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EXAMINING THE DISCONNECT: THE GAP BETWEEN AMERICA'S  
LAWMAKERS, ENFORCERS, THE COURTS, AND THE PEOPLE

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EXAMINING THE DISCONNECT: THE GAP BETWEEN  
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AND THE PEOPLE

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ABSTRACT

In the United States, the Constitution and statutes are in place to ensure all citizens' rights and to regulate a constitutionally limited but free society. The law makers and courts safeguard these rights and facilitate the additions and amendments necessary to maintain a functioning society. Despite this promising framework, our legal system all too often fails to provide solutions to citizens on an individual basis. Intuitively, a series of individual failures can conjure widespread dissatisfaction among society. If groups of people believe that the laws do not serve them or even do not apply to them at all, they are more inclined to turn to alternative means to accomplish their goals. For example, people may look to black markets, crime, and under the table negotiations to fulfill their needs for self-advancement if they perceive these alternative paths to be more conducive to their success than legitimate avenues. Clearly, this departure from the law represents a failure on someone's behalf. Is it on the streets where decisions are made on a daily basis to disregard the law in favor of crime, often for the ironically noble purpose of acquiring the means to leave the same environment? Is it in the court house where sentences are issued on the basis of statute and not individual merit? Is it in the legislature where representatives pass laws without adequate understanding of their constituents? This thesis will examine where the weaknesses in our legal system lie and offer potential solutions to these shortcomings.

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Yeah, Hove is back, life stories told through rap  
N\*\*\*\*\* actin' like I sold you crack  
Like I told you sell drugs: no.  
Hove did that so hopefully you won't have to go through that  
I was raised in the projects, roaches and rats  
Smokers out back, sellin' they mama's sofa  
Lookouts on the corner, focused on the ave  
Ladies in the window, focused on the kinfolk  
Me under a lamp post, why I got my hand closed?  
Cracks in my palm, watchin' the long arm o' the law  
So you know I seen it all before.  
-From "Izzo (H.O.V.A.)" by Jay-Z<sup>1</sup>

## INTRODUCTION

This excerpt from a rap song tells a true story. Rapper Shawn Corey Carter (Jay-Z) sold drugs as a youth growing up in the Marcy Projects of Bedford-Stuyvesant, Brooklyn.<sup>2</sup> Jay-Z describes a scene from his early life in a place with an economy of its own, governed by drug trade. He laments this, and warns people that he does not encourage selling drugs ("Hove did that so hopefully you won't have to go through that"). Still, the song is upbeat and reminiscent of a life shaped through crime and evading the police. Jay-Z is now an immensely successful hip-hop artist, producer, and business person.<sup>3</sup> Young people could easily mistakenly imitate the characteristics that led him to crime instead of the characteristics that led

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<sup>1</sup> JAY-Z, *IZZO (H.O.V.A.)* (Roc-A-Fella Records)

<sup>2</sup> Biography of Jay-Z, <http://www.biography.com/people/jay-z-507696> (last visited March 20, 2012)

<sup>3</sup> TIME Magazine's Most Influential people of 2006 list

him to success, or mistake them for one in the same. Jay-Z does clearly categorize the law as an enemy, at least during the time in his life that these lyrics snapshot. What makes it so? This thesis contends that there is more than just a mere disregard for the law on behalf of the criminal. Instead, in many cases, lawmakers contribute to making inner city youth view themselves as disconnected from the law. Lawmakers perpetuate the problem because of their own disconnect from the people they are supposed to represent.

This is “The Disconnect”, and it is not limited to situations involving illegal narcotics. The Disconnect exists in civil law as well as criminal, in areas from sentencing guidelines to business regulations. This thesis will examine, through examples and research, the dangerous consequences of the Disconnect that separates the players in the system and the people whom legal decisions affect.

There are three major sections of this thesis. The first section explains where the Disconnect comes from. It is further broken down to show where and why the Disconnect exists in the legislative branch, the judicial branch, and the executive branch. Each of these three branches operates at a certain inherent distance from the people, with the legislatures the farthest, the judiciary slightly closer, and the players in the executive branch the closest in proximity to the people their decisions affect. This

concept will be developed more specifically in the subsections about each of the three branches. The second major section points out the reality of the disconnect in society through two major subsections. The first subsection lists specific laws that exemplify the effects of the Disconnect. The second subsection gives examples of how the people have reacted to feeling disconnected with their government. Examples used are rap lyrics, as well as the Tea Party and Occupy Wall Street movements. The third and final section describes how the disconnect can be mitigated through educating the people about their rights, particularly Constitutional rights, and through marketing-style research on behalf of the government to gain better insight on the people's opinions.

### **I. THE DISCONNECT EXISTS BECAUSE LAWMAKERS DO NOT SEE THE WORLD THE SAME WAY AS THE PEOPLE THEY REPRESENT**

To begin examining the Disconnect, we need to identify what it is and where it exists. The concept is simple: those who wield power in the legal system do not see the world through the same eyes as the people their decisions affect. This creates feelings among the people of alienation and distrust that can be traced back to the Disconnect. Sometimes, the disconnect may lead people to commit crimes. Its presence spans all three

branches of government. The Disconnect, as it applies specifically to each branch, will be discussed in more detail shortly. The next step is to examine why it occurs. The United States Constitution creates three branches of government with checks and balances such that none could ever become so powerful as to overtake the others.<sup>4</sup> Additionally, and most importantly, it includes a Bill of Rights to ensure that the government as a whole serves the people and does not encroach on their fundamental rights. As Abraham Lincoln eloquently put it in his *Gettysburg Address*,<sup>5</sup> our government is one “of the people, by the people, for the people.” Then how, if it is rooted in such a prudent design, could a government have become so distant from the desires of the people it represents? It seems that the players in the system, with their (intentional or unintentional) disregard for the people’s will and rights, make unbecoming decisions that lead to an ever-broadening disconnect.

#### A. *Where Does the Disconnect Exist in Society?*

A discerning look at the structure of our legislative branch sheds light on where the Disconnect dwells. The United States Congress is

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<sup>4</sup> “The Separation of Powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as Checks and Balances” see Constitutional Topic: Separation of Powers; The American Example, 2010. [http://www.usconstitution.net/constop\\_sepp.html](http://www.usconstitution.net/constop_sepp.html).

<sup>5</sup> President Abraham Lincoln, *Gettysburg Address* (Nov. 19, 1863), available at <http://showcase.netins.net/web/creative/lincoln/speeches/gettysburg.htm>.



separated into two houses in the name of checks and balances, and so that, between the two, the people's rights and best interests can be properly protected. Representatives in the House are directly elected every two years so that they are, in theory, *forced* to cater to their constituents or be voted out of office.<sup>6</sup> The two Senators from each state, originally elected by the members of the state legislature but directly elected by the public since 1913,<sup>7</sup> are likely to be less swayed by frequent political campaigns during their six-year terms in office.<sup>8</sup>

It would seem that, since members of Congress in both houses are directly elected, and since the House has the potential to completely turn over every two years, there should be hardly any disconnect at all. Of course, the Disconnect can partially be attributed to lack of voter participation. Still, this would not be a perfect formula even if every single eligible citizen voted, because the United States is not a direct democracy, and the people have no direct vote on any piece of federal legislation. Representative democracy is an important protector against mob rule or

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<sup>6</sup> "All members of the House are up for election every two years. In effect, they are always running for election. This insures that members will maintain close personal contact with their local constituents, thus remaining constantly aware of their opinions and needs, and better able to act as their advocates in Washington" Robert Longley, *Why We Have a House and Senate Driven by Their Differences*, <http://usgovinfo.about.com/od/uscongress/a/whyhouseandsenate.htm> (last visited Apr. 7, 2012).

<sup>7</sup> U.S. Const. am. 17. Though the bill to allow direct election of Senators was passed in 1912, the 17<sup>th</sup> Amendment was not ratified until 1913

<sup>8</sup> United States Senate, *Length of Senate Terms*, [http://www.senate.gov/artandhistory/history/common/briefing/Constitution\\_Senate.htm#2](http://www.senate.gov/artandhistory/history/common/briefing/Constitution_Senate.htm#2) (last visited Apr. 7, 2012).

tyranny, but that does not mean that it is without fault or that the faults of this type of democracy, as they occur in reality, should be overlooked.

It is the duty of representatives, particularly those in the House, to keep the people's intentions at the forefront of each decision. Unfortunately, in many cases, it seems that the people's intentions are anywhere but at the forefront of legislation. So, the disconnect may partially stem from the functional structure of representative democracy, but it seems that instead the failure is more accurately attributed to players in this democracy (that is, the representatives and senators, at least in the legislative branch). The following subsection explores reasons why the legislature's actions often seem at odds with the people's intentions.

#### 1. Legislators Are Too Distant from Constituents to Adeptly Represent Them

Legislators are too distant from the people they represent, not only in terms of physical distance, but also in terms of life experiences and understanding. Are legislators truly representative of their constituents? How many members of Congress on Capitol Hill know people like those living in all of the neighborhoods that fall under their constituencies? How many have followed the same or similar paths as each other through high school, college, and graduate degrees in political science? And, thereby,

how many have *not* grown up underprivileged, amidst gang violence, or amidst drug trade? How many have *not* worked the career of a small business owner, a middle school teacher, an hourly wage-earning laborer? As it turns out, 46% of congress people are lawyers.<sup>9</sup> It has been noted that if Congress were truly representative of the people of the United States, only three of the 535 members would be lawyers.<sup>10</sup> Clearly, this is far from reality.

