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Impact of globalisation, types of crimes relating or emerging from it – for example illegal immigration, human trafficking, cross-border terrorism on the American Criminal Justice System.

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Professional Position Paper:

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INDEPENDENT STUDY

Impact of globalisation, types of crimes relating or emerging from
it – for example illegal immigration, human trafficking, cross-
border terrorism on the American Criminal Justice System.

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Fall 2007 Professor Martha Jones

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Abstract:

We are all global citizens, with individual, national, global legal and moral responsibilities. With the internet, the increasing number of daily direct flights that connect world capital cities like New York, Tokyo, Milan and Amsterdam to name a few, we live in a global village. If we take an example from the sad event of September 11 terrorist attacks on America, it obviously shows that with globalization, each American citizen faces increasing security risks that were not taken into account years ago when our nation's existing principles, practices, procedures and legislations that guide the practices of the existing criminal justice system were enacted into law. Does this mean that the criminal justice system relies on outdated theories and principles to address new national security issues, illegal drugs dealing, human trafficking and illegal immigration? Should we be looking for new ways to reinforce the capacity of our national and federal law enforcement agencies, to upgrade skills through new training and development programs to better position ourselves in the fight against these new types of crimes? The main goals of this paper are outlined below. First, an analysis of the theoretical principles of immigration laws, national security and law enforcement agencies will be done. Second, the paper will identify and define changes happening at a global level. Thirdly, it will point out the impact of such changes and the strain put on the judiciary, law enforcement, and other national, federal agencies whose field of work and range of responsibilities are greater than before.

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Introduction:

The criminal justice system is composed of the police, courts and correction departments. Its primary goal is to safeguard citizens' security through its law enforcement agencies, to look after people's wellbeing in a secure and peaceful society. We expect the criminal justice system to preserve our individual rights, enforce the rule of law, make arrests, punish the criminals, deliver justice through the trial process, protect the victims and keep the peace. This is a simple definition of the function of the criminal justice system which is based on a citizen's expectations; however, in view of the fact that more immigrants come in to the United States of America and world politics keep changing, delivering justice and preserving a peaceful and secure country might become a challenge. This is a good reason to analyse the impact of globalisation and all it entails in the field of criminal justice administration. Although getting its job done is the ultimate goal of the criminal justice system, more synergy amongst the different parts that form it, allocation of enough resources coupled with people's awareness and involvement as responsible citizens became more important than before to make the whole system work effectively. Although America has one of the best criminal justice systems in the world, I feel that there is still room for improvement. This professional paper will look at possibilities to make improvement by updating legal codes so that they accurately reflect the need to

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protect the public against these new problems caused by world economic, social, political changes and technological innovations.

What is globalization?

The first time I heard a comment that was not appreciating of globalization, it was during a debate broadcasted live on the British Broadcasting Company, BBC. The topic was “Why many people seem to hate or disagree with American Foreign policy and try so much to make innocent civilians pay, why would an extremist even think about plotting against a country or killing its citizens for revenge.” It was after the 911 attacks. A middle-eastern professor and political analyst presented different theories in which he was trying to “explain” what he thought extremism was. The professor gave a case scenario in which it was explained how some conservative and nationalistic societies perceived America as “the driving force behind social structures of modernity – capitalism, rationalism, industrialism; a superpower that spreads all over, destroying pre-existent cultures – for example in Irak, Cuba, Haiti and even Somalia in Africa - and preventing local self-determination in the process.” This was in a live talk show of the British Broadcasting Company, BBC which was taped in a Gulf country - Doha, a modern attractive city of the United Arab Emirates. For those who have never heard of Doha, Dubai is its neighbouring city. Dubai is more known globally with

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its attractive glass towers and ever expanding “free zone” market economy marked with controversial use of cheap foreign labour in its building and construction projects. This professor’s contribution “explained” what he thought was the reasons behind some extremist Islamic scholars and thinkers’ negative attitude about the western world – America.

This explanation echoed one of the definitions of globalization given by Sholte 2000:45 (encyclopaedia of informal education). This negative line of thinking is used quite often by terrorist groups who think that all the problems, failure of young world democracies, difficulties caused to civilians like civil wars and other political crises are fabricated by America. This negativity and apprehension about American position and foreign policy in the world are subjective thoughts but a reality. I, however, still think that there is a reason to remain optimistic in the fight against terrorism. Not all definitions of globalization are negative.

