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Pre-employment character assessments for United States pretrial services and probation officers

Michael Blake Baker

University of Nevada, Las Vegas

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PRE-EMPLOYMENT CHARACTER ASSESSMENTS FOR U.S.
PRETRIAL SERVICES AND PROBATION OFFICERS

by

Michael Blake Baker

Bachelor of Science
Southern Utah University
1993

A thesis submitted in partial fulfillment
of the requirements for the

Master of Arts Degree
Ethics and Policy Studies
Department of Political Science
College of Liberal Arts

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The Thesis prepared by

Michael Blake Baker

Entitled

Pre-employment Character Assessments for U.S. Pretrial Services and Probation Officers

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Examination Committee Chair

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Graduate College Faculty Representative
ABSTRACT

Pre-employment Character Assessments for U.S. Pretrial Services and Probation Officers

by

Michael B. Baker

Dr. Craig Walton, Examination Committee Chair
Professor of Ethics and Policy Studies
University of Nevada, Las Vegas

Are pre-employment character assessments for federal officers necessary? Can character be tested? What does Aristotle’s theory of moral perception and practical wisdom have to do with law enforcement? I will look at what constitutes human flourishing or eudaimonia and how it relates to law enforcement. Moral perception and judgment are discussed and how perception is necessary in the Federal Pretrial Services and Probation Officer’s profession. What makes one person’s character good and another’s less than good? Are there tests currently being used to test for strength of character or are they really testing for ethical sensitivity or moral judgment?
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PREFACE

Does a person’s character influence their judgment and behavior? If it does, could testing a person’s character prior to their appointment benefit federal probation and pretrial services offices? In this thesis I will discuss the possibility of developing pre-employment character assessment tools and tests to be used to assist U.S. Federal District Judges and Chief Pretrial Services and Probation Officers in their selection of new officers. I will also look at what it means morally to flourish, to possess sound moral judgment and reasoning, and what character means. I will look at how character is developed and if and how it might really be assessed or tested.

In order to understand the necessity of pre-employment character assessments or tests for U.S. Pretrial Services and Probation Officers, a brief description of what they do is helpful. Federal Pretrial Services Officers are responsible for preparing reports and recommendations for U.S. Magistrate and District Court Judges. When a person is arrested and charged with a federal offense, be it bank robbery, wire fraud, counterfeiting etc, the Pretrial Services Officer will interview and investigate this person. This investigation consists of checking into their background. The background investigation includes their family ties, employment and property ties to the community, as well as their previous arrest and conviction history.
This investigation is done in an effort to fashion conditions that would reasonably assure the court that release of the defendant would not pose a danger to the community or a risk of nonappearance for future court hearings. If the defendant is released, the officer will then supervise the defendant and monitor his or her conduct similarly to supervision of a person on probation or parole.

Federal Probation Officers conduct presentence investigations (in accordance with federal sentencing guidelines) for the Court after a person who has been federally charged with a crime has either pled guilty, or been convicted at trial. Federal Probation Officers also provide supervision of offenders after their release from prison (supervised release), or those serving a term of supervised probation as a specific sentence in lieu of incarceration.

In these positions of influence, it is essential that officers display only the highest levels of honesty, integrity, and virtue, so as to act in an unbiased and fair-minded capacity that allows them to make pivotal decisions and recommendations of either detention or release, based on the facts and pertinent policies and guidelines of the individual case.

There are 94 federal districts across the United States and its territories. I have used one western district on which to conduct preliminary research. I selected individuals who currently have a great deal to do with the hiring methods of U.S. Pretrial Services and Probation Officers and set up one-on-one interviews with them. I contacted the Chief Pretrial Services Officer and five Federal District Judges, as well as a special agent with the Federal Bureau of Investigation field office located in the same western district. I conducted 30-45 minute interviews with these seven individuals and asked each of them seven questions that included their perspective on the helpfulness of an ethics/character
assessment tool for new recruits. I also asked specific questions as to what information they believed would help them most in hiring new officers and in maintaining an ethical and morally sensitive workforce. I asked if they believed that the development of a character assessment test or tool would be viewed as helpful and necessary, or if staying with the status quo was preferred. The results of these interviews are discussed in Chapter Four.

The possession of a good character, with sound judgment and moral reasoning results in right actions. Such actions demonstrate virtuous behaviors rooted in experience and previous education in law enforcement, and are essential to maintaining a qualified and professional supervision and corrections arm of the federal courts.

Dr. Steven J. Vicchio¹, defines Core Virtues as those consisting of the following components:

**Prudence.** Practical wisdom, the virtue of deliberation and discernment. The ability to unscramble apparent conflicts between virtues while deciding what action (or inaction) is best in a given situation.

**Trust.** The virtue of trust involves the three primary relationships of the officer: The citizen/officer relationship, the officer/officer relationship, and the officer/supervisor relationship. Trust should engender loyalty and truthfulness in these three contexts.

**Effacement of self interest.**

Given the potential “exploit ability” of citizens, self-effacement is important. Without it, citizens can become a means to advance an officer’s power, prestige, or profit, or means for advancing goals of the agency, other than those to protect and to serve.

¹Steven J. Vicchio, Keynote address delivered at the National Symposium on Police Integrity and printed in the *FBI Law Enforcement Bulletin, July 1997, Volume 66, N7, page 8 (5).*
Courage. As Aristotle suggests, courage is a golden mean between two extremes: cowardice and foolhardiness. There are many professions—surgery and police work, to name two—where the difference between courage and foolhardiness is extremely important.

Intellectual honesty. Acknowledging when one does not know something and being humble enough to admit ignorance is an important virtue in any professional context. The lack of this virtue in law enforcement can be very dangerous.

Justice. We normally think of justice as giving the individual what he or she is due. But putting the virtue of justice in a law enforcement context sometimes requires the removal of justice's blindfolds and adjusting what is owed to a particular citizen, even when those needs do not fit the definition of what is strictly owed.

Cognizant of other alternatives that might be taken. More important, a person of integrity is one who does not attempt to evade responsibility by finding excuses for poor performances or bad judgment.

In the case of Federal Probation and Pretrial Services Officers, not only is society counting on honorable actions by officers, but the courts and the parole and probation authorities are expecting exemplary actions. Oftentimes unethical behavior by officers can have a very far reaching effect on the individual district, as well as the profession as a whole. Not only is there shame brought about by the unscrupulous behavior, but quite frequently there are civil litigations too. Civil discrimination suits and the allegations made, whether justified or not, can destroy morale and pride throughout the district or office. Therefore, officers that possess and use sound reasoning and good, strong characters, appear to be a necessary part of maintaining a successful and ethical agency.

In one eastern district, a Chief Pretrial Services Officer was arrested after being caught (along with several others), in a local law enforcement sting operation conducted...
at a well known crack-house. The Chief was at the house purchasing crack cocaine for his personal use. When word of the Chief's arrest appeared in the media, there was a great sense of embarrassment by the Court and the Chief's staff. The effects of the Chief's illegal and unethical actions also placed into question the legitimacy of dozens of prebail reports and recommendations (involving drug related cases) made by line-officers in his district. Prosecutors asked for and received new bail hearings on many cases as they asserted that the Pretrial Services Agency (in light of the Chief's alleged use of drugs himself), may have acted in a less than neutral manner and perhaps even shown preferential treatment and leniency in their detention/release recommendations regarding the drug related cases.

In contrast to the display of a less than good character and lack of judgment demonstrated by the Chief, other officers display behaviors that indicate a good character and sound reasoning. One particular situation involved an officer who saved the life of an offender suffering from mental illness and depression. This officer was contacted by the wife of a person he was supervising late one evening. The offender's wife told the officer she was very concerned for the safety of her husband as he had been acting very despondent and she feared he would attempt to take his life. The officer immediately called local law enforcement and then went with them to the offender's home where they found that he had barricaded himself in a back bedroom and had a handgun in his possession. The offender told law enforcement that he wanted to talk to his Probation Officer. The officer (due to the rapport he had developed with the offender), was able to convince the offender to turn himself in, which he did, without incident.
Subsequently, the offender was able to get the mental health treatment that he needed and society, the offender’s family, and law enforcement were all safe.

In addition to their professional obligations, Pretrial Services and Probation Officers are also required to conform to, and abide by, the established code of judicial conduct. Exceptional behaviors and actions in both their personal and professional lives are of paramount importance.

Presently there is no mechanism in place to identify those officers who may act in a questionable or unethical manner until their unethical or insensitive actions have brought embarrassment or humiliation upon themselves, the court and the district. In the most extreme cases, even criminal actions result from their unethical actions. Oftentimes after an officer has been let go due to inappropriate or criminal behavior, a careful analysis or reflection in hindsight, reveals that there were concerns raised in the initial review of these officers when their background checks were conducted by the F.B.I. However, since there is not a character or ethics assessment section in the background investigation or in regular performance evaluations, persons possessing suspect characteristics or values not in harmony with the values of the judiciary have been hired. It would appear that the best manner to address ethical behavior outside of increased training would be to introduce character/ethical assessments test to individuals prior to their appointment as federal officers.

Critics perhaps would say that making hiring decisions based upon how someone answers an assessment of ethical sensitivity or character evaluation, would be biased or unfair, or inaccurate. My response to their concerns is such a tool would not be used if it lacked validation and that this would be only one tool that would be used in addition to
the myriad of tools currently used to assess and evaluate a candidate's potential or suitability for a successful career in Federal Probation and Pretrial Services. Many questions are still left unanswered, but the development and implementation of an ethical/character assessment used to aid in the hiring of federal officers could potentially go a long way in helping to restore some of society's loss of trust in its appointed federal officers.

In Chapter One I will discuss the importance of Aristotle's theory of eudaimonia, (flourishing and happiness) that will lead to an understanding of this important concept. I will try to present concepts that will show the overall relevance that possessing, nurturing and developing ethical sensitivity and high moral character, can have in the law enforcement profession. Most notably, I will look at the relevance of eudaimonia to Federal Pretrial Services and Probation Officers.

In Chapter Two I will discuss whether there is a difference among theories speaking of moral judgment and moral perception? I will then address how one assimilates these theories into practical application. Chapter Two will also compare two different theories of moral judgment and perception and contrast and compare those theories with those of rule-based ethics such as Kantianism and Utilitarianism. A discussion ensues as to why principle-based theories fall short of the desired relevance and applicability that can and should be expected from a complete moral theory. In the end of the chapter there is a discussion of relevance and the ideal use of these moral theories, especially in the profession of law enforcement.

Chapter Three discusses what character is, how it is developed, and whether or not it can be assessed or tested. I look at how a person's character can influence their
decisions and the difference between a weak and a strong character. There is also a
discussion about why a person’s character includes not only knowing what is right, but
why it is right. I also look at what is currently in use in the way of moral psychological
testing and assessments of people and their ethical sensitivity or how they act in ethically
or morally challenging situations. The discussion also touches upon the limitations of
moral psychology, noting that critics of moral psychology state that tests in moral
psychology test what a person says they will do, but not necessarily what they would do in
a given situation.

Chapter Four presents the results of the interviews of the seven individuals who
are critical in the hiring process of U.S. Pretrial Services and Probation Officers in one
western district. This chapter discusses the opinions of these Judges, and of the Chief
Pretrial Services Officer and the special agent from the F.B.I. as to what they believe
about whether or how an additional assessment tool would be helpful in hiring federal
officers, or if the methods already in place are adequate.

Chapter Five, the conclusion, discusses the overall applicability of the ideas
discussed in each of the preceding chapters and then indicates the direction in we should
now go. It discusses the limitations and opportunities that testing and assessing a person’s
practical wisdom and moral reasoning can have when used for the purpose of pre-
employment testing. In the end, the conclusion is that pre-employment testing is an
additional tool that would greatly benefit the Judiciary. The benefit would come in the
way of a workforce that possesses qualities of moral perception, sound reasoning and
judgment, strong good character, that would identify officers who display practical
wisdom and an overall practicality in their behaviors both professionally and personally.
ACKNOWLEDGMENTS

I wish to recognize my dedicated committee members Dr. Craig Walton, Dr. Jerry Simich, Dr. William Simich and Dr. Soonhee Kim, for all their hard work and advice throughout the compilation of this thesis. I also wish to express my love and devotion to my beautiful wife Kristin and my children, Zachary, Austin, Alyssa and Nicholas. Their continuous support and tireless patience helped make this possible.
CHAPTER ONE

ARISTOTLE ON HUMAN FLOURISHING

In this chapter I look at why an understanding of human flourishing and its consequences are valuable in a broad sense, but also especially in relation to hiring persons possessing good character. I will look at two different views of eudaimonia,\(^2\) which, loosely translated, means human flourishing. Author John M. Cooper in the book *Reason and Human Good in Aristotle*\(^3\) addresses this important topic. I will attempt to introduce his interpretation and then compare his view of Aristotle with that of Rosalind Hursthouse in her book *Beginning Lives*\(^4\). I conclude with an attempt to use Aristotle’s views of human flourishing and to synthesize them into practical application in federal law enforcement today.

The very basic and common reading of Aristotle’s theory of eudaimonia is that of

\(^2\) The Greek translation of *eudaimonia* literally means well-spirited, well-being.

\(^3\) John M. Cooper, *Reason And Good In Aristotle*, Hackett Publishing Company, Reprint, second printing. Originally published: Cambridge, Mass.: (Harvard University Press, 1975), 89-133. Subsequent references to this work, will be cited in the text parenthetically, as e.g. (Cooper, p.)

\(^4\) Rosalind Hursthouse, *Beginning Lives*, Basil Blackwell in association with the Open University, 1987, 218-237. Subsequent references to this work, will be cited in the text parenthetically, as e.g. (Hursthouse, p.)
an intellectual content. This approach sees the focus on the cultivation of the mind, holding it as an ultimate end. What is this ultimate end supposed to be and why did Aristotle think this was the case? Does it have application today?

Interpretive Section:

I will begin to tackle the details as to what human flourishing is and how it can affect my profession. In each of these, one can find satisfactory and substantive answers. First, the ultimate end according to Cooper, can be answered by chapter two in Nicomachean Ethics\(^5\) where Aristotle states that the ultimate end is first, that which is desired in and of itself and that everything else that is desired is desired for the sake of it. Cooper also believes there is a third condition, namely, that the highest good is not desired or sought after for the sake of anything else.

According to Cooper Aristotle implies that individually we all have such an end or highest good; he admits in Eudemian Ethics\(^6\) that everyone is not organized in this pattern he has set forth, but that they ought to be. Aristotle proclaims a standard or outline that one should follow in his or her life. He states that those who are able to live according to their own choosing, (excluding women, children, and slaves) should set goals that encompass living a good life, honorably with a good reputation, to attain riches and intellectual cultivation.

\(^5\) Aristotle, *Nicomachean Ethics*, Martin Ostwald translation and notes. The Library of Liberal Arts, published by Prentice Hall, 1999. Subsequent reference to this work, will be cited in the text parenthetically, as e.g. (N.E. p)

\(^6\) Aristotle, *Eudemian Ethics*, I 2 1214b7-9. Subsequent reference to this work, will be cited in the text parenthetically, as e.g. (E.E. p)
This should be done by looking to perform all of one’s actions towards these ends. So, a person according to Aristotle, needs to first look at what constitutes good living and good human conditions and work to possess this type of life.

Cooper lists his own ideas of what needs and interests one should consider when setting the goals of one’s life. The end, Cooper suggests, includes development and exercise of sexual capacities, and developing nurturing sociability. Along with these ends, a priority according to the author, would be the assigning of priorities to various ends to be reached.

Aristotle is well known for his views of practical reasoning and intellect and it is this ability that makes his theories plausible and palatable. However, the author admits that his own development of prioritizing the ends may not be consistent with Aristotle’s. Aristotle believed that a person would have to abandon various ends for a single end that lies behind every other desire and pursuit. Aristotle held that human flourishing entails a person who is in complete control of his life and all his actions, with a single view of living. This is flourishing. This is a different level altogether than what Cooper was striving to explain. It would be comparable to a universal or eternal view when Cooper’s claims are a worldly or earthly view, with its mortal limits and understanding.

Cooper believes that Aristotle’s views of this categorical dilemma can be explained by classifying ends. He does this by describing first and second-order ends. Cooper admits his influence in understanding Aristotle and in developing and explaining first and second order ends is based on views and influences of John Rawls.  

Cooper explains Aristotle’s single ultimate end theory as first-order ends. Cooper believes that the first-order ends he is referring to are defined as Aristotle’s commitment to...”the rationality of having a system of desire and pursuit which has at its apex a single end lying ultimately behind every desire and pursuit of whatever kind.” (Cooper, pp. 96-97) Second-order ends according to Cooper, are the developments of sexual capacities and cultivation of the mind and the nurturing of sociability.

Cooper suggests that any impression or belief that Aristotle only recognized one single dominant end of *eudaimonia* is false. He quotes a passage from *Nicomachean Ethics*: “...the good of man is an activity of the soul in conformity with excellence or virtue, and if there are several virtues, in conformity with the best and most complete N.E. (1098a16-18).”

Additionally Cooper believes from N.E. (1097b16-20) that Aristotle’s views should encompass first and second order ends completely. “Moreover, happiness is of all things the one most desirable, and it is not counted as one good thing among many others. But if it were counted as one among many others, it is obvious that the addition of even the least of the goods would make it more desirable; for the addition would produce an extra amount of good, and the greater amount of good is always more desirable than the lesser. We see then that happiness is something final and self-sufficient and the end of our actions.” It is most inclusive, so it is an aggregate and an integration of goods, of body, spirit, mind and association.

Cooper points out that critics of Aristotle have focused on the fact that he did not consider someone to have had a complete flourishing life if that person did not attain the things that Aristotle proclaimed one should achieve, namely honor, reputation, riches or
intellectual cultivation. Cooper points out that this impression about the only way one
could have a flourishing life is a misleading and false one. He says that Aristotle himself in
*N.E.* dispels this untruth when he says, flourishing includes a number of good things rather
than just the dominant single end and that flourishing is the addition no matter how small,
of additional good things. Aristotle states in *E.E.*, that there is room for an inclusive
rather that a dominant pattern. Critics however would focus solely on book I chapter 7 of
*N.E.* where Aristotle characterizes flourishing as “excellent spiritual or mental activity, or,
if there are several forms of excellence, spiritual activity expressing the best and most final
excellence.” He does make mention of two specific types of excellences that the author
develops, excellence of mind and excellence of character.

Aristotle explains these two cases of excellence by a general statement that says
that the best excellence is the best thing in us as interpreted by the author, namely
*theorizing excellence*, or theoretical wisdom (*Sophia*). The author believes that the
portions of book one referred to above form a foundation for Book Ten, where Aristotle
talks of the activity expressing the best and most final excellence and this is where he
refers to the theoretic life or theoretic wisdom.

Cooper further develops his love of reasoning by beginning to draw premises that
lead to his conclusion that Aristotle held this single minded view of intellectual excellence
as the ultimate end. He justifies this by stating that since practically intelligent people
know what the correct excellent end of life is, that they will organize their lives and make
all practical decisions accordingly. But he also considers that intellectual excellence has to
support and coordinate with one’s excellence of character also. This means one’s moral
disposition and all the behaviors which the intelligent person is concerned with, should be
consistently of the highest excellence, thereby enabling the advancement of his intellectual life. If the moral life is in shambles, the intellectual life cannot develop well. Moral values and behaviors are all seen as means to enhancement of one’s intellectual life. Cooper believes that support for these views of moral reasoning can be found in *N.E.* (1139a31-36) "The starting point of choice, however, is desire and reasoning directed toward some end. That is why there cannot be choice either without intelligence and thought or without some moral characteristic; for good and bad action in human conduct are not possible without thought and character."

Cooper concludes that his reading of Aristotle displays the understanding that there is nothing in Aristotle’s *Ethics* that is inconsistent with the idea that intellectual reasoning or pure thinking is not the ultimate end, if these conditions are met: (1) intellectual activity must be desired for its own sake, not for the sake of anything else; and (2) anything else that is desired must be desired as a means to this end. However, Cooper says that Aristotle believed man could pursue other worthwhile and virtuous means. The other means could include virtuous activities including things that are pursued by reasonable people as a break or recreation from more serious endeavors.

Cooper believes that there are some problems arising out of Aristotle’s point that some people in some situations might best pursue intellectual values by doing something that goes against the principles of some virtue. For if this does occur, according to Cooper, the practically intelligent man would have to abandon goodness as his end. Cooper believes that it is not true when Aristotle states that one cannot be practically...
intelligent by not acting morally, as intellectualists would imply. Cooper explains his views as follows: A contradiction in Aristotle’s account of practical intelligence immediately comes to light once it is allowed that for some persons or in some circumstances intellectual values might best be pursued by doing something that goes against the principles of some virtue. For if that can ever happen, the two ends, which on this theory the practically intelligent man will pursue, will conflict; and then, given the dominance of intellectual values, he must abandon goodness as an end. So it will not be true, as Aristotle says it is, that you cannot be practically intelligent without being morally virtuous. Indeed, in the situation envisaged, one will only show practical intelligence by acting morally. If the Intellectualist’s interpretation is to be maintained at all, plainly one must hold that Aristotle thought it could not happen that the two ends should conflict. (Cooper, p.106)

Cooper claims that Aristotle’s definitions of eudaimonia are not the same in N.E. and E.E. He claims that in N.E. the definition is incomplete as Aristotle does not specify the precise kind of spiritual activity involved in flourishing. In E.E. his definition is plain and clearly understood: “Flourishing is the activity of a complete life in accordance with complete excellence (II 11219a 38-39).”