People come from different walks of life and this should not be held against them. That statement is double sided. Of course, lack of opportunity should not be held against underprivileged people nor should they be denied a voice. At the same time, it would be erroneous and theoretically dangerous to deny opportunities to those at the top of society, whether they have risen to the top or have always occupied the upper financial or educational echelons. In our society, government offices and power usually fall to the highly-educated as opposed to the less-educated or uneducated. However, these same positions of privilege -- especially elected privilege -- confer the responsibility to adeptly govern. There is absolutely no reason why someone elected, based on his or her credentials, to govern a group of people as fairly as possible, should do anything different.

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<sup>9</sup> Vote Out Lawyers Home page, <http://www.voteoutlawyers.com/> (last visited Feb. 2012).

<sup>10</sup> *Id.* There are an estimated 1,180,386 lawyers in the United States, that is, 1 in every 200 adults.

## 2. Language is Too Difficult to Interpret

Legal language is difficult to interpret, so people don't understand it. Although most serious crimes may not be committed out of lack of understanding that the act is illegal, crime is chosen over legitimate actions more readily and more often when the legitimate path is unclear. It is easy to misconstrue the law as an enemy if its very language alienates a large portion of the citizenry. Because of the inevitable physical distance between most of the lawmakers and the people, every effort needs to be made to close the understanding gap. This means that laws should be communicated in clear, simple English, and easily available in translation to other relevant languages (especially Spanish). Despite many attempts to make English the official language, the United States actually has no official language.<sup>11</sup>

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<sup>11</sup> Though never made into law, H.J. Res. 16 (107<sup>th</sup> Congress) states, "The English language shall be the official language of the United States. As the official language, the English language shall be used for all public acts including every order, resolution, vote, or election, and for all records and judicial proceedings of the Government of the United States and the governments of the several States." Also, H.R. 3333 (107<sup>th</sup> Congress) states, "The Government of the United States shall preserve and enhance the role of English as the official language of the United States of America. Unless specifically stated in applicable law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If exceptions are made, that does not create a legal entitlement to additional services in that language or any language other than English."

Therefore, there is no requirement that all of our laws be written exclusively in English. When Congress passes bills that are strewn with overly complex language that only a member of Congress could understand, they are doing the people a great disservice. The law should be absolutely transparent and easily accessible to each and every citizen. This clarity allows citizens to feel like their government is accessible to them, as opposed to a remote entity operating in a distant realm. Lack of communication and clarity makes legal alternatives unclear.

### 3. Well-Intentioned Laws Can Miss Their Targets

Even if laws are clearly written and well-intentioned, they can miss their targets. Their summary shows that there is a missing link in understanding between Congressional actions and the people affected. To truly understand a problem one must experience it, or at least, place oneself as proximally close to it as possible in order to experience its effects. Without this direct association, any attempt at a solution is speculation at best. This is especially relevant to the court system in the United States. The court system issues decisions based on the power given to it by statute, and it is thus confined by statute. Therefore, when a court reaches a verdict it does not necessarily agree with but is compelled to issue based on a

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statutory requirement, it essentially implements some distant legislature's speculation. This is problematic not only because of the legislature's physical and temporal distance from the decision at hand, but also because there are considerable distances from the people that are inherent in the judicial system as well, as is explained in the section below.

#### 4. Judges are Confined to Issue Sentences Based on Statute

Our judicial branch operates at a range of physical distance from the people whom its decisions affect. While the Supreme Court sits far away from most of the people in the United States, state and local courts usually convene with the judge just a few feet away from the parties to the trial. Despite physical closeness, statutes still restrict judges with regard to what they are allowed to decide.

Of course, a line must be drawn between the lawmaking power vested in legislators and the law-interpreting power vested in judges. However, the judicial branch is an important component of the checks and balances structure of our government. Although they cannot write statutes, the Supreme Court can declare legislation unconstitutional. Furthermore, the principle of *stare decisis*<sup>12</sup> essentially allows judges' decisions to

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<sup>12</sup> "Latin for "to stand by things decided." *Stare decisis* is essentially the doctrine of

become law, which we know as the common law.<sup>13</sup> The common law practice of looking to previous judicial decisions (precedents) in addition to the statutory law indicates that we do recognize just how important individual decisions are and have been throughout history. A judge's written opinion provides tremendously more insight regarding the way to rule on a topic than an unspecific statute could. It is no wonder that case studies are so widely used in legal education.<sup>14</sup> To confine a decision maker to applying statute alone would be crippling.

In fact, to confine a decision maker strictly to an ancient precedent would severely limit him as well. Further, if precedents are made so sacred that they are adhered to as unwaveringly as statutes, is the judicial branch not prolonging the issue of distant, un-individualized decisions? Perhaps the doctrine of *stare decisis* needs to be applied more sparingly in particular cases, that is, perhaps old decisions should be challenged more often when they do not exactly fit the case at hand. Basing decisions on temporally or situationally distant precedents or statutes broadens the disconnect in the face of an opportunity to close it: the judge sits directly in front of the

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precedent. Courts cite to *stare decisis* when an issue has been previously brought to the court and a ruling already issued. Generally, courts will adhere to the previous ruling”Cornell Univ., Legal Information Institute, Wex, *Stare Decisis*, Aug. 19, 2010, [http://www.law.cornell.edu/wex/stare\\_decisis](http://www.law.cornell.edu/wex/stare_decisis).

<sup>13</sup> “Law that is derived from judicial decisions instead of from statutes. Early American common law was taken from English common law. See, e.g. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).” Cornell Univ., Legal Information Institute, Wex, Common Law, 2010, [http://www.law.cornell.edu/wex/common\\_law](http://www.law.cornell.edu/wex/common_law).

<sup>14</sup> Law School Admission Council (LSAC), *Inside Law School*, <http://www.lsac.org/jd/think/inside-law-school.asp> (last visited Feb. 2012).

accused and has a unique opportunity to try to understand the individual before him, and what should be a special opportunity to tailor his decision accordingly.

The judicial branch is fascinating because of its proximity to life changing situations. Its construction is necessarily so complex and multi-layered because judges could essentially rewrite the law if left unchecked. This thesis does not suggest that these protective layers be peeled away. Adherence to the Constitution is paramount, and there are few things more ingenious in any government structure than the opportunity for appeal that is granted to any party involved in a law suit that is unhappy with the decision. Of course, just as people look to the United States Constitution as a solid reference,<sup>15</sup> people should be able to rely on certain time-tested court decisions as rule. No one could, with credibility, argue that a judge should ever dismiss a precedent like *Brown v. Board of Education*.<sup>16</sup> Still, no legislative law or judicial precedent can replace the intimacy and immediacy of a moment in a courtroom in which the judge, jurors, plaintiff and defendant are close enough to each other to look one another directly in the eyes.

So, while this thesis certainly does not suggest that the judicial branch

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<sup>15</sup>There is a tremendous and ongoing debate about the merits of Constitutional Originalism. This particular Harvard Journal of Law and Public Policy features a compilation of insightful scholarly articles arguing both for and against the concept. 31 Harv. J. L. & Pub. Pol'y 875 (2008).

<sup>16</sup> 347 U.S. 483 (1954).



expand its power to the detriment of the other two branches, it does argue that, in order to close the Disconnect, individual judges should be allowed the discretion that they deserve. This may mean that certain precedents are challenged more regularly in order to ensure that sentences are truly individualized. Of course, *stare decisis* is a court power, but it is important to understand that to limit this doctrine in specific cases is not to make the courts weaker. On the contrary, it would make judges stronger to be able to issue their own decisions in the face of ancient precedents when the precedents do not adequately apply to the case at hand.

#### 5. In the Executive Branch, Human Beings Execute the Laws and Are Influenced by Individual Factors

When it comes to physical closeness to the people, certain players in the executive branch may in fact be closer than those in the courts. The executive branch of the United States government of course includes the president, but the focus in this thesis will be on police officers and administrative agencies<sup>17</sup> which are extensions of executive power.

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<sup>17</sup>“Administrative agencies are lawmaking bodies with limited powers delegated by Congress. Administrative agencies specialize in specific issues that require expertise. [They] are established by Article 1 Section1 of the federal constitution...The rules and regulations created by administrative agencies can be enforced as law. The agencies help in the speedy disposal of cases, both minor and complex and thus are a big aid to US courts...Most administrative agencies fall under the supervision of the President...[T]he states also have administrative agencies” see [i] 5 U.S.C.A. § 551 [1982]. US Legal, Legal Information Encyclopedia, <http://system.uslegal.com/administrative-agencies/> (last visited Mar. 2012).

Although statutes are made in Congress, it is up to the police to enforce them on the streets – from Wall Street to inner-city neighborhoods – and this one-on-one physical proximity of officers to people is the epitome of the closeness. Here it is critical to note that the Disconnect does not exist only on a federal level. Police, who enforce state laws, can widen the Disconnect as it exists on the state level, which is just as detrimental as any Disconnect in the federal arena. Protecting justice is a heavy responsibility, and the entire concept can become elusive when considered through the lenses of biases, varying personal motivations, and varying educational and life experiences. These are the limitations that broaden the Disconnect, making the physical closeness to the people almost *void*. Examples of the executive disconnect, as well as the legislative and judicial disconnects, are presented in the section below.

## II. EXAMPLES OF LAWS THAT DO NOT WORK BECAUSE OF THE DISCONNECT

The previous section outlined the fundamental shortcomings of each of the three branches of the United States government, but the current section presents specific and sometimes startling examples. Problems stem from the varying degrees of inherent distance from the people that characterize each of the branches (the legislature is characterized by the greatest distance, the

judiciary slightly less, and the executive branch the least). The current section lists examples of problem laws and how specific problems worsen the Disconnect in each of the three branches of government.

