

See discussions, stats, and author profiles for this publication at:
<http://www.researchgate.net/publication/283494971>

Worley, R. M. (2013). "Tried and Convicted: How Police, Prosecutors, and Judges Destroy Our Constitutional Rights. *International Criminal Justice Review*. Vol. 23, (2): 203–205.

ARTICLE *in* INTERNATIONAL CRIMINAL JUSTICE REVIEW · JUNE 2013

READS

4

1 AUTHOR:



[Robert M. Worley](#)

Lamar University

58 PUBLICATIONS 74 CITATIONS

SEE PROFILE

International Criminal Justice Review

<http://icj.sagepub.com/>

Book Review: Tried and Convicted: How Police, Prosecutors, and Judges Destroy Our Constitution

Robert M. Worley

International Criminal Justice Review 2013 23: 203 originally published online 12 March 2013
DOI: 10.1177/1057567713480812

The online version of this article can be found at:
<http://icj.sagepub.com/content/23/2/203.citation>

Published by:



<http://www.sagepublications.com>

On behalf of:

[Published in Association with Georgia State University, Department of Criminal Justice & Criminology](#)

Additional services and information for *International Criminal Justice Review* can be found at:

Email Alerts: <http://icj.sagepub.com/cgi/alerts>

Subscriptions: <http://icj.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

>> [Version of Record](#) - May 29, 2013

[OnlineFirst Version of Record](#) - Mar 12, 2013

[What is This?](#)

disrupted by the nature of the crime committed. In particular, 42% of the inmates were serving time as sex offenders often committing offenses against young family members. This chapter also provides evidence that prison is an extreme environment where day-to-day relationships are magnified due to the close proximity within which they live. For many of the respondents, fellow prisoners were a major coping resource for coping and something to be celebrated.

The ability to cope under challenging circumstances is a theme continued into Chapter 5. This chapter explores how the distribution of power affects positive prison adjustment. With physical declines related to aging, challenges to one's masculinity are frequent. A valuable contribution to the literature, the aging prisoner was found to be highly innovative when it comes to the portrayal of his masculinity. Of note is the creative discussion of how power is magnified behind prison walls and the limited capacity to act is present for all inmates, regardless of age. The chapter identifies "old school" or "long-term" inmates, knowledge, gender staff relations, and older inmates as a father figure as important variables for the maintenance of a masculine identity. These unique characteristics were found to serve the inmates well as they created a successful adjustment strategy in later life. Mann challenges some of the early stereotypes where researchers have painted a somewhat depressive picture of aging prisoners as powerless. While prison size, security level, and population makeup may be important factors for determining who controls a prison environment, Mann has introduced an important topic worthy of further research.

This book addresses some of the special issues a growing section of the prison population who struggle to cope with a variety of end-of-life issues while incarcerated. Mann concludes with a variety of recommendations including adequate health care, education and employment opportunities, special housing environments, and outdated policies designed for younger inmates. Perhaps, a major weakness of the book is the distinct prison establishments from which the data were collected: (1) the open prison; (2) the Category C prison, and (3) the resettlement (reentry) prison. While each setting provides a unique study group, the prison structure, and hence experience, varies significantly. Also, since the foundation of the book is based on personal accounts of prisoners, perhaps more specific distinctions could have been made regarding inmate narrative (i.e., age, length of time served, prison environment). Nonetheless, Dr. Mann makes a valiant effort in providing one of the few studies that has focused on the inner lives of older men doing time. This book should be a most helpful resource for prison policy makers and for researchers who continue to break new ground on this increasingly important topic.

Michael D. Cicchini

Tried and Convicted: How Police, Prosecutors, and Judges Destroy Our Constitution. Lanham, MD: Rowman & Littlefield, 2012. 161 pp. \$32.00 ISBN 13: 978-1-4422-1717-1

Reviewed by: Robert M. Worley, *Texas A&M University—Central Texas, Killeen, TX, USA*

DOI: 10.1177/1057567713480812

In this book, Michael D. Cicchini, a Wisconsin criminal defense attorney, argues quite convincingly that fundamental constitutional liberties are under attack by criminal justice practitioners. In the beginning of his book, the author points to a recent case where a prosecutor in Wisconsin petitioned to admit a letter of a deceased person, which essentially accused a criminal defendant of murder, into evidence during a jury trial. Since the letter is written by someone who had recently passed away, Cicchini contends the defendant did not have an opportunity to cross-examine or challenge the writer of the letter. According to Cicchini, this case went to the Wisconsin Supreme Court through

a special direct appeal; and in a crushing blow to the confrontation clause of the U.S. Constitution, the Court permitted the letter to be admitted into evidence by the lower court. Subsequently, the defendant was convicted, even though he was never permitted to cross-examine the person who had written the letter. After the case, the jury members were polled, and many stated that the letter was the most important piece of evidence that led them to convict the defendant. Throughout this book, Cicchini points to actual cases, such as this, in order to argue that constitutional liberties are not merely technicalities that allow defendants to escape criminal convictions. On the contrary, the author asserts that these rights are quite fragile, and law enforcement officials often go to great lengths in order to circumvent and destroy these precious rights.