Aristotle explains that “complete” means fully developed. This means the integration of all of the soul’s excellences taken together to make up the whole. According to Cooper, the soul is separated into two parts: the rational, made up of reasoning and confusing desire, and the other is passions. The moral virtues are also included. The two types of excellence refer to those pertaining to the character and pertaining to the mind. Therefore, complete virtue is made up of the whole of moral and
intellectual excellence. A complete life revolving around the attainment and development of a single end that consists of both moral and intellectual excellences is the ideal.

Cooper presents some ideas that appear to me to be critically flawed. He takes an un-Greek Rawlsian example and says he believes that there should be values in work, art, and personal relations that one would think should be allowed an independent place, having a greater or smaller conception of human flourishing. He believes that it appears there is no room in Aristotle’s theory for this idea. He asks if it is reasonable to concentrate exclusively on moral control and pure thinking and forego other possibilities that may be less than dominant in virtuous and intellectual reasoning. I would counter with the query, is it truly a virtue of the character of persons if it is not something one strives to maintain and emulate every minute of every day? A virtue ethics proponent would almost certainly say “no”.

Cooper states that many people have wrongly interpreted Aristotle to believe that only intellectual and moral excellence are worthy pursuits. He develops this view by stating that Aristotle was very aware of the fact that human flourishing consists of more than one or two types of values. He uses a statement by Aristotle in E.E. (1216a10) where Aristotle says that when we ask, “what eudaimonia consists in, one is asking what would fully satisfy one’s desires if one had it”. This satisfaction according to the author, depends upon what the desires are so that attainment of an ultimate end consisting of only a single activity, like contemplation, or some few activities, would satisfy the desires of someone who desired nothing else.

Cooper believes that the significance in this statement of Aristotle is pertinent in that human’s desires are to some extent fixed and are not up to him or anyone else to alter
them beyond a certain point. Aristotle supposes that the desires a person has are either
given to him at birth or are acquired some in the course of natural process of maturation,
others acquired through schooling or training. Therefore no one can avoid possessing a
number of different kinds of desire-habits. If in attaining *eudaimonia* one’s desires are
completely satisfied, and if, as Aristotle holds, one has many desires, *eudaimonia* it seems
would need to incorporate a number of different good things from different desires.

Cooper says that in *Magna Moralia* Aristotele says that “suppose, someone should say
that philosophic wisdom (*phronesis*) is the best of all good things, compared singly. But
perhaps the best good (in the sense in which eudaimonia is the best good) is not to be
sought for by this method. For we are seeking the *teleion*, or complete good, and wisdom
by itself is not complete (that is, after one has it one still needs other things as well). So
this is not the best thing which we are seeking, nor is it what is best in this way (best in the
way we mean.)” (lignia34-38).

Cooper also notes a passage in *N.E.* that seems to say the same thing. It basically
says that *eudaimonia* is the thing that is most choice-worthy of all things being added in.
The overall theme then in both passages is that a person attains a number of different good
objects which, in totality, meet all of ones needs and desires. The point is that this is an all
inclusive end or, as the author puts it, an inclusive second-order end.

To clearly understand this last concept, one must look at *eudaimonia* as this
inclusive “second-order” end that is a compilation or a whole, of which every part has to
be a good thing or a type of a good thing (things are according to the author, “first-order”

---

goods. He uses a quote from Aristotle in *M.M.* (1184a26-29) where he says “

*Eudaimonia* is composed of certain good things...it is nothing else besides these, it is these.” Parts or examples of these good things would include, good birth, plenty of friends, good friends, wealth, good children, health, beauty, strength, fame and virtue. Aristotle says that it includes both external and internal goods.

There are some important levels of *eudaimonia* that Cooper explains including the difference between, and the value that should be placed on, external and internal goods. External goods to Aristotle are not the highest end, flourishing, as evidenced by statements that they are or can be obtained by sheer good fortune. *Eudaimonia* is something that must be achieved. It can only be attained or achieved by a person’s efforts and not good fortune.

Aristotle’s theories are consistent in that moral character and the actions that develop and promulgate a good character constitute the very essence of *eudaimonia*. This is true because he believed that every person is responsible for his own character and behavior.

There is a beautiful quote in *The Politics*¹⁰, that presents this view eloquently expressed by Aristotle who says that his views on *eudaimonia* are supported by the facts about God,...” who is *eudaimonia* and blessed, but not on account of any external goods but on account of himself and because he is by nature of a certain-sort which shows that being fortunate must be different from flourishing. For the goods external to the soul come of themselves and by chance, but no one is just or temperate by or through chance”

¹⁰Aristotle, *The Polictics,VII* (1323b24-29)
Cooper points out some areas of note where Aristotle successfully and masterfully goes out of his way to distance his beliefs from those errors of the classic Greeks pertaining to the attribution or definition of success or glory being synonymous with one who attains external goods and excesses no matter how acquired or accumulated. Cooper says that in both ethics *N.E.* and *E.E.* the same constant point about external goods is made, that being *eudaimonia* is the result of a person’s own efforts and that his success of any kind is only *eudaimonia* if it is due to his effort. Secondly, he says that moral virtue and human flourishing exist where a person takes charge of his life. It is when one takes charge that the flourishing seems to begin.

Cooper believes that Aristotle regards or holds that moral virtues are states of a character that one ought to acquire to be in the best (for that individual) position to secure their first-order goods (that could include external fortune). Cooper then holds that it is not actually possessing the external goods to the fullest extent that counts, but to be living in such a way as to give one the greatest chance to maximize their potential and opportunities to secure them. The key then is not who has the most toys first, or who dies with the most wins the game, but that one should maintain a standard of character throughout one’s life as to be consistently in the best position to know how to lead one’s life. This pattern of controlled design is what will bring about the attainment of happiness.

The specific value this is referring to is called “rational design”. Cooper further clarifies this by comparing two men. Both men have the same good character, but one has been thwarted and foiled at every turn by miserable fate and bad luck. The other has experienced one success after another. Yet they both are living virtuous and good lives and have *eudaimonia*. 

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The man with the ill fortune has no need to regret his life because he has done all he could and fought the good fight so to speak.

Cooper next turns to an overview of what Aristotle holds as the difference between a) things that are good without reservation and qualification, and b) things that are good for certain or specific individuals. Aristotle does not call a) or b) first order goods, but the author uses the term.

Cooper believes these first-order goods form the foundation of the individual's development of character and that the maintenance of these goods (as Aristotle has just said) leads to the ultimate end. Cooper states that in usual circumstances, a virtuous person can expect to achieve and attain them. Aristotle said that what appears good to a morally virtuous person is good to him. What it is that is good for him or from his view or understanding is good without qualification or, natural.

A deeper understanding of the appearance of what is good, and pleasure is made by what the person actually enjoys doing and wants to do. These choices are also based on desires and interests that actually promote his good. Something could appear to be good to someone because he enjoys and likes doing it, yet, it would not be good for him, let alone unequivocally good in nature.

Therefore the key is making the morally virtuous man the measure of what is really good without qualification. Aristotle explains this in N.E. (1113a24-31) ..."Thus what seems good to a man of high moral standards is truly the object of wish, whereas a worthless man wishes anything that strikes his fancy... (Just as a healthy man judges these matters correctly, so in moral questions) a man whose standards are high judges correctly, and in each case what is truly good will appear to him to be so." This is meant to provide
a standard or norm according to the author. This idea can be taken literally into one’s life in various ways relating to associations both personally and professionally. Aristotle says that both the unqualified good and good for oneself must be merged or synthesized into one:

...for what is not unqualifiedly good but may chance to be bad is to be avoided; and although what is not good for a given man is no concern of his, still what is sought for is that unqualified goods should be good in just this way. For the unqualified good is the (unqualified) object of choice, but the choice for oneself is what is good for oneself, and these ought to agree. This is produced by moral virtue and the job of the political art is to see to it that this agreement occurs in these in whom it does not yet exist. E.E. (123cb 36-1237a3).

Cooper believes that essentially one ought to come to have desires of the morally good person so that in the end, it is the unqualified good we will possess. We should also try to bring out morally good desires in those with whom we associate and live and strive to make and associate with friends that are unqualifiedly good morally. We must become the sort of virtuous person that can benefit others and aid them in virtuous living.

What exactly again are these unqualified goods? There are eight and they entail the goods that fortune plays a hand in, with the exception of two. The six are honor, wealth, the bodily excellences, friends, power and influence; most people have reason to want all or part of these unqualified goods, but good fortune plays a role in attaining them. The two not reliant on fortune, are moral and intellectual excellences themselves.

Aristotle excludes moral and intellectual excellences from the group of qualified goods, based on the Platonic ideal that he embraces. That ideal states intellectual powers are a free act of intellectual personality and that all adults as independent agents accept the character each one has and how it was formed. In other words, these things are good for
the virtuous man and not good for the less than virtuous man. Non-virtuous men harm
themselves by reckless pursuits of these qualified goods and because of their deficient
character, their possession of these qualified goods would be to their detriment.

Finally, Cooper analyzes two ways in which the virtuous man is in a superior
position. The non-virtuous man experiences an internal conflict involving the satisfaction
of his carnal and base desires, and this tends to place him at a disadvantage from the
beginning. He strives to satisfy these appetites and will experience suffering and
dissatisfaction and only by extreme depravation (or not giving in to these base desires) can
he hope to avoid intense suffering.

The virtuous person has the ability to control and subdue a limited amount of base
and carnal desires without injury to health or hopelessness, and he can then pursue other
behaviors or desires that do not require the frustration of his carnal desires. This leads to
the belief that the non virtuous man is worse off because he does not have the intellectual
excellence or the moral mean of character to satisfy his desires.

Cooper also states that due to his choices and desires, and resultant weakness of
character, the non-virtuous man may very well be so habituated into giving in to self
indulgence that he will miss the very opportunity to realize his full development. This
amounts to a kind of stunting of his potential for moral development. This damning effect
then becomes cyclical and a self fulfilling prophecy if you will.

In summary, the most central points for Cooper appear to be the following: a) the
most common reading of Aristotle’s theory of *eudaimonia* is that of an intellectual
content, b) the ultimate end, according to Cooper, is answered by that which is desired in
and of itself and everything else that is desired for the sake of it, c) the highest good is not desired or sought after for the sake of anything else.

Cooper differs from what Aristotle believed, namely, that flourishing entails a person who is in complete control of his life and all action, with a single view of living. Cooper believes that there are two levels or orders to ends, first-order and second-order ends. First-order ends encompass Aristotle's single ultimate end theory and second-order ends are the development of sexual capacities and cultivation of the mind and nurturing of sociability.

Cooper believes that Aristotle recognized this inclusivity, yet some critics may believe that he thought otherwise. One area where Cooper differs greatly from Aristotle is his view that one should be allowed values in work, art, and personal relations independent from intellectual excellences, and that they should have a greater or smaller conception of human flourishing. He believes that Aristotle does not have room for this view in his theory. Cooper believes that by combining first-and second-order goods, man can have a pattern of controlled design bringing about their attainment of happiness.

Finally, Cooper believes that one ought to come to have desires of a high or moral person and that way, in the end, we will possess a unqualified good life.

Evaluative and Comparison:

Rosalind Hursthouse gives a clear and concise explanation of a Neo-Aristotelian interpretation of *eudaimonia* or flourishing, in strong contrast to Cooper. How ought or should we live, she asks? What should I do, or how ought I live, to be a successful and flourishing individual? She states that it is important to understand that certain words traditionally associated with values are not necessarily 'moral' words. The key is to not
read into words moral qualifications. Many persons according to Hursthouse, read moral qualifications into versions of ancient Greek words. This problem is particularly evident in versions of her writings that discuss what it means to ‘flourish’ and ‘be successful.’ She gives examples of situations where one would not think for even a moment that phrases were in regard to moral ‘shoulds’ and ‘oughts’. She uses an example of how ‘should’ this plant be treated so it will flourish? She also uses an example of how ‘ought’ I study to be a successful student. Hursthouse explains that one needs to carefully understand that ‘flourish’ and ‘successful’ are very difficult to translate and that eudaimonia itself has many different definitions or connotes many ideas depending upon how it is used. When eudaimonia is used as a noun it’s translated as: ‘good fortune’, ‘happiness’, ‘prosperity’, ‘flourishing’, ‘success’, ‘the best/good life’. When it is used as an adjective allied to a person, according to Hursthouse, it is translated as ‘fortunate’, ‘happy’, ‘prospering’, ‘flourishing’, ‘successful’, ‘living well’, and it is equally used adverbially and as a noun.

Hursthouse then compares what she says about eudaimonia to that which Aristotle says. Aristotle says that eudaimonia is what we all want to get out of or get in life. It is the goal or level at which we are all aiming. It is the way we all want to be. Aristotle says that we all agree that this is ‘living well’ or ‘faring well.’

Hursthouse says that disagreements in meaning arise when some say it consists in enjoyment or pleasure and others say virtue and honor. Success and prospering are materialistic in nature and they describe wealth and power. If descriptions of eudaimonia are used this way, two main counter claims are evident. The first is that a person can consider himself a fortunate and happy man even if he does not possess success or prosperity in a materialistic sense. Second, materialism does not necessarily bring with it a
feeling of happiness. Many other things not related to success can bring great happiness, including loyal friends, love of the arts and loving relationships.

As discussed by Cooper in the interpretative section, many want to only associate it with intellectualism. But Cooper seemed to suggest that it is all-encompassing, of both intellectual and character excellences. Therefore success has a non-materialistic sense to it. Persons possessing wealth and prestige or power may consider themselves unsuccessful because they are lonely or do not feel they are part of anything worthwhile. Conversely, those lacking wealth and power may feel successful and rich in loving relationships of their children and close friendships and feel they possess a non-material type of success. So many people, including the ancient Greeks, believe that the ‘good life’ is a life of well-being and this is why some contend that eudaimonia is consistent with material wealth. As stated by Cooper, Aristotle felt that the Greeks of his day were in error in thinking that only the accumulation of material wealth was valued and that it did not matter how the wealth was obtained. The type of character that one held throughout his life was the important factor.

Hursthouse develops the key idea that eudaimonia is something everyone wants, and the way everyone wants to be. She maintains that some philosophers including John Stuart Mill say that eudaimonia is ‘true or real happiness’. Hursthouse likes this idea, as some people may consider that certain persons may consider themselves happy when they truly are not. She uses an example of such a person as living in ‘a fool’s paradise,’ or fruitless type of activity. These persons are not flourishing or leading lives considered successful and she claims that no person would want to be this way.
An important concept that Hursthouse develops is that of what true happiness really means to various persons. Some people view ‘true happiness’ as a term outside of the scope or circumference that *eudaimonia* encompasses. They would say that true happiness is not the most important aspect of one’s life. A person may want to really accomplish something worthwhile or great in this life. This determination to achieve and attain a lofty goal is often difficult work. This could cost someone in terms of contentment or enjoyment of life in pleasurable terms, but still be well worth it. *Eudaimonia* then becomes happiness in spite of effort, difficulty, striving and suffering. So overall, when success is defined in a proper way that includes a person flourishing and succeeding in worthwhile goals, we can see that most people want to flourish, be successful and happy.

How is this idea now applied to ethics and moral philosophy? Hursthouse reinterprets the context by changing the question into ‘how am I to live morally well?’ A problem that develops is that the ancient Greeks did not differentiate between ‘moral’ on one side and ‘self seeking’ on the other.

Aristotle says that ‘If you want to flourish/ be happy/ successful, you should acquire and practice the virtues courage, justice, benevolence, or charity, honesty, fidelity (in the sense of being true to one’s word or promise), generosity, kindness, compassion, friendship...’ i.e. as we might say ‘you should be a morally virtuous person’. Human beings have certain emotions and tendencies that lead us to an overall flourishing and success only when these traits are developed and refined. These traits are listed as the virtues: courage, benevolence, justice, and such.
Hursthouse defined this view by citing examples of why she believes the Aristotelian views are correct. She discusses generosity and the fact that we are sociable creatures who want to have friends and family and be loved. She says that we love people to do things for us and not always place their own agendas first. Humans, she says, are not only sympathetic, but empathetic also. Thus, a person who is a mean and selfish individual is usually lonely and unhappy and not liked. A person who acts and lives opposite to this is usually full of enjoyment by benefitting others and is well liked.

She uses the case of honesty to describe another trait which, if nurtured and strengthened, will lead to flourishing and happiness. We need and want friends she says, that are trustworthy and want them to trust us also. We need to be believed and honesty will enable us to not constantly be on guard and will help us have peace of mind regarding what we say and when we say it.

An honest person can always tell the truth in situations where it may be embarrassing or unpleasant, frustrating or perceived as impossible compared to the person who does not have the virtue. Courage is another trait that an Aristotelian philosopher would have to place in this discussion and Hursthouse brings it in. She says that it is not so important that one can endure pain or death, but that one has the courage to face it for the sake of some good. She uses an example of someone needing to give a kidney or bone marrow to help another and that person not being able to do it because they did not possess courage to do so, but a cowardly character. The intended recipient then later dies, much to the coward’s regret.

Hursthouse admits that there are critics who will bring up various objections to her examples. She tries to answer some of them by tackling two specific objections. The first
is that virtues are surely not necessary to flourishing, or, second, they are not necessary to being truly happy or successful. Critics say (as does Cooper on the interpretive section of this paper) that we all know the wicked may also flourish and materialistically succeed even when they possess deficient levels of generosity, honesty and courage. For example, there are many federal law enforcement officers who appear on the outside to ‘get by’ and move up into prominent and powerful administrative positions, though they are devoid of excellence in generosity, honesty, and courage.

Hursthouse replies to these objections that when talking about generosity one should look at what is the ‘right’ amount to give. This ‘right’ amount is relative to what a person deems they are capable of giving. A person of substantial means should be able to give a larger amount than a person of little or scarce means. It is also important to consider giving for the ‘right’ reasons and on the ‘right’ occasions. Hursthouse says that any virtue can contrast with many vices or shortcomings. With regard to generosity, they could be mean or selfishness or prodigal, too generous or a sucker.

Hursthouse gives an example of courage and the negative outcomes that may befall a person who displays courage. Hursthouse says that a person may display great courage when coming to the assistance of someone being attacked on the street and with the courageous person being killed or maimed for life, while the coward who refused to help remains unscathed through her life. She says given the above example critics claim ‘how am I to flourish?’ She responds. ‘by being virtuous’.

Hursthouse returns to Aristotle to answer the critics and says that although to flourish is to be virtuous, to be a truly happy or successful person, that nothing counts other than doing what is right. She says that Aristotle himself realized limitations to this
thinking. He said, ‘Those who maintain that, provided he is good, a man is happy (eudaimonia) on the rack or when fallen among great misfortunes are talking nonsense...’ (Hursthouse, p.229)

Hursthouse gives another even more acceptable response to critics by stating that there never was any guarantee that virtuous living will always enable the person who possesses and develops these virtuous traits to avoid having difficulties or a tough time. She gives an analogy of a person going to his physician and asking how am I to live and to flourish and be healthy? The doctor’s response is to suggest he stop smoking and lose weight and do not work in a hazardous field etc. If after taking all of the doctor’s advice the patient still develops lung cancer or serious illness, does this mean that the advice of the physician was not correct? Of course not. The correctness of Aristotle is the view that virtuous living will lead to a life of flourishing and happiness is true, even if in some cases bad fortune may lead to a lack of happiness. Thus, living in a virtuous manner is a reliable bet for a fulfilling and happy life that is complete, or as complete as can be.

Is virtue necessary to living well? The critics say no. We have already talked about the wicked succeeding at attaining riches or fame. One response is that the wicked are not truly flourishing in the true sense of the word, since nothing counts as success except doing what is right. Hursthouse responds to a second objection using her medical analogy: she says that sometimes it is the fat smokers that live to be 90 years old. But this is not a demonstration of the rightness of their choices, but rather dumb luck.

Others say it is because of power that the wicked flourish, so that power is better than virtue for flourishing. They say we should acquire power not virtue. Hursthouse answers this by saying that many persons are considered successful in a worldly or
material sense, but are failures due to the non-virtuous means by which they have achieved their success even though they may not feel guilty or lonely, or that their life is a failure in any way. Hursthouse states that Aristotle's views are not all-inclusive of every person. Certain groups are not able to follow his plan. These two groups include, first, the persons who have been corrupted throughout their upbringing, who are so jaded that they see nothing wrong with the life and 'success' of non virtuous persons. A specific view of Hursthouse and other Neo-Aristotelians is that there really is something inherently wrong with these sorts of person and it is not just a different way of viewing life. Critics wrongly claim that there is no 'rightness' or 'correctness' here, just different attitudes.

The second type of person with whom Aristotle's views may not work is a type of person Hursthouse calls 'unnatural.' These people include hermits or persons who feel out of place with others and want no part of the company of others. Some psychopaths are these type of people.