#### *A. Functional Disconnect: Laws*

The following examples display failure-ridden legislative attempts to solve socioeconomic problems in the United States.

##### 1. The Welfare System Does not Motivate or Empower Beneficiaries and May Prolong the “Welfare Class”

The welfare system is one of the easiest targets for this type of criticism, but it is most relevant. President Johnson’s “War on Poverty” was an ambitious attempt to give America’s poor access to “the good life.”<sup>18</sup> Unfortunately, it largely failed to achieve its intended results.<sup>19</sup> This shows that the problem of the legislature being too disconnected spans well back into the 1960’s. The War on Poverty provided prolonged assistance to low- and middle-income people but did little to cure problems of the “hard-core” poor.<sup>20</sup> The War on Poverty gave birth to the welfare system. Welfare spending has steadily increased without much observable socioeconomic

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<sup>18</sup> Kent B. Germany, University of Virginia, *War on Poverty*, 2005, <http://faculty.virginia.edu/sixties/readings/War%20on%20Poverty%20entry%20Poverty%20Encyclopedia.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* At 7.

improvement.

The 1996 welfare reform replaced the Aid to Families with Dependent Children (AFDC) program with the much more limited Temporary Assistance to Needy Families (TANF) program to create incentives for parents to return to work as quickly as possible. These newly instated timelines and penalties would help parents become more self-sufficient and less reliant on the monthly government aid checks. Interestingly, there was a significant increase in the labor market participation of low-income parents.<sup>21</sup> Still, poor conditions persist in the United States in both rural and inner-city environments, and it is not certain whether this increase in employment led to any increase in overall quality of life.<sup>22</sup>

So, though the 1996 reforms may have been a step in the right direction, further and more in-depth observation is required to assess the next steps in eliminating the welfare class that the welfare system has created. For example, was the TANF program just a successful shot in the dark, or does it represent a closing of the Disconnect in that legislatures have become better educated on what incentives are required to help America's poor pull themselves out of trouble? No doubt, the War on Poverty and all of its early

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<sup>21</sup> Greg J. Duncan and Jeanne Brooks-Gunn, *Family Poverty, Welfare Reform, and Child Development*, Child Development, Vol. 71, No. 1, 2000, at 188.

<sup>22</sup> Hila Shamir, *CRITICAL DIRECTIONS IN COMPARATIVE FAMILY LAW: The State of Care: Rethinking the Distributive Effects of Familial Care Policies in Liberal Welfare States*, AM. J. COMP. L. VOL. 58, 2010, at 953.

programs were intended to help America's poor. This is an important example of the fact that legislators do not necessarily pass disconnected laws and programs because their intentions are at odds with the people's best interests. Welfare is indeed a well-intentioned law that has somewhat missed its target; it was never a malicious disregard for the people. Welfare and other attempts to deal with America's poor are instead examples of dealing with the effects rather than the causes of long term poverty – band-aid reforms of sorts.

Though it is not part of the welfare system, another example of a band-aid reform is public housing that forces low-income families into self-perpetuating, unhealthy living environments. Poor living environments have many victims but the most tragic are the children. Children are victims of poorly-targeted legislation as well as their parents' choices. Public aid, housing, etc. needs to be as easy to leave behind as it is to acquire so that children need not be subjected to unhealthy environments longer than necessary, especially in early developmental stages.<sup>23</sup> Violent and unhealthy behaviors that can often lead to crime are effects of growing up in such environments. Unfortunately, because of the Disconnect in their understanding of the causes of juvenile criminal behavior, legislatures all too often attempt to deal only with the effects.

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<sup>23</sup> *Id.* Duncan, *supra* note 21.

2. CA Prop. 21, Intended to Crack Down on Juvenile Crime, Would Essentially Put More Kids in Prison and Is Constitutionally Questionable

California's proposition 21 from 2000 is a glaring example of the Disconnect in that it makes the mistake of cracking down on crime that should instead be prevented. CA Prop. 21 essentially shifted the philosophy of prevention and rehabilitation to punishment for juvenile criminals.<sup>24</sup> CA Prop. 21 was met with great controversy and even raised constitutional concerns in terms of its implementation and lack of due process for juvenile offenders.<sup>25</sup> Furthermore, it vests enormous power in prosecutors (whose traditional job is "retaliation and not rehabilitation"<sup>26</sup>) in that it grants them a waiver as to whether the child is tried in juvenile or adult criminal court.<sup>27</sup> Its passage in 2000 represents a significant broadening of the Disconnect and a departure from any attempt to solve a problem by understanding its root cause. This law shows the multi-layers of the disconnect in that it was created due to disconnect in understanding, but it goes a step further to functionally create disconnect because of how it forces people (courts, police, etc.) to interact.

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<sup>24</sup> Jennifer Taylor, *California's Proposition 21: A Case of Juvenile Injustice*, 75 SOUTHERN CALIFORNIA LAW REVIEW, 2000, at 983.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Historically, the juvenile justice system made a commendable attempt to focus on the root causes of crime. Juvenile court was created to focus on the offender and whether or not he was delinquent or could be rehabilitated.<sup>28</sup> This was in stark contrast to adult court which focused on the offense and its warranted punishment.<sup>29</sup> This trend of separating children and adolescents from adults because of their “qualitative differences” began in Illinois in the 1890s and spread across the nation.<sup>30</sup> The idea was that children who are still growing are therefore more psychologically adaptable to changing their ways than adult criminals. It also gave more discretion to the judge<sup>31</sup> who would be better able to assess the child or adolescent before him than would be a distant legislature and its strict adult criminal code. There has almost always been a mechanism to transfer a juvenile to criminal court by waiver, either because of his age or the severity of the crime.<sup>32</sup> Therefore, it is not as if a truly hardened young criminal would be immune from due punishment because of his age.

CA Prop. 21, however, raises questions of whether it meets Constitutional muster, particularly in this area of transfer. As stated, CA

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> David S. Tanenhaus, *The Evolution of Transfer out of the Juvenile Court*, in THE CHANGING BOARDERS OF JUVENILE JUSTICE 13, 17 (Jeffrey Fagan & Franklin E. Zimring eds., 2000).

<sup>31</sup> *Id.* Taylor, *supra* note 24

<sup>32</sup> *Id.* Taylor, *supra* note 24

Prop. 21 gives prosecutors the power to waive juvenile court jurisdiction and try children as adults in criminal court. However, this arguably violates the doctrine of separation of powers (in both the California and United States Constitutions) which aims to keep power out of the hands of a single person or group.<sup>33</sup> An article titled “California’s Proposition 21: A Case of Juvenile Injustice” adeptly quotes California Judge James T. Warren as he discusses the constitutionality of CA Prop. 21 as follows:

Under Prop. 21, [transfer] decisions will no longer be made by an independent judge but by one of the parties to the lawsuit – the prosecutor. DAs run for election and have vested interest in appearing “tough on crime.” Filing decisions are most often made by junior prosecutors who lack experience and are under pressure to appear tough on crime. Under Proposition 21 their decisions must be made at the earliest stage, often with incomplete police reports and little or no information about the background of the minor. These critical decisions should be made by a judge, who has no vested or political interest in the outcome.<sup>34</sup>

Further, the act of being automatically transferred to adult court, whether by waiver or by statute, arguably violates the juvenile’s rights to

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<sup>33</sup> *Id.* Taylor, *supra* note 24

<sup>34</sup> Judge James T. Warren, *Proposition 21: No: Costly Law Just Isn’t Needed*, PRESS ENTERPRISE, Feb. 20, 2000 at A13.



due process. The fifth<sup>35</sup> and fourteenth<sup>36</sup> amendments to the United States Constitution protect a person's right to due process, and the California Constitution contains a similar protection.<sup>37</sup> The Supreme Court has held in the past that the waiver procedure in juvenile court requires a full hearing and that the juvenile court judge must issue a statement fully explaining the reason for the waiver.<sup>38</sup> It is argued that CA Prop. 21 violates due process by giving the power of the waiver to the prosecutor directly and without a fitness hearing.

Constitutionality aside, the problem with CA Prop. 21 is that it deprives the court of the opportunity to treat the juvenile as a developing child in certain cases. This wall against judicial discretion is a dangerous manifestation of the legislature deepening and prolonging the Disconnect. It has been noted that, in contrast to the prior juvenile code, “[CA prop 21]

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<sup>35</sup> US CONST am. V

<sup>36</sup> US CONST. am XIV § 1

<sup>37</sup> “Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. / In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States. / This declaration of rights may not be construed to impair or deny others retained by the people.” CAL CONST. art I § 24

<sup>38</sup> Landmark case *Kent v. United States*, 383 U.S. 541, 561 (1996).

requires trial in adult court for juveniles as young as fourteen for certain offenses, and permits the death penalty for juveniles who commit certain gang related murders.”<sup>39</sup> Since California’s proposition system employs direct voting, it would seem that this system should be more free from the disconnect than the federal and many state governments which use wholly representative systems. Unfortunately, however, the proposition system is not free from misrepresentation. CA prop. 21 was positioned to attract the small, politically influenced group of voters who were far from those who whom the law would target.<sup>40</sup>

Goals of public safety are not on the surface misguided. But defaulting to longer and more severe punishments as opposed to attempting rehabilitation is like going to extensive lengths to treat only the effects and not the causes of a potentially curable disease. The trend of cracking down on crime is a slippery slope; it sounds wonderful but it is not optimally effective. Instead, it can produce widespread detrimental effects on the same societal ills that it set out to alleviate. This is the disconnect manifested. The legislature, unfortunately, is one of the greatest culprits in prolonging the struggle, as it condemns people by statute and not by individual merit. The

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<sup>39</sup> Kelly M. Angell, *The Regressive Movement: When Juvenile Offenders Are Treated as Adults, Nobody Wins*, 14 SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW JOURNAL, 2000, at 125.