The term is used quite often these days; yet it means different things to different people. I have noticed that people from developing countries who admire the lifestyle portrayed in western world’s television programs see in it some chance for exposure to new information technologies, access to financial or development policies that help their trans-national economies emerge and develop. For example, the last time I witnessed on television a group of demonstrators wave messages that read “globalization profit rich nations only”.... “When will the poor

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be given investor rights, a major role in the world economy” “how inclusive, empowering, human, and developing country friendly are your globalisation policies?”, I started to wonder whether my understanding of the term was correct. These demonstrators were students and adults from all walks of life – women and males chanting along the Avenue, the building where the annual meeting of the World Trade Organisation was being held in Berlin. In my former job in New York City, some of my colleagues who volunteered to take an early retirement plan package used to joke that globalization had made them obsolete, and taken away all American jobs overseas where employers are required to provide health insurance packages or high wages. Is this true, or is it just a subjective evaluation of what the term means to them? To shed some light on the confusion, I will quote different definitions given by Jan Aart Scholte (2000: 15-17)¹.

The first definition of Globalisation says that it can be used as an adjective to describe cross-border relations between countries, international exchange, interdependence, according to my source Aart Scholte. If globalisation is mainly considered in this context, it meets my expectation to have it solely touch on issues, problems, solutions that can be faced and tackled beyond international economies with the use of terms “open, borderless”. The second definition given by Aart is “worldwide, global, process of spreading various objects and experiences to people at all corners of the earth”. This definition reminded me of

¹ Information retrieved from www.infed.org the website of the INFED (informal education)

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the need to include people and all their socio-economic values such as race, language, type of jobs, working class and status in the picture to have it complete. What I am trying to explain here is any person migrating to what he/she consider greener pastures, will carry along his/her family, all the luggage cited above that define him/her an individual; including behavioural issues that can be developed or caused by stress, risks, high expectations and disappointments encountered on the journey. Globalization means “ouverture” a French word for exposure, exchange, and change of cultural, social values, behaviour, and this can have an impact on transactions whether it is monetary or business relations.

Analysis of some of the Existing Theoretical principles and Some Arguments on their Practicality:

There are many theoretical principles that I think if applied effectively across the board in police stations, courts, correctional facilities, could make America a safe heaven for all its citizens. The challenge is America being a democratic society where power should be used judicially - police officers, lawyers and correctional facilities employees should abide by the rules that protect citizens' individual rights, liberty from the free citizens to the convicts serving their terms behind bar.

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This professional position paper aims to argue ways to apply effectively such theoretical principles and practices while retaining the true American values of due process in each trial. Fairness and equality in the application of the law is part of the practices that make the criminal justice system operate lawfully. This is the only way that it can reach its goals and win people's confidence and trust. Trustworthiness of the system makes a difference and a big impact on the life of the citizens, who, otherwise, might feel threatened by uncertainties and the unknown especially in cases of lengthy trials or unexplained temporary imprisonment without bail, denial of access to counsel or refusal of the assignment of a defence lawyer to indigent accused.

In the area of homeland and national security, tightening borders, deporting or extraditing illegal immigrants who committed crimes could help but how much power is given to law enforcement agencies to search persons without warrants? Think about respecting the arrested suspects' rights who, under the *Miranda*² law, are read their privilege to be protected against self-incrimination and are supposed to be given the benefits of doubt until proven otherwise or guilty in a court of law. The arrest and surrender process is as tricky and slippery as the whole issue of administration of justice in a democracy. However, the lack of information like a database with reliable sources and registered informants to track and investigate

² Extracts from the Law of Confession on the website of the University of North Carolina Wesleyan College – see <http://faculty.ncwc.edu/toconnor/miranda.htm>

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suspects - illegal immigrants - can be a challenge. Minor changes, reviews or reforms in current practices could lead to major improvement. For example, by creating and linking databases from information collected from hospitals, motor vehicle departments and schools records, we could get information on suspected illegal immigrants or terrorists, monitor their activities and prevent commission of crimes. Only suspects' records would be monitored and analyzed to find factual supporting evidence to prosecute criminal cases. The creation of such databases could support the development of an early warning system; a good preventive measure for the criminal justice system.