Neo-Aristotelians then state that generally, humans are either a) the sort of creatures that can flourish; or b) non-virtuous, i.e. they have acquired their power by non-virtuous means such as cheating, lying, and ruthlessly sacrificing people when it suited them; or c) people who flourish side by side, all together, not at each others expense. Some objections to these three groupings include a person bent on misery and self destruction and not intent on flourishing no matter what. Or it could be false if the person had characteristics that prevented them from controlling their emotions. It could also be false if there were racist or sexist claims that were true. Neo-Aristotelianism states that nearly everyone can flourish.
Aristotle believed that the best life for all people is the life we live together, one that includes the practicing of the virtues to all of our mutual benefits and enjoyment.

In summary, the most central ideas to Hursthouse includes her explanation of Neo-Aristotelian concepts. Hursthouse explained that the differences between phrases and how others mistakenly read moral qualifications into ancient Greek words. She speaks about what differences there are in what one “ought” to do and what one “should” do. One point that Hursthouse brings up is the point that *eudaimonia* is happiness in spite of effort, difficulty, striving and suffering. She says that the ancient Greeks did not qualify or differentiate between moral or self seeking in how one should live. (Hursthouse, p222)

Hursthouse admits that Aristotle himself saw limitations to his thinking and that there is no guarantee people who possess and develop virtuous traits will then avoid difficulties.

Conclusion:

The overall sequence of attaining *eudaimonia* then comes into focus when an agent follows these steps: first an agent must have moral perception of what is occurring in the given situation, reflection on what the ‘right’ thing, or action is, deliberation and choosing how best to act and then taking that action. When the process or steps are taken over and over again, habits are formed that strengthen the character. Conversely, if the agent does not perceive adequately and make the proper choice, he will either choose incorrectly, or make no choice and this will lead to inaction or the wrong action. His character will then be less than good.

Where is the practicality of Aristotle’s words to the dilemmas of today? Are they truly ageless with current applications and uses for today? Where do *eudaimonia* and character fit in? Is the present climate ripe enough to entertain a broadening of ethical
applications that include a major paradigm shift in ethics training and the use of character assessments?

Current indications from management associations and organizations including city governments and law enforcement agencies, show a resurgent interest in ethics training and awareness over the last decade. The self-centered materialism and greed of the 1980's seem to have been replaced with the prevailing political correctness of the 1990's. The focus now appears to be on appropriate and ethical behavior and increased sensitivity and moral reasoning. Ethics training appears to be at the forefront of this change in many areas including education, business and public administration, the military and law enforcement, to name a few.

What do organizations hope to accomplish with ethics training? The short answer is that organizations hope to promote ethical behavior within their profession and organization. Each organization has its own set of “core virtues or values” complemented and interwoven in its specific codes of conduct and professional procedures of behaviors that it hopes to instill in its employees or charges that will aid them in attaining a level of subject mastery of that conduct.

Organizations want to encourage and improve the ethical quality of personal and organizational decision making and behavior in the work place. In many organizations they also want to improve the organization’s performance and restore the public’s trust. These goals, of restoration of public trust, and as prerequisites, integrity in organizational

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11 The International Association of Chiefs of Police Ad Hoc Committee on Police Image and Ethics issued a report based on results of a survey conducted by the Ethics Training Subcommittee of the IACP Ad Hoc Committee on Police Image and Ethics. The Police Chief, Jan 1998. p.14(1)
performance, are most notable in public schools and law enforcement. Perhaps one of the most practical reasons for ethics training may be to eliminate or reduce unnecessary scandals and the effects of unethical acts. Nowhere is this potentially devastating and embarrassing problem so evident and closely scrutinized at the present time as it is in law enforcement.

The study conducted by the International Association of Chiefs of Police Ad Hoc Committee on Police Image and Ethics, concluded that unethical behavior has a far reaching effect on the individual departments and the profession as a whole. Not only is there shame brought about by the unscrupulous behavior, but quite frequently there is also civil litigations. Civil discrimination suits and the allegations made, whether justified or not, can destroy morale and pride throughout the department or agency.

There is another area where many law enforcement agencies appear to fall short, (as indicated in the before-mentioned study) that area being the training of new officers. Field training officers responded in the study, (63%) that they were provided with some formal training and only 34% of the agencies had an ethics section in the evaluation they prepared on the new recruit. In other words, in about two-thirds of agencies there was no information included in the assessment of qualifications and skills of new recruits involving ethics and ethical behavior or characteristics. In one other telltale statistic, 70% of agencies said they provided only four hours or less of ethics training.

Ethical sensitivity and high moral character are necessary components in order for new agents and officers to be trustworthy and effective in their professional lives, ethics training will only enrich their personal lives. At the 16 week intensive training for new special agents of the Federal Bureau of Investigation held at Quantico, Virginia, from day
one to the graduation both philosophical and practical ethics are taught. The focus is on heightened awareness, accountability and moral authenticity. Trainers use a foundation ranging from the ethics of the Declaration of Independence to specific dilemmas including due process and crime control, truth and justice, honesty, and loyalty. Throughout the academy, scenarios are used involving real life cases from the F.B.I.’s internal affairs office. The key to the success of the F.B.I.’s program is a balance of diligence and moral values interfused into all aspects of the training.

After a Pretrial Services or Probation Officer candidate is hired, the agency could institute additional ethics training at the local level to reinforce the specifics of the expected ethical behavior and levels of sensitivity expected by the new officer. This could include group interaction and a minimum of four-eight hours of initial training followed by further separate courses and employee programs beyond the initial mandatory training for new employees.

The key area that I wish to address is the possibility of developing an ethical sensitivity assessment tool to be used to aid U.S. Chief Pretrial Services and Probation Officers in assessing people seeking appointment as federal officers prior to their selection and appointment.

The idea is that by assessing the Probation or Pretrial Services Officer’s ethical and moral sensitivity, the various districts could avert potential problem individuals who have difficulties or deficiencies in ethics prior to their appointments.

It is obvious that to develop an assessment tool with Aristotelian roots, it would need to possess components consisting of moral character, the strength or weakness of character, moral perception, deliberation and choice, and what pulls it all together,
practical wisdom. In chapter two of the thesis I address these components in a discussion of moral judgement and perception.

Both Cooper and Hursthouse raise pertinent viewpoints that are sound when one looks at flourishing, especially in the role of a law enforcement official. One particular point of great interest that I personally subscribe to, is the discussion surrounding what is seemingly good to the virtuous man and measuring others actions against this virtuous man. In the field of U.S. Pretrial Services and Probation Officers, one would hope to find these ‘virtuous’ persons, male and female ‘spoudaios’ - the person of high standards.

I truly believe that those who seek to enter into the profession of Pretrial Services and Probation Officers generally are imbued with characteristics of virtue and honor.

However, there is an evident need for additional safeguards or assistance in weeding out undesirable candidates who possess shaky values and characteristics. If an assessment tool were available to help determine what applicants had many of the qualified traits and virtues as described by Aristotle and Hursthouse the entire profession would definitely benefit and be the better for it.

I believe that there are at least two areas where Cooper is off target. The first is his hesitation to concentrate “exclusively on moral control and pure thinking...foregoing other possibilities that may be less than dominant in virtues and intellectual reasoning.” (Cooper, pp.89-133)

As previously stated, I think that one should acquire and practice all of the virtues, all of the time to flourish and be successful and happy. I believe that this ideally should be at a level that strives for excellence in all that one does, not a less than dominant effort. Secondly, I believe Cooper is mistaken when he states that human desires are fixed and
unchangeable. I believe that a person can indeed alter or improve his/her desires and character by learning and practicing virtuous behaviors. Moral education begins at birth, but can continue.\textsuperscript{12}

Further research and study into character assessments and the development of additional ethical training is important, but even more critical is the continued resonance of the virtue ethicist trumpet. This is a constant, clear and true tone that holds high the belief that possession of, and actions that include, virtuous dealings of the highest level, are vitally important in every aspect of one's private and professional life and is the only answer. Critics including Cooper, would have us believe that certain aspects of our personal and private life should be held to a different, less stringent level of virtuous living. However, Aristotle completes the discussion and has the last and complete word with this truth with which I whole heartedly agree. \textit{N.E.} (1100 b 16-22):

The happy man will have the attribute of permanence which we are discussing, and he will remain happy throughout his life. For he will always or to the highest degree both do and contemplate what is in conformity with virtue; he will bear the vicissitudes of fortune most nobly and with perfect decorum under all circumstances, inasmuch as he is truly good and "four-square beyond reproach.

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CHAPTER TWO

MORAL PERCEPTION AND JUDGMENT

How does an agent perceive a situation in a certain way? Do certain situations call for certain characteristics? What is the relationship between one’s capacity to exhibit moral perception and other psychological capacities that are essential to leading a moral life? Lawrence A. Blum in his book *Moral Perception And Particularity*\(^{13}\), attempts to answer these questions and bring clarity to the otherwise underdeveloped area of moral perception and particularity. Charles E. Larmore also attempts to contrast and compare Aristotelian insights with those of Kantianism and Utilitarianism in his book, *Patterns of Moral Complexity*\(^{14}\). I will look at both author’s views and then give an indication as to whether I believe they are correct in their presentations. I will relate their viewpoints to the applicability and relevance of perception as it relates to the profession of federal pretrial and postconviction supervision officers.

\(^{13}\)Lawrence A. Blum, *Moral Perception And Particularity*, Cambridge University Press, 1994. University of Massachusetts, Boston. Subsequent references to this work, will be cited in the text parenthetically, as e.g. (Blum, pp).

\(^{14}\)Charles E. Larmore, *Patterns of Moral Complexity*, Cambridge University Press, 1987. Published by the Press Syndicate of the University of Cambridge. Subsequent references to this work, will be cited in the text parenthetically, as e.g. (Larmore, pp).
According to Blum, moral philosophy has traditionally focused on rules and principles that are action guiding, or on choices and decisions based on universality and impartiality. However, this emphasis on rights and obligations places a veil between the concept of moral agency and the importance of moral perception.

Blum contends that while a moral agent may adequately reason in a given moral situation and adhere to the strictest standards acting impartially in testing his/her moral principles and maxims and be adept at deliberation, this may all be for naught unless the agent can also perceive a situation or circumstance as being a moral situation unless this person can also perceive their moral character adeptly and accurately. In other words, the most important and problematic concept of moral difference between individuals is those who see and those who do not see various moral features of different situations confronting them. For example, there are many opportunities for federal supervision officers to help defendants and offenders secure employment. Helping these individuals secure employment is both a role and duty of the officer. An example of adequate perception would be when an officer, making a home contact to check on the defendant’s/offender’s success in securing employment, sees and perceives at that time, that not only does the defendant/offender need to secure employment, but that the defendant’s or offender’s children are hungry and that immediate assistance in obtaining food is necessarily right at that moment. In contrast, an example of inadequate perception would be the officer focusing only on helping the defender/offender find employment not perceiving the additional immediate needs of food for the children.

Blum wants to relate moral perception to moral judgment. This process of moral judgment is the means by which a person engages in the act of connecting and a) balancing
both processes needed to fully see the moral rules and principles, and b) the particular
relevancies in particular situations. Blum contends that moral perception is the important
precursor to moral judgment and one must utilize it well in order to then adequately act in
a morally appropriate manner.

Moral perception is the process that encompasses an ability to perceive a situation
in its full range of relevant factors and capacities, and their significance. Moral judgment
is the ability to relate these morally ‘right’ actions, connecting reasons to them via choice.

In the chapter I will discuss how Blum uses a style of writing that enables the
reader to see how “real life” situations and dilemmas can help define and display how both
moral perception and judgment work. In example number one, two individuals are sitting
down riding a subway train with no other empty seats around. Another individual, a
woman in her late thirties, is standing while holding two full grocery bags. John, the one
cracter, is aware of the woman standing there, but is not really paying any attention to
her. However, Joan, another woman, is distinctly aware and perceives that the woman
appears uncomfortable and offers to let the woman take her seat. The author states that
while both subjects are at the same place at the same time and in the same situation, their
sense of consciousness is vastly different. This is the difference of moral perception, the
one person missing and the other grasping relevant practical details.

Blum contends that there are various levels of awareness of different situations. He
states that, “An aspect or feature can be more or less salient for, or “taken in” by, an
agent.” Therefore, according to Blum, this notion of salience is one of degrees. So too,
perception can be and is seen differently by different persons. Blum says that in the
example of situation one, what John perceives is different than what Joan perceives. Joan
is worried or perceives the comfort or "good" of the woman standing holding the bags. John does not. Joan sees a morally relevant value, a possible choice and action, which John does not.

The key is that perception itself is the focus, here, and not whether John or Joan is acting benevolently towards the woman. Obviously we should not discount benevolent actions and conduct, but Blum's focus is on the more foundational idea of moral perception. The idea of moral perception is explained further by a discussion of moral awareness. Blum explains that it is important for one to understand if John's perception was consistent for John in the above situation and others like it. In other words, would John have acted or reacted similarly in other situations as he acted in the train? It is also important to see if Joan's perception would have been very similar, or not, in other situations.

What this means is that John may have a character flaw or defect when comparing his moral perception to Joan's. John's defect although not necessarily a serious flaw, causes his moral reality to miss the mark. Blum states that John may not necessarily be a cold or uncaring individual, but may require another person's influence to point out someone's discomfort and then he would react sympathetically and move into action to assist and alleviate the discomfort of another. Blum contends that John would then be considered a person possessing average moral sensitivities. The contrast to John is a person who does recognize another's discomfort, but is totally uncaring, unmoved and simply does not care even when told of it. Again, it comes down to John's failure to "see" or perceive another's discomfort. Blum moves to a second example that involves an administrator named Theresa and an employee named Julio. Julio has a disease that
causes excruciating pain in his leg and has come to Theresa in hopes of working out a plan with the company to assist him in continuing to work within the department even with his disability. Theresa in principle is aware of the legal aspect and the company’s policy and commitment to providing a work place free from discrimination against persons with disabilities. However, she is unable to appreciate Julio’s disability and its impact on his work.

Blum points out that Theresa has an attitude that Julio should “pull himself together” and that Julio is too self-pitying. It is not so much that Theresa fails to see that Julio is in pain, but that she fails to perceive, or acknowledge that there is also a moral question of “rightness” involved. Perhaps (as Blum sets up the situation), Theresa has a personality that attributes pain and complaining with weakness when people complain of pain in her presence, she immediately perceives them as being weak and that they “are overdoing it”, or acting as a hypochondriac. This tends to change Theresa’s feelings from one of compassion or understanding, to one of contempt. This may occur even if she is not aware of it. This failure to be in touch with the moral reality is a deficiency in her character.

Blum states that in this situation moral perception is also “moral discrimination,” and a matter of feeling or sensing a moral aspect of a situation. Empathy in certain degrees becomes paramount for a person in Theresa’s position. Empathetic understanding is often a requirement for adequate moral perception.
Blum brings up another very good point, a point that begins to explain why moral perception is so important. He says:

...we do not say that devotion to duty or principle is morally neutral just because it can be put to bad use. Accurate moral perception is,...a good thing,...one sometimes finds the acknowledgment of a need for moral reflection cited as an argument in favor of a principle-based or impartialist view of ethics as against one more strongly centered in virtue or emotion. In fact, moral reflection by itself is neutral as between such theories.”(Blum, pp.35-36.)

What Blum tends to imply is that the ability to possess and utilize moral reflection is neither good nor bad in and of itself. It is in fact the quality of moral perception and what one does (the action taken) following this “moral reflection” that matters. Reflection is sandwiched between perception and choice; it is not, by itself, the sole moral quality or virtue we need.

Blum brings one more situational example into play to further demonstrate his views of moral perception. In this case a white male named Tim is waiting for a cab. A black woman and her small child are near Tim, also waiting for a cab. A cab comes along and passes the woman and child up and stops in front of Tim. Tim is relieved to have a ride and gets in and he is off.

Blum argues that Tim’s relief of getting the cab may have affected his full awareness or sensitivity of the driver ignoring the black woman and her child in favor of picking him up. Tim’s overall perception may be focused solely on getting a cab. Blum continues and says that once inside the cab, Tim starts to realize the significance of the driver passing by the woman and child. Perhaps Tim perceives a possible racist motive. Tim’s perception of racism now becomes his assessment of the situation. For Blum’s purposes it is not relevant whether the driver really is racist or not. Now the situation
becomes (in Tim's mind) one of injustice that he had not perceived initially. Tim begins to contemplate why he had not made the connection initially. Blum believes that regardless of what Tim does at this point, the important thing is that he is realizing or perceiving the potential racial injustice that has taken place.

In this situation Blum brings in two new concepts that I believe are important to the overall applicability of his ideas of moral perception to everyday life. These two ideas are: a) construal and b) inference. Tim had to construe the situation in a way that he sees the driver passing up the woman and child, and then he had to infer that this action was due to the driver possibly having a racist intent as to why he did not pick them up. One can not infer until one construes.

Blum emphasizes that this situation shows dependence of the agent already possessing certain moral characteristics and categories, or how the agent perceives the situation. The point Blum makes is that perception occurs prior to the deliberation and before taking or realizing that a given situation is one in which deliberation is necessary.

Criticism of principle-or rule based ethic:

Blum states that the principle-or rule-based ethical theory's overall completeness as a conception of moral agency should be called into question due to its lack of emphasis on particularity of situations. Blum believes, (rightly so) that it is not the rule, but some other moral capacity possessed by the agent that then directs action in a given situation. This knowledge or perception involves particulars that rules in and of themselves can not and do not address. Blum states that Kant recognized this need for something to bridge particular situations and rules. Kant called this bridge the "power of judgment."
However, there is more to it then the mere mention of Kant for a bridge. The fabric and makeup of the material used to construct this bridge is brought up in detail by Blum as well as by Charles Larmore in his book *Patterns of Moral Complexity*. Larmore’s insight will be part of the evaluative section of this paper and discussed at a later time.

Blum states that there are two distinct parts to judgment that Larmore following Kant develops. They are knowledge of what a rule calls upon one to do in a certain situation, and recognizing features in a certain situation as having moral significance.

The first point of rule knowledge leading to action, deals with the ability to sift through the chaff to find the wheat, to get to the relevant details of a particular situation and to then adequately apply actions and thoughts (perception) to the situation as warranted. Blum uses situation number three as an example that some principles require more of the type of deliberation just described than do other cases.

For example Blum says, that if Tim holds the principle that he should take a stand against racism, how to do this or even his discerning how to do this, is not a simple thing. The power of judgment and discernment of the best action, requires understanding and judgment about the particularities of the situation. The power of judgment is a necessary addition or supplement to traditional principle-based ethics. One must know how to apply the principle, and then pick the best action. This ability “…involves a moral capacity (or capacities) beyond the adoption of, or recognition of the validity of, the principle itself.”(Blum, pp. 39.)

Blum states that one can see the necessity and the practicality of using this idea to flesh out Kant’s notion of “imperfect duties.” Imperfect duties do not direct a specific
action for a specific situation. Rather, they prescribe an adoption of a general end, without any specifications of how or to whom acts are to be carried out. Blum states that one reading of Kant states that it is morally indifferent how and when one carries out a benevolent act, so long as one does so on some occasions.\(^{15}\)

Blum focuses on the fact that judgment and discernment are moral matters and not matters of moral indifference or mere, trivial personal preference. They involve moral capacities, judgment and sensitivities. One should know what acts are those exemplifying moral principles, know how to carry out the act (how to conduct oneself), and know when it is and is not appropriate to engage in certain actions.

Blum states that Kant saw that there was a need for judgment, but did not view it as a moral position. Kant, according to Blum, thought his moral theory complete without stating what specifically is involved in moral judgement. Blum also addresses an area he believes many principle-based traditions fail to recognize, viz. that situations have moral significance. He uses the example of knowing a given situation has more than one morally relevant feature such as, harm to an individual and keeping a promise. Therefore, before an agent even considers the issue of implementing a principle, he/she must know which of the specific features of a situation are morally significant ones, and funnel or focus his/her actions toward specific moral principles relevant to those. This feature is an issue for Kantian ethics, particularly for Barbara Herman. In her book, *The Practice Of Moral*

\(^{15}\) This concept is one that is especially troubling and worrisome when undertaken or incorporated within the profession of law enforcement. Imagine the undesirable and problematic subculture that would be bred within the law enforcement community if this idea were widely accepted as truth. (Perhaps this is one of the keys to understanding the small percentage of rogue or criminal personalities that unfortunately exist in law enforcement agencies)?

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Judgment, says: "...if the categorical imperative is regarded as a testing procedure for already formed maxims of action, then (given that a proposed action may fall under several descriptions), how an agent knows which features of a situation are relevant and which irrelevant in constructing the to-be-tested maxim of her action is itself a moral matter."

Blum concludes that principle-based traditions have generally failed to grasp specifics of moral character in two specific ways: 1) Knowing what counts best in exemplifying and applying rules or principles; and 2) recognizing, prior to this, which features of a situation are morally significant.

