

Public Safety Measures and Crime Prevention: Based on an Interview with U.S. Federal Judge Timothy D. DeGiusti

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ABSTRACT

This article is about public security measures and crime prevention issues, the theoretical basis of the article is the SECURITY MEASURES. the SECURITY MEASURES in the German and Japanese criminal laws refer to some social harmful behaviors, although they have not yet reached the degree of crime, according to the harmful behavior already displayed by the perpetrator, and the PERSONAL DANGER shown by him, or THE ANTISOCIAL BEHAVIOR OF THE PERPETRATOR. It is inferred that the perpetrator is likely to commit crimes in the future. The research content of this article, mainly comes from a senior judge that Timothy D. DeGiusti's in-depth talk with U.S. Federal. Finally, in order to avoid harm to society, that is, from the purpose of PROTECTING SOCIAL SECURITY, the SPECIAL PREVENTION effect can be achieved by taking SECURITY MEASURES against the perpetrators. (Minor hazard behavior of the perpetrator such as minor but repeated traffic offences, juvenile delinquency - bullying or stealing, minor violations in the state of drunkenness and other kinds of behaviors that ignore the rights of others and undermine social order).

Keywords: *security measures, crime prevention, PROTECTING SOCIAL SECURITY, personal danger, public safety*

1. INTRODUCTION

In our judicial practice, we have a jargon to describe some diehard, ALTHOUGH SERIOUS SINS ARE NOT COMMITTED, THE MINOR ERRORS REPEATED; THE COURT IS INCOMPETENT, AND THE POLICE ARE MAD. That means the perpetrator's harmful behavior has not reached the standard of China's CRIMINAL LAW, hovering on the edge of LAW ON PUBLIC SECURITY ADMINISTRATION AND PUNISHMENT (Administrative Law). Even if he was punished by the latter, the fine is only RMB Yuan 200 to 1,000 and the more severe penalty is only detaining for 15 days. These minor penalties are simply not enough to stop their wrongdoings. However, these acts have caused a lot of inconveniences and even brought harm to others. They have also caused damage to the entire social order, if there is no regulation in a timely manner, the crime can progress at any time, thus causing more serious harm. [1] Even if the perpetrators are punished according to the Criminal Law afterwards, it will not achieve the best social effects. For example, it is difficult to make up for the loss of victims (especially their lives lost), repair the damaged social relations, and make people distrust the government and judicial system that are regulating social order and security laws.

Regarding security measures, supporters believe that for the sake of public security, security measures should be enforced upon those who repeatedly displayed harmful

behaviors from the perspective of defending the society and have considerable personal risks, such as compulsory treatment for mentally-ill patients, compulsory detoxification for drug addicts, learning and working schools for problem-teenagers, shelter education for prostitutes, constraint measures for the alcoholics, and prohibition of practitioners in a certain field (otherwise their licenses will be revoked), the confiscation or destruction of illegal articles, and the good behavior margin for repeated harmful actions. [2] The recidivists, whose occupation is committing crimes, additional security observations are done at the same time as the sentence is imposed. The ultimate goal is to find a variety of ways besides the penalty, break through the GUILTY AND PENALTY ACCORDING TO THE LAW restrictions, regulating the social instability, in order to ensure social security and crime prevention as much as possible.

However, the most unacceptable view of the opponents is that they firmly believe it is impossible to break through the ancient principle of GUILTY AND PENALTY ACCORDING TO THE LAW, they are fearful that the flood of state penalty or government power will infringe on people's rights in the name of SOCIAL DEFENSE and SPECIAL PREVENTION. [3]

Therefore, this interview mainly focuses on the theme of SECURITY MEASURES and CRIME PREVENTION, but it is not limited to SECURITY MEASURES in German and Japanese criminal laws. [4] Relevant

SECURITY MEASURES in American justice can also be compared, In order to obtain the relevant theoretical positions and specific judicial measures of the federal courts on this issue. Mr. Gu has provided professional translation and proofreading to ensure the accuracy of the following article.