HOWEVER, in 2005 the Supreme Court rules in *Roper v. Simmons* abolished the death penalty for juveniles anywhere in the United States.

<sup>40</sup> *Id.*

examples of the disconnect span the boundaries of civil and criminal law, from public assistance to mandatory minimum sentences. As demonstrated, the Disconnect exists on multiple levels including state as well as federal.

### 3. The Overuse of Criminal Penalties Has Many Negative Impacts

One single disconnected court decision can impact numerous lives. If a man who is a father is sentenced to five years in prison for a crime, it can directly impact at least two other people: his child and the child's mother. Except in certain cases that allow for work release, incarceration prevents him from working and stops a source of income that would have paid off debts, paid for food and clothes, or paid child support. The need to pay child support does not disappear upon incarceration, in fact, unpaid child support accrues interest in Texas<sup>41</sup> and in most other states including California in which the interest rate is ten percent.<sup>42</sup> These two states allow for a modification in the amount of the child support order, but such a modification is very difficult to receive.<sup>43</sup> Many other states have a “no

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<sup>41</sup> Attorney General of Texas Greg Abbot, *Incarcerated Parents and Child Support: The Handbook for Incarcerated Parents*, Jun. 2008.

<sup>42</sup> Judicial Council of California, *The Basics of Child Support for Incarcerated Parents*, 2011.

<sup>43</sup> Attorney General, *supra* note 41 and Judicial Council, *supra* note 42, both describe a process that involves filing a request to the court to request a change in the amount due but they provide no guarantee that the amount will be lowered.

justification” rule<sup>44</sup> that prevents modification altogether. Child support laws aside, the mother and child still lack a source of income and possibly a more qualitative source of stability as well. Faced with this deficit, the mother may become more inclined to choose an illegal alternative to acquiring income (such as drug trade or even prostitution). The child, too, may make similar choices either as a distraction, or even as a perceived way out of one struggle he or she now faces.

At times long prison sentences are necessary and unavoidable, but the Disconnect rears its head when judges rely on these types of sentences as defaults instead of last resorts. Options that include rehabilitation and a constructive course of probation need to be at the forefront of more judicial decisions. Of course, not all probation is constructive. Andrew Horwitz notes in an insightful article from the *Brooklyn Law Review* that even the reformatory potential of probation can be lost if the system is mismanaged in such a way that more people end up being incarcerated as a result of their more minor violations while on probation:

[A] disturbing consequence is the creation of a shadow criminal justice system in which an extraordinary percentage of criminal charges is resolved not through our normal adjudicative process,

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<sup>44</sup> Indiana Kansas, Louisiana, Nebraska, New Hampshire, New York, and North Dakota. (This is no longer true for Indiana) Susan C. Antos, *Child Support Arrears*, GREATER UPSTATE LAW PROJECT INC., 2005.

but rather through a probation violation process that runs roughshod over the constitutional rights of the accused.<sup>45</sup>

Though the faults of the probation system are not the focus of this thesis, here we see that the overuse of criminal penalties leading to incarceration is a great problem – probation gone wrong is just one example.

a. Mandatory Minimum Sentencing Violates Individualized Treatment

Unfortunately, when it comes to over incarceration, a judge's hand is often forced by legislative restrictions such as mandatory minimum sentencing. These minimum sentences, created in the distant legislature, are generic and far from tailored to fit the individual criminal. The fact alone that these legislative creations shift the discretionary authority away from the judges seems to represent an overstep of boundaries on the legislature's behalf.

The trend of mandatory minimum sentencing came about in the mid 1980s in order to limit the disparities between sentences issued. The Sentencing Reform Act of 1984 and the Anti-Drug Abuse Act of 1986 were among the first pieces of federal legislation to impose mandatory minimum

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<sup>45</sup> The Costs of Abusing Probationary Sentences: OVERINCARCERATION AND THE EROSION OF DUE PROCESS, 75 Brooklyn L. Rev. 753

sentences for certain crimes, especially those related to drugs. The Omnibus Anti-Drug Act of 1988 mandated 5-year minimum sentences for simple possession of more than 5 g of crack cocaine, and requires a minimum 20-year imprisonment for offenders convicted of involvement in a drug enterprise.<sup>46</sup> During the 1980's, the trend of being "tough on crime" was as prevalent as ever. The downside, as we see today, is that in creating these statutory mandatory minimums, the legislature has usurped the judiciary's special discretionary power. The statutes, as opposed to the judge and jury, determine the outcome of the trial. The question becomes not "What is the most fitting sentence for this individual?" (asked by the judge and jury) but "under what statute shall I prosecute this person to achieve the desired sentence?" (asked by the prosecutor and determined by legislative statute). The Federal Sentencing Guidelines of 1987 further reduced judicial discretion in their efforts to reduce sentence disparity, and even they are always trumped by the mandatory minimum sentencing requirements on the federal level.<sup>47</sup>

b. Pennsylvania Sentencing Guidelines Are a Step in the Right Direction

To be effective, sentencing guidelines must balance "the goal of

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<sup>46</sup> Celesta A. Albonetti, *Judicial Discretion in Federal Sentencing: An Intersection of Policy Priorities and Law*, Policy Essay, 2011.

<sup>47</sup> *Id.*

uniformity and logically formal-rational rules, on the one hand, and the goal of individualized justice, which necessitates local discretion and substantively rational considerations, on the other.”<sup>48</sup> John H. Kramer<sup>49</sup> and Jeffrey T. Ulmer describe the struggle that the judicial criminal system faces in their book, Sentencing Guidelines: Lessons from Pennsylvania.

The sentencing guidelines system in Pennsylvania employs substantive rationality<sup>50</sup> to a much greater degree than in other states and in the federal system. When applied to criminal sentencing, this means “flexible and individualized decision making in service of a potentially wide variety of extralegal goals.”<sup>51</sup> These goals include the welfare of the offender, victim, or community. In other words, the Pennsylvania Sentencing Guidelines are relatively effective at maintaining some uniformity of rules but still allowing judges more discretion in considering extralegal factors that determine individualized sentences.

The Pennsylvania Sentencing Guidelines eschew the restrictive power of mandatory minimum sentences by using a special procedure to

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<sup>48</sup> JOHN H. KRAMER AND JEFFERY T. ULMER, SENTENCING GUIDELINES: LESSONS FROM PENNSYLVANIA 2009.

<sup>49</sup> Kramer served as the Executive Director of the Pennsylvania Commission on Sentencing from 1979-1998 and essentially created Pennsylvania’s unique system of criminal sentencing

<sup>50</sup> “Substantive rationality in legal decisionmaking refers to criteria that are guided by, or in service of, ideological factors and goals external to the law.” Id. Kramer, *supra* note 48.

<sup>51</sup> *Id.* Kramer, *supra* note 48.

determine the guideline sentence.<sup>52</sup> The procedure has three steps: (1) Determine the Offense Gravity Score.<sup>53</sup> (2) Determine the Prior Record Score.<sup>54</sup> (3) Determine the guideline sentence recommendation.<sup>55</sup> This framework allows for a more comprehensive view of the offender in terms that are less limiting than resorting to a mandatory minimum sentence. The analysis process takes place in conjunction with a judicial proceeding, in which the judge is allowed to deviate from the guidelines based on the offender's individual merit and other mitigating or aggravating circumstances. Kramer and Ulmer hold that, "the potential complexity of interpreting and applying guidelines and the ability to depart from them in certain situations provide ample opportunity for between-court variation in guideline implementation and sentencing practices."<sup>56</sup>

However, Kramer and Ulmer go on to describe another problem that sentencing guidelines face: even with a comprehensive formula like the one used in Pennsylvania, "the flexibility inherent in substantive rationality also permits the possibility of bias, discrimination, and unwarranted disparity."<sup>57</sup> As mentioned, judges, like legislators, are mostly lawyers. Though they are

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<sup>52</sup> TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS, PART VIII. CRIMINAL SENTENCING, CHAPTER 303. SENTENCING GUIDELINES by the Pennsylvania Commission on Sentencing (2008).

<sup>53</sup> described in §303.3 and §303.15 *Id.*

<sup>54</sup> described in §303.3 and §303.15 *Id.*

<sup>55</sup> described in §303.9 - §303.14 *Id.*

<sup>56</sup> *Id. Supra* note 52

<sup>57</sup> *Id. Supra* note 52



supposed to be held to the highest ethical standards because of their profession, judges too face the educational and experiential disconnect that is prevalent in law makers, and they are not free from personal biases. The next section demonstrates how, unfortunately, the same is true in the executive branch, and often on a more detrimental level.

#### 4. Problem Laws in the Executive Branch

While the previous sections have focused on the Disconnect as it is broadened by the legislature and the courts, this section outlines several examples of disconnect in the executive realm. Though the president's office is obviously the figurehead of the executive branch, the Disconnect that this thesis covers is the between the people and the police force or administrative agencies that interact much more closely with the people. Specifically, this looks at the police as people who could potentially decrease the disconnect because of their close proximity to the people. It also takes a brief look at the Environmental Protection Agency (EPA) as an example of a government agency that adds to the disconnect with certain regulations that don't seem to rightly serve the people affected by them.