Blum now shifts our attention to other elements of moral perception other than the two just mentioned. This shift encompasses other capacities and moral processes. The author uses the example of Tim and the cab driver scenario again. Blum explains that an agent such as Tim needs to figure out how to act. Tim must see the particular situation in terms other than his relief at having found a cab. Tim must perceive the possible racism of the driver. This ability takes a different kind of understanding or sensibility. Tim must see the driver pass by the woman and child, use this knowledge and imagine a possible racist motive, and then recognize what has taken place as being morally significant in order for him to construct a principle that will guide his actions. Finally, he must determine what action best instantiates that given principle. There is a whole lot to consider and think about and it all comes back to moral perception.

A second way by which moral perception is different than moral judgment is the idea of some moral perception occurring outside the set rules and their application taking

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place that leads to action. Blum brings back Joan from the subway and explains that when Joan perceives the standing woman’s discomfort her offer to help does not necessitate there being a rule, principle or precept.

The role of moral perception then is not necessarily to help the agent select the right rule, but rather it is the agent’s understanding of the woman being uncomfortable that contains the agent’s reason for action. This then draws her to help without thought of some given rule or principle (“always help those in need”).

A third way that moral judgment acts as a bridge between principle and action is its ability to generate moral action. This is very significant in order to take the concept from theory to reality. Blum says that moral perception and moral understanding of particular situations are very significant for their role in generating or promulgating “right” action. If one performs a “right” action but has no understanding of the moral realities confronting that person, then the action loses some, (although not all) of its moral value.

Blum uses the example of Theresa again, supposing that after being enlightened by her supervisors about acknowledging and accommodating Julio and his disability and even if she becomes convinced that it is the right thing to do, she loses some of the moral worth, or moral quality of her act, because there is a lack of the appropriate moral understanding of his condition. Theresa ought to have perceived and understood Julio’s predicament and then acted accordingly at the appropriate time. Blum reiterates the contention raised previously that just or moral perception in its own right, is of value by itself, and not only due to its informing of right action. We should praise, encourage and admire correct perception and moral insight independently.
Blum uses an alternative to the cab situation with Tim and the black woman and child by introducing Yasuko. Yasuko witnesses the action previously mentioned and perceives rightfully so, the black woman's embarrassment and shame as she witnesses and perceives the possible act of discrimination and racism that Tim does not. This type of sensitivity is not understood simply as a predisposition to perform certain actions. It is more pervasive than that, for it has to do with emotional, moral responses, what one notices, and then actions stemming from this sensitivity. Another criticism that Blum addresses is that impartialists only reflect one dominant voice within morality, yet they claim to cover the entire spectrum. Blum attributes those reflections of what is called "morality of care" to Carol Gilligan and Nel Noddings and others\(^7\). Blum contends that criticism of Gilligan and Noddings and other impartialists is partially valid, but also partially incomplete. Care involves attention to and sensitivity to certain situations and persons that are not fully recognized by the impartialist's principle- or rule-based moralities.

In summary, Blum distinguishes three types of "particularity." The first aspect is a) the perception of particular situations. This idea is one that encompasses and has relevance for any moral concept, ideal, or principle. A gap or area of gray exists between intellectually adhering to and understanding of principles and foundations of justice, on the one hand, and the ability to recognize particularities of injustice, of acts of violations or unjust situations as they are occurring. The author gives the example of Tim and the cab

story. He states that Tim may very well be an advocate of justice being done when unjust acts are committed, but that Tim may very well be lacking in the ability to perceive that his own role in an injustice has just occurred in the cab story.

The author contends that there is a "real" difference in what it takes to be "sensitive" to injustices and what it takes to "see" the overall validity and character within principles of justice. The principles themselves do not innately possess sensitivity needed to recognize violations, and their own applicability.

Blum believes that there is a variety of capacities and particularities that, along with different sensitivities, are needed to fully process, recognize, and then put into action, the ability to fully perceive and act toward injustices. A second aspect of particularity is b) a particularistic attitude. I wholeheartedly endorse and embrace this idea and believe that the relevance is of great importance. The idea according to Blum is that the moral agent brings an awareness and open-mindedness that says that although something (a situation) may appear to be similar to one previously experienced, that the agent has the ability to not make an assumption, (a quick draw towards action) but rather possesses the ability to keep in mind the particularity of situations.

This attitude according to Blum keeps the agent employing good perception and helps to deeply develop the roots of moral sensibility. Thus, aiding the agent by helping to develop this perception deeply, to where the agent may not have to always take a step by step elementary approach toward every situation requiring a deeper understanding or examination, is the critical area of importance. Thus with this attitude of awareness of particular, open-mindedness and possession of moral perception, the agent can and will increase his/her overall abilities.
The third aspect of particularity is called c) detail particularity. Detail particularity entails the ability to fine tune or classify a level of understanding to a particular moral situation, and to gain more specific detailed knowledge enabling the agent to act more appropriately.

Moral perception and particularity versus principle-based theories:

Blum considers three popular, or at least frequently expressed views of principle-based theorists that imply that their theories already incorporate moral perception, particularity and judgment. He addresses these ideas and shows the flaws in their thinking (Blum, pp.53). The statements are as follows:

1) The concepts of moral agency in a principle-based ethic already contains moral perception and particularistic sensitivities.

2) The commitment to the primacy of principles entails a moral commitment to develop perceptual and particularistic sensitivities.

3) The conceptual resources of principle-based theories can be mustered to express what is involved in moral perception and particularistic sensitivity.

Blum states that according to contention or position number one, principle-based theorists contend that one cannot but help to develop an understanding of moral principles and a commitment to the same, without additionally developing sensitivity in which they should be applied. Blum responds that one cannot say they have a full grasp of the validity of a moral principle if the person never noticed when that principle applies. He says that the position he takes and that of principle-based ethics are not totally distinct and separate, but in order for an agent to fully understand and incorporate moral perception and particularistic sensitivities a principle-based approach is in and of itself not sufficient.
Blum then moves to position two with its Kantian roots and says that although Kant would agree that recognitions of situations is required in order to address his duties and to even develop capacities to master situational recognition, still Kant would not go so far as to place moral value in them for themselves, but only value as a morally necessary means to an end. Blum states that Kant is wrong here and that accurately perceiving injustice, dishonesty, and distress, where and when it occurs can have moral worth and substance in and of its own right, not just as a means to performing a principled action. He continues that "...situational perception, judgment, and particularistic sensitivities are as central [emphasis mine] to that agency (personal action) as is commitment to principle." (Blum, pp.54)

Blum then moves to contention three and says, while principle-based theories traditionally may not include or incorporate judgment and perception, they can conceptually provide resources enabling an agent to do so. Blum states that there are two Kantian versions to look at and compare.

The first Kantian concepts would include 1) rationality, and 2) universality of ends used, to capture the proper objects of judgment, 3) perception and particularity. Blum states that even if these concepts could capture the objects of perception, judgment and particularity, (and he does not think it can) it is not sufficient to make the claim that one has then accounted for perception using Kantian categories. Blum says that if using the Kantian notion of "end" was employed in the context of relieving another's distress, the "end" notion would have to encompass the object of situational perception (that being witnessing the distress).
But it does not follow that if the Kantian approach entails the principle that one
should always treat the well being of others as ends, that then that approach also entails
the ability that leads the agent to perceive distress when it is present. One might not. So
the Kantian concepts and resources cannot fully account for moral perception.

Blum clears up this idea by using the situational example to clearly illustrate the
differences between Kantian based principles and those he has been describing. He goes
back to the example of Tim and the cab driver. Suppose Tim thinks about the action
taken by the cab driver and sees it as wrong. He now sees that these actions have violated
principles of justice. Now contrast Yasuko with Tim. Yasuko also perceives the cab
driver's wrong actions and in addition, perceives the direct indignity also when the driver
passed by the black woman and her child. Tim had perceived the injustice without
perceiving the indignity. Blum shows through this example that one can grasp the
wrongness of an unjust act, without recognizing and processing intellectually the indignity
sustained by the victim. This idea Blum says, shows how sensitivity alone may not
guarantee an understanding or the ability to perceive an indignity suffered by victims of the
violation of the principle. Therefore soundness of the Kantian theory, even if it includes
the capacity for recognizing violations of principles, is still called into question as to
whether it is sufficient. The universalizability of the categorical imperative even if it is
equivalent to its “end” formulation, in all real cases, cannot guarantee situational
perception.

In an effort to understand Blum and practical wisdom, it is necessary to take a
critical look at moral judgment with further considerations of Kant. Charles Larmore in
his book, *Patterns of Moral Complexity* touches on Kantian examples. Larmore believes
that modern moral theories including Kant’s, have failed to recognize and use Aristotelian insight or incorporate Aristotelian concepts of moral deliberation and judgment. Larmore believes that this failure is evident in large part to the widely held belief of Kantian theorists that moral examples can be used to logically, rather than rhetorically, explain a person’s role and duty.

Examples are said to persuade us to perform our duties. Examples also are believed to stimulate the passions and imagination more so than rules and reason. Therefore examples are indispensable in value to persons. Larmore contends that the flaw in this reasoning of Kantian theorists is that their view treats examples as only a means for motivating actions in what has been determined to be our duties in the situation at hand. Our duties and the actions that satisfy them can adequately be handled through the following of the rules only. This view is not large enough or complete enough to allow these examples to play any role in determination of what is in fact morally “right,” but only to serve as a motivating factor.

Larmore relates that Kant did recognize that an example must be judged by a moral principle to determine if the example is a good fit and appropriate to serve as an original example. However, he believed that our choice of examples has nothing more to do other than applying the rules contained in the concept of those duties. Kant, according to Larmore, did write about a faculty of reason he called “native wit” (Mutterwitz) or judgment. Kant admitted that while rules are a vital component in judgment, an understanding of the rule should consist not only of the mastery of rules, but that also one must have the knack to see how things fall within the scope of a rule.
Kant called this "knack" judgement. Kant also believed that one could improve this judgment by the use of examples of rules being applied in concrete cases or examples. Larmore expresses considerable amazement that in light of Kant’s views stated previously, that Kant then displays severe disapproval toward using examples in moral deliberation. Larmore states two reasons Kantian theorists display a negative attitude toward examples in moral philosophy. The first is Kant’s idea of moral freedom, and the second concerns fundamental deficiencies in Kant’s theory of judgment.

Larmore states that in Kant’s *Critique of Practical Reason*[^18] there is a particular section that deals with the application of general moral rules to specific cases. Kant believes that a specific manner must be followed: one must decide if the action falls under a law of nature, or does it agree with a universal maxim which may have been willed for empirically conditioned reasons? Then, to understand it as a moral action, it must be conceived as being willed freely. This means that if the only general concept applied, is that we view the action as a law of psychology that conforms to a law of nature, then the action is necessitated and not free. The only examples of judgment then are examples that are not moral ones, but ones that may or may not be moral.

The fundamental flaw is that Kant overlooks the monumentally important concept of perception, the ability to distinguish between morally “good” actions and morally “right” actions. These of course have to do with the motive by which one conducts or engages in an action. Actions can be right and not good, when looked upon or gauged only by the duty of the person, and if they are fulfilling it in that particular circumstance.

If the action the person performs is in accord and compliance with their duty, then the action can be right but not good. The person may do the right thing entirely for the wrong reasons.

Larmore believes that Kant should have agreed that moral examples play a prominent role in moral experience. They aid in judgment, and in helping to determine whether a specific action fits into a rule expressed by a “universalizable maxim.” Larmore contends that even the most pure moral agent requires judgment and also might need examples to then apply moral rules to particular or specific circumstances. There cannot be a replacement of this idea about using examples, where it is possible for an agent to pick out certain rules since examples make for personal application of the rules.

Larmore’s main point is that in the moral realm, Kant’s theory is incomplete. Its incompleteness is based on the assumption and definition that rules apart and away from other concepts of judgment are not much more than the ability to apply the rules to actions and situations. Larmore attempts to cast a net into the theoretically troubled waters where Kantianism, Utilitarianism and Aristotelianism theories abound. He wants to show that although Kant has some ideas that are acceptable, that a better and more complete understanding of moral judgment is available. He labels this attempt, the centrality of judgment.

Larmore expressly centers on two main areas to which this “centrality of judgment” is applicable. These two areas are both theoretically and practically relevant and salient. The first area is the decisions involving moral duties such as courage, generosity and benevolence.
This refers to moral judgment in areas and instances where employing characteristics such as those listed is of paramount importance and relevance to a full understanding of moral judgment.

Determination of whether a particular situation or circumstance is one that begs the question of a particular or certain duty is a key idea. One must be able to figure out which action best satisfies and addresses this duty. This requires moral judgment and insight above and beyond the capability for following rules only.

The second area has to do with deciding if we are to act in a given situation, and what course of action we should then take. Moral judgment is the compass that directs an individual between two polarities that Larmore mentions, timidity and overzealousness. This entails doing too little, too late, versus rushing forward with reckless abandonment into a moral crusade.

Larmore contends that the shortcomings of Kantian approaches have to do with their attempts to "...specify the general concept of 'the moral perspective' in terms of rules for moral decision making." (Larmore, pp.10) The problem then is the narrowness of these "higher-order" rules and the generalization of their significance. Another shortcoming or failing of the Kantian approach to moral judgment is that it has often, (according to Larmore) in an attempt to maximize general happiness, directed principleness as valid when sometimes a great good can be and is achieved at the price of doing evil.
Larmore then gives an intriguing read on his belief that an ethics of virtue is often contrasted with duty and the ethics thereof. Larmore cites H.A. Prichard\(^{19}\) who said that virtuous actions are not done from a sense of duty or obligation, but rather from "...some desire which is intrinsically good, as arising from some intrinsically good emotion."

Larmore agrees that although there is a distinction between motivators such as obligation and sympathy, that Prichard is wrong to say that only virtuous actions derive from motives such as sympathy. Larmore states that Aristotle believed that both types of motives (sympathy and duty; adherence to rules) are necessary to acting in a virtuous manner. Aristotle believed according to Larmore, that a person acts virtuously if he knows what it is he is doing, and then chooses to do it for the right reasons and because its the right thing to do. Therefore it is done because it is right and the action is knowingly and willingly performed, and can be a duty.

A key concept and component of the above understanding would seem to include the idea that virtue is in fact the character and disposition of one to act virtuously using what Larmore calls "moral imagination." Larmore explains that the shortfall and failing of modern theorists including Kant and Mill is based on their overlooking or at best minimizing of the validity and great importance of judgment and the qualities of character which contribute to good judgment.

Kant and Mill according to Larmore, never seemed to understand that virtue entails much more than adherence to rules and principles. They failed to understand that the process or approach, (the way it's done) that one takes toward understanding and

willingly acting in a virtuous manner using imagination and judgment is the very vessel one should board to navigate the stormy theoretical seas of judgment and perception leading to the eventual goal of moral discovery.

Larmore states that Kant understandably connected the second kind of duties (generosity or gratitude) with virtue and called them *Tugendpflichten* ("virtue duties"). However, no connection or reason why one should act in a moral manner or virtuously while performing these duties was given.

Larmore states that at one point Kant seems to be on the right track and then his theory derails. Kant said that there were duties of virtue called "perfect duties," and that these were the first sort; allowing some flexibility in their observance. Kant said that the rules associated with these types of duties cannot completely (and this is a key) specify what the actions are and should be done to satisfy that duty.

Kant seemed to have recognized that there are times when judgment is required and necessary. But Kant then goes on to demonstrate the limits and shortsightedness of his approach when he said that the exercise of judgment will consist in the application of a further maxim. He believed that ethics is not so concerned with judgment but with reason and how to apply principles. This is the narrow thinking to which Kant reverts, although showing glimpses of a greater understanding.

In the concluding remarks of Larmore on judgment he addresses the very puzzling nature of judgment; puzzling meaning hard to put our finger on. Larmore contends that the best person to assist in this understanding of the nature of judgment is Aristotle. Judgment and accordingly moral disagreements, generally develop from disagreements as to when and where and how judgments are exercised. Judgment is a way to resolve
disagreements. Aristotle said that judgment is not an activity governed by general rules; instead, it must always respond to the peculiarities of the given situation. Learning formal doctrine does not enable one to acquire judgment. Only through practice and performing right actions after being trained to do so can we bring about virtuous and right actions. The development of character depends on a moral and just community or organization.

Larmore contends that there is very little of how to exercise judgment precisely in Aristotle’s writings. However, he did suggest that a person must use a mean “relative to us” that the person of judgment must determine with an eye toward the particularity of a situation. This mean is the thing that the person must think, feel and use. And that it is based on an understanding of what the situation requires. Larmore said that Aristotle did give some rules of thumb to use:

1. We should endeavor to avoid that extreme that we are more inclined by nature to pursue;

2. We should learn what errors we typically make, in order better to avoid them in the future; and,

3. We should be on our guard against the lures of pleasure.

In addition to these rules mentioned by Larmore, and attributed to Aristotle, there are five other rules that Aristotle states in N.E. (1106b, 20-23), they are: ...” experience this at the right time, toward the right objects, toward the right people, for the right reason, and in the right manner—that is the median and the best course, the course that is a mark of virtue.” Larmore notes that most rule-based theorists do not address the importance of perception and judgment in moral experiences as they prefer to see the moral life involving a strict adherence to rules only. However, Larmore points out that
Adam Smith in *The Theory of Moral Sentiments*, counseled that persons should remember the counsel of the ancient philosophers and view the virtues in two related ways. First, as a general rule or way that one acts associated with a particular or certain virtue. Second, when general rules are vague, one must supplement that vagueness with a sentiment that motivates the exercise of a specific and particular virtue.

Larmore lists another theorist who addresses how to acquire judgment. This author is Hans-Georg Gadamer. Gadamer states that Aristotle would agree with his point that "...the acquisition of moral judgment requires training in the performance of right action, and that this formation of character can thus emerge only within a historical community in which considerations are important." It appears that Gadamer is speaking about Aristotle and his view that a man’s "self-control," *sophrosyne*, "preserves" our "practical wisdom." Aristotle says that as soon as a man is corrupted by pleasure, he loses his vision to see how he should act and choose in every case, for the sake of and because of this end. *(N.E. 1140b, 11-19)* Thus, the *historical community* that Gadamer references would be similar to persons who hold on to and value self control and have the capacity of seeing what is good for themselves and for mankind.

In conclusion, Larmore believes that the inability of Aristotle, Smith and Gadamer to give an account of what moral judgment consists of is a positive and not a negative thing. He says "The activity of moral judgment goes beyond (while depending upon) what

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20Adam Smith, *The Theory of Moral Sentiments*, Part 7, Section 4, 517; also Part 3, Chapter 6, 287f.


is given in the content of moral rules, characteristic sentiments, and tradition and training." (Larmore, pp. 19-20)

He also states that "We should not hesitate to say that we know that moral judgment exists and know how to recognize it when it occurs just because it appears not to be a phenomenon constituted by reconstructible rules." (Larmore, pp. 21)

Larmore does contend that there are no clear cut steps to understanding the development of or the manner that one exercises moral judgment. A return to the writings of Lawrence A. Blum may help us to find the method toward implementation of better moral judgment and perception.

The first step an agent may take is, the accurate recognition of a situation's features. This step involves the agent coming upon a situation that may not have even developed into a "situation" and having the ability to get a "take" or "read" on the situation to recognize that it is of a certain character and it has certain features.

Step two, recognize the features of an already characterized situation as morally significant. When one can put steps one and two together, this is "moral perception".

The third and fourth steps involve actual engagement or action, deciding whether to engage one's agency. Persons see that something is wrong or unfortunate, but do not engage or get involved or may not be able to do anything. Sometimes engagement may make the situation worse, other times one may want to get involved but be unable to do so. This is called "agency engagement."

The fifth step is the selection of a rule or principle that one takes to be applicable to the situation. What one "ought" to do may be within a range of relevant possibilities involving moral characteristics.
Blum uses an example of "relieve suffering" if suffering is what is happening. He also says that there are various and numerous types of principles governing what to do in what type of situation and that this step is an entire process in and of itself.

The sixth step is determining the act that best instantiates the principle one has selected. This means one needs to select the act or action that best specifies the principle. Moral judgment becomes paramount in importance to successfully completing this step.

The seventh step, the final step, is figuring out how to perform the act specified in step six. This step concerns the full or complete functioning of moral agency. Blum gives a very good explanation of how important this step is when he says that, "a person who consistently selected the right act to perform but could never work out how to succeed in performing the act would be morally incomplete, if not decidedly deficient."

Moral perception and judgment, these concepts also have a very real and important application to the field of law enforcement and professions involving the upholding and enforcing of laws and regulations. These professions are at the pinnacle of the hierarchy of virtue and integrity of society and civic virtues and practices. If agents existing and interacting on a daily basis in this arena are devoid of moral perception and judgment, the outlook and future of civic virtue and rightness including actions done because and for the "right" reasons, becomes a long-ago memory that does not bode well for the present or the near future.

Perception appears to be a key component of a morally virtuous person and a concept not to be taken lightly or loosely. The type of sensitivity that Blum speaks of, involving perception of circumstances or situations involving emotional reactions needs to
be developed and practiced. Agents who are continually exposed to situations that require this ability to notice a potentiality for injustices and are then in a position to address these injustices, need to focus and concentrate on addressing these injustices. It is paramount that organizations and agencies as a whole, need to take the lead in emulating, encouraging and training their respective officers and subordinates to do so.