1. Q: Based on the crime classification in the U.S.A., crime of violating the police - misdemeanor – felony, is there any illegal activity that is difficult to be covered? What are the usual treatments for social harm that are not included in the above-mentioned crime classification? Another situation: Even if the behavior is not allowed by law, but that law is not enough to stop the behavior, what should be done?

A: Of course, but we have some differences, many times depending on the situation, such as dangerous driving, when the plot is very slight, it is not criminal, just wrong behavior; even if it causes general damage results, it is also a crime of negligence; but if drunk driving has reached the legal standards or drove after taking drugs, you will be sent to jail, the blood alcohol content will reach 0.08g/100ml; if it causes serious results, it will be judged as a felony. For example, the DUI (driving under influence) case just happened this morning, a drunk-driving woman led to death of a young college boy, she may be sentenced as a second-degree murder. Therefore, taking drunk driving as an example, either it is not covered by criminal acts, or it is directly imprisoned beyond the limits set by law, and serious consequences are felony.

On the other hand, for some harmful behaviors, as long as the behavior is implemented and completed, usually the perpetrator will have to face some criminal charges. [5] Unless there is no intention behind that behavior, he or she will not be charged. In other words, if it's illegal, don't do it, otherwise it is highly likely to cause some legal consequences. Unless a particular behavior is not regulated by law, otherwise, as long as it is within the scope of legal regulations, there is generally nothing can't be stopped; if it is, then it will be punished with more stringent laws. For example, the court injunction that I mentioned earlier only intends to warn the prohibited party not to exercise certain acts during the prohibition period, once the perpetrator violates the injunction, he sure will have to assume greater liability or even criminal responsibility.

2. Q: What are the legal provisions in the State of Oklahoma and federal laws as well regarding the crimes and dangerous behaviors of mentally-ill patients, especially in the administration of justice? Are there any relevant protective measures to replace punitive measures?

A: To treat people with mental illness, the federal courts in Oklahoma usually put them into three scenarios. Scenario one is those who can prove that they do have a mental illness, that can be used as a reason in their defense, but the court needs to assess it and request for treatment, they can't be freed until fully recovered. Imprisonment is still imposed during rehabilitation, except that such imprisonment is different from the imprisonment of common criminals. For example, the venue can be a medical center, the goal is to provide treatment to them.

What I said here mainly refers to the practice of the federal judicial system, for different states may deal with it differently. Scenario two, criminals who claim to be mentally ill, and have physically committed a criminal act, but there is no criminal motive. The court must also make an assessment first before making any decisions. The third scenario is that the suspect has not only behavioral ability, but also subjective consciousness, and there is no mental illness symptom observed, it still needs to be assessed by the court from the procedural point of view.

For people with mental illness, the best way is to provide medical treatment. In the above three scenarios, first of all, it is necessary to verify whether the suspect has mental illness or not, if not, it is treated the same as other criminals. If there is a mental illness, medical treatment and rehabilitation are carried out at the same time as imprisonment. Note that this type of imprisonment is different from that of normal offenders, is not imprisonment in the sense of punishment, it's rather to help them with medical treatment, on the other hand, it will also effectively confine the suspect and prevent similar conducts from happening again before he or she is fully rehabilitated.

3. Q: For recidivism (persons who repeatedly commit crimes) and professional offenders (career criminals), in addition to being more severe in terms of penalties, is there any other better way to prevent repeated crimes?

A: For detainees, the state court will first conduct a risk assessment after a period of detention. Then according to the risk factor of that detainee, court will decide if the sentence can be reduced or released on parole or continue to be held.

The federal courts do not have such a favorable mechanism. They usually issue severe sentences for recidivists, and if the sentence is 20 years then it is 20 years, there is no release in advance. So, based on this point alone, I can say that the state court's way is probably more humane and reasonable.