On 26 September 2007, Ken Belson and Jill P. Capuzzo authored an article about the city of Riverside in New Jersey. It reads "Towns Rethink Laws against Illegal immigrants." This is a township where a municipal committee embarked on the road of advocacy to have their elected representatives enact into law a new legislation that would penalize anyone who either employed illegal immigrants, rented them apartments or businesses. Before I finish reading the whole article, I wanted to applaud the commitment of this group of citizens and their decision. Then, I thought about the further consequences both good and bad of such a proposal or project if it was going to become law. I acknowledged these concerned citizens' involvement to change their township; however, having been an immigrant myself, and having reflected on the negative effects of such a draft

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legislation becoming law, I thought perhaps the people who lived in that areas had already taken the precaution of educating, training and hiring new employees who will fill the jobs to be vacated by the departing illegal immigrants. I have lived in Jersey City – New Jersey and in the lower East Side of New York City but the majority of the city transit bus drivers, beauticians, office cleaners, office clerks, assistants and secretaries, baby sitters, teachers of French or Spanish as a second language are all descendants of illegal or legal immigrants who came from Latin America, Africa, Europe and other parts of the developing world. They might have legalized their status and became legal immigrants today. I later stated that chasing illegal immigrants is not the answer and asked myself about the idea or proposal to ask employers to come forward and sponsor the illegal immigrants who are already employed and paying taxes to get their status adjusted and receive working papers. I would rather advocate for an amnesty, a pardon or a new immigration law that could give papers to non criminals who quality to work than to have them chased away. They can be chased away from one location but not from America. They will settle elsewhere where the community members would be lenient in their dealings with illegal immigrants.

The citizens of Riverside might have good reasons to work on keeping the illegal immigrants out of business because the article stated that “in the past two years, more than 30 towns nationwide have enacted laws intended to address problems attributed to illegal immigration, from overcrowded housing and schools to

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overextended police forces.” In other localities, new laws called for fines and even jail sentences for people who knowingly rented apartments to illegal immigrants or who gave them jobs. The same authors wrote that “with the departure of so many people, the local economy suffered... ..the town was hit with lawsuits challenging the law. Legal bills began to pile up, straining the town’s already tight budget. The legal battle forced the town to delay road paving projects, the purchase of dump truck and repairs to town hall, official said.” It seems that suddenly, many people including some who originally favoured the law started having second thoughts because many businesses that remain are having a hard time. For example several hair salons, restaurants and corner shops that catered to the immigrants and saw business plummet are later closed down according to the article.

Some of the arguments made on the existing theoretical principles and practices of the criminal justice system touch on controversial issues like privacy and individual rights. We will strive to provide a final list of easy to implement recommendations as a basis to improve the organisation and workings of the criminal justice system. To be more precise, we shall remind ourselves that any proposal on the introduction or creation of databases will require skills in information sharing, data collection and mining a sensitive field of work that need mature well trained information technology professionals who have integrity and

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awareness to respect the need to bear on mind the sensitivity to use judiciously such records and other technology. In the following example, the benefits of using video cameras are praised. However, when it involved video surveillance, monitors in public areas, eve dropping, taping private phone conversations, it touches on the privacy rights.

In Newark, New Jersey, the installation of video cameras and their use have made a great difference in members of the community' life by isolating the local gangs who caused pains to many families. According to Luis A. Valentin³, the Monmouth County Prosecutor, “gangs are transient; when an urban area becomes saturated with law enforcement, gangs will move and relocate”, he said describing how gang members move between counties and between cities in a single county.

We can check phone records to provide public security as long as we bear on mind the essential requirement to respect citizens' privacy and individual rights.