##### a. Racial Profiling by the Police

Consider this quote from an anonymous sixteen year-old Chicano in an article by Robert Koehler about racial profiling of Chicana/o youths in

San Jose, California:

“I like to go out on Friday nights and Saturday nights and join up with my homies and walk around the hot spots and get some food. I like to check out the girls and see if I can get something going with them. But every weekend the cops stop me. What the \*\*\*\* for? I go to school everyday and get treated like a criminal and then, when I want to step out of my house...I get treated like a criminal again! I have never been arrested for nothing! But I always get stopped for walkin' down the street. For walkin' down the street! Am I in a gang (the police ask)? Who's in a gang? Who's carrying a gun, a disrespectful attitude, and stopping people for nothing? The police gang. You don't see me with a gun or knife or harassing anyone! I'm just tryin' to walk down the f\*\*\*ing street.”<sup>58</sup>

This excerpt is striking in part because it lacks the polished language that we expect from a statement that we are to take seriously. Yet, the youth's words articulate the Disconnect dead on. The youth speaking represents the people whom laws and police officers Affect. This thesis challenges officers of the law to open their ears, so to speak, because it is the only way that the understanding gap may ever be closed. The act of racial profiling by the police represents the Disconnect in its purest, most

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<sup>58</sup> Robert Koehler, *Petit Apartheid and the “TB” Snydrome: Police Racial Profiling of Chicana/o Youths in San Jose, California*, ETHNIC STUDIES REVIEW, 2007, at 1.

pungent form – an officer of the law directly and intentionally makes unsupported assumptions and acts on them to the detriment of the people.

And so, we briefly examine racial profiling and its detrimental effects. An article from the *American Behavioral Scientist*<sup>59</sup> cites tens of studies that ultimately suggest that profiling is unconstitutional.<sup>60</sup> Constitutionality aside, it seems to have detrimental effects on the groups that are targeted.<sup>61</sup> For example, studies show that an increase or decrease in the percentage of criminals punished does not affect people's fear of being punished and therefore does not change crime rates.<sup>62</sup> So, even though through racial profiling more criminals of a certain group may be arrested and apprehended, this is neither appropriately representative of the percentage of criminals in that group nor more effective at deterring

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<sup>59</sup>George Wilson, Roger Dunham and Geoffrey Alpert, *Prejudice in Profiling*, AMERICAN BEHAVIORAL SCIENTIST, Vol. 47 No. 7, March 2004, at 896.

<sup>60</sup>Banks, 2001; Engel et al., 2001; Fagan, in press; Garrett, 2001; Gross & Livingston, 2002; Harris, 1997, 1999, 2002; Skolnick & Capolovitz, 2001; Smith & Alpert, 2002; Smith & Petrocelli, 1997; Taylor & Whitney, 1999; Thatcher, 2001; Tomaskovic-Devey, 2001.

<sup>61</sup>Jesper Ryberg, *Racial Profiling and Criminal Justice*, JOURNAL OF ETHICS VOL. 15, 2011, at 79-88.

<sup>62</sup>“Whether the ratio of apprehended criminals is somewhat higher or lower need not have any impact on people's judgments with regard to the likelihood of being apprehended and, consequently, need not affect the general preventive effect of the punishment system. There may, so to speak, be a point at which the curve flattens out in the sense that an increase in the ratio of apprehended criminals no longer results in an increase in general crime prevention. But if that is the case, then it seems that apprehension and punishment of a larger percentage of criminals will no longer be desirable—in fact, from a utilitarian point of view it would be wrong. Moreover, over-punishment may affect when this point is reached. A society that punishes criminals too severely—i.e., that in utilitarian terms punishes more severely than is required—may be more likely to reach the point at which an increase in the ratio of apprehensions is undesirable.” *Id.* At 82 and at 80 (Doob and Webster 2003).

members of that group (or any other) from committing crimes than would be random stops and searches.<sup>63</sup> In fact, racial profiling leads members of the discriminated-against groups to resent and distrust police even more.<sup>64</sup>

Though solving the problem of police racial profiling is out of the realm of this thesis, through examining it, we can identify that it is rooted in the same Disconnect as the problems in the legislative and judicial branches. For one thing, officers of the executive branch don't necessarily understand the people or situations that they come into contact with, which can prolong the problem. The same is true on the civil side of things. In business, government agencies audit transactions that they likely do not fully understand.

#### b. Administrative Agencies Can Easily Abuse Their Executive Power

Administrative agencies have the unique power to make regulations and enforce them as law (limited to powers conferred upon them either by the statute or by the constitution, of course).<sup>65</sup> This thesis discusses briefly one example of an agency, the Environmental Protection Agency, that can and

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<sup>63</sup> *Id.* at 82

<sup>64</sup> *Id.*

<sup>65</sup> "Administrative powers can be executive, legislative, or judicial in nature. These agencies are vested with the responsibility to interpret guidelines consistently in order to avoid arbitrary and capricious results. Administrative agency decisions can be reversed as arbitrary or capricious if the decisions lack fairness and if it fails to indicate any course of reasoning and the exercise of judgment." US Legal, Legal Information Encyclopedia, Powers and Functions of Administrative Agencies' <http://system.uslegal.com/administrative-agencies/> (last visited Mar. 2012).

does act in a disconnected fashion, sometimes even advancing interests that are at odds with those of the people it represents.

*i.* The EPA

There is obviously discourse about whether certain EPA regulations inhibit business.<sup>66</sup> Of course, businesses need to be conscious about the world around them. But how many EPA government employees have business backgrounds? Government agencies actually have the dangerous ability to take their regulations (and with that, the Disconnect) to another dangerous level. For example, overregulation is often the result of people mistakenly calling for regulations that they perceive to be needed, whether or not they truly are.<sup>67</sup> In other words, politicians and government agencies can paternalistically convince people that regulations are needed.<sup>68</sup> This takes the Disconnect a step further and is an even graver sin, as it involves misleading people to believe that the government's actions are in line with their expectations, based on a false reality.

One way to overcome this problem is if government agencies instead play on the same field as business through a form of marketing. An

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<sup>66</sup>For example, Andy Stone, *What the EPA's Rulings Mean for Business*, FORBES MAGAZINE, Apr. 17, 2009.

<sup>67</sup>Salanié, F. and Treich, N., *Regulation in Happyville*, THE ECONOMIC JOURNAL VOL. 119, 2009, at 665–679.

<sup>68</sup>*Id.*

article from the Journal of Business and Behavioral Sciences suggests a more effective and beneficial way for the EPA to get businesses to cooperate with its goals.<sup>69</sup> That is, instead of making rules, the EPA might market its ideas to businesses as mutually beneficial and profitable practices that enhance instead of inhibit business.<sup>70</sup> It is less a matter of agencies being right or wrong in their proposed regulations, but more a suggestion that agencies pitch their ideas about business regulations as something that businesses can either buy into or not. If a regulation is a legitimate idea that is both environmentally beneficial and makes business sense, it would receive positive feedback. If it is an overly restrictive idea that really only gives too much power to the agency, the ideas would not have weight and would probably not become actual regulations. The only potential danger here is deceptive marketing (in the same vein as the "false reality" premise described above).

The Disconnect as described in this section is self-perpetuating. Just as earlier sections described how the legislative and judicial branches necessarily balance each other out, the executive branch must be an integral part of the balance of power.

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<sup>69</sup>Tom Suraphol Apaiwongse, *Barriers of EPA Voluntary Policy Upon Market Innovations: An Exploratory Qualitative Approach*, JOURNAL OF BUSINESS AND BEHAVIORAL SCIENCES VOL. 19 NO. 2, Fall 2008 at 11-23.

<sup>70</sup>*Id.*

*B. The People's Reactions to the Disconnect and Disconnected Laws*

Now we shift gears to focus on the most significant evidence for the existence of the Disconnect: the people's reactions and manifestations of their dissatisfaction with the status quo. This section first examines the eye-opening opinions expressed through rap lyrics. It then goes on to show how the Tea Party and Occupy Wall Street movements are similar expressions of the Disconnect's impact on the people. As it turns out, all three have striking similarities to one another.

1. Rap/Hip-Hop Lyrics Provide Insight Into Real and Personal Decisions

Examining unconventional sources like lyrics may prove to be highly effective at bridging the Disconnect by helping close the understanding gap. Lyrics, like personal testimonies, offer unique insights into their speaker's perspective. Lyrics are valuable communication tools that can create understanding and even empathy among listeners. Legislators and judges, who are often physically distant from the inner city, can nevertheless identify with lyricists on another level: that of human understanding. Certainly, lyricists are subjected to their own biases and motivations, but this represents the diversity of opinion that officers of the law need to consider when acting on behalf of society.

A well-rounded body of research can lead to new and better solutions. Just as politicians of opposing parties maintain enough respect for one another to listen while the other speaks his point of view (sometimes thereby establishing compromises and agreements), they ought to listen to their constituents (who are not in fact their opponents). Just as we consider opposing points of view, we should consider lyrics in this similar context. They need not be taken as fact, certainly, lyricists are artists. No one would pass a law of social consequence in a city only after studying a painting of the area. Yet, through studying unfamiliar arts one can condition the mind to perceive facts or themes differently and from fresh perspectives.