However, in terms of final result, the federal justice is much better than that of state-level justice. Although the federal detention period is longer and there is no mechanism such as commutation and parole, the correction mechanism of federal justice is very effective and thorough. For example, a prisoner can not only study, but also obtain a high school diploma (because one of the reasons many people commit crimes is lack of education, they can't find a good job.), and even take some college credit courses, although that won't get them a college degree immediately, the credits will certainly help them to get a college degree after they are released from prison.

In addition, vocational and technical training are provided in federal prisons, those skills can help criminals get a very good job after they are released from prison. For alcohol and drug addicts, they can receive rehab treatment within federal prisons as well.

4. Q: Based on your many years of judicial experience, how can young people who have committed crimes and those who are on the verge of committing crimes be helped and their lives being transformed, and how to prevent the youth from committing crimes?

A: I think there are three things that can usually prevent juvenile crimes. First, education, education is always in the first place. Whether it is school education or family moral education, it will teach our adolescents knowing what's right and what's wrong. Therefore, education must be placed on top of the list, it is an eternal truth!

2. BACKGROUND

Timothy D. DeGiusti is a judge in the U.S. federal court of the Western District of Oklahoma. He was nominated by President George W. Bush on February 15, 2007, confirmed by the Senate on August 3, 2007, and appointed on August 9, 2007. Born in Oklahoma City in 1962, he received a Bachelor of Arts degree from the University of Oklahoma in 1985 and a Juris Doctor degree at the same university in 1988. He served in the U.S. Army National Guard and U.S. Army Reserve from 1981 to 2003. He was a trial lawyer from 1990 to 1993 and was in private practice from 1988 to 2007. From 1998 to 2003, he was an adjunct professor at University of Oklahoma College of Law.

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Mr. Gu Ming: Director of China Affairs, Oklahoma City University and attorney at law in Oklahoma, U.S.A. Mr. Gu Ming, a senior practicing attorney in Oklahoma who has been studying, living and working in the U.S. for 20 years. He is Director of China Affairs at Oklahoma City University. This interview with Judge DeGiusti was made possible by the kind arrangements of Mr. Gu and Professor Eric Laity, former Associate Dean of Academic Affairs of OCU Law. Mr. Gu was kind and helpful enough to be present at the entire interview and acted as an interpreter. Mr. Gu has obtained his MBA and Juris Doctor degree from Oklahoma City University.

3. CONCLUSION

In fact, many problems can be attributed to lack of education, and can also be solved through education. No one is born a BAD CHILD and has grown up to become a criminal naturally, there must be something done wrong at some point of time in their lives.

The second is vocational skills. Not everyone likes to read or write, nor every family's education is perfect, but everyone needs to be able to live independently when they grow up. A legal and stable career can provide them with stable income and pay bills for their daily life, therefore

vocational skills are very important, which will decide whether they will have food on the table, and whether they will become homeless. If someone has a job, the probability of its committing a crime is much smaller.

The third is control of alcohol and drugs. In so many cases, crimes are inseparable from these two things. They can cause people to lose basic judgment and even conscience. When you commit a crime under the influence of alcohol and drugs, it can not be simply forgiven, because it not only harms others, but also ruins yourself. In addition, alcohol dependence and drug addiction can also lead to a variety of other crimes, such as theft, robbery, rape and a series of criminal violations that endanger the whole society and others.

5. Q: It is reported that the United States has resolutely stopped and severely cracked down on campus violence and bullying (both referred to students). What specific measures have been taken in Oklahoma and the federal government in this regard?

A: We firmly say no to campus violence! How do we do it? First of all, the society must step up as a whole to combat against school bullying, the whole society must take actions, never allow the existence of such behavior in any form, and never allow any environment to cultivate such behavior.

Secondly, bullying must be made illegal, and all state and federal laws must include school violence/bullying as illegal acts, just like any other criminal cases. We cannot allow these illegal acts to exist simply because it's happened in schools and students did it.

Thirdly, Article 9 of the federal law stipulates the corresponding appropriation mechanism, campus security is an important indicator for appraisal and assessment. If a school has done a good job, there will be normal appropriation; if they failed the assessment, the school fund will be cut off as a punishment. This also facilitates schools to increase their attention on campus safety and order, as well as student safety education.