In one of his most thought-provoking chapters, Cicchini provides readers with an in-depth discussion of the Fifth Amendment right against self-incrimination. The author argues that, in reality, this is a *soft law* that is often malleable and manipulated by police officers. In fact, the author maintains that police, with the assistance of prosecutors and judges, have been able to employ numerous techniques in order to avoid reading *Miranda* warnings to suspects. Cicchini writes that the police, in fact, are very adept at convincing a suspect to waive his or her right to remain silent as well as the right to an attorney. According to the author, police will often interrogate a suspect before placing the individual under arrest. When this happens, the suspect has not been technically arrested; and therefore, law enforcement officers can interview an individual as long as they wish without giving any *Miranda* warnings. Cicchini argues that police may also approach a suspect at work as well as other places where they might be able to catch an individual off guard. In these circumstances, so long as the individual is not placed under arrest, police do not have to give *Miranda* warnings. This allows them to obtain a self-incriminating statement without having to respect important constitutional liberties. Also, in some cases, police may arrest an individual and place the suspect in custody without making an attempt to perform a formal interrogation. However, instead of *asking* suspects questions, Cicchini asserts that the police may *tell* certain things to arrestees. According to the author, police do this in the hope of getting some type of verbal reaction. Often, judges may not consider this to be a form of interrogation; therefore, police are able to obtain incriminating information without having to *Mirandize* a suspect. However, even if an individual reads his or her *Miranda* rights, Cicchini contends that the majority of suspects are eventually convinced to waive these rights. The author asserts that often police induce suspects to waive this right by offering *false promises*. They lead suspects to believe they will be treated with leniency if they cooperate, without making any specific guarantees.

In this book, the author also makes a convincing argument that the right to privacy is a *soft law* that is routinely violated by governmental agents. Cicchini explains that it is extremely easy for police officers to obtain warrants. In fact, he suggests that magistrates will almost always give search warrants the rubber stamp of approval. The author argues that search warrants are turned down in only the rarest of cases. Additionally, in a bold indictment of the criminal justice system, Cicchini insinuates that some judges may not even bother to read the warrants they sign off on. He also is critical of the fact that when police officers swear on the truthfulness of statements used in warrants, this is typically done in secret, with no one from the general public actually witnessing this. The author also implies that judges may be reluctant to rule that a warrant is invalid, since this usually means that they may have to rule against a fellow judge and colleague. Also, Cicchini provides a particularly insightful discussion regarding the *good-faith exception* that permits officers to search an individual's home, even if a warrant is defective. He asserts that this is among the most dangerous exception to the Constitution. And, the author argues that the police are not required to inform homeowners that they have a right to refuse to have their houses searched. As a result of this, he contends that police may simply keep asking to be admitted into a dwelling until the homeowner breaks down and relents to a search. Cicchini asserts that the police often intimidate individuals into allowing them into their houses; and as a result, they often do not even need to secure a warrant. The author

also writes that a police officer may even outright lie and say that a homeowner provided him with consent to conduct a search when, in fact, this was not the case.

In what proves to be another extremely insightful chapter, Cicchini explains how criminal defendants may not always enjoy the right to confront their accusers. The author alludes to this in the introduction of his book; however, throughout the book, he delves into this topic in much more detail. For example, Cicchini argues that if a child is a witness to a crime, judges often put constraints on the type of cross-examination that can actually take place during a trial. Also, the author points out that in many cases police are permitted to read an accuser's written statement that may then be admitted as evidence during a criminal trial. While this might appear to be a form of *hearsay*, judges often allow members of the jury to consider these statements, despite the fact that a defendant may not have an opportunity to cross-examine his or her accuser. Cicchini writes accusers may be reluctant to testify for many reasons. For example, the author asserts they may have "sobered up" since the day of the incident. Also, according to Cicchini, witnesses may be worried about committing perjury, particularly if they are unsure of their testimony. Regardless of why a witness may refuse to testify, the author argues that it is problematic when judges admit written statements, in lieu of an actual witness, as this does not give the defense an opportunity to cross-examine adverse witnesses.

Cicchini concludes his book by arguing that the criminal justice system provides officials with a perverse incentive to disregard, rather than respect, constitutional liberties. For example, he writes that if a police officer forces a suspect to confess to a crime, at worst the prosecution cannot use the incriminating statement at trial. Therefore, the police are no worse off than if they had respected the individual's right to silence. And, according to Cicchini, even if the police coerce a suspect to give a statement, any physical evidence discovered as a result of this statement can actually be used at trial, depending upon the state. The author also contends that it is not uncommon for prosecutors to recklessly file criminal complaints. Cicchini argues that some prosecutors will even *overcharge* a defendant and use this as leverage to extort a plea bargain agreement. He asserts that police officers also lie in order to justify their actions and contends that both prosecutors and judges are often aware of these lies and accept this as a part of the justice system. Throughout his book, Cicchini argues that Americans should have a healthy distrust of the criminal justice system. He provides countless examples of how police, prosecutors, and even judges may trample on basic civil rights and liberties. This book is very eye opening and should be read by anyone who is interested in pursuing a career in law enforcement. It is a concise and well-written work that would make excellent supplemental reading material for virtually any undergraduate or graduate level course related to criminal law or criminal procedure. I strongly recommend this book. Once I opened it, I literally could not stop reading.

Bewley-Taylor, David R.

International Drug Control: Consensus Fractured. New York, NY: Cambridge University Press, 2012. 360 pp. US\$36.99 (paperback). ISBN: 978-1-107-64128-0

Reviewed by: Aislinn Murray, *Georgia State University, Atlanta, GA, USA*

DOI: 10.1177/1057567713480811

International Drug Control: Consensus Fractured is an exploration of globalization's effect on drug control policy. David R. Bewley-Taylor argues that as countries became increasingly interconnected through colonization, technology, and human migration, so too did the countries' issues. He contends that drug control is a major issue of concern, given the nature of drug creation and distribution; drugs are produced in one country, trafficked through another, and distributed in yet another. An