I cannot think of any better profession that has the continuous opportunities and potential for daily exposure to situations where this moral perception and judgment are required, and where practical wisdom and moral sense leading to ethical and morally right actions can be employed than in the law enforcement profession. A key component that Blum discusses and that is so important, is the action that one takes or does not take, after one perceives and is aware of injustices taking place. The new officer would be a proper person and would be there at the right time in the continuum of a career to help foster this “right” behavior.

The ideas of a particularistic attitude could be embraced and nurtured so that a new officer would fully comprehend that this awareness and observant, open-mindedness is something that in every situation and circumstance is relevant along with strict adherence to the rules and code of conduct of the organization. Oftentimes a seasoned officer has a tendency to become jaded or slothful in employing perceptiveness and judgment, instead becoming dulled to the particularity of situations by repetition or boredom.

As indicated by Blum, if an agent nourishes and develops these abilities, forming a strong root system, he/she will not have to always take a step by step approach, for every potential situation, but rather can continue to gain in practical wisdom and understanding.
thus increasing “moral sense,” “perception” and judgment. As attributed to Aristotle by Blum, an agent needs both motivations and knowledge to do the right things for the right reasons and to do these acts regularly and willingly.

Where does this approach fit into a law enforcement organization? In the Federal Judiciary it can fit in at the very elementary and entry level. When a potential Federal Probation or Pretrial Services Officer begins the application process, an agency should and can help to determine a person’s potential and ability to engage in moral judgment, perception, and reason. This approach starts within the organization from the District Judges, to the Chief Probation and Pretrial Services Officers.

The approach is limited if it is solely focused on a basic background check (as is the case presently) that helps to determine previous criminal activities prior to a person beginning appointment to the agency. A principle-ethics based approach may very well embrace and laud an agency approach that encompasses a background check employing criminal record checks and interviews of past trends of behavior. This seems to parallel Kant’s ideas of an adoption of “general ends” and “imperfect duties.” The candidate who “checks-out” without noticeably evident defects or flaws in their background check, and appears to possess an overall ability to act benevolently on some occasions, (viewing this action as “morally indifferent” so long as the general rules are adhered to), would be suitable for employment.

I contend that this is not an appropriate organizational or personal and professional concept. One area that can aid the overall incorporation of moral agents being hired by morally responsible organizations is in the hiring process itself. Recently, in one western U.S. District Pretrial Services Agency, two new U.S. Pretrial Services Officers were hired.
One of the new innovative approaches used to hire the best people, was the use of scenario-type questions involving situations that require a level of "moral sense" and the ability to perceive of an injustice or ethical dilemma.

Many of the candidates interviewing had difficulty deciding if the situations in the scenarios were relevant or even worth solving, and if they contained dilemmas that were outside the scope of traditional or organizational rules or practices. In other words, there appeared to be many candidates who although not flawed in their "moral imagination," appeared to possess only average moral sensitivities.

In the end, I believe that it is clear that the ability to use and employ moral perception and moral judgment is of paramount importance and relevance for a person to be a moral agent. Nowhere is this more relevant and necessary than in law enforcement. Officers can be the type of barometer that we can use to gauge the level of civic responsibility and sensitivity, or callousness and apathy to the ever-present and growing dilemmas facing society today.

The organization or agency that heeds this contention and makes it a point to hire those persons who posses adequate levels of practical wisdom and moral perception, and the ability and integrity to act on those characteristics, will be an organization with a strong foundation for excellence.

Although an assessment tool using Aristotelian concepts that measure a person’s practical wisdom is not presently available, I can imagine what may be incorporated into such a tool. In law enforcement agencies, there is a training tool called F.A.T.S. (firearm training simulator), that officers use to train for situations where lethal force may, or may not, be necessary to secure the officer’s life or the life of another. This tool consists of
numerous scenarios played out on a big screen television almost like a movie, where the officer is an active participant. It is sort of a virtual reality concept, where the officer’s actions directly influence what happens on the screen. For example, an officer will see himself walking through a dark warehouse, and on the screen he will hear gunshots and people yelling, there may be loud music playing, all in an attempt to replicate or display an actual or potential scenario that could take place in real life. The officer has hooked to him a microphone and an electronic gun with a holster that is also hooked to the screen. The computer senses if and when the officer draws his weapon, and where the shots fired by the officer hit the “bad guy.” In the example I am mentioning, the officer may have individuals running out of the warehouse, some who are undercover police officers and some who are “bad guys” running out shooting at the officer. The simulator tests the officers ability to decide when to shoot and when not to shoot in any given situation as well as the appropriate verbal commands that he does or does not utter.

The value of this training is great, as it is the only way short of an actual event, that officers can get training that could someday save their lives. I can envision an assessment tool of Aristotelian concepts in much the same way. An officer could be faced with numerous situations that could be derived from actual examples of situations that have occurred in the collective experience of the federal supervision offices across the 94 federal districts. The officer could be placed in front of a simulator again (as in the above example), and could then show through the various scenarios the ability to accurately, and adequately, perceive a morally challenging situation as it is occurring and the officers would then need to reflect upon the situation as it is happening. The officers choice is made and his/her action viewed, thus revealing, or at least indicating whether their
character is strong or weak. After the various scenarios are concluded, the officers could process with the panel or those administering the test how he or she integrated or did not integrate practical wisdom into useful and adequate practicality.
CHAPTER THREE

CHARACTER

In an effort to discuss what could possibly be derived from a character assessment tool or test, used to hire U.S. Pretrial Services and Probation Officers, one needs to first look at what character is, how it is built, and if it can be assessed or tested. I first look at the book *Character* by Joel J. Kupperman that focuses on what character is, as well as how it is defined. I will look at the difference between personality and character. I will look at how someone’s outside interests or work projects can define or be part of their character, and I will explore definitions of both a primary and a strong character.

I then consider Nancy Sherman’s book *The Fabric Of Character* as to how character is developed. I will look at how character can be habituated and developed throughout one’s life. I will strive to define a good or true character, one that involves not only knowing what is right, but knowing why it is right.

Finally, I take a look at moral psychology involving character assessments or tests. I will mention some experiments previously run and what processes or devices are currently in use. I will look at which ones are beneficial and could be used for the purpose of character assessments for U.S. Pretrial Services and Probation Officers.
What is Character?

Joel J. Kupperman in his book *Character*, uses a simile of character being like a mental tablet with lines engraved upon it. Character represents the lines engraved onto this mental tablet. If none of the lines was any deeper than others, it would be like having sand or water poured onto it with the water and sand not following any specific or prominent line, but rather, flowing every which way. Thus, character is in an analogous sense, the prominent manner, or path, our actions will follow, based upon our action and reaction to moral choices.

Kupperman does an exceptional job of explaining differences between what character is and is not. He explains that all of us will find ourselves at one time or another, in certain situations that we can neither entirely control, nor can we control forces acting upon us. In these situations, character is vital to the manner in which we act. This idea is central to why hiring person’s of good character is vital in the U.S. Courts. I shall discuss this further in the conclusion of this chapter, but suffice it to say, federal officers are daily placed in precarious situations and circumstances where persons possessing a weak character would be susceptible to acting in less than virtuous manners, since there is a myriad of opportunities for compromise.

Kupperman explains that although there may be those who do not have any level of good character, and would be considered morally unreliable, they are very few in number. The key is that the majority of people possess very little good character. Kupperman basis this belief on the Stanley Milgram experiment and studies of various
dictatorships as well as prison studies. I am concerned in this thesis with trying to test for persons who possess high-levels of moral character.

Kupperman explains that the main reasons character is so important to the philosopher, are the moral overtones attached to any discussion of it. Kupperman cautions that it is a mistake to attach the concept of character too closely to that of morality only. He explains that there are many choices outside of strictly moral lines, greatly affecting our own happiness and that of others; and that these choices are also a large part of someone’s character.

For example he talks about tendencies people have that can be related to character to act certain ways around friends and certain family members; lifting them up, or bringing them down. He also speaks of a person’s ability to rebound from misfortune and says that those things are not traditionally associated with moral virtues, yet have to do with a person’s character. He explains that a person’s character includes a broad range of excellences that compounded, makes up their character. He explains that someone could be a weak, depressing, and lazy individual, but not necessarily immoral.

In contrast, Kupperman admits that a person would not be considered to have a good character, who did not on the whole, make correct choices that also involve morality.

Kupperman talks about the two differences that I had mentioned earlier, as to what character is and is not. Character is not the same thing as personality. A personality according to Kupperman, is more closely associated with being charming. He explains that Attila the Hun may have had a charming personality, (although I doubt it), but we

\(^2\)Kupperman speaks about bribes taken by congressman in the FBI abscam investigations and other studies in appendix A of his book,( pp. 159-172).
know his character was not good, as cruelty and destructiveness would clearly not add up to good character.

Character defined then, suggests the presence of virtues and the absence of at least major vices. Some of these major vices may be such things as those that would describe cruel individuals of a criminally devious nature, such as child molesters and rapists and psychopaths as well as those full of greed and malice toward others causing them to commit heinous crimes or deeds.

Kupperman cautions using virtue related strictly to morality and says morality is a ‘narrow subset’ of other-regarding choices. He says that there is a fuzzy boundary between moral and nonmoral choices. As an example, he cites consideration, strength, and self-reliance. He admits that these nonmoral virtues matter to someone’s character, but the moral virtues count more heavily.

Kupperman explains that one reason that we cannot simply identify character with assessment of virtues or vices, is that they have especially close and vital links to performance. He explains very clearly, I believe, that to ascribe a moral virtue to a person, is suggesting that they perform well and consistently on occasions of a certain sort; to then have a vice, is to tend to perform badly. However, Kupperman says that "...the role we ascribed to character in a person’s life extends well beyond performance on tests."

Character has to do with the particularity of a person’s life. What matters in the virtue of honesty, is shared by all honest people; but there are specific experiences shaping an individual’s life that set him or her apart from others of good character. In other words, the person who can successfully navigate through the challenges and obstacles that test one’s character, will then make an indelible mark on the strength or gauge of their
character, when compared with others who have seemingly maneuvered or traversed similar terrain and chosen to allow themselves to act with less than good actions.

Another way Kupperman states that a person’s character can be viewed, is through their responsibilities. The choices that a person makes in what they will and will not do in the way of outside responsibilities and activities, may be engaged in very deeply and may reveal more thoroughly their character. This is in contrast to focusing solely on how an individual performs in traditional settings such as work. Traditional settings could also involve how they follow policies and procedures, or adhere to certain laws and guidelines, where less attentiveness or thought is required.

Therefore, Kupperman believes that the sorts of projects and categorical desires (outside interests) someone has can reveal their character. More importantly he states, how a person maintains or fails to maintain his responsibilities and commitments, as well as the day to day quality of the relationships that he has with various people to whom he has responsibilities, or who have responsibilities to him, reveals a great deal about his character and commitment to integrity. The image of character that emerges, is that it is what a person is, especially as it relates to areas in their life requiring major choices.

The overall difference between personality and character then, has to do with what the person’s self-presentation is and what their nature is. So the definition Kupperman comes up with is:

...X’s character is X’s normal pattern of thought and action, especially in relation to matters affecting the happiness of others and of X, most especially in relation to moral choice.
A complete definition of a strong character according to Kupperman is:

... X has a strong character if and only if X’s normal pattern of thought and action, especially in relation to matters affecting happiness of others or of X (and most especially in relation to moral choices), is strongly resistant to pressures, temptations, difficulties, and to the insistent expectations of others.

Kupperman delves into areas of character that appear very complicated especially when thinking about assessing or testing for good character. He says that "... character traits are propensities to behave in certain ways and that a person can have a propensity to behave in certain way if given suitable opportunity, even if suitable opportunities hardly ever arise."

How to build character:

Now it is important to talk about how character is built. This can help us understand why character is good or bad, and can possibly help us to develop a character assessment tool. In her book *The Fabric Of Character*, Nancy Sherman speaks of how one builds character. She specifically speaks of an habituation of the character in Chapter Five. Sherman focuses on the development of character and how important parents are to the development of character in their children. She states that the emphasis of a parent who is trying to assist their child in developing good character and moral perception and reasoning, should not simply be on trying to affect specific desires or actions, including thwarting greed, or encouraging compassion, and tempering anger, but to teach their child to see particular circumstances and situations, and then make their emotions and actions appropriate. This assistance in helping the child see, or compose the situation or scene in the ‘right way’ is what is important, it is the coaching of moral perception.

How does this teaching take place? What exactly does it entail? Sherman says
that it is all about helping the child construe the situation in an alternative manner, so they
can be sensitive to, and utilize moral perception and reasoning.

She says, for example, that a parent might help the child see that a particular
situation that was previously seen by the child as a deliberate assault, and a legitimate
cause of alarm or anger, was in fact really just an accident. It would also include teaching
them that the annoying smiles and laughter were really not done to annoy or tease, but
were genuine signs of delight. She uses other examples that include showing the child that
although painful to them, a particular distribution of items is fair and just and that looking
at certain situations from another’s viewpoint will help them to arrive at a more just
conclusion.

Sherman says that a person that thinks the child is an empty box that one can
merely place ideas or beliefs in, would be wrong. On the contrary, as mentioned by
Kupperman and his mental tablet analogy, children have fine lines of engraven values and
judgments that deepen and enlarge, as they associate with, and assimilate the teachings,
values, and mannerisms, of adults including their parents. Aristotle, according to
Sherman, thought that this idea was accurate, that there is already an ability for children to
discriminate and an interest and delight in improving.

The process or procedure of assisting the improvement and building of a good
character, entails a shifting (or expanding and deepening), of beliefs and perspectives by an
outside person or by oneself. This process, as stated before, is not merely placing ideas
into a box, (child) but providing constant and constructive training and instruction
allowing the formation of patterns and trends in what the child sees and notices. I believe
that this approach is at the heart of good character building, thus enabling it (good
character) to flourish. This training and instruction allows the child to develop and grow into a person possessing moral reasoning and perception and in becoming a person of good character.

Building character does not mean influencing an outcome here or there, or training a child or adult to act in a situation correctly now and then, but instead means preparing the learner to arrive at, and make judgments that, lead to soundness of both moral and ethical decisions and actions.

How best is this done, one might ask? Sherman gives us some insight when she says that the methods used, must encourage the child's own development. She suggests that the most helpful method is dialogue and exchange involving what one feels, sees, and what a person should feel and see regarding certain situations. By talking about situations this way, and using actual descriptions of what perceiving situations means, the parent helps discuss relevant concepts, emotions, and considerations, all relevant to the child developing good character. As discussed by Kupperman, the key concept in persons of good character as opposed to those with weak or no character, is the ability to perceive morally relevant circumstances or situations.

This level of perception encompasses the ability to know what they are, to know why it is that way, and then possessing the strength of good character needed to carry out the morally good and significant act or behavior.

Sherman also makes a very good point that the formation of good character is dependant upon parents, or other influential adults, teaching children the value of their actions and helping them realize the ends of virtuous actions and behaviors, as well as recognizing people who perform those virtuous actions reliably. She says Aristotle's
claim that one cannot be fully virtuous by simply choosing actions that promote virtuous ends, but rather one needs to practice virtuous actions also and to know them, is a correct principle.

Sherman now turns to habituation as critical practice. This she says is practice and repetition of virtuous actions and behaviors that in turn form the person's character. She notes that Aristotle said in the *Rhetoric*, that through repetition an acquired capacity becomes almost natural, or second nature, "...for as soon as a thing becomes habituated it is virtually natural."

She continues to develop her interpretation of Aristotle. She says that excellence of character or virtue is contrasted with the idea of a person's abilities. One can have an ability which is not yet developed to the level of excellence. My take on this is, that a potential new officer may have a less than good character, because he or she may not have acquired the ability in his or her formative years, to both recognize and practice virtuous judgments and actions. The reason this is so critical is that the ability to combine recognition of a morally or ethically challenging situation, to use and display appropriate responsive emotions and the best level of how to act in a certain situation, (that is to possess moral perception and judgment) is paramount to being an officer of good character. So it seems, the steps of building character would be as follows:

One, learning to recognize and perceive moral situations;

Two, using this (moral perception and judgment) vision, to make right/good choices;

Three, practicing skills and recognition through virtuous actions and behaviors;
Four, using your experience and memories to continue and enhance future behaviors, judgments, and actions.

It is interesting to note that in thinking about a character assessment tool or test, what we would hope to gauge or measure would be the level of abilities of persons to use and display moral perception and judgment and to utilize their previous experience in making right or virtuous choices and actions.

Character, can it be tested?

In looking at what developing a character assessment tool or device would be valuable for, one would be remiss in suggesting or encouraging use of a tool if one did not address whether character is something that could even be tested. Returning to Joel J. Kupperman and his book *Character*, we will look at the practicality and viability of implementing an assessment tool or test to use in evaluating one’s character. Kupperman looks at what has taken place already in the area of moral psychology, its limitations and strengths, and gives a glimpse of what may be helpful in the future.

Kupperman talks about the strengths and weaknesses of moral psychology. He says that any scientific study of the psychology of character is most useful and revealing if it focuses, not on what people say, but rather on what they do. This belief is very important as Kupperman says that what one does in an average, complacent setting or situation, is not necessarily indicative of what that same person would do or say in an extreme or unusual situation. This idea also applies if the same person were severely pressured or tempted. The example given by Kupperman is that of the Abscam law enforcement sting operation. He mentions that at one time the Federal Bureau of Investigation conducted a sting operation that demonstrated the lack of character of
several U.S. Congressmen. The F.B.I. offered the Congressmen substantial bribes in a manner that led the Congressman to believe there was an extremely low risk of their being caught or any detection of their accepting the bribes. Sadly, many of the congressmen took the bribes. The significance being, that these same Congressmen purportedly were advocates of virtues such as honesty and integrity, and probably would never have shoplifted or stolen from their neighbor; but in an extreme situation, the experiment revealed flaws in their characters.

Kupperman examined another study by Stanley Milgram who conducted a psychological experiment where subjects were pressured, rather than tempted, in order to get them to do certain things that normally would go against their moral codes. Kupperman states that one reason why such experiments are usually not performed, is strong ethical objections to what is essentially the corrupting of people to see how easily they can be corrupted. Kupperman cites the increase in litigation in the United States, as one factor in limiting moral psychology from conducting experiments where scientific research involving moral psychology and character assessment or testing is done.

Kupperman touches on the idea of alternative measures including questioning people about what they would do, or think should be done, involving various hypothetical situations. He mentions Lawrence Kohlberg and his school and says that their perspective is one that combines the theory of cognitive and social learning in educational modalities producing positive outcomes in changing behaviors. Kupperman says that Kohlberg believed that the biological maturation and environment experiences interact and thus produce the individual's state of thought that affects how the person understands and interprets his or her social world.
This is in one way similar to Aristotle's theoretical and practical wisdom, in that it is impossible to be a good individual in the full sense of the word, without practical (how to do something) wisdom and to be a man possessing practical wisdom without moral excellence (ethical knowledge and character of a high level) or virtue.

Kupperman says that such research as conducted by Kohlberg and his school, is not a valueless thing and can be a good test of ethical sophistication, if one assumes that the questions mirror a valid and reasonable set of ethical distinctions. One significant tool or assessment device developed by Kohlberg and his school (Center For The Study Of Ethical Development) at the University of Minnesota is the Defining Issue Tests, or DIT and DIT-2.

In a sample copy of the DIT-2 sent to me by the Center and in reading James R. Rest's book, Postconventional Moral Thinking, A Neo-Kohlbergian Approach, I learned more about what makes up the DIT and DIT-2. The DIT is a moral reasoning and judgment tool that is used to activate moral schemas that presumably then structure and guide the person's moral thinking. The test is based on Kohlberg's six steps of moral development.

Kohlberg lists two stages within each of these three moral levels and states that the second stage is the more advanced of the two, in each pair. (Kohlberg, pp 76-81)

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24James R. Rest, Postconventional Moral Thinking, A Neo-Kohlbergian Approach, Center for the Study of Ethical Development University of Minnesota. Lawrence Erlbaum Associates, Publishers, Mahwah, New Jersey, 1999. Subsequent references to this work, will be cited in the text parenthetically as, e.g. (Rest, p.)

25Lawrence Kohlberg, The Psychology of Moral Development, Essays on Moral Development Vol. II. Harper and Row, Publishers, San Francisco, 1984. Subsequent references to this work will be cited in the text parenthetically, as e.g. (Kohlberg, p.)
Moral Level One:

Stage one- Heteronomous Morality, egocentric does not consider interests of others, or recognize that it may be different than their own. Actions are physical rather than psychological interests of others. Confusion with authorities perspective and their own.

Stage two- Individualism, Instrumental Purpose, and Exchange, concrete individualistic perspectives. Aware that everyone has own interests to pursue and that these conflict, so right is then reflected in the concrete individualistic sense.

Moral Level Two:

Stage three- Mutual Interpersonal Expectations, Relationships and Interpersonal Conformity, Perspective of the individual in relationships with other individuals. Aware of shared feelings, expectations and agreements that take primacy over the individual’s interests. Relates points of view through Golden Rule, putting self in the other person’s shoes. Does not yet consider generalized system perspective.