The United States used to have a lot of campus violence too, but we worked hard for the past 25 to 30 years to become where we are now. We educated the whole society to realize that this problem can be changed, which is indispensable for the achievements we have made today.

Many times, a person's bad habits, such as not following rules and not respecting others, are formed when they are young. That is pretty much the years before they enter college, especially before the ninth grade. Once they become college students, their characters and habits are more or less set. Therefore, the cultivation of following rules and regulations between ninth grade or twelfth grade is particularly important, which largely determines a person's future personality and even affects one's personal development. In the meantime, the current campus order could represent the future social order. So, from the perspectives of government, school, family and the judiciary, this is an important issue that cannot be ignored, it must be treated seriously. And it is precisely why we have zero tolerance policy for school violence and bullying.

6. Q: How do the federal and Oklahoma state governments effectively control food safety and environmental regulation? If someone violates the law, will it be forbidden to work in related fields again?

A: The United States FDA (Food and Drug Administration) regulations have full force of law, it's very thorough and strict, can bring lawsuits against any offenders.

In terms of environmental protection, there are three forces in the play. First and foremost, because the land and the surrounding environment under its jurisdiction are private properties, and land owners have full rights to possess, use, and enjoy the benefits that come along with its ownership. If their private property is threatened or destroyed, by threatened I mean situations may cause potential risks such as crop pollution or production cuts, land devaluation, etc.; by destroyed I mean actual physical damage, property owner can definitely file a lawsuit to demand compensation from the violator.

Oklahoma is rich in oil, if an oil company pollutes the land or water sources during oil production, the land owner can file a civil lawsuit against that oil company for huge compensation. For example, as early as 1989, Mobil Company was fined \$3.5 billion for polluting the environment. At the same time, there were some public interest litigation filed by private organizations too. Another example, in 2007, the US Power Company was fined by the court for up to 4.6 billion U.S. dollars, that joint lawsuit was jointly filed by nine states, environmental organizations, and the U.S. Environmental Protection Agency. One of the grounds for the lawsuit was that the U.S. Power did not set up purification equipment in accordance with the U.S. Clean Air Act, resulting in a large amount of untreated emissions which formed acid rain, then caused irreparable damage to the Statue of Liberty and Adirondacks.

Lastly, the federal Environmental Protection Agency also performs environmental duties as a regulatory body. But the most effective way is still heavy monetary fine, which is the best way to stop corporations from engaging in harmful business practices for profits.

7. Q: I assume that most people know that China is famous for its liquor culture and has a long history of liquor culture. There are many very unsafe behaviors of drunk driving, which cause great harm and serious threat to the lives of people and property. Almost every city has invested a large number of police force daily in investigating the illegal drunk driving (in our country, the drunk driving of the general plot is an administrative violation, and serious drunk driving is considered as committing a crime.) Even so, it is still hard to prohibit drunk driving. Living in the United States for a year, besides experiencing in the State of Oklahoma, I have also visited several other states, I have never seen a policeman inspected the drunk drivers. It seems like they have not regarded the drunk driving as a common violation of law. Can you talk about how to effectively respond to drunk driving and give us some constructive opinions especially in the State of Oklahoma and the U.S. federal experience in this regard?

A: Drinking and driving is also a big problem in the United States. To answer your question, I will refer to the case that I previously mentioned, a drunk driver killed a pedestrian earlier this morning, without any exception, it is likely that the court will press charges for second-degree murder. Many states, just like the State of Oklahoma, have passed laws to regulate the dangerous driving behaviors such as drunk driving and drug driving, as well as using cell phones while driving.