³ From the New York Times *Gangs, Too, Flee Cities for the Suburbs* by Anne Correal, published on July 1, 2007

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Current political changes in the world:

Through my research, I found out that these changes have had a big impact on the American Criminal Justice System. Today's world presents challenges ranging from transnational terrorism to economic interdependence, environmental and health issues of global warming and AIDS. These problems drive the loss of human dignity and liberty from these populations who, sensing the risks leave their countries and migrate to new places to start a new life. As the United States seek to assume international obligations to fight torture, injustice and restore peace in former dictatorships that are now devastated by wars, ethnic tension leading to new types of crimes like genocide, ethnic cleansing as it is in the case of Darfur, Sudan in East Africa where tribes of African descendants are accusing the seating government's leaders whose policies are more favourable to Sudanese citizens of Arab origins. This is a lengthy and costly process in which, America and the branches of its government, including the criminal justice system must look forward and seek new ways of adjusting to a new world order. It requires reinforcing existing structures of the system, promoting domestic laws that could help us contribute effectively and efficiently to the development and enforcement of global, international rule of law and ensure full compliance.

The creation of organisations like the department of homeland security resulted from joint efforts under the government's leadership – justice ministry, law

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enforcement agencies, the judiciary and correctional entities to get together and decide to formulate tougher but effective policies to address terrorism and human trafficking, horrible crimes whose commissioners favour smuggling illegal immigrants into America.

Although these are effective preventive measures they will likely have detrimental effects on people's life and could make us be indifferent or reluctant to accept or comply with them. A rule of law that infringes on citizens rights becomes cumbersome. For example, with the use of video cameras in public places without citizens' consent through the distribution of questionnaires to taste the waters before implementing them, searches at ports of entries, we feel that our basic individual civil rights and privacy are violated. Although I support the department of homeland security's efforts to look for the bad guys, arrest, and prevent them from entering America, I am sceptical about resolving the question of those legal bad guys – human traffickers from China, other parts of Asia and even Eastern Europe and Africa who through illegal activities continue to smuggle people in America to provide cheap labour for sweat shops, restaurants and brothels. These potential criminals lure unassuming foreign young girls who will most likely become escorts, call girls into accepting working visas, signing contracts to come to America and work for pimps in red districts, -legal sex businesses in The Netherlands. On the other hand, I acknowledge that not every

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one shares my progressive position or leniency about airport searches because it is unnerving to miss a flight due to delays caused by tighter security searches, closing of roads that usually lead to the airport to longer diverted traffic. Part of the role of government is to prevent or ease people's nervousness, worries, by raising public awareness on the introduction of such practices comes in.

There must be new government policies, clear legislations on information use and sharing, creation of public outreach centers to inform, sensitize people on new global security risks. It is not enough for any government to expect a citizen to follow the news to educate oneself about the current world order or to comprehend the reasons behind the introduction of new local preventive practices and laws. Tax papers' money could fund these centers which in return could provide jobs. It is worthy of taking time, committing resources to inform people about changes in demography mainly due to arrival of new asylum seekers who are running away from wars, dictatorship and political crises. No one should rely on occasional television channel programs as a main source of information to raise people's awareness on chaotic or deteriorating state of affairs – for example situations in Pakistan (Asia), Dakar (West African) or Darfur a region of Sudan (East Africa) that can lead to new waves of both legal and illegal immigrants. More awareness could promote the public's understanding of the goals of the criminal justice system, their cooperation and compliance to the rule of law.

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Promotion of the rule of law:

The law can be effective only if it is sensitive to the history and culture of the recipients, the people it serves – American citizens. The Nation has become more diverse than before and there is a need to educate the nation about these changes. It would prepare us to accept to see new faces that one could hardly identify with or trust in the past.

There are differences in religions, world dress codes, attires that could be religious or cultural. If police officers and other law enforcement workers protecting the border Know these differences and respect and accept them, members of these communities could be more cooperating and easy to deal with in a crisis situation. For example, it is necessary to be aware of the fact and reality that one hand, there are Arabs who are Christians, Coptic or non believers. This means that one can be of Arab origin and not be of the Islamic faith. On the other hand, one can be of the Islamic faith and still remain moderate, non violent and non extremist. Still about diversity, there are Africans who are not Arabs but do embrace the Islamic faith and are born in secular peaceful Islamic families. Some Africans wear attires or adopt a dress code that is cultural and non-religious; however such attires are sometimes similar to a burka, a veil and can send the wrong message to

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people who are not aware of these cultural, religions differences and/or similarities.

