editorial Forward: An old friend of Indiana law enforcement favors us with a delightful mix of history/philosophy/prognostication. His lesson, that law enforcement is intended, and should continue, as a stabilizing force of society, is grounded in the very fabric of America, and one for which a frequent reminder is necessary.]

The Law

by Michael J. Lindsay

In previous years, I enjoyed the privilege of writing an article for the Indiana Law Enforcement Journal whenever I felt something was happening within the law enforcement profession that needed addressing. Upon my retirement, I still feel a compulsion to address issues that flare in the media or in society generally. I have asked the Academy staff if I might publish the following as we celebrate our nation’s 242nd birthday. If you are now reading this, you know that the answer was obviously in the affirmative.

I title these remarks, “The Law.” Such a simple label does not reveal the depth or importance of this term. Likewise, the term “law enforcement officer” is often used as a dispassionate label as well. However, this term declares so much more than the terms “police officer,” or (as this official is described in the western part of our country) “peace officer.”

One can be a police officer in Russia or China where one of the main functions of this position is to carry out the “policies” of the ruler or the ruling party. In fact, the term “police” comes from the same root word as “policy” (Middle French *police*, 1555-1565, Dictionary.com, Unabridged). Even within our system, military “policemen” are used primarily to enforce the orders of a superior, i.e., military discipline, rather than established criminal law provisions.

The Old Wild West personification of this function was the peace officer who kept the peace in a rowdy, untamed town. Keeping the peace in those days, however, often did not square exactly with what the law or Constitutional provisions specified.

Ah, but a true law enforcement officer is different. A law enforcement officer has his or her primary responsibility to the law. A true law enforcement officer needs to know the law, right down to the specific principles within each law. And, a law enforcement officer also needs to know Constitutional, statutory, and case law *procedural* *requirements* for enforcing those criminal laws.

These requirements have been heavy upon officers for many decades. So why do I mention these things now? From the early 1960s, in particular, officers have been reviewed in an increasingly critical manner concerning these limitations. True, many of these restrictions are important for giving our citizens a buffer of freedom and protection that people in China or Russia or Iran do not enjoy. Having viewed law enforcement as a practitioner since the early 1970s, I have noted some profound changes that—as they continue—will make the profession more difficult in the coming years. That is why I mention these things now.

In the Warren Court Era and for several years thereafter, mandates were handed down based on Constitutional or statutory principles. Many of us thought that some of these were taken to an extreme, but at least they had their foundations on legal doctrine. The Miranda Warning requirements, especially, caused quite a stir in those days.

The public and the police (grudgingly) accepted those requirements. Today, however, there is a new and growing sense that who you are or what you represent is more important than the underlying law or principle. This attitude can become very dangerous for our country.

Should a review of an officer’s actions for a shooting be based primarily on the initial facts that might show the officer acted beyond the discretion given that officer, or should it be based primarily on the race of the “victim?” Should the constitutional free speech principle be subordinated to the current popular notion that contradictory views should be silenced by whatever means are necessary? Does the constitutional freedom of religion clause have any meaning left in it, in the 21st Century?

In the current fury over the highly emotional issue of the Immigration Service separating children from their parents, is this procedure any different than what so often occurs when a mother is arrested by a local officer and is taken to jail? In some communities, fifty percent of the fathers are absent from the home. Overall in America, between a third and a half of families have had a divorce. If no one is left at home, these children typically end up in foster care or a juvenile facility, by the thousands, *every week*! Compare those numbers to the relatively small federal stats.

With the *get-tough* approach to immigration—criminally charging those illegal immigrants rather than just running them through an administrative deportation hearing—these families are placed in the same legal status as those thousands of arrested *U.S. citizens* for state statute violations. Those state arrestees are not allowed to have their children reside with them in jail.

Granted, the abruptness of implementing this tougher immigration policy could have probably been smoothed out. And, there is nothing to say that certain federal arrestees—like misdemeanor immigration arrestees—could not have families reside with them *if* the rules for those criminal arrests were changed.

However, the present outcry ignores the standard operating procedures that have been in place since before America even declared its independence. The Immigration Service was correct in adhering to these long-established procedures for processing criminal arrestees regardless of how intense the political pressure becomes. It has now fallen to the President, not ICE, to change that procedure. Even at the presidential level, there is a question as to whether such an Executive Order is legal. Nonetheless, using Executive Orders instead of legislation has unfortunately gotten to be a regular mode of administration over the past five years.