On one hand, severe punishment is imposed on those who exceeded the blood alcohol limit or caused harmful results. The rule in Oklahoma is that the blood alcohol content cannot exceed 0.08g/100ml. If it is lower than this amount, you will have no problem. However, if it has reached or exceeded that limit, then you will face jail time. Frankly, I personally think it is kind of silly to differentiate by blood alcohol content limit. For instance, my wife and my children, they never drink alcohol, they won't drink and drive, compare to those who drink and drive ended up in jail, is the difference just that blood alcohol content of 0.01? I think they are fundamentally different, and this practice actually encourages those who drink to indulgent themselves, they may think drinking a little bit is no trouble, it's fine as long as it did not exceed the limit. But is this really the case? Many criminals had similar thought process before committing crimes. Hence, exercising self-control is critical. Take myself as an example, I only drink occasionally and very little, I will not drink and drive because I know it could be a second-degree murder if I do. Nowadays there is another problem that is also very concerning. The legalization of new drugs, such as medical marijuana and morphine, that are legally accessible and utilized in Oklahoma and several other states, which could lead to drug abuse and subsequently cause more crimes such as dangerous driving and etc. Another problem is that too many people like to use their cell phones while driving, it is a very dangerous behavior. It could not only harm the lives and properties of others, but also is irresponsible for their own lives. All of these unsafe practices should be monitored more closely, and the whole society must act upon to resist and combat these dangerous behaviors. Everyone must start changing from himself or herself, not to engage in those behaviors that could potentially harm others and the society.

8. Q: Can it be concluded that based on the needs of SECURITY SOCIETY, SOCIAL DEFENSE purposes and SPECIAL PREVENTION methods which are related theories to take security measures beyond the penalty, [6] for those bad behaviors that are likely to develop into crimes in the future, or which will cause problems for society and others even if they do not reach the degree of crime?

A: First of all, there may be some differences between different countries' legal systems. Different legal systems leave different spaces and blank areas for illegal criminal acts. It really depends on the specific case.

Under the U.S. federal law, it is really difficult to find any dangerous behavior that's not covered by it. For example, the most common injury cases we talked about earlier,

whether is verbal threat or physical threat, as long as the targeted victim felt unsafe, first, he can exercise his right of self-defense, secondly interrogator has now already constituted the crime of intimidation. Self-defense is the most basic rights that we citizens have. The parties involved have the right to protect their personal safety of themselves and their families according to the principle of **STAND ONE'S GROUND**. The intimidation is established even if the perpetrator did not engage in any actual dangerous behavior. If minor insults are committed, then it is an assault and will face more serious criminal charges. Therefore, from the perspectives of U.S. federal law, ordinary infringements are well prevented and relieved.

But if we are talking about homeland security, I think it is still necessary to take security measures. Such as extreme terrorists, criminals that were imprisoned in federal prisons or state prisons many times, but still cannot be transformed, this indeed is a question worth considering, especially when different legal concepts and legal systems are involved, like the existence of the **BILL OF RIGHTS** and **THE FIRST AMENDMENT**. At least for the current anti-terrorist crimes, our Patriot Act has already achieved great breakthroughs and compromises. That should be regarded as the most typical **SECURITY MEASURES**.

Q: What is the criminal policy or the value orientation of judicial activities of the federal government (Oklahoma) in the field of crime prevention and social safety security?

A: From the law enforcement's point of view, it is typically lagging behind criminal activities, which is rather passive. This is obviously determined by the natural attributes between criminal acts and judicial activities. However, despite all this, we can't just sit and wait for the crime to happen, and doing nothing ahead of time is apparently inappropriate. In reality, we do have our detecting system and methods, for example, when the police noticed that you look flustered and suspicious, or have reasons to believe that a person may commit a crime, he has the right to take relevant measures to eliminate the nuisance. Another example, U.S. law does not allow children under the age of 12 to be in public alone, the main consideration here is to prevent crimes such as abduction, deception, and even sexual abuse of children from happening. With legal provisions and strict enforcement, legal guardians must perform their guardianship duties; otherwise, they will be deprived of their guardianship rights. By doing so, it not only prevents potential crimes from happening, but also protects children's personal safety and their rights to be cared for, this plays a very important role in protecting families and social order.