One major challenge we face and must address is to recognize that a terrorist is not necessarily a foreigner or does not always have the face or identity portrayed in newspapers, television shows or programs. In London, there are national terrorism cases where the suspects are “home grown” terrorists who are born and raised in the United Kingdom. In America, if we take the case of illegal aliens who work in the black market and live in congested apartment buildings, they are not accounted for in the system because unregistered and untraceable they have neither a social security number nor a bank account. They might have overstayed the duration of their visa. Some make a living in an honest way, working long hours and getting paid cash or if they have a check, they use the check cashing businesses. They live in fire hazardous buildings with a large number in one apartment. They raise American children born in households where there is tension, worries to survive on one member of the family’s paycheck. Promiscuity, lack of security and enough space for family members are sources of anger and frustration that can build up and force good natured people into vandalism, home-ground terrorism like the case in the London bombings where most of the actors are British citizens growing up in poverty and precarious

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situations where parents do not speak English, fear going to the hospitals to get care when they are sick or to go to learn or train for a job.

As a solution to the above constraints, some police precincts strive to recruit prospective law enforcement officers from females and diverse ethnic groups to address these concerns. There are efforts in the courts also to include judges, court officers that could be the shoes of the populations and represent the nation. The development of policies and activities sensible to new citizens' cultural values could prevent the deterioration of an existing state of affairs and ease the tension between police officer who are active in community policing and the members of the community where they work. For example in South Africa, a country with one the world's worst rates in all types of crimes, mediation skills workshops for city police officers are organised quite often to teach basic mediation skills (BMS) and Restorative Justice. Police officers are trained to intervene in high-risk schools as part of an anti-gangsters programme. There are also centers on conflict resolution placed in the housing development projects according according to Professor Ibrahim Gambari, a United Nations Undersecretary general who participated as a facilitator in one the seminars sponsored by the United Nations⁴ I am trying to show how changes on the fabrics, layers of American society – new immigrants'

⁴ Page 6 of the Centre for Conflict Resolution Annual Report 2005-06

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nationality, religions and other values can have an impact on a country's legal systems.

Recommendations:

Police officers' preparedness to address conflict, tension in a community is important in the fight against violence. Good training can help officers become proactive; they can react easily to threat and prevent argumentations from escalating. Training to raise awareness can deter violence or use of force in arrests.

There are many theoretical principles that could make America a safe heaven for all its citizens. With the department of homeland Security, we could say that the country is more secure than ever. On the other hand, the new developments in world affairs for example radicalism, change of political regimes, instalment of new governments in a non-democratic way and American involvement in foreign policies, all these factors can trigger revolts, unrests within and outside the country. We just need to be more vigilant and invest more on education, jobs to help keep people motivated, focused on pursuing their American dream.

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In order to identify and track all the existing illegal immigrants who have been residing in America for over 5 years and ask Congress, legislators, constituents should find a common ground to address the issue once for all. Whether they benefit from an amnesty to regularize their immigration status or not, most of these illegal immigrants do not plan to leave America and they are busy making a living, some do it honestly, others make ends meet regardless of the activities they are in for example selling drugs, squatting, being hard by selfish employers who do not report them to the Internal Revenue Service or Immigration. Undocumented aliens work in the black market and live in congested apartment buildings that are fire hazardous. The immigration services need more money to clear back logs of visa applications whose owners have been waiting for more than 5 years. I met people who complain about the slow pace, red tape and heavy bureaucracy of the immigration services. Some of them were sponsored by their parents who are now citizens. I met a young lady, who was sponsored since she was 22, has now turned 30 years old, got married and have a child yet her file is still with immigration. When is she going to be a legal permanent resident or American citizen like her husband and son? For 10 years or more, she cannot travel to her home country because she would not enter America again without an adjusted or legalized status, something she deserves, I think. Whenever she calls the immigration service hotline, she is told that they have not reached her file yet.

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For a more effective criminal justice system, all the parties involved : the public, scholars, police, courts, legislators should reflect on what does the ever increasing connectivity of today – often termed ‘globalisation’ or ‘internationalisation’ – mean for the setting in which rule of law at the national level is defined, perceived, shaped, or is to be developed and what consequences does/should this have for the actual implementation of rule of law strategies and programmes at the national level?

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