These current federal arrest situations—where the children are separated from the parents—are actually very small in comparison to the number of unescorted minors who were encouraged to cross the border by parents (10,000 unescorted of the 12,000 minors in federal custody today), beginning a couple of years ago when DACA was first announced by the previous administration. The important point here is that many citizens are now demanding that current, well established law be subordinated to political pushback efforts. This is a dangerous trend that can have very bad consequences. Whenever something like this happens, the rule of law is weakened.

This leads back to my original theme: The importance of established law! The rule of law as the basis for government has made the United States the one great republic that created—and continues to create—an open society that has endured for well over 200 years. The *honest* interpretation and application of law is one of the values that stabilizes and perpetuates our society. This stability allows people to know what to expect, and that then leads to our many liberties. Without stability, there are no liberties.

The second major element that leads to our stability, in tandem with established law, is that we have a republican form of government. Several have observed that if we were a true democracy—where everybody votes directly on all issues, even during highly emotional times—we would have destroyed ourselves years ago. This practice of using representatives slows down the process just enough to give some stability.

The third condition necessary for stability is working with a generally accepted set of moral values, a foundation. The basic moral commands of God (our Judea-Christian principles) are not meant to be oppressive to mankind. They are established to be in the best interest of mankind in the long run. These rules often seem offensive to our egos in the short run but doing away with these rules or “fudging” these rules can easily lead to chaos.

A country whose foundations are based on Judeo-Christian principles, like America was, can provide the greatest amount of liberty for its citizens. President Adams, one of our founding fathers, once said that a constitutional government like ours is only possible with a moral and religious people. That is because even a well-established constitutional government can be undermined and eventually destroyed by immorality and instability.

A case in point is the current push towards passing “hate” legislation. This legislation is basically telling us how and what to think. Although this may sound good to some, it was and is used by a segment of our society for nefarious purposes. Much of this legislation is focused against the Christian community. Our Constitution has not been amended for decades, but with the push towards creating hate legislation, our constitutional principles of freedom of religion and freedom of speech have already been twisted beyond what any of the founding fathers would recognize.

How in the world could a baker who refuses to bake a cake for a homosexual wedding because of his religious beliefs become a national focus and a Supreme Court case? How could this case even get any traction? But more importantly, would a founding father even conceive this could occur in America without a huge change in our Constitution? This one case alone shows how even an established constitutional system can collapse when the foundational principles under that constitution dissolve.

When I was a young boy living in the South during the 1950s, I can remember our maid, an African-American woman, being arrested for vagrancy and loitering. I remember my parents saying that she was one of the hardest working people they knew. She had several clients on our block and worked six days a week. The laws that were often used to arrest African-Americans then were the vagrancy and loitering laws. Most of these were eventually declared unconstitutional by the Supreme Court for being so vague and inappropriately applied.

Those were the last of the “hate laws” of the ultra-conservatives in those days. So, obviously, we did have hate laws in previous times, it is just that these were not called hate laws and were not passed specifically for that purpose. The loitering and vagrancy laws had a good purpose; it is just that they were inappropriately applied by policemen. Hate laws then, like hate laws today, do not produce many good results regardless of which end of the spectrum they punish.

So, what does all of this “law talk” have to do with *law enforcement* officers today? Well, as mentioned, it is the officer’s perspective that can—sometimes inadvertently—start such a destructive ball rolling. For a more current example, police officers have in recent years arrested a parent for giving a child a swat on the bottom in a public place for the child’s misbehavior. Surprisingly, practically no state has changed its battery law to initiate such a thing. Likewise, the “child abuse” laws in most states have not been changed either, but that law is typically the justification for the arrest.

The definition of child abuse is so vague that nearly anything can be incorporated under this banner. In years past, the U.S. Supreme Court has, as stated, struck down many laws for being too vague, but this one area has never received that kind of criticism from the courts. Consequently, the *fear of arrest* in this area has had *a profound impact* on our society in recent years, even though these laws have typically not changed one iota.

Like the misapplication of the vagrancy and loitering laws in years past, the perspective of the officer can radically change the outcome of laws without one word being altered. As new police officers are “indoctrinated” into a mindset by their previous schooling, the media and in some cases Hollywood, this radical swing can occur in how officers view these situations.