A common theme among rap and hip-hop lyrics is exasperation with the system. In the song “The Proud,”<sup>71</sup> hip-hop artist Talib Kweli enumerates multiple instances that represent system failures in America. He announces them as if they are news reports and then comments on what they mean to him. Deeper consideration of his position tempers the initial brashness of his comments, including what he would say to the widow of a police officer (“cops kill my people every day, that’s life”). He exhibits remorse and intellect at the same time as what comes off as insensitivity:

*[Interlude]*

August 4, 2001

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<sup>71</sup> TALIB KWELI, THE PROUD, (Rawkus 2002)



A drunken police officer mows down an entire family  
in Brooklyn

The judge lets him go with no bail

It reminds us, of just how worthless our lives are to the  
justice system

I struggle, to explain the situation to my son, it's hard

*[Verse Two]*

N\*\*\*\*\* with knowledge is more dangerous than  
n\*\*\*\*\* with guns

They make the guns easy to get and try to keep n\*\*\*\*\*  
dumb

Target the gangs and graffiti with the Prop 21

I already know the deal but what the f\*\*\* do I tell my  
son?

I want him livin right, livin good, respect the rules

He's five years old and he still thinkin cops is cool

How do I break the news that when he gets some size

He'll be percieved as a threat or see the fear in they  
eyes

It's in they job description to terminate the threat

So 41 shots to the body is what he can expect

The precedent is set, don't matter if he follow the law  
 I know I'll give my son pride and make him swallow it  
 all (damn!)

...

Who they serve and protect? n\*\*\*\* not you  
 Cops shot off of ten G's but they got glocks too  
 Let you protect yourself, or better yet respect yourself  
 Straight into the hospital is where you gotta check  
 yourself

They be gettin tips from snitches and rival crews  
 Doin them favors so they workin for the drug dealers  
 too

Just business enforcers with hate in they holsters  
 Shoot you in the back, won't face you like a soldier<sup>72</sup>

The effect is eye-opening. Kweli reveals multi-dimensional feelings of simultaneous resentment and hopefulness when he discusses topics like how to prolong his son's imminent disillusionment with law officers.

Tupac Shakur also comments on failures of the system in his song, "Keep Ya Head Up."<sup>73</sup> Though the song primarily encourages women to

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<sup>72</sup> *Id.*

<sup>73</sup> TUPAC SHAKUR, KEEP YA HEAD UP (Interscope Records 1993)

stay positive in the face of life's abuses and mistreatment from men, it also alludes to his general discontentment with the trapped and forgotten welfare class and the government's military spending:

Little somethin for my godson Elijah and a little girl  
named Corinne

*[Verse One:]*

...

I give a holler to my sisters on welfare

Tupac cares, if don't nobody else care

And, I know they like to beat ya down a lot

When you come around the block brothas clown a lot

But please don't cry, dry your eyes, never let up

Forgive but don't forget, girl keep your head up.

...

*[Verse Two:]*

...

I'm tryin to make a dollar out of fifteen cents

It's hard to be legit and still pay tha rent

And in the end it seems I'm headin for tha pen

I try and find my friends, but they're blowin in the wind

Last night my buddy lost his whole family

It's gonna take the man in me to conquer this insanity  
 It seems tha rain'll never let up  
 I try to keep my head up, and still keep from gettin wet up  
 You know it's funny when it rains it pours  
 They got money for wars, but can't feed the poor  
 Say there ain't no hope for the youth and the truth is  
 it ain't no hope for tha future  
 ...  
 We ain't meant to survive, cause it's a setup  
 And even though you're fed up  
 Huh, ya got to keep your head up.<sup>74</sup>

The theme of system failure gives way to the theme of alienation. Lyrics describe being victimized and ostracized. This leads to confusion and feelings that there is no avenue for legitimate help to turn to - least of all the government. The chorus of the song “Runnin’ (Dying to Live)”<sup>75</sup> by Tupac Shakur and Christopher Wallace (The Notorious B.I.G. or “Biggie”), posthumously-released, testifies to this feeling of helplessness:

You know, I wonder if they'll laugh when I am dead.

Why am I fighting to live, if I'm just living to fight

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<sup>74</sup> *Id.*

<sup>75</sup> TUPAC SHAKUR AND NOTORIOUS B.I.G., RUNNIN’ (DYING TO LIVE) (Interscope Records 2003)

Why am I trying to see, when there ain't nothing in sight

Why am I trying to give, when no one gives me a try

Why am I dying to live, if I'm just living to die?<sup>76</sup>

The second verse (sung by Tupac), is also characterized by the same feeling of helplessness.:

We was young, and we was dumb, but we had heart

In the dark when we survived through the bad parts

Many dreams is what I had, and many wishes

No hesitation in extermination of these snitches

And these b\*\*\*\*\* they still continue to pursue me

... even the cops tried to sue me

So what can I do but stay true, sipping 22's a brewing

Now the media's trying to test me got the press asking questions, trying to stress me

misery is all I see, that's my mind's state

My history with the police is shakin' the crime rate

Ma main man had 2 strikes, slipped, got arrested and flipped

He screamed 'Thug Life!' and emptied the clip

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<sup>76</sup> *Id.*

Got tired of running from the police.<sup>77</sup>

Tupac's words are in line with the song's overall tone: resignation after being denied any attempt at advancement. The introduction of Wallace's song "Juicy"<sup>78</sup> speaks volumes about the same rejection and alienation. He proclaims the album to be a dedication to everyone who prolonged his struggle, and especially, to those who continue to struggle in the face of opposition:

Yeah, this album is dedicated to all the teachers that told me  
I'd never amount to nothin', to all the people that lived above the  
buildings that I was hustlin' in front of that called the police on  
me when I was just tryin' to make some money to feed my  
daughters,  
and all the n\*\*\*\*\* in the struggle, you know what I'm sayin'?<sup>79</sup>

System failure and its side effect, alienation, both seem to influence loyalties to crime and criminal enterprises instead of to the law. When acceptance and opportunities for self-advancement seem more promising through criminal activity than through legitimate activity it is easy to see

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<sup>77</sup> *Id.*

<sup>78</sup> NOTORIOUS B.I.G., *JUICY*, (Bad Boy Records 1994)

<sup>79</sup> *Id.*

why. In the song “Loyal to the Game,”<sup>80</sup> Tupac Shakur and members of G-Unit: Curtis James Jackson III (50 Cent), Christopher Lloyd (Lloyd Banks), and David Darnell Brown (Young Buck) proclaim their loyalty to a life of crime and beating the system. They boast of evading the law. The tone of this song is quite different than the others already mentioned; it reveals pride in disregarding the law as opposed to a yearning for redemption that the other songs exhibit:

*[Verse 2: Young Buck]*

Possessed by the streets you can't tell me that this ain't home

I can't eat if the rest of this s\*\*\* ain't gone

I'm gettin used to the needles on the bathroom sink

Gotta close my door because the bathroom stink

See, daddy don't work, and mama don't drink

But daddy do dope, and mama can't think

So look like I'm gonna be the man of the house

Gotta have somethin to put in her hand when it's out

Up early in the morning the first to get it

They say if you really want it then come on wit it

Sacrifice my life for this ice and these cars

And I only spent 30 days behind bars

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<sup>80</sup> TUPAC SHAKUR, LOYAL TO THE GAME (Interscope Records 2004)

I ain't never had a job but my rent got paid  
I handled any beef that they sent my way  
So send me to the pen but you know I won't change  
It's thug in my veins  
I'm loyal to the game.<sup>81</sup>

Do these last lyrics indicate a decisive departure from the law, one that cannot be remedied? Perhaps for those who wrote them. It is a dangerous reality for young listeners who are faced with the choice of pursuing a legitimate career or buying into the small time drug trade or violent gang behavior that opens doors to greater risks (and what they perceive to be greater returns).

## 2. The Occupy Wall Street and Tea Party Are Different Sides of the Same Coin of Political Dissatisfaction

Rap artists and inner-city inhabitants are not the only people who suffer from the Disconnect and voice their opinions on feeling alienated. In fact, though their messages come from opposite ends of the political spectrum, the Tea Party and the Occupy Wall Street movements both have partially business-related agendas and are characterized by the same vein of

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<sup>81</sup>*Id.*



institutional dissatisfaction. These three “movements,” (that is, the Tea Party, Occupy Wall Street, and rap) without knowing it or even caring about one another, have a common motive: to make heard their protest of the system.

The Tea Party and Occupy Wall Street movements have perhaps been more effective at making their voices heard by the mainstream media than rap artists have, and therefore they may be further along their way to being considered on Capitol Hill. In fact, Tea Party backed candidates have already had some political victories and have been elected to both state and federal legislatures.<sup>82</sup> Still, each of these movements can learn from one another, and law officers across the branches of the government need to commit themselves to learning a lot more from these dissatisfied citizens.

The Tea Partiers seek to align themselves with the Boston Tea Party movement of the American revolutionary era. They contend that the Founding Fathers created a framework and eternal principles that would lead the United States to prosperity.<sup>83</sup> Their message is that socialism, progressivism, and government regulation have led the nation astray.<sup>84</sup> They maintain that it is time for the people to reclaim their right to a life largely free from government regulation. This reclamation and subsequent return to

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<sup>82</sup> For example, Mike Lee of Utah, Rand Paul of Kentucky, and Russell Pearce of Arizona.

<sup>83</sup> Gerald A. Goldstein, *The Tea Party Movement and the Perils of Popular Originalism*, 53 ARIZ. L. REV. 827

<sup>84</sup> *Id.*

the simple eternal principles will empower the people instead of just the federal government and set the nation on the path to solving its problems, including but not limited to the debt crisis.