Stage four- Social System and Conscience, Differentiates societal point of view from interpersonal agreements or motives. Takes system point of view including definitions of rules and roles. Considers the individual’s relations in terms of place in the system.

Moral Level Three:

Stage five- Social Contract or Utility and Individual Rights, Prior-to-society perspective. Perspective is that of a rational individual aware of values and rights prior to social attachments and also contracts. Integrates perspectives through formal mechanisms of agreements, contracts, due process and objective impartiality. Considers legal and moral points of view, recognizes potential conflicts arise and finds it difficult to integrate them.

Stage six- Universal Ethical Principles, Perspective of a moral point of view, from which all social arrangements derive. Perspective of a rational individual recognizing the nature of morality and that persons are ends in themselves and should be treated as such.

Kohlberg’s six stages or theoretical description of the moral stages are grouped into levels. Preconventional level encompasses stages 1 and 2 and the conventional level
encompasses stages 3 and 4 and finally postconventional level incorporates stages 5 and 6. Kohlberg says that one must understand the three moral levels to then understand the stages. ‘Preconventional,’ according to Kohlberg, is the level of most children under nine years of age. Kohlberg believes that there may also be some adult criminals and many adolescents that are at this level. The ‘conventional’ level is the level of most adolescents as well as adults in most societies. Kohlberg attributes this large number of people being in the preconventional or conventional levels due to this group lacking a formal education past high school. Consequently, Kohlberg believes that the postconventional level is reached by only a minority of adults and then usually only after age 20. This apparently is also attributed to those individuals possessing formal education past high school.

In defining each moral level Kohlberg says that the moral attitude of the conventional level is to conform to and uphold rules, conventions and expectations of authority or society *just* (emphasis mine) because they are society’s conventions, expectation, or rules. Kohlberg states that a person in the preconventional moral level is limited in understanding or upholding societal rules or conventional expectations. Kohlberg states that those who are in the postconventional level understand and basically accept the types of general moral principles that underlie the rules of society. Kohlberg believes that in order for a person to act in a morally high way, one has to have a high stage of moral reasoning. He states that one’s moral behavior is related to cognitive advance and that a person cannot follow level three (postconventional) principles in stage 5 or 6 without understanding and moral reasoning and that a person in those stages possesses a high stage of moral reasoning.
Kohlberg believes that if principles conflict with the actual societal rule, the postconventional person will judge on principle rather than convention.

The DIT began in the 1970's as a multiple choice alternative to Kohlberg's time consuming interviews focusing on the stage definitions. According to the literature sent to me by the Center For The Study Of Ethical Development, by measuring the patterns of ratings and rankings indicated by the respondents answers to the test questions, the Center arrives at estimates of the relative strength of the schemas. The person taking the test is not allowed to explain or argue for a line of reasoning, but rather just fill in their test answer sheet.

The DIT and DIT-2 is a device for activating or triggering moral schemas from a person's long term memory into his working memory. Rest believes that the various dilemmas in the DIT and DIT-2 tests will activate these moral schemas if the person taking the test possesses them. The person taking the test will rate or rank an item in the story that means something to them. The overall patterns established by the ranking and rating of the tests establishes or produces trends and becomes like a moral judgment construct.

Rest states that at the Center they view the DIT and DIT-2 test assessments as problematic and that over large enough samples and several dilemmas it is useful for the development of moral schemas. The Center assumes that people are much clearer in making judgements about what they seem to think is an important moral issue rather than articulating a moral justification of one course of action over another.

Here is a question from a sample DIT-2 test; an actual DIT-2 test would have five dilemmas followed by twelve issue-statements that the person taking the test ranks.
Reporter - Story #2

Molly Dayton has been a news reporter for the *Gazette* newspaper for over a decade. Almost by accident, she learned that one of the candidates for Lieutenant Governor for her state, Grover Thompson, had been arrested for shoplifting 20 years earlier. Reporter Dayton found out that early in his life, Candidate Thompson had undergone a confused period and done things he later regretted, actions which would be very out-of-character now. His shoplifting had been a minor offense and charges had been dropped by the department store. Thompson has not only straightened himself out since then, but built a distinguished record in helping many people and in leading constructive community projects. Now, Reporter Dayton regards Thompson as the best candidate in the field and likely to go on to important leadership positions in the state. Reporter Dayton wonders whether or not she should write the story about Thompson’s earlier troubles because in the upcoming close and heated election, she fears that such a news story could wreck Thompson’s chance to win.

The ranking scale is, 1) Strongly Favor 2) Favor 3) Slightly favor 4) Neutral 5) Slightly Disfavor 6) Disfavor 7) Strongly Disfavor. The DIT and DIT-2 appear to be incomplete as a character assessment tool as they are based on Kohlberg’s six stages and never address moral perception or practical wisdom. As indicated in Chapter Two, Nancy Sherman states that what is or is not salient in a given situation is not discussed by Kohlberg.

Rest admits that Kohlberg’s approach is primarily addressing formal structures of society that include laws, rules, general practices and institutions and not personal face to face everyday dealings and contact with people or the ability to evaluate these particulars. (Rest, p.2)

So what exactly does the DIT and DIT-2 offer us? Are high scores on the tests linked to actual behavior? Rest states that four kinds of studies have been completed that address what a high DIT test score can mean. (Rest, pp.76-81) According to Rest, higher P-scores on the DIT and DIT-2 can associate a higher comprehension of moral concepts. Rests also states that higher scores on the test correlate with higher development scores.
on other developmental instruments such as Piaget's formal operations, or Kohlberg's measure of moral judgment. Rest also states that higher scores link to higher stages (Kohlberg's six stages) with more desirable behaviors such as prosocial behaviors and more highly valued job performance. Rest also states that higher scores are associated with better recall and reconstruction of the moral arguments in narratives.

Rest believes that formal education is the most powerful factor in correlating high DIT and DIT-2 test P-scores. He states that P-scores tend to increase while the person is in a formal education setting and reaches a plateau as the person exits formal education. (Rest, pp.100-102) This all sounds fairly good, but Kupperman brings up three distinct weaknesses or limitations in Kohlberg's approach including the following:

1) The questionnaire method cannot distinguish what someone's character genuinely is;

2) It cannot distinguish what someone is pretending his or her character is;

3) It cannot distinguish what someone incorrectly thinks his or her character is.

Kupperman believes the only way to distinguish among the factors just listed, is to put people under extreme pressure or present temptations and then observe how they actually behave. Obviously, as mentioned by Kupperman this is impossible due to lawsuits and other than considerations such as that the very idea of placing individuals in extreme situations or corrupting people to see how easily they can become corrupted, is an unrealistic approach to testing one's character.

The approach that Kupperman believes may show some potential and promise is that pioneered by Ira Newman in 1984. This approach involves using novels and plays
and movies to model aspects of reality. The idea is that a student could look at a situation and attempt to grasp the moral significance of a situation or circumstance, from a movie or play or novel, and try to bring out detail and relevant connections to compare it their everyday life in ways that otherwise may not be grasped. An improvement on the Newman approach is being used by students and professors at Utah Valley State College. The program is called Critical Incident Technique\textsuperscript{26}. This model is a modification of the design developed initially by Sir Francis Galton and strengthened by John Flanagan for the United States Army Air Corps during World War II.

The idea is that a person is asked to locate and recognize specific actual behaviors and then to evaluate them as ethical issues. As indicated in Newmans approach, the incidents are selected by the student/participant from either a movie, video, or television show. The participant observes and then analyzes the incident and its solution and/or lack thereof, and then he is told to portray an alternative or additional solution. I received this example of a Utah Valley State College Critical Incident Test question:

Case: In the movie, "A Few Good Men," a secret group of soldiers in the military have killed a soldier who they believe is not fit to be a U.S. Marine. A group under the direction of a character played by Jack Nicholson believes that it is in the best interest of the country and the military to kill this soldier. Explain the ethical implications of this action.

\textsuperscript{26} Information about this approach and its potential was found in a professional paper presented by Dr. Elaine E. Englehardt, Professor of Philosophy at Utah Valley State College and presented at the second annual International Conference on Teaching Ethics Across the Curriculum held at Salt Lake City, Utah, October 18-22, 2000. Utah Valley State College has been conducting ethics across the curriculum courses since 1984. However, the CIT is still in its infancy stage as an assessment tool. At the present time, research development of a reliability study is underway that will lead to the creation of a valid teaching tool that can be used as a method of assessing students.
1) Summarize case and identify thesis statement

2) Identify ethical problems.

3) Explain personal opinion.

4) What would philosophers say?

So far the test scores of persons taking the CIT used at Utah Valley State College, show that 90 percent of the students taking the CIT test show the ability to define and analyze ethical problems. Are there benefits for U.S. Courts with the Critical Incident or DIT and DIT-2 Tests? Do they measure or assess a person’s character?

Conclusion:

In the end, it is evident from both Kupperman and Sherman, that character is something separate from personality. It is critical that it is nurtured and developed from childhood. It also appears that what is currently being assessed or tested for, is not a person’s character, but a person’s ability to recognize or comprehend morally or ethically challenging situations on a test such as the DIT, DIT-2 or CIT test.

A valid assessment tool that measures a person’s ability to perceive a moral or ethical dilemma correctly and also correlate with the future behavior of that individual apparently does not exist.

The present screening processes used by U.S. Courts in hiring U.S. Pretrial Services and Probation Officers appear to be doing an adequate job of evaluating potential officers, and whether or not they possess characteristics and factors attributed to person’s possessing good character. It appears that current practices such as an FBI background investigation and detailed interviews with the persons selected as references for the candidate’s for U.S. Pretrial Services and Probation Officers may enable Chiefs and
Judges the ability to determine which candidates may possess a limited or weak character. Additionally, if as Rest contends, that those possessing a formal education are better able to comprehend moral dilemmas and possess a greater cognitive capacity, then the requirement of a Bachelors degree is also a positive thing.

Chapter Four of this thesis will take a look at what those in prominent and pivotal positions affecting the hiring officers have to say about character, the current method used to screen candidates, and whether we need a character assessment tool or test.
CHAPTER FOUR

INTERVIEWS WITH FEDERAL JUDGES AND OTHERS

In one western U.S. Court District, the current screening process for hiring U.S. Pretrial Services and Probation officers entails several steps and involves various checks, balances and reviews. The first step is to review letters of interest and resumes submitted by prospective officers when an opening is available within the district. A panel made up of officers (line and supervisory) will usually review the resumes looking for obvious factors leading to exclusions of some candidate’s including persons over 37 years of age, (the maximum age of officers due to mandatory retirement age 57), those without a bachelor’s degree, or others without any related experience or an unrelated bachelors degree. The next step is interviewing the prospective officers. In an effort to determine whether the current hiring/screening processes have been effective and to assess views of current stakeholders in regard to implementation of character assessment tools or tests, I conducted seven separate interviews of persons integrally involved in the current hiring process in a one western U. S. Court District. I interviewed a Chief U.S. Pretrial Services Officer, five U.S. Federal Court Judges, and a special agent from the Federal Bureau of Investigation with extensive background in conducting pre-employment background checks on selected officers prior to being appointed and beginning their official duties.
The hope of this chapter was that I could take the collective pulse of these individuals that were interviewed to see if there were support to try to develop and then implement a character assessment tool or test. All of the Judges were asked the same questions in the same order and I made it a point to interview Judges appointed by U.S. Presidents of both major political parties.

I also hoped to get additional comments from the Judges by allowing ample time between questions for them to respond. Several of the Judges did elaborate on their answers to certain questions and what followed, was helpful information into their views and potential support or concerns about the development of a pre-employment assessment tool or test.

Both the Chief U.S. Pretrial Services Officer and the special agent from the F.B.I. also provided additional comments during the interview process. Overall, the goal of eliciting additional comments and ideas regarding tests and assessments from the people already involved in the process was very successful and something to build on for the future.

Interview Results:

The Chief Pretrial Services Officer was told that the purpose of the interview was to discuss a graduate study that I was conducting involving selection criteria for hiring United States Pretrial Services and Probation officers. He was told that the results of the interview would be used in my graduate thesis and that his identity would be kept confidential. I taped the conversation with the Chief’s permission to ensure accuracy.

The first thing that the Chief Pretrial services Officer was asked to describe in general terms were what background checks Pretrial Services conducts on new hires, prior
to their appointment. He was also asked to describe what part if any the background investigation involves focusing or addressing character or factors that may indicate a good or bad character. The Chief's response was as follows:

Well the only thing that we would do prior to actually offering them the position is to do a local criminal record. We would also interview about three references that they had provided and we would talk about character with them when we talk to those people. Prior to their appointment of course is when the FBI background is completed and I understand you met with the F.B.I. today so you know what it is they look at. I'm not so sure how much they touch upon character. I read their reports and I see standard questions asked and I don't know how much that really delves into character. However, it may hit on it somewhat.

The second thing that the Chief Pretrial services Officer was asked was what sorts of "red flags" or warnings had he seen in the past that caused him to think that this person may have an issue with honesty or integrity, or some type of character attribute? The Chief's response was as follows:

Well it's probably more in the interview itself when we ask certain questions about how they would handle certain situations. I ask them to describe their traits and actually our interviews are based on trying to get to the character of the person, it really doesn't have to do with job experience or anything else because that's not what's important to us at that point. What is important is learning who this person is and what their all about. We do this by selecting the questions so we can hopefully solicit the right responses from people and not what they think you want to hear. That is hard sometimes because people are very cautious. But people also like to talk about themselves and I think they like to say how they feel and sometimes you can get them to be honest when they may not really want to be honest. I think there are keys to that.

The third question that the Chief Pretrial Services Officer was asked was, how much weight or validity would he put on the issues regarding a person's character that come up in the interview? Meaning things that he might not feel comfortable with even if all the other factors such as education, background and references looked good and seemed to add up; how much weight would he then place on his gut feeling or reaction?
The Chief's response was as follows:

Well I think a lot of weight is put on that Michael. You could be the best educated person in the world and if you don’t have the right character, you just won’t perform well and you are going to create a lot of personnel problems. That person could also bring embarrassment to the organization. So I would then put a lot of stock in that. Character probably would be, particularly for this job, very high on the list.

The fourth question that the Chief Pretrial Services Officer was asked was if he thought that in addition to the tools that we already have, it would be helpful if a preemployment character assessment tool or test was developed? Is that something that you would find helpful? The Chief Pretrial Services Officer responded as follows:

Well we have looked at that, when we used the profiles company that I think you were involved with. They have something like that I believe that they say can measure honesty and character and we lost sight of that because we hadn’t been involved in the hiring process for quite awhile. I think it would be helpful if it had some good validity to it. They claim that theirs did. That is something that we ought to take a look at. It would probably be good to give all applicant’s an MMPI before their hired. But I understand that the Administrative Office in Washington D.C. frowns upon doing any kind of psychological testing. I think it would be very helpful because I don’t think people are entirely honest with us when they come in for the interview, they just want the job. Most recently we found as you know, people who right up to the time that we are ready to submit their name for the F.B.I. background check are still not honest with us and then we find out things that cause us to withdraw the job offer because you know that their not going to pass the F.B.I. background investigation. There are a lot of things that indicate possible problems, we have had people that have had financial problems. We have found that people with financial problems have historically carried them onto the job and have then had other problems too. So financial problems are a “red flag” too. One person in particular had an outstanding student loan that turned into other problems later on. There are indicators that you’ve got to look at and I think that they really do hold up.

There was also an interview conducted with a special agent from the F.B.I. who was also told that the purpose of the interview was to discuss a graduate study I was conducting involving selection criteria for hiring Pretrial Services and Probation officers.
She was also told that the results of the interview would be used in my graduate thesis and her identity would be kept confidential. I also tape recorded the conversation with the agent’s permission to ensure accuracy.

The first thing that I asked the special agent was to describe in general terms what an F.B.I. background check entails and if possible to describe what part, if any, of the background investigation, focuses on evaluating the person's character or factors that indicate a good or bad character. The special agent responded as follows:

We do two specific different background investigations. The initial one is to determine whether the person has the appropriate suitability, background and that they haven’t been convicted of any felonies or done anything that makes them fall outside our baseline criteria. Assuming they get through that, we do the long background it's about a fifteen page background investigation we do an extensive background on Pretrial Services or Probations Officers but it is just a little bit less than if you were applying for the FBI and not quite as involved.

The second question posed to the special agent was a follow-up question. I asked her to comment on the first investigation dealing with the criminal record investigation, specifically I asked what kinds of things exclude a person from being hired? She responded as follows:

Basically any felony conviction and any conviction involving abuse of cohabitators or spouses or any domestic violence. These days we look closely at drug use whether it’s drug use that they’ve been convicted of or not. We are very particular in that there are very set guidelines. A person may have experimented with marijuana up to and including 15 times in their past but not have used more than 15 times and they cannot have used marijuana at all during the past 3 years. The same goes with hard narcotics they can have experimented no more than 5 times and it may not have been at all in the last 10 years. It is real specific and if the person falls outside those guidelines, then there is no recourse and they would not be deemed suitable for employment. Once the person has gone this far the investigation goes into every place they have ever lived, every job they have had, every school attended, interviews with all their neighbors and friends.
The third question posed to the special agent was, what sorts of things do you ask that would go towards trying to establish whether that person is as person of honesty or integrity? Do you ask only general questions? She responded in the following way:

We ask questions about their character, about reliability, honesty, friends and associates. We ask questions about their loyalty to the United States. We ask the same set of questions with everybody including former employers. We have to know all about their background and a person could be disqualified on the basis of character.

The fourth question asked of the special agent was, what are some of the “red flags” that would signal you as an agent during the course of the investigation that there were potential problems in the area of character? She responded as follows:

If we get one person saying that there might be an issue with your honesty or integrity or the people that you hang around with, or your social activities or something like that, we might not be alarmed. However, if we get two totally different folks saying it, then were inclined to pay a little more attention to it. If we had three or more people saying this person might have some issues that we need to look into then we start really looking into it further.

A follow up question was asked. I asked her what did “really looking into it” entail?

It depends on the issue. If we get people saying that this person is just not honest, then we go back and reinterview them and say “what exactly do you mean saying he is not honest, do you mean he’s a thief, does he tell lies? Give us specifics.” Because if were going to tell this guy he can’t have a job, and if he ever comes back under the freedom of information act, there needs to be a specific reason why he didn’t get the job. We then have to be able to document all that. While all of that is going on, we have the person come in for what is called a personal integrity interview. This is a list of questions that covers basically the integrity kind of issues and when they sit down with us for this interview, were kind of the court of last resort.
The standard questions that go right toward integrity are as follows:

1. Have you ever abused prescription drugs or alcohol in the past or are you doing so now?

2. Have you ever used illegal controlled substances?

3. Have you ever participated in drug/alcohol counseling/rehabilitation in the past or are you doing so now?

4. Have you ever or are you now participating in professional psychological or psychiatric counseling?

5. Do you have any personal or business related credit problems? These could include repossessions, collections, delinquent student loans, bankruptcies etc.

6. Are you presently involved in a civil suit as a plaintiff or defendant including divorce?

7. Are you presently involved in a criminal matter as a suspect or defendant?

8. Have you ever been arrested or convicted?

9. Have you ever been denied employment or dismissed for cause?

10. Is there anything in your personal life which would cause problems that maybe used to coerce you?

11. Have you ever been the subject of any professional complaint or non-judicial disciplinary action including bar association, better business bureau, EEO, student or military discipline?

12. Are you presently involved in any business and or investments which may be construed as a conflict of interest?

13. Are you a member of an organization that restricts membership on the basis of race, sex, religion or national origin?

14. Have you ever used a false identification?

15. Are you current on all taxes?

We explain to them that they need to be honest with us in answering all of these questions. We let them know that if they choose not to be honest with us, and we
I have questions that we don’t feel that they are answering honestly they’ll walk out of this room and down to the polygraph room. So if they have any issues that their not coming clean on here before they go to the polygraph, we will go down and meet with the polygraph examiner and say, everything is clean except down on these two issues and we want you to ask some specific questions because we didn’t get the answers we needed.

The fifth question was also a follow-up question and I asked the agent, when it gets to that point, have you had people who then come clean?

Generally if it takes a polygraph or the threat of the polygraph to force an honest answer out of them, then were not going to recommend or take that person any further. We would say in your situation to the Judge or Chief, we’ve sat down with this person and we have interviewed them and told them, “if you don’t tell the truth in this interview and don’t come 100% clean, with anything that might be in your background, then at that time we’re going to consider it a lack of integrity. We’re going to consider that you’re lying to us and that you don’t want this job very badly. If it comes down to that you’re not going to get the job, because this is your chance, if there is anything that we need to know tell me here and now. I’ve had folks call me up 30 minutes after they leave and say that they should have told me something but they didn’t and then tell me something. At that point I am stuck, there is nothing I can do about it. They have to tell me here and now and if it’s something we can resolve and they’ve told me and then fine, we resolve it. It’s not going to be that big of an issue.