This is why *law enforcement* officers—especially in today’s volatile society— should stick to the law as it was intended to be applied and as it has been applied for years, sometimes even for centuries. A conservative (i.e., old-fashioned) view maintains the status quo, and therefore, maintains a little stability in a time of rapid change. It is not the job of law enforcement officers to blaze new trails, create novel interpretations, or establish unique results. That is a job of the legislature, in a public forum, after much debate.

That is exactly why the INS officers were correct in separating children from their parents when the parents were arrested on a criminal law violation rather than just being routed through an administrative system as has been done in recent years. Criminal penalties generally provide more deterrent than administrative sanctions. For local officers, that type of distinction would be like arresting someone for Driving Under the Influence and not filing the criminal charges, but instead, filing only with the Bureau of Motor Vehicles to have the driver’s license administratively suspended. One wonders how effective that would be in curtailing DUI?

There have always been criminal penalties in the immigration laws. At some point, however, someone decided not to use them. Federal officers correctly look to Congress to change the immigration law—which was created by Congress in the first place. Jumping back and forth between the two approaches perpetuates an impression of using extra-legal procedures in handling immigrants.

Along this line, much has been said lately about the ‘Shadow Government’ in Washington. Here is another area that bears *directly* on law enforcement. Truthfully, if officers—state or federal—start contorting the law to fulfill a political agenda or conform to a personal perspective, these officers are truly part of a Shadow Government. A case in point is the recent disclosure of an FBI agent (see the Peter Strzok case) and an FBI lawyer using their official positions to try to influence the 2016 election. This was morally and foundationally wrong at its most basic level. With the present political environment, we will likely be seeing much more of this type of thing in the future.

If the legislature has specifically defined a concept—hate situations, for instance—an officer must enforce the clear intent of the law, but if this definition is ambiguous, this author’s advice, for the good of America, is not to make any political evaluation concerning the enforcement of the law, not to take any huge leaps in logic, and not to contort a law towards personal preferences. When this starts to happen, even for convenience purposes, we begin to move from a nation of laws to a nation of tyrants.

Many officers today may say that these types of situations do not present themselves all that often to the average street officer, so perhaps this concern is just *yelling wolf* when there is really not that much of a need. If this were the case, I would have to agree. However, I can see a substantial change in direction today. I have already noticed some strong indicators that Christians, certain ethnic groups (like the Jewish populations), and conservative political alliances are in line to be the next victims of persecutions.

Besides these areas of probable persecution in the near future, there are a number of other profound, rather weird changes (at least weird for the Baby-Boomer generation), that will also impact law enforcement. Although the below-mentioned areas do not entail a magnitude of impact on society that the above-mentioned areas can, the below situations contribute greatly to the “mentality of change” and instability in America. These changes in everyday life will create the strong feeling that *nothing* rests on a moral foundation.

For instance, scientists agree that sophisticated robots *with* *artificial intelligence* (A.I.) will be fully operational in the next five years. A prototype already exists named Sophia (Google: “Sophia” on an internet search). A robot *with* artificial intelligence means that this is more than just a pre-programmed machine. This means that those “entities” have the ability to know and to choose between right and wrong. It means they can become independent entities after accumulating enough data. It means that they can think and take action on their own without having an answer pre-programmed into their software.

There has already been a situation in which two “A.I. entities” were allowed to talk to each other. The developers later noticed that they had created a language on their own that the developers could not understand. The developers had to shut the machines down because the developers did not know what they were plotting.

Believe it or not, this prototype robot, Sophia, has already been given citizenship in Saudi Arabia (Google: “Sophia citizenship” on an internet search). How unbelievably weird is this? Well, that could never happen here, right? Again, how is this a law enforcement issue? Well, what do we do when a future artificial intelligence entity commits a large-scale premediated criminal fraud against thousands of our citizens (stealing millions of dollars) through an internet scam and then hides the money in a Swiss bank account? Even if we can detect one of these schemes, who do we arrest?

What do we do when a self-driving car, on a public street, malfunctions and kills someone standing along a roadway? This particular conjecture is not speculation on future events. It has already happened in Arizona. Is there criminal liability for anyone for the death, or is this just a sacrifice to modernization? Can a programmer be held criminally liable knowing the potential consequences of a deficient program?