Broadly speaking, I personally think that it is more effective to start with social services, civic education, and the treatment and correction of related morbid behaviors, after all, that is the best way to eliminate the soil and environment for crime.

10. Q: What's your perspective about the relationship between security measures and social control? (The government is capable of securing the society in an orderly manner.)

A: This is a tough question. On one hand, it is difficult to completely eliminate crime. The previous question only answers how to stop and deter the crime. If we want to talk about the relationship between these two, of course, there is a mutual facilitation or mutual influence between security measures and social control. However, the degree of social control varies according to different countries and different cultures. If we see social control as a more orderly and safer society, then it is clear that security measures are very beneficial for achieving that goal. For example, let me embody this to a real issue – the gun control in the United States, there is a certain contradiction between personal freedom and public society. **THE SECOND AMENDMENT** to the Constitution stipulates that citizens have the right to legally hold guns, but many crimes are related to firearms, whether directly or indirectly; reality has proved that if guns are banned, the crime rate will drop drastically, but the premise of gun control is to amend the constitution, which currently is unrealistic. So this issue alone is a big contradiction -- gun control can sure help to achieve the ultimate goal of social safety to a large extent, but there is still a long way to go.

11. Q: How do you understand related concepts such as **PERSONAL DANGER** and **ANTISOCIAL PERSONALITY**? Can it be applied in judicial practice (such as measuring, deducing or proving that the perpetrator is socially harmful) or is it only in theory?

A: Oh well, it sounds like a philosophical question on the surface, just like thoughts and actions, it is difficult to be concrete; but with careful thinking and combine with real cases, they are not all that immeasurable or uncertain. [7]On one hand, the theories are relatively mature already, from the earliest **ORIGINAL SIN** to the present **MALIGNANT**, some people do have anti-social and anti-ethical characteristics, it does not matter how they are formed, this type of personality does not help one's daily interactions with the society. On the other hand, with today's advanced science and technology in relative disciplines such as psychology, it is not that difficult to measure and assess whether a person has a personality defect or a dangerous personality trait, and generate an authoritative report. Finally, in trial cases involving a jury or a judge, the formation of a free testimony through the evaluation criteria of the general good people is also sufficient to determine whether the perpetrator has anti-social personality or poses personal danger, if it presents a real or potential threat to others, the court will usually adopt their verdict.

12. If **SECURITY MEASURES ACT** is enacted, considering it from the other aspect, it is necessary to limit the expansion of the state's power to bring about improper interference with citizens' rights. What advice do you have for the supervision of **SECURITY MEASURES**?

A: First of all, I have to admit that the relevant system in the United States is still not yet perfect. According to the **BILL OF RIGHTS**, **THE FIRST AMENDMENT** to the Federal Constitution, and **THE FOURTEENTH AMENDMENT** to the **FEDERAL CONSTITUTION**, the civil rights are well protected, a series of measures are

very effective too. However when civil rights conflict with the government public administration, it still cannot be solved perfectly. It's more like how to balance the relationship between SOCIAL SECURITY and INDIVIDUAL FREEDOM.

THE AMERICAN PATRIOT ACT sacrifices a small portion of the freedom of the citizens in exchange for greater social security value, even though it may be protested by some people, it is acceptable for the overall concern of public safety and national security.

But when SOCIAL SECURITY does not reach the height and importance of preventing terrorism, how to balance and choose between the two will have to be mutual choice and compromise between the government and citizens.

All powers must have supervision, otherwise it will eventually become absolute power, it will expand to the extremes. Supervision can come in many forms, such as mutual checks and balances by system design, procedural guarantees during the implementation process of power, remedies by the people, public opinions and other non-government bodies. In summary, the structural design of an institution is important, and what's equally important is the effective implementation of the rule of law.

[7] Avast Software S.R.O.; Patent Issued for Enabling Wireless Security Measures Based On Wireless Access Point Attributes (USPTO 10,568,017)[J]. Network Weekly News,2020.

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