The sixth question asked the agent was if she felt that a pre-employment, character related, assessment test or tool, would be valuable in addition to what the FBI does for hiring U.S. Pretrial Services or Probation Officers. Why or why not? She responded in the following way:

I do think it would be very valuable. In regards to new FBI special agents, in the very first test there is a four hour section or examine that tests everything from cognitive development to problem solving to your personal background questions that nobody can answer right except you. It’s a personality profile if you will. You know there are not many agencies using this type of testing in law enforcement. For example there was a law enforcement recruiting retention conference held here in September of this year and I spoke at it regarding the integrity section of the new agent exam and also the integrity questions that I provided for you. I asked the 1100 agency representatives at the conference how many used any type of an
integrity interview for the hiring process and only a dozen hands were raised. So there definitely is a need for some type of integrity/character test used in the hiring process.

Responses from Judges:

The following interviews of the U.S. District Court Judges were conducted by selecting five Judges. One Judge was a visiting Judge from another western district and was appointed to the bench by President Ronald Reagan. Two of the other remaining Judges interviewed were also Reagan appointees. The last two Judges interviewed were President Bill Clinton appointees.

One of the Ronald Reagan appointees was asked in question number one, what factors or traits would you take into account in evaluating applicants for U.S. Pretrial Services or Probation Officers? He responded in the following manner:

I would start with honesty. Predictably honest in everything. I would obviously consider intelligence. Common sense is also very important. Dependable, if a person says they will do something they should do it. Fairness is absolutely essential. Appearance is important, whether someone is neat and tidy in dress. Someone that communicates well in both written and spoken form is very important. I have also thought that someone who lives their life in a respectable manner away from the court and with their family as well and sustains and upholds responsibilities is important. I think it’s extremely important that a person be capable of acting financially responsible to pay and meet their financial obligations.

The second question that the U.S. District Judge was asked was, which of the following factors would you take into account in evaluating applicants for positions of U.S. Pretrial Services or Probation Officers: education, previous experience, evidence of good character, or previous arrest record? Other factors not listed?

He responded in the following manner:
All of those you mentioned I would just assume that we would incorporate into hiring potential officers. When I spoke of intelligence previously, I’m referring to those capable of completing college. However, I have grown to have the opinion that it does not mean someone must come from some of the more well known schools such as Harvard, or Yale as they do not necessarily produce the most qualified or capable attorney’s.

The third question that the U.S. District Judge was asked was, what kinds of things would indicate a good character? He responded in the following manner:

Some of the things that I have already said such as dependability and the absence of a police background are very important. That is not to say that in an extraordinary circumstances we could not consider someone with a police record, but it certainly would make it very difficult. The person with a previous record would certainly be suspect as to whether they would be hired or not. Someone’s behavior in their home life is vital, as well family fidelity, and their credit record. Past behavior in school involving honesty issues is important. This would indicate if their word is reliable or not. A composite of all of these factors is essential and related to character.

The fourth question that the U.S. District Judge was asked was, what is the most important of the factors you have chosen. What is the second, third and so forth down to the least important? He responded in the following manner:

1) Reliability 2) Honesty 3) Fidelity in home.

The fifth question that the U.S. District Judge was asked was, what sorts of evidence or indicators could be brought forward to count as helpful for each of those factors?

Performance versus promise. Fulfilling obligations is really the test of how someone performs. There are natural skills that some people possess higher degrees of than others. These higher levels or skills enable some to deal more effectively with people. That is very important.
The sixth question that the U.S. District Judge was asked was, do you feel that a pre-employment character assessment tool or test would be of benefit in the hiring of U.S. Pretrial Services or Probation Officers? Why or why not? He responded in the following manner:

Yes. Prior experience is very helpful, but it depends on who administers the assessment test and what the assessment is based on. Again, prior experience is helpful, but I've also seen officers with very little so called actual experience who work hard and can naturally do well in the profession. Sometimes they can perform better than officers with a lot of previous experience.

The seventh question that the U.S. District Judge was asked was, if you feel that a pre-employment character assessment tool or test would be of use, to what extent should the results be weighted or factored compared to the other considerations and the evidence for them? He responded as follows:

I think it would be useful and helpful, but it could not replace the opportunity to make a personal assessment. Testing prior observations of officers would not be more important than the other factors that we already use. I would use it if it were available, but it would not be the most important factor. I feel that we have a good group of officers in the district right now.

Another U.S. District Court Judge appointed by President Bill Clinton said in regard to the same question number one: What factors or traits would you take into account in evaluating applicants for U.S. Pretrial Services or Probation Officers? He responded as follows:

The first would be training and that process including training in the criminal process and the judicial process with respect to that. I think the general factors are character including honesty, integrity are so important since they will be dealing with people who must learn to have confidence in them. I think their own conduct needs to be above reproach so that their assessments and evaluations are not clouded by personal conduct that may interfere with their ability to be objective and fair regarding the people that they are assessing. I think they need to have in
addition, people skills and the ability to communicate well and listen well, so essentially communicative skills would be very important.

The second question this U.S. District Court Judges was asked was, which of the following factors would you take into account in evaluating applicants for positions of U.S. Pretrial Services or Probation Officers: education, previous experience, evidence of good character, or previous arrest record? Other factors not listed? His response to the question was the following:

I think the factors I mentioned above would be incorporated in those you just mentioned, although maybe not all of them.

The third question this U.S. District Court Judges was asked was, what kinds of things would indicate a good character? His response was the following:

Honesty obviously does, trustworthiness, dependability, loyalty, civility and empathy. I'm trying to think of others among the myriad of character traits, I think a person's personal, I'm not sure how to describe this, but if you have a person for example who himself has a difficult time avoiding excessive use of alcohol, might make it difficult for them to evaluate or monitor others who do. Obvious they can't use illegal drugs, so I think all that plays a part. So I guess their own self control is maybe what the word is I was looking for.

The fourth question this U.S. District Court Judges was asked was, what is the most important of the factors you have chosen. What is the second, third and so forth down to the least important?

His response was:

I think honesty and trustworthiness probably are paramount. Self control would come up very high as well. I'm not sure of all the others I could be one in front of the other as the are all equally important.
The fifth question this U.S. District Court Judges was asked was, what sorts of evidence or indicators could be brought forward to count as helpful for each of those factors? His response was:

Well obviously arrest records give you some indication. I also think any evidence of activities they had like past work experience for example and their involvement in service oriented activities where they are performing or doing things for other people. I think that would include those activities that they are not compensated as well as those thing that they might be paid for. Their associations I think, meaning the kinds of groups and organizations that they have worked with and the things that they have done within he organizations seems to me would reflect on whether or not they are able to communicate with and relate to and work with people and serve people. It seems to me that these professions primarily provide a service, although sometimes the recipients of the service feel as if it’s more of a control, but it really is more of a service. I think anything that people have done or anything about their personal life that would reflect that, any accomplishments they have made, or anything that evidences their relationship with people that the are responsible for or close to is important.

The sixth question this U.S. District Court Judges was asked was, do you feel that a pre-employment character assessment tool or test would be of benefit in the hiring of U.S. Pretrial Services or Probation Officers? Why or why not? His response was:

I think it would be difficult if not impossible to establish a test, because the criteria it seems to me and the evidence of that criteria, is going to be almost individualistic and it almost has to be. I mean there are areas, perhaps checklists of things that need to be pursued, but it seems to me that a test that might be accurately reflective of one person’s abilities and character, would not necessarily accurately gauge someone else’s. Ultimately I think it’s going to be a subjective evaluation by whomever is doing the evaluating. So I think there are criteria that could be established, but I don’t think a test could be established. There is another aspect of it that I think would be very difficult to put quantitative levels on different aspects of character to the extent that one person may excel in one area and subjectively may not score high in another area where another person may have strengths in other areas. When you put it all together it may work ok, but trying to score that or put a quantitative score on a certain character I think it would be too subjective to reflect reality. I don’t know how else to describe that.
The seventh question this U.S. District Court Judges was asked was, if you feel that a pre-employment character assessment tool or test would be of use, to what extent should the results be weighted or factored compared to the other considerations and the evidence for them? His response was:

I don’t know that it should be given an objective weighted score, although I think it could be considered. But I think it is something that is by its nature, when it comes to character traits very subjective and could be very erroneous depending how the tests were done. It seems it would be sort of like a poll if you will, it depends on the question you ask as to how well or how they answer the question when you try to score it. I think it is much easier and more practical for a person to do an assessment in the interview to make an assessment because it’s the sort of thing you talk about in generalities and ranges rather than specific criteria.

Another Ronald Reagan appointee said in regard to the same question one: What factors or traits would you take into account in evaluating applicants for U.S. Pretrial Services or Probation Officers?

The absolute primary one would be integrity, when you talk about ethics it is essential that we have anyone involved in our court system whether its a Judge, attorney, Pretrial Services or Probation officer, law clerk, clerk of court, you name it. These are people who need to be ethical persons of integrity and honesty. You will compromise the system if you ever have anybody who breeches the public trust. A Pretrial Services or Probation Officer is a representative of the Court. We talk loosely about the court family, but its truly a court family and not in a pejorative sense at all, but in the best sense that I can think of as an organization. We have a tremendous responsibility to the public and how we appear and act is import I think and so that I think is fundamental then of course you want the training the skills and the educational background that the individual presents there. Their educational work experience, what do they bring to the position of the Pretrial Services Officer or a subgroup within Pretrial when we would talk about someone with previous experience with something like drug counseling, or some other subgroup then same would be said of Probation. Some might be better presentence report writers than supervising officers. There are many similarities between Probation Officers and Pretrial Services Officers, in fact over the years there has been so much cross pollenization where you’ve got someone who was a Pretrial Services officers becoming a Probation Officer and vice a versus and with the federal system, over the years, (and this a been a subject of a fair amount of debate to my knowledge) issues of whether Pretrial should be absorbed within the federal system.
Probation Offices and I think not. I’ve always taken the position that they should be separate. Most Probation Officers would say that when they promulgated these sentencing guidelines that put us into a more adversarial with those we supervise because we’ve had to ding them in terms of writing the reports in terms of these assessments, I think that it then might be compounded if you’ve also got people in the same agency doing pretrial work. They are distinct functions one prior to trial and conviction compared to post trial, post conviction supervision and so forth. I think there can be a sharing of skills, and resources, certain things like drug testing or other things administratively, but I think they should be separate offices. Those are the fundamental qualities and of course there has to be commitment. How do you discern someone who is really committed to public service, because what we do is public service in all phases of what we do in the courts. I think we have to have a commitment to that because most anybody who is skilled enough, educated enough, to really do a very fine job as a pretrial services, probation officer, or federal judge or lawyer that works for the courts could probably make more money doing other things else where. So it definitely takes a certain commitment.

The second question asked this Ronald Reagan appointed U.S. District Court Judge, was, which of the following factors would you take into account in evaluating applicants for positions of U.S. Pretrial Services or Probation Officers: education, previous experience, evidence of good character, or previous arrest record? Other factors not listed? His response was:

All of them. However I didn’t touch upon previous arrest record. I certainly would be concerned about that unless were talking about something truly minor many years ago like a juvenile type of thing. I’m not saying that the fact that someone was ever arrested should completely bar them, oddly enough it might have been the turning point in their lives that motivated them to get into that type of work in the first place and gave them some understanding. But you want to be careful when you look at their references that they have, where they have worked before, have they had problems getting along with people, you have to get along with the folks that you work with. Have they had some other lapses that are of concern; if your given keys to a car, or a government credit card or access to things. You also have access to information, you have access to information that even I don’t have as a United States District Judge. I don’t have a computer that taps into the national criminal records. You are privy to things that I’m not privy to, nor do I need to be, or should I be particularly if I’m going to sit impartially in judgment in a case. People who are in position of trust such as Pretrial Services and Probation can also abuse those positions of trust, it could be something as common as an abuse of travel vouchers or over use of cell phones, you could pick a subject. There was one Probation Officer many years ago that was playing with his gun and
discharged it upstairs in the Foley Federal Building, that was not a good thing particularly when I as a U.S. magistrate Judge was right next door.

The third question asked this Ronald Reagan appointed U.S. Judge, was, what kinds of things would indicate a good character? His response was:

Your history obviously. If you’ve had a record of problems on the job or an arrest record then that clearly would reflect adversely on your character. Background checks in terms of things that are so frequently done with regard to federal employees, associations, history of drug or alcohol abuse things of that sort. Those things demonstrate character flaws. None of us are completely beyond reproach and none of us have not made a mistake at some time in our life, but there may be people who have made a mistake and haven’t learned from it. If a dog bites you once it’s the dog’s fault, if the dog bites you twice it’s your fault so to speak. I think that probably the clearest understanding and I certainly wouldn’t adhere to some sort of litmus test, it’s individual analysis that whoever is doing the hiring has to make of the people that he’s considering hiring.

The fourth question asked this Ronald Reagan appointed U.S. Judge, was, what is the most important of the factors you have chosen. What is the second, third and so forth down to the least important? His response was:

Character/integrity would be one and then two would be the proficiency as best as you can discern it predicated upon the education and then the work experience the person has. Also put with that the ability to work with others as well. Then I’d include the commitment to work in public service. You could be all of the above, but if you didn’t have a commitment and real desire and interest to do it then I think it can be too easy to get disillusioned or frustrated and sidetracked and then if there are any character weaknesses there going to come to the fore. If it’s important to you and this is what you want to do and you’ve decided, I mean I’ve dedicated my life to being a Judge, this is what I’m going to do. I made a choice long time ago that I wasn’t going to go out and try to make three times the money, as I perhaps could, maybe not, but this is what I want to do and there are reasons that I wanted to do it and I think that people make those kind of important life choices. Those would then be the factors. It’s kind of hard to say one is over the other but the first would definitely be integrity/character.
The fifth question asked this Ronald Reagan appointed U.S. Judge, was, what sorts of evidence or indicators could be brought forward to count as helpful for each of those factors? His response was:

The interview process obviously would be a starting point. Other things would be like the resume and checking with their references and talking to people is essential. I think it’s nice to get a glowing letter of reference, that say’s a lot, but you and I know that oftentimes people that pen those things don’t often live up to what was said on the paper. Certainly if you know who it is that’s making the letter of recommendation that counts for a lot you’ve got a good assessment of that person. There may be in certain areas that I’m really not conversant with testing as well. Particularly if your talking about something that requires technical expertise. Does this person really know how to operate machinery or something that they really need to know, do they have the technical skills to test for this or do that.

The sixth question asked this Ronald Reagan appointed U.S. Judge, was, do you feel that a pre-employment character assessment tool or test would be of benefit in the hiring of U.S. Pretrial Services or Probation Officers? Why or why not?

Would that be like the MMPI or that sort of thing is that what you mean?

I responded to the Judge and said that there are actual two tests out there that are being used. One is called the Defining Issues 2 Test out of University of Minnesota dealing generally with someone’s ability to say how they would deal with and act in a ethically sensitive scenario or dilemma and then the Critical Incident Test out of Utah Valley State College. They have a test that incorporates viewing video segments of ethical dilemmas based on movie etc and then having the person state what the ethical dilemma is and how they would deal with that. The Judge responded:

I like the sound of that, I’ve not seen those but they sound intriguing. I’m not personally familiar nor have I had any experience with that. However as a lawyer there is in the bar exam included in that now an ethical section. It used to be that when I took the bar there was an ethical question, but now it’s an entire test if you
will a half day test that gives you a series of hypothetical questions asking how would you deal with them. As a judges were not tested like that but we have a book that literally covers all codes of conduct that also includes a series of advisory opinions that comes form a committee that is staffed by people in Washington D.C. that we can call and discuss situations. This morning I disqualified and recused myself because a former law clerk of mine prosecuted a case for the Department of Justice out of Washington D.C. actually became a witness and I was going to assess credibility with this individual versus the defendant and the defendants’s attorney. I advised counsel that this person worked with me for two years and even if your willing to waive any conflict, I’ve got to tell you candidly, it would never appear that way and internally I feel that if I were confronted with one version and then another version I may accept the version of this person because of the friendship and relationship and no matter if you say that you don’t mind that he worked for me, that not going to be sufficient. Then I cited the newspaper that was given to me a baby judges school when I came to District court fourteen years ago. The chair of the codes of conduct committee said all these rules are great, but I use the newspaper rule, I look at the course of conduct and I ask myself, how would I feel if I read about what I’m doing in tomorrow mornings newspaper? If I am sanguine about it, comfortable about it, then it’s probably ok. If I’ve got a twinge in my gut, don’t do it, it’s just that simple. So I think that we could test somebody if you could objectively get some kind of an assessment with different hypothetical video scenarios etc. I think they would be kind of useful, but I would put a qualifier on that because I am still a believer that when you are hiring someone for a job, I think for most of us the best indicator is just how they feel in that interview process with the person. We can all be snowed, but somebody could pass a test too by saying the right things and how many times do we hear of that and then the person doesn’t pan out.

The seventh question asked this Ronald Reagan appointed U.S. Judge, was, if you feel that a pre-employment character assessment tool or test would be of use, to what extent should the results be weighted or factored compared to the other considerations and the evidence for them? His response was:

If a person failed miserably I would be greatly concerned. But if a person passed it satisfactorily I would have it take precedent over the other considerations and factors.
The first question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, what factors or traits would you take into account in evaluating applicants for U.S. Pretrial Services or Probation Officers? His response was:

Well I would be looking for an individual who was professionally qualified, that had either a degree in some related discipline such as some sort of a social service/science degree or the equivalent experience. Of course they would have to meet whatever minimum standards were required by law. And I’m also looking for, (and this is just as important) somebody who is highly motivated and somebody who is beyond reproach. I guess you might say somebody whose integrity is unimpeachable and seems to really want the job.

The second question posed to the other Ronald Reagan appointed Judge was, which of the following factors would you take into account in evaluating applicants for positions of U.S. Pretrial Services or Probation Officers: education, previous experience, evidence of good character, or previous arrest record? His response was:

I would say all of those. I believe I addressed all of those factors previously. A major factor is motivation, and I don’t know if I said that.

The third question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, what kinds of things would indicate a good character? His response was:

Well I think a good reputation for honesty and truthfulness, somebody who is diligent and has performed well in past employment and school situations. Somebody who has demonstrated the temperament to do the job right rather than cutting corners.

The fourth question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, what is the most important of the factors you have chosen.
What is the second, third and so forth down to the least important?

His response was:

Obviously I think integrity, truthfulness and then honesty are the most important, because it doesn’t matter how competent someone is, it doesn’t matter how capable they are, or even how motivated they are, if they are dishonest, they are going to be a disaster in this type of a job. So I would say integrity is first, honesty second and then competency falls behind it.

The fifth question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, what sorts of evidence or indicators could be brought forward to count as helpful for each of those factors? His response was:

I think speaking with past people that they have worked with is important. For an important position I look to their past performance and I don’t just simply rely on letters of recommendation which have a tendency sometimes to be very generic. I will often call references directly and speak to them (of course assuring them of confidentiality) and sometimes in speaking to them, I get a very different flavor then I got from the generic letters of recommendation.

The sixth question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, do you feel that a pre-employment character assessment tool or test would be of benefit in the hiring of U.S. Pretrial Services or Probation Officers? Why or why not? His response was:

Yes I think so as long as it was fair. I think that an assessment, a pre-hiring assessment doing the kinds of things that could do more than an FBI background investigation would be good. The FBI background investigation is essentially a tool designed to determine whether somebody has a criminal history, or involved in some uncharged criminal misconduct and that sort of that kind. It doesn’t really do a good job in picking up (all though it tries to) the flavor of the person in regards to general traits and it’s very cumbersome and takes a long time. I think then that some sort of an investigation of candidate’s that is focused not so much on the criminal aspect (because that is what we hope the FBI is doing), but rather is focused on the other traits, motivation, honesty, integrity, willingness, enthusiasm and if they show up for work on time, do they dress appropriately for the job, were they a source of harmony and assistance in their previous office or
were they a disturbing factor causing problems with their co-workers. These are the kinds of things that you don’t get in an FBI report.

The seventh question posed to the other Ronald Reagan appointed Judge, (the visiting Judge from another district) was, if you feel that a pre-employment character assessment tool or test would be of use, to what extent should the results be weighted or factored compared to the other considerations and the evidence for them? His response was:

I think it depends on the individual, I would certainly think that if you had a fair process that did a good job and was able to give you a good read on that individual’s past performance and their traits for good character, that it should then be given some substantial weight. I don’t think it should be necessarily the determining factor, because there is always the possibility that something may be explained away. For example a reason I believe it would be helpful if you have somebody that had a pretty good working record, ten years with a state agency let’s say a state probation or parole agency and they wanted to move to the federal system with pretrial services or probation, and they applied and we did some kind of character assessment and the FBI went out and found that this person had done very well all except for their very last position. Let’s say that in that last position there were six or eight people who spoke very harshly against them, and it unfairly weighted their assessment of their character in a very negative way, you would want to be able to have them have a chance to explain, because it might be that the reason that those people were so negative to the candidate is that maybe the candidate had blown the whistle on these people for some misconduct by them and others in the office and that would then be something that we would consider to be a favorable trait. This would indicate the candidate would not tolerate misconduct nonetheless it would cause the former coworkers to think of this person in a very negative way. So you have to be very careful when you just talk to people. This is why the FBI report is not necessarily a good indicator, it’s just kind of an unfiltered repository of random thoughts of people who know the candidate.