Even though these things are starting to manifest already, these situations seem somewhat bizarre and remote today, so why spend time thinking about such things. Well, perhaps, these possibilities are somewhat remote today, but what about five years from now? With knowledge now doubling every eighteen months, how far out are these before they become common?

Within the next five years, will we have A.I. devices and robots in our homes? Will an A.I. robot ever beat a human to death? In the next five years, will there be self-driving cars on many of our roads? How will we handle it when these cars speed, disregard stop signs, and make illegal turns? In the next five years, will we be implanting “chips” in our bodies for convenience sake? Will we allow ourselves to be cloned for extra parts? Will we allow our babies to be cloned? Are we playing God when we allow our DNA to be cloned?

What could possibly go wrong in any of these brave new-world endeavors? Yes, our country will be a much different place in another five years. Of course, nobody—in a miraculous age such as this—would expect anything to go horribly wrong. That is just human nature.

But, no one expected terrorists to fly an airplane into the World Trade Center. No one expected Hitler to attempt to kill the entire world’s Jewish population. No one expected America to drop two atomic bombs on civilian populations. And even in ancient (much slower) times, no one expected Christians to be fed to lions even ten years before that actually happened in Rome.

I do not think anyone, even 50 years ago, anticipated parents being arrested for swatting their misbehaving child or children being asked what sex they wanted to be. I do not think anyone anticipated gender-neutral public restrooms or same-sex marriage being legal.

So, how does a *law enforcement* officer handle the situation when someone files a complaint that a certain Christian evangelist committed a hate crime because Christianity is “an exclusive religion?” How does a *law enforcement* officer handle an investigation where a conservative politician’s house has been badly vandalized, and that officer’s detective sergeant tell him or her not to worry too much about it? He got what he deserved.

Whether it is in the area of supporting or resisting same sex marriage, finding someone in the other sex’s bathroom, dealing with a disruptive A.I. robot, or any number of other unique situations now surfacing in our highly dynamic, rather neurotic society, we are unquestionably in the process of transitioning into a very different world that we will need to ponder extensively in order to discern good from bad and right from wrong. But, *when* there is a choice, an officer should remember that erring toward historical interpretations to maintain stability will be oh so important in those volatile days.

Speaking of anticipation, even the Pope recently said that he would offer to baptize aliens—of a different sort—if or when they arrive in our realm. Wow! Yes, the next two decades—which is just ONE LAW ENFORCEMENT CAREER span—will be very interesting!

Even beyond these street level problems, all indications are—globally, within America, and Biblically—that there will be strong forces pushing, in the very near future, towards creating a one-world government. Again, what could possibly go wrong? How this plays out in the United States is anyone’s guess. Americans tend to be a little more exclusive and patriotic than most Europeans who now have a world view.

Even so, a number of European countries—that have surrendered their sovereignty to the European Union—now realize that the mandate to absolutely accept all foreign immigrants into their borders contradicts their home country’s current desire to protect its borders. This really places local law enforcement in a very awkward position?

Likewise, the new World (criminal) Court has already issued arrest warrants for leaders who have allegedly committed “crimes against humanity” within their own borders. Doesn’t this place local law enforcement in a really tenuous position? What are crimes against humanity? That sounds pretty vague. Is that like child abuse, loitering or vagrancy? If a World Court had been fully empowered at the end of World War II, would President Truman and all of the involved military people have been convicted for crimes against humanity for dropping the bomb on civilians in Japan?

One-world government sounds good on a superficial level, but what happens if (when) a Hitler is voted in? If that happens, there will not be any other countries left that can resist such a despot. Even back in WW II, Hitler—working through a relatively small country like Germany—was nearly impossible to stop. What if he had commanded a world organization?

Some will say in those days that law enforcement should be on the cutting edge of all things new, not an anchor. They will say that this is the only way for law enforcement to shed its racism, intolerance, and many other limitations within the profession. This author disagrees.

Although it sounds regressive in today’s society, an anchor is really designed for protecting the ship, for keeping the ship from crashing against the rocks in a storm, and for keeping it in the navigable channel so that it does not beach itself. Law enforcement has always been a maintainer of the status quo. This is nothing new. It is just that this characteristic of law enforcement is twice as important today than in the past because of the times we are now entering.