The Tea Party's ideology is summed up in the term "popular originalism" which combines the separate theories of originalism<sup>85</sup> and popular constitutionalism.<sup>86</sup> These theories address different aspects of constitutional interpretation; originalism addresses how the text should be interpreted (in its original form with its original intentions), and popular constitutionalism addresses who should do the interpreting (the people at large as opposed to the federal government).<sup>87</sup> The practice of combining these two theories, which do not necessarily compete with one another, has been widely criticized by opponents of the movement. Nevertheless, the Tea Partiers' dissatisfaction with the legal system's status quo is clear.

The very vocal dissatisfied group at the other end of the political spectrum, Occupy Wall Street, though newer than the Tea Parties, has already caught national attention. The description from their official homepage reads: "Occupy Wall Street is [a] leaderless resistance movement

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<sup>85</sup>"Originalism is a set of theories of textual interpretation, which most centrally assert that the meaning of the constitutional text was fixed at the time the Constitution was adopted, the only true meaning of the text is the original meaning, and only the original meaning has democratic legitimacy." *Id.*

<sup>86</sup>"Popular constitutionalism...is a set of theories that address the institutional mechanisms for determining the meaning of the Constitution, which asserts that the authority to determine the meaning of the Constitution does not (or should not) rest exclusively in the hands of the judiciary and that the people at large can (or should) effectuate their understandings of the Constitution through democratic politics." *Id.*

<sup>87</sup> *Id.*

with people of many colors, genders and political persuasions. The one thing we all have in common is that We Are The 99% that will no longer tolerate the greed and corruption of the 1%.”<sup>88</sup> Occupy Wall Street uses the Arab Spring tactic<sup>89</sup> and encourages nonviolence and civil disobedience in its protests. Although they target “Wall Street” (i.e. big businesses and corporations) and the top 1% of income earners in America as the objects of their protest, the underlying tone is dissatisfaction with how little has been done to alleviate the gross inequality that they see.

While the different movements target different branches of the government with their political demands and suggestions (Occupy Wall Street primarily legislative; Tea Party primarily legislative and judicial, that is, the federal Supreme Court’s interpretation of the constitution), they each hold that the officials have abandoned them in some way. They systematically refuse to conform in silence any longer to the direction that officials have taken the nation. Andrew Sullivan puts it well,

“The theme that connects them all is disenfranchisement, the sense that the world is shifting deeply and inexorably beyond our ability to control it through our democratic institutions. You can call this many things, but a “democratic deficit” gets to the nub of it.

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<sup>88</sup>Occupy Wall Street Homepage, available at: <http://occupywallst.org/> (Last Visited Jan. 2012).

<sup>89</sup> Generally peaceful, pro-democracy movements modeled after the recent uprisings in the Middle East and North Africa

Democracy means rule by the people—however rough-edged, however blunted by representative government, however imperfect. But everywhere, the people feel as if someone else is now ruling them—and see no way to regain control.”<sup>90</sup>

Sullivan discusses how the movements, particularly Occupy Wall Street, have become global. He goes on to say, “The collapse of faith in big government is hard to distinguish from the collapse of support for big business—especially when the tax code reads like a conspiracy between them against the rest of us.”<sup>91</sup> This is a striking point. However, even without establishing that their messages are essentially intertwined, it is clear that both movements’ motives (that is, to be heard) are the same.

This similarity aligns the Tea Party and Occupy Wall Street with the rap artists, all three of whom are at odds with the legal system. The rap artists perhaps have the longest road ahead of them, as they address dissatisfaction with every branch of government (the legislative with its laws that inhibit social progress; the executive with its corrupt and biased police officers; and the judicial with its ill-fitted sentences). However, rap’s themes of exasperation with the system, alienation, and helplessness are the very same themes that the Tea Party and Occupy Wall Street movements

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<sup>90</sup> Andrew Sullivan, *You Say You Want a Revolution*, NEWSWEEK MAGAZINE ONLINE, Oct. 23, 2011, <http://www.thedailybeast.com/newsweek/2011/10/23/how-i-learned-to-love-the-goddamned-hippies.html>.

<sup>91</sup> *Id.*

share. All of these very different people have in their own ways identified the same Disconnect. Each group is speaking out and letting the system know that it is time for change.

Interestingly enough, many people from the inner cities that the rap artists represent tend to empower themselves more often than they call upon the government to fix their problems. It seems that many people are already resigned to the notion that the government won't help them, and so they take matters into their own hands. Because of this perception, they often turn to crime as the alternative. It is a common misjudgment that underprivileged people wait for their welfare checks and do nothing to advance themselves in the meantime. The problem is not that they take no action, but that the actions they resort to are misguided. The drive to succeed is there, but apparently the laws in place (or our means of enforcing them) are limiting or ineffective.

This presents the same dangerous choice that children in disenfranchised environments are faced with: pursuing a legitimate career or buying into the small time drug trade or violent gang behavior that open doors to greater risks (and what they perceive to be greater returns).

### III. HOW DO WE SOLVE THE DISCONNECT?

This thesis now proposes several bottom-up as well as top-down

solutions to the Disconnect defined and described to this point.

### *A. Educate the People*

The first proposed solution is a bottom up focus on educating the people. It suggests embracing the Constitution as a protector of rights and therefore a tool to advance the people's interests and make them visible to the law makers and decision makers in society.

#### 1. The Constitution is Key

A lot of the doubts that people have regarding their ability to succeed in the United States stem from lack of understanding of their Constitutional rights. The Constitution enumerates the powers of the government and explicitly states and protects the rights of the people. Though it is impossible to ensure equality of outcome, the Constitution exists to ensure equality of opportunity to each American when it comes to government treatment. However, knowledge is truly power when it comes to Constitutional rights. The body of this thesis lists examples of laws and officials that add to the disconnect, yet many of the negative effects could be mitigated if all of the players considered Americans' constitutional rights. This thesis therefore represents how laws and officials, when left unchecked, trod over these rights. All too often people cause their own

feelings of disenfranchisement by not knowing how well the Constitution can actually protect them.

A large number of surveys have consistently shown that Americans do not adequately know the Constitution.<sup>92</sup> It is this knowledge, however, that can empower them to not only stand up for their rights in the face of police abuse, but also to proactively stop laws from being passed that are unnecessarily disconnected from the people to whom they apply. This thesis does not place the blame solely on officials' misinterpretation of the people – it is largely the people who contribute to their own disenfranchisement through their lack of knowledge.

There are already inspiring movements that have sprouted up to help people get to know their rights. The ACLU has published booklets that educate people about what to do when they are “stopped, questioned,

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<sup>92</sup>One can find a selection of surveys at a variety of websites related to the Constitution. C, eg.

<http://ratify.constitutioncenter.org/CitizenAction/CivicResearchResults/NCCTeens%27Poll.shtml>;

<http://ratify.constitutioncenter.org/CitizenAction/CivicResearchResults/NCCNationalPoll/index.shtml>;

[http://www.constitutionfacts.com/2011\\_constitution\\_day\\_survey/](http://www.constitutionfacts.com/2011_constitution_day_survey/);

[http://www.constitutionfacts.com/2010\\_constitution\\_day\\_survey/](http://www.constitutionfacts.com/2010_constitution_day_survey/);

<http://www.newsplex.com/home/headlines/103081684.html>;

<http://writ.news.findlaw.com/dorf/20020529.html>;

[http://justice.uaa.alaska.edu/forum/19/1spring2002/d\\_const.html](http://justice.uaa.alaska.edu/forum/19/1spring2002/d_const.html);

<https://www.baker.edu/student/const/survey.cfm>;

<http://www.gsusignal.com/2.14080/surveys-yeild-that-american-knowledge-on-u-s-constitution-is-limited-1.1948783#.T0KcuoGjSSo>;

<http://www.ericdigests.org/pre-926/constitution.htm>.

arrested, or searched by law enforcement Officers.”<sup>93</sup> A website called Flexyourrights.org uses social media including youtube.com to reach people and educate them about how to prevent abuse by police officers.<sup>94</sup> Social support organizations based on empowerment are key to solving this problem. For example, Urban Youth Impact is a California organization that “exists to love, equip and empower inner-city youth and their parents to fulfill their God-given purpose.”<sup>95</sup> The group has many programs, but their Leadership Academy stresses academic development as a means to succeed in life.<sup>96</sup> Though this thesis would suggest that they go further to include lessons that focus specifically on Constitutional education, organizations like this are key to reaching inner-city children and remedying the disconnect for the future.

Furthermore, one does not have to look far to see the comprehension and retention rates of effective marketing efforts in the United States (think of the highly recognizable “Got Milk” style campaigns). This thesis suggests that the power of marketing should be harnessed to promote education and empowerment of the people. Imagine billboards that feature a

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<sup>93</sup>The ACLU Racial Justice Program, *Know Your Rights When Encountering Law Enforcement*, ACLU National Security Project, ACLU Immigrants’ Rights Project, and the ACLU of Southern California.

<sup>94</sup> Flex Your Rights homepage, <http://flexyourrights.org/>, (last visited Feb. 2012).

<sup>95</sup> Urban Youth Impact homepage, <http://www.urbanyouthimpact.com/>, (last visited Feb. 2012).