The first question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, what factors or traits would you take into account in evaluating applicants for U.S. Pretrial Services or Probation Officers? His response was:

Education would be one, I think that would be an important factor. Probably work experience would be another. I would look for someone who had some training in
criminal law or some experience in that area. Someone who could show a balanced approach to evaluating issues and questions those are important traits. I think that is something that someone working in pretrial services should have. Probably some experience with social issues and someone with a respect for law because we have to deal with law and applying the guidelines. I would not be looking for people who had philosophical axes to grind. This is not a place for people who want to change the world on their own terms. Those would be some of the major areas just off the top of my head.

The second question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, which of the following factors would you take into account in evaluating applicants for positions of U.S. Pretrial Services or Probation Officers: education, previous experience, evidence of good character, or previous arrest record? Other factors not listed? His response was:

I think I would take all of those into consideration.

The third question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, what kinds of things would indicate a good character? His response was:

The absence of a record would certainly be one indicator although having a record does not automatically rule someone out, it depends on what the record is. Certainly if it's for things that reflect moral turpitude those would then have to be very seriously considered. If it's for minor traffic offenses or juvenile offenses then those are areas that would be of less concern. I suppose I would look to employment history to see if they had been dependable. I would call former employers to see if they are honest and faithful to the duties that they had, that they hadn't misused funds or abused sick or other leave policies, that they had given a full days work for a full days pay, that type of approach. That they are industrious and are self motivated and loyal to the employers. Those are areas that would indicate good moral character and without sitting here and spending a whole lot of time I'm not sure how else you would determine moral character other than looking at past conduct.

The fourth question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, what is the most important of the factors you have
chosen. What is the second, third and so forth down to the least important? His response was:

Well I think honesty has to be at the top and that by definition incorporates a lot of the others, giving a full day's work for a full day's pay, that part of honesty to me. Being loyal to your employer is a form of intellectual honesty. The absence of a criminal record also reflects on honesty to some degree, of course the fact that the person hasn't been caught is not dispositive. But even if the person had a minor record, I suppose that would be something (depending on what it was) that you could still overlook and wouldn't reflect on honesty, it would reflect on maybe bad judgment or a youthful mistake or something else. So then honesty is at the top and the other factors would be subfactors of honesty.

The fifth question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, what sorts of evidence or indicators could be brought forward to count as helpful for each of those factors? His response was:

The employment history references of former employers would tell a lot of the story.

The sixth question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, do you feel that a pre-employment character assessment tool or test would be of benefit in the hiring of U.S. Pretrial Services or Probation Officers? Why or why not? His response was:

Depending on what questions were asked, yes.

The seventh question asked the other U.S. District Court Judge appointed by President Bill Clinton appointee was, if you feel that a pre-employment character assessment tool or test would be of use, to what extent should the results be weighted or factored compared to the other considerations and the evidence for them? His response was:
I assume that such a test would include questions or generate information that would be similar to the factors that I have already mentioned, so it could be given a lot of weight. The advantage of having something like that is that the employer, or the person who is interviewing doesn’t have to wing it, they have something that they can look at that can cover a lot of the ground that I have mentioned off the top of my head and much more. That to me is the idea of having something like you are talking about, is that it gives the employer the opportunity to look at that and then think of other follow up questions. I have always looked at employment, I’ve hired a lot of people in private practice and even working for the government in my former judicial position and in spite of all the information you can get on an application, the interviewer is in large part is still winging it, trying to think up questions and to cover things and given the amount of time that a typical interview takes, at least at the initial stage of a half hour, if you have a dozen or more applicants you could eat up the whole day quite easily interviewing. As a judge I found it very difficult to give that much time to a hiring decision, so a half hour to make a decision about hiring someone you are going to be working with for many years is just not enough. Even if you are very good at interviewing and you’ve had a lot of experience you can still miss critical questions that had you asked or had an answer to such questions, you wouldn’t have hired the person and I found that even if you spend that time and are on your toes, you can still miss attitudes, personality traits, and background information that would have been very helpful to have when you make the hiring decision.

Analysis and Conclusion:

In reviewing the responses made by the five Judges regarding question number one, the overwhelming majority, (four out of five Judges), listed integrity and honesty as their most prominent or important factor. The next significant factor or trait garnishing the most support by the Judges was “conduct above reproach”. Other factors listed by more than one of the Judges included: intelligence, financial stability and responsibility, previous experience related to skills needed in the role of Pretrial Services the Probation Officers and both written and verbal communication skills. There were also factors mentioned by at least one of the Judges such as commitment of public service, ability to use a balanced approach to supervision, and an ability to deal with defendants as well as educational and background experience.
When asked about the kinds of things that indicate a good character, the Judges responded in the following manner: three of the five Judges indicated that the absence of a criminal arrest record would be an indicator of someone with a good character. Three of the Judges indicated that dependability was an indicator of a good character. Several Judges also believed that past behavior and involving honesty in school or previous employment would indicate a good character. Other factors included, but were not limited to: temperament to do the job right and not cut corners, lack of a history of drug or alcohol abuse, trustworthiness, loyalty, civility and empathy, industriousness, self-control, self-motivated, and family fidelity.

When asked to rank or weight factors they indicated about a good character the rankings were as follows: honesty and integrity was either first or second for every Judge. There were several other factors with no strong consensus by all the judges and as to how much weight certain factors should have.

When we move to the results of question number four, we begin to see indications to whether the current practices and procedures in place adequately address the character traits sought for by the Judges when evaluating potential new hires. In other words, if the current practices employed deliver the desired outcome, is there then a need to develop a pre-employment character assessment tool or test? Answers to questions two and five, revealed that the majority of the Judges believed that the process of detailed telephone interviews of previous employers or references provided by the potential new hires, were helpful in determining the character traits of the candidates.
One Judge felt that various areas that are routinely covered in the F.B.I. background check, (including past associations with groups or activities previously performed) were good indicators leading to a indication of a persons character traits.

Responses to question number six went straight to the heart of the issue of developing and then implementing a pre-employment character assessment tool or test. The overwhelming majority (four out of five) of the Judges, felt that a character assessment tool or test would be helpful. However, the same majority felt that the weight of the test results should not be any greater than any other factors involved in the decision to hire an individual.

The Chief Pretrial Services Officer also felt the character assessment test would be helpful and indicated that he had considered using something similar to that previously to assist in identifying a person's character, but had previously not done so. It appears that there are steps in place currently in the hiring of U.S. Pretrial Services and Probation Officers that do an adequate job in identifying factors that can be attributed to a person having a good character. These include the F.B.I. background check, that according to the F.B.I. special agent interviewed, incorporates extensive criminal background checks and interviews of previous employers, friends, family members, and associates, as well a “personal integrity” interview. The special agent also identified the fifteen questions regarding integrity that are asked by the special agent while conducting the personal interview of the perspective Pretrial Services or Probation Officer. According to the agent, those questions go directly to the heart of integrity and a person’s susceptibility to bribes or potential flaws in their character that could be exploited at a later time. The special agent also revealed that she felt that assessment tool would be invaluable with U.S.
Pretrial Services and Probation Officers and unfortunately very few law-enforcement agencies across the spectrum are conducting character or integrity tests or assessments before hiring officers.

In the overall analysis of the responses by all persons interviewed, it appears that the current processes are working in assisting the court in finding qualified, capable, and able persons, who demonstrated behaviors and possess good characters. However, the majority of those interviewed also felt the character assessment tool were test would provide additional help and assist in hiring persons of high characters.
CHAPTER FIVE

WHERE DO WE GO FROM HERE?

It is time to put all these ideas expressed in the previous four chapters into some sort of prescriptive use that becomes applicable towards the idea of instituting the use of character assessments in the hiring of U.S. Pretrial Services and Probation Officers. In Chapter One, human flourishing was addressed. As the chapter found, not everyone has the same idea of what it means to flourish. Many people have a flawed, or less than virtuous character. These individuals can do irreparable harm to the Judiciary both within the context of their professional behaviors and actions, but also within their own behaviors in private life. The actions and behaviors of individual officers outside of work is very important, as we have seen in the media recently and historically, when a public servant (who is given his authority and status by the public themselves) violates or misuses his/her power through unsavory, unethical, or even illegal behaviors, this can tarnish the entire organization. Therefore, as stated in Chapter One, it is vital that a person possess a good character, especially within the U.S. Pretrial Services and Probation Offices and that they cultivate and live a good life, have a good reputation and continue to strive for and cultivate professional and individual integrity. It is paramount for those officers to maintain a virtuous life and take control and responsibility for all of their actions.
Chapter One also spoke of the importance of a person possessing a moral character that is consistent and of the highest level. This moral disposition is so important, because the very laws and conditions and behaviors the officers require the defendants and offenders to follow are based on values and ideals at which the officers themselves must be able to excel, in order to be effective officers. In other words, the moral character, and the right or good actions or behaviors displayed by a person with good character, constitute the essence of *eudaimonia*. The main value of Chapter One then becomes a working understanding of what it means morally to flourish and how that is applied to the federal supervision profession.

The key component of a good character and of the application of virtuous traits is the ability to enact these traits at the right time and in the right manner, etc. There is always a huge possibility of persons with power, to use it in a less than virtuous manner to control or manipulate others wrongly. Therefore, Chapter Two explained why it is so important that a person not only have a good character, but that they have the ability to use it correctly and completely.

Chapter Two also discusses moral judgment and perception. The ability to perceive correctly and completely is vital in the capacity of a federal supervision and court officer. The most important reason for valuing the ability to rightly judge and perceive a situation is that officers can then, in effect, determine to a great manner some other person’s life and liberty. Due to this immense amount of leverage and control over someone else’s life, it is essential that officers possess and then fully utilize the ability to perceive and judge wisely in a myriad of circumstances. The main reason for asking the question in my thesis, ‘should character assessment tests be used in the hiring of U.S.
Pretrial Services and Probation officers?—is that persons may be selected as officers whose moral perception is seriously flawed. I have seen in my brief career, a handful of officers who appear to be lacking in the ability to effectively view challenging situations with morally right perception or moral discrimination. These officers appear to be able to follow rules and procedures, but lack an ability to use or possess moral awareness or empathetic capacities. In Chapter Two, I include that we need to emphasize the relevance, importance and necessity of officers to judge and perceive well in morally relevant situations.

There is an extremely good reason why a person who does not possess a good, strong character would be dangerous and could cause damage to the judicial system. That reason is that a person who acts with moral indifference, or harmfully, would be a grave liability to the overall mission of the courts. As discussed in Chapter Two, one criticism of the precept or rule-based theories of ethics is that for the person subscribing to those theories, it is not the agent’s moral capacity that drives him into action, but obedience to a rule. But this rule-centered behavior can be full of the possibility for problems in the supervision profession. Oftentimes, there are situations that could require an officer to use and display good, sound, moral perception and judgment and then move into action. These situations are often outside the scope or bounds of familiar rules, policies or procedures. They must be acted upon at that exact time when they are noticed or when they present themselves. An example would be if an officer in the cause of conducting routine field supervision work were to come upon an injustice occurring, such as a domestic dispute. Suppose that the officer was visiting someone on his/her case load in the same apartment complex in which an obvious domestic battery incident was occurring.
An officer that did not have an ability to perceive or judge a challenging situation may simply believe that the actions of the persons involved in the dispute, (unless they were under his direct supervision), were of no consequence and that there would be no reason or obligation to get involved. On the other hand, a morally good agent who can perceive and judge situations with moral wisdom, would be able to see that there was an injustice (the abuse) being committed, and to realize that the morally right thing to do is to intervene. He or she would also realize that the injustice could be prevented by him or her and they would act appropriately by getting local law-enforcement to assist. The point is that it is very important that officers possess good moral perception, reasoning and judgment and that these qualities matter to the overall effectiveness, professionalism and quality of the Judiciary.

Chapter Three detailed the essence of character and how it is formed and habituated. Character is vital to selecting officers that will display the highest level of virtuous behaviors and a capacity for good reasoning that will effectively and completely represent the court and the laws of the land. The strength of the laws and the judicial system rests on the foundation of its front-line employees. Chapter Three also discussed the limitations of the DIT and the DIT-2 tests and their lack of any consideration of moral perception as being of importance to the person making right moral judgments. The DIT by the admission of Professor Rest, is not designed to gauge or assess a person’s face to face or everyday dealings and contact with people.

Where do we go from here? In Chapter Four I asked seven questions that went right to the heart of this question and came away with a sensible answer. The answer is that the current processes for hiring people of good character are working. However, all
but one of the five U.S. District Court Judges interviewed agreed that if an assessment
tool or test that would give an indication of a candidate’s level of character could be
developed, they would welcome and use it. They stated that they would use this
assessment tool or test along with the other things that are already in place as an additional
tool. They believed that using an assessment tool or test along with the other factors
would enable them to select the person’s best suited to work in the capacity of U.S.
Pretrial Services and Probation Officers.

Objections:

In an effort to be fair to critics of character tests in general, or those who feel that
what is currently available is adequate, I will present some possible objections and
suggestions. The first objection of critics may not be a resistance to the development of a
character assessment tool, but rather limiting use of that assessment tool to U.S. Pretrial
Services and Probation Officers. One may think that just about every profession would
benefit from a character test, and the question is then, why just address the U.S. Pretrial
Services and Probation Officer? Granted, the possession of good character and practical
wisdom would be important in many fields such as teaching, nursing, business and many
more. However, very few professionals have the level of control and authority granted to
them as do Pretrial Services and Probation Officers. It is that control and ability to place
severe restrictions on someone, including the ability to take another’s freedom away
through recommendations of detention, that first and foremost warrants the
implementation of character assessments for Pretrial Services and Probation Officers.
While in an idealistic sense it would be nice to have everyone take a character test, it seems to me that there is a greater need for federal officers due to the uniqueness of the control and power that they wield through the authority granted to them by the Court.

A second objection or concern may be, ‘why are the DIT and DIT-2 and CIT tests not useful?’ It appears that if one were testing a level of ethical sensitivity regarding ethical situations in accord with Kohlberg’s six stages of moral development, then the DIT and DIT-2 tests may be useful. Professor Rest believes that the tests reveal a person’s moral comprehension, moral judgment and prosocial behaviors. (Rest, pp. 101-102) He believes that the tests assess what the test subject considers as possible actions in the given situations, as well as interpreting a moral dilemma and how varying actions could impact the participants in the stories. Interestingly enough, although Rest alludes to research studies dealing with moral sensitivity being improved through education and that there are studies that show a modest correlation of moral sensitivity with moral judgment, he states that this discussion is beyond the focus and scope of his book.

Another objection or concern may be, do the DIT and DIT-2 tests correlate to anything concrete leading to future behaviors? Rest states that the prosocial behaviors he mentions are such things as professional decision making and job performance. The professions Professor Rest specifically mentions are nurses, teachers, and auditors. Rest believes that there are links of high P-scores on the DIT and DIT-2 tests to nurses’ clinical performance ratings, school teachers’ perceptions of classroom discipline, and auditor’s detection of fraudulent reports. Rest claims that there are many studies that show a statistical link of high P-scores to good behavioral outcomes.
So, do high scores predict future behaviors? The answer is puzzling. Rest says the following:

...we are not subscribing to the notion that judgment is to be validated by "predictive validity"... We do not intend that kind of use for the DIT by looking for its correlation with job performance. We think the relations of moral judgment with behavior are complex and determined by many variables. Rather, the issue is whether or not that researcher's interpretations of another person's cognitions are valid at all when those interpretations have no relation to anything at all. (Rest, p.81)

In other words, there are real difficulties and no one has tried to handle them, as yet, so the next phase I believe would be to work on an assessment tool that does this as the DIT and DIT-2 do not appear to do so.

Can the CIT offer anything more than the DIT and DIT-2 tests? It appears that although there is promising work being conducted at Utah Valley State College with the CIT test, that the test may also have limits in what it can deliver in the way of predicting or correlation of a high score with future behavior. The test appears to have elements that are helpful, but may not fully deliver as a complete tool. Students are asked in steps one and two of the test, to identify the thesis statement and ethical problems. This step appears useful as the students are required to analyze and reason what ethical concerns or dilemmas arise in the specific case. However, it does not appear that they are given additional information either prior to or after reading the selected case scenario that may enable them to present alternative or additional summations or clarifications. The third step of the CIT asks the student to explain his/her personal opinion.

I am puzzled as to what relevance or assistance this personal opinion gives in testing or assessing the person's character or practical wisdom. Step four is also puzzling.
as to what help asking the student to say what philosophers would say about the particular case or scenario provides in gauging the character or practical wisdom of the person taking the test. This step may be helpful in a classroom setting where the teacher may want to assess whether students have in fact read assigned reading and such, but it does not appear to translate into usefulness in the Pretrial Services and Probation Officer’s world.

I also have concerns with how to translate the claim that 90 percent of students taking the CIT at Utah Valley State College show the ability to define and analyze ethical problems? In other words, do 90 percent scores reach above a pass/fail level? If that is so, what is the acceptable level?

Can high test scores on the CIT translate into future behaviors? In all fairness to the CIT it is in its infancy stage and the full picture of validity, applicability and usefulness of the test is unknown at this time. It appears that neither the DIT, DIT-2 nor the CIT tests assess or test practical wisdom or its three parts;-perception, deliberation and judgment all stemming from a person’s character.

The major objection to what I have thus far written in this thesis may be that I have only briefly touched on correlation of test scores with future behavior. I have concluded from my research, that there is no test available that defines practical wisdom in operational terms to something that one could be asked to do, or fail to do, with a good percentage of correlation.

Therefore, I propose developing a ‘plan B’, if you will, for use in hiring U.S. Pretrial Services and Probation Officers. What I envision is a test that is a hybrid of the F.A.T.S. simulation machine currently used that would have ethical dilemmas and...
situations (drawn from actual field experiences) instead of shoot/do not shoot scenarios. I also propose contacting other training officers like myself, or Chief Pretrial Services and Probation Officers from districts across the United States and compiling a data base of actual cases that involve issues of practical wisdom or a lack of it. These cases could be developed into a questionnaire that would state the dilemma in a series of incomplete paragraphs, meaning the officer would not be given the entire facts of the case at first. The officer would be asked questions that go to the heart of how they believe they would handle the dilemma with limited knowledge. The questions that the person taking the tests might ask at this stage would be important also, as questions they pose would be a mark of their perception and judgment and would show their ability to see questions raised by the situation and not just reading the case. Then, the officer would be given additional pertinent information that may help them to see the broad picture of the problem. Again, questions would be asked related to their perception and practical wisdom. Finally, the officer would be given the rest of the story including what in reality happened and why the actions or inactions of the officer in the actual case were either right or wrong, practically wise or practically foolish, and why.

I recently tried a similar approach in my district, through the lead of my Chief Pretrial Services Officer. We had a meeting of all senior line-officers and administrative officers in our district. Our Chief read actual scenarios that he had gathered at a national Pretrial Services and Probation Chiefs conference held at San Antonio, Texas in May of 2000. The format used in this experiment in my district was for the Chief to read to the group a portion of the case scenario, (the whole scenario was purposely not provided at this time) and the officers were asked what if anything was wrong (perception), asked to
think about it individually, (deliberation) and finally, were asked for their take or read of the ethical dilemmas or concerns and what if anything should be done and why. The process was then repeated with more of the particularities of the situation unfolded, as well as additional time to assess and deliberate. With the additional information, perceptions changed and some judgments were different also. One thing that came of the experiment was that I observed several officers were focused strictly on precepts or rules and what the Judicial code of conduct had to say about the situation and whether the codes dealt with any specifics of the dilemmas and not if the very nature of the acts or behaviors of those portrayed in the real cases were worrisome.

In conclusion, as there is no standardized assessment tool or test available to test a person’s level of practical wisdom based on Aristotle’s theory and until such a time that one is developed, the best place to start may be to synthesize a scenario-based training tool similar to that mentioned in Chapter Two - tailored to situations requiring the officer to use moral perception, reasoning and judgment in various challenging situations similar to the Critical Incident Techniques test at Utah Valley State College. The Court could use this tool as a pre-employment tool to be used in the hiring of new officers and also to assist in the continued training and evaluation of officers already working. If and when the tool at Utah Valley State College becomes available and the reliability and validity of the testing is completed that indicates a high correlation with good future behaviors, I believe it would be a valuable asset for use by the Court in developing a scenario-type of assessment tool to test an applicant’s practical wisdom and to use in conducting pre-employment testing or assessing and hiring persons of good character. Until that option becomes available, the proposal I have made regarding the use of scenarios in a simulation
setting and questionnaires may prove helpful in pre-employment character assessments for U.S. Pretrial Services and Probation Officers.
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VITA

Graduate College
University of Nevada, Las Vegas

Michael B. Baker

Home Address:
3712 Beacon Point Street
Las Vegas, Nevada 89129

Degrees:
Bachelor of Science, Sociology, 1993
Southern Utah University

Thesis Title: Pre-employment Character Assessments for U.S. Pretrial Services and Probation Officers

Thesis Committee:
Chairperson, Dr. Craig Walton, Ph.D.
Committee Member, Dr. Jerry Simich, Ph.D.
Committee Member, Dr. William Thompson, Ph.D.
Graduate Faculty Representative, Dr. Soonhee Kim, Ph.D.

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