A good lesson here might come from a fuller examination of the Adolf Hitler story. We have already mentioned his name a couple of times because of his importance in recent world history. Many today are not really familiar with this story. Hitler did not come to power by a coup d’état or a military take-over. He was voted in during a highly emotional time after World War I when inflation was great and Germany’s social fabric had been virtually destroyed. He was voted in because he seemed like the right man at the right time.

As soon as he was elected, however, everyone marveled at how rapidly the changes came! Rapid change nearly always catches people off guard. Does that sound like today? When Hitler then decided to send all Jews to the gas chamber, there was practically no resistance: no resistance from the churches in Germany, from the police, from the military, from the politicians, or from other countries.

There will undoubtedly be many line officers in those future days who will say that these big philosophical issues seem more like conditions that someone else should handle, perhaps those more in authority than line officers. This might be true to a certain degree until one considers that those reading this today will be the chiefs, sheriffs, superintendents, and politicians in 12 to 15 years. It is also true that line officers can substantially influence chiefs and sheriffs, and one must remember how influential local law enforcement is.

State and federal officials rarely have much real contact with street level events. Remember when 9-11 occurred. Immediately after that, the FBI decided it needed to include all local departments in the espionage information-gathering process because it did not have the employee base necessary to accomplish this task. Two days *before* 9-11, however, the FBI shared practically no information with local officers.

And, it is also true that there is *no area* in these discussions that completely circumvents line officers. For example, a very recent article (see *The Week* magazine, July 6, 2018, page 8) reported the attack on Roma cultural groups in the Ukraine by suspected neo-Nazis groups. The Roma people were beaten and knifed. Their tents and possessions were burned. The Roma people reported that in some cases, the police stood by and “chatted with the neo-Nazis” while the beatings and burnings were occurring.

These types of reports have always been in the news somewhere in the world, and in fact, this was not unheard of in American during much of the Jim Crow era. My personal experience with our family’s maid, reported above, shows this occurred in America until relatively recent times. Some would say it is still occurring. Line officers do, in fact, find themselves involved in these kinds of incidents, even today.

With our current instability, will these types of incidents again manifest in the United States? The question then is: How will you handle these?

Obviously, not enforcing traditional law is as upsetting to a society as taking novel, unsupported, or new approaches to interpreting a law without the blessing of a legislature. Not enforcing traditional laws (because those laws seem out of step with modern times) creates a serious void in our cultural structure. There is a lesson to be learned from the ancient people of Britain on this matter. Back in the 5th Century A.D., in the land that would eventually become England, the people of Britain (a Roman province) experienced a total disintegration of an established, affluent society when the Western Roman Empire collapsed, creating a huge void.

In those days, many legends developed around a class of noble knights who worked to fill that void *at the street level*. These knights were the only vestiges of justice and certainty in the realm. Their moral principles gave some stability to a very turbulent era. They did not have the huge resources of the Roman Empire behind them but had to defend “truth and justice” individually. Consequently, history and legend have treated these knights very well over the centuries.

Hopefully, our current and new law enforcement officers will be able to do the same if or when they see all of these seemingly unstoppable changes coming to pass. America is just now entering these years of transition and transformation. We are at the doorstep. Like birth pangs, the rate of radical change will likely increase greatly, but prepared officers can be the salt and light in those changing times.

Today, however, is the time to accept the challenge of these moral obligations because preparation is critical. Officers who study moral virtues and think deeply about these things will be prepared. Those who do not will likely be caught by surprise, just as millions were during Hitler’s era. Officers need to now plant the seeds of virtue and justice deep in their hearts. They need to cultivate these with the waters of resolve and prune the branches of prejudice and ego because the pressures to abandon one’s principles in those days will likely be great.

I believe today’s law enforcement officers are more than equal to this task. Never before have they been called upon to do so much for our society: peace keeper, policy maintainer, law enforcer, and (now) moral compass.

So, these are some thoughts concerning our ever-changing nation during its birthday month. Some of these things sound rather grim, but many are upbeat and exciting if we are prepared for them. There is more radical change likely in the next ten years than we have experienced in the last fifty. The most fundamental question for future times, however, will be *exactly the same* as it was several generations ago: If the most ominous events come to pass (a worst-case scenario), will you, as a person of authority, be a Himmler or a Schindler?

Happy birthday America and may all of your LEOs keep you safe!

Study suggestions: A free Constitutional course: www.hillsdale.edu/constitution

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