<sup>96</sup>“The primary goal of The Leadership Academy (TLA) is to prepare the students it serves to succeed in life by providing academic assistance, character development and spiritual enrichment through the students’ formative years.” *Id.*



picture of a prominent hip-hop artist with bold text across the center reading, “Flex your rights.” The only other text on the ad would be the URL to a website like Flexyourrights.org. This advertising style would spark the receiver’s attention and lead him to engage in the “Flex Your Rights” idea. Upon accessing the website he could read further about his clearly stated, constitutionally guaranteed rights and powers. At this point, links could be provided to organizations such as Urban Youth Impact which would provide opportunities to continue the education and get involved with productive, empowering activities in his community. With the appropriate celebrity endorsements, knowing one’s rights could easily become “cool.”

### *B. Marketing Research*

The “Got Milk?”-style rights-marketing initiative is a glimpse into the world of business marketing, but there is so much more that marketing is capable of. For better or for worse, it seems that marketers have figured out how to tap into more information about consumers than consumers actually know about themselves. This thesis contends that the powerful methods of marketing research can be applied to work for “the better” and to uncover the needs and wants of the American people in a day and age governed by technology.

## 1. How Marketing Research is Used in Business

Businesses have long targeted their consumers with advertisements. Every era has had its own marketing style that dominated the advertising of the day (think the 1960's Old Spice jingle to high tech, humor laden Super Bowl commercials of today).<sup>97</sup> Today, the field of marketing is characterized by Integrated Marketing Communications (IMC) which views marketing as a business process. IMC unites the various aspects of the promotional mix (advertising, direct marketing, interactive/internet marketing, sales promotion, publicity/public relations, and personal selling)<sup>98</sup> under one common plan and budget. IMC is unique in that it seeks to understand both internal and external stakeholders (that is, employees and managers as well as consumers), and build "long-term brand and shareholder value."<sup>99</sup> Thus, research is a major component of gaining such a holistic understanding of all of the players in the market. Businesses can now learn as much as they want about a chosen demographic, and perfectly

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<sup>97</sup>The evolution of Integrated Marketing Communications (IMC): The 1950's was the Mass Marketing Era, characterized by advertising a product with television and radio jingles as having superior performance in its product class. The 1970's is known as the Sales Era in which the main goal of advertising was to generate product demand. In a time of counter-culture and anti-business movements, marketers just wanted to sell. The 1980's was the Marketing Era. In this time of high materialism, marketers began to match organizations' products to customers' wants. In the 1990's and 2000's the IMC era evolved in which marketers fine tune the products and advertising appeals to customers' wants. GEORGE E. BELCH AND MICHAEL A. BELCH, *ADVERTISING AND PROMOTION: AN INTEGRATED MARKETING COMMUNICATIONS PERSPECTIVE* (2012). At 8-10.

<sup>98</sup> Figure 1-2 Elements of the Promotional Mix, *Id.* At 17.

<sup>99</sup> Don Schulz of Northwestern University definition of IMC, *Id.* At 10.

target their marketing campaign and products to meet the needs of that demographic. Why, then, should government officials not delve into similar research in order to acquire an appropriate understanding of their constituents? There are powerful valid reasons in favor of, and opposing, such action.

For example, a recent article in the New York Times describes how Target is able to tell a woman is pregnant even before she has told any of her closest friends.<sup>100</sup> According to the article, Target has identified that by capturing a pregnant woman in her second trimester as a loyal customer, they could likely capture her for years to come.<sup>101</sup> They determine she is pregnant through tracking her purchases. Key identifier items include vitamins, zinc, and magnesium supplements, and cocoa butter lotion.<sup>102</sup> “Toss in extra large clothing, or a rocking chair, and the store decides you are pregnant,” says another article on the Target pregnancy-sleuthing topic.<sup>103</sup> Once Target has determined that a customer is pregnant, they can immediately begin targeting her with specialized baby coupons to fit her personal needs.

The idea of government officials having access to such personal and

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<sup>100</sup> Charles Duhigg, *How Companies Learn Your Secrets*, Feb. 16, 2012.

<sup>101</sup> *Id.*

<sup>102</sup> WCPO, *Report: Target Knows When You're Pregnant*, Feb. 22, 2012 at [http://www.wcpo.com/dpp/news/local\\_news/report-target-knows-when-youre-pregnant](http://www.wcpo.com/dpp/news/local_news/report-target-knows-when-youre-pregnant).

<sup>103</sup> *Id.*

intimate information as this is, of course, a bit frightening. Privacy laws are rightfully in place to prevent the government from interfering too closely in people's personal lives. Furthermore, there is something to be said for standing up and being counted. It would seem that making laws based on people's desires that they may not have even acknowledged let alone lobbied for in any way could produce a lazy and aloof public. However, it is probably not likely that the average disconnected American citizen will rally around town halls as in the case of the Tea Party movement or fully mobilize in order to make their voices heard in the style of the American Revolution (especially in a time that probably does not call for a full-out revolution anyway). With this in mind, tapping into modern information sharing capabilities in some way seems like a good alternative. Failure to use research methods to connect with the people will only produce more of the same disconnect.

Indeed, times have changed. Consider this analogy: the phone lines have all broken, so we need to figure out a new way to connect. We can look to developing countries who are rapidly becoming modernized but lack the infrastructure built from our industrial revolution (i.e. phone lines). Instead, they bypass our process and begin building cell phone towers, which is a lot easier and cheaper than building the infrastructure for the all-

but-outdated telephone system.<sup>104</sup> The disconnect that we currently experience is something of the same nature. Instead of expecting all of the disenfranchised people to start attending town hall meetings tomorrow, however, officials need to reach out to them in modern, innovative ways. In other words, we can't go back.

Instead, officials can follow in the footsteps of some other marketing researchers and use social media as an avenue to connect with people. Third party providers with their own security methods enabled, such as Facebook, can act as what a marketer would call an important "consumer touchpoint" or "contact point," that is, an encounter with a customer that provides an opportunity for a flow of information.<sup>105</sup> Marketers seek to maximize such touch points in order to reach the consumer on as many levels as possible. Just as Facebook enables marketers to target users with ads for products related to their listed interests, government officials could engage in forging a similar connection through a third party provider. The advantage of a tool like Facebook for closing the Disconnect is that Facebook provides a two-way flow of information that is nonetheless security enabled. This allows

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<sup>104</sup>“Without the burden of navigating pre-established bureaucratic chains, new [cellphone] towers are going up at a furious pace. Unlike fixed-line phone networks, which are expensive to build and maintain and require customers to have both a permanent address and the ability to pay a monthly bill, or personal computers, which are not just costly but demand literacy as well, the cellphone is more egalitarian...” Sara Corbett, *Can the Cellphone Help End Global Poverty?*, NEW YORK TIMES ONLINE, Apr. 13, 2008, at <http://www.nytimes.com/2008/04/13/magazine/13anthropology-t.html?pagewanted=all>

<sup>105</sup> Definition of contact (or touch) point, *Id.* Belch and Belch, *supra* note 97, at 26.

for not only the company (or government employee or agency, in our case) to target the consumer (or citizen), but for the targeted party to provide feedback as well. Private “know your rights” groups could do the same. In fact, it would be beneficial for business to get behind this effort. Business, which thrives in a healthy economy, would benefit from helping connect people and turning them into productive members of society.

## 2. How and Why Businesses Should use Marketing Research to Help People

The fundamental goal of business is obviously to turn a profit to shareholders. In today’s day and age, however, the focus has shifted and broadened from merely shareholders<sup>106</sup> to include all of the stakeholders<sup>107</sup> as well.<sup>108</sup> Stakeholders, who are not necessarily financially invested in the business, can be anyone from employees to neighboring communities. Corporate social responsibility<sup>109</sup> aside, however, it is in the economy’s

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<sup>106</sup>“Shareholders are stakeholders in a corporation, but stakeholders are not always shareholders. A shareholder owns part of a company through stock ownership, while a stakeholder is interested in the performance of a company for reasons other than just stock appreciation” Investopedia, Online Financial Encyclopedia, Shareholders and Stakeholders, May 8, 2009, <http://www.investopedia.com/ask/answers/08/difference-between-a-shareholder-and-a-stakeholder.asp#axzz1rPuBMmlX>.

<sup>107</sup> *Id.*

<sup>108</sup> *Shareholders vs. Stakeholders: a New Idolatry*, ECONOMIST ONLINE, 22 Apr 2010.

<sup>109</sup> “The new field of corporate social responsibility (CSR) has encouraged companies to take the interests of all stakeholders into consideration during their decision-making processes instead of making choices based solely upon the interests of shareholders. The general public is one such stakeholder now considered under CSR governance. When a company carries out operations that could increase pollution or take away a green space

(and therefore business's) best interest to maximize the number of happy and productive members of society.

For example, certain corporations could get behind smaller social justice programs, inner city advancement programs, and know your rights programs, or even start and sponsor their own. Others could invest in a Facebook-like third party provider (or become this third party provider) to help connect the people to their government, in order to decrease the size of the Disconnect. This would at the same time shed a positive light on corporations that lend their support to such operations. Basically, business could help build the "cell phone towers" from the earlier analogy that will facilitate the communication between the government and the people and close the Disconnect for the era to come.

## CONCLUSION

The Disconnect is a problem that has been around for a long time in the United States. It manifests itself in all three branches of our government, in varying degrees of severity. Recently, however, people have been responding to feeling disconnected from their government in new and

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within a community, for example, the general public is affected. Such decisions may be right for increasing shareholder profits, but stakeholders could be impacted negatively. Therefore, CSR creates a climate for corporations to make choices that protect social welfare, often using methods that reach far beyond legal and regulatory requirements." Investopedia, Online Financial Encyclopedia, Corporate Social Responsibility, May 8, 2009, <http://www.investopedia.com/ask/answers/08/difference-between-a-shareholder-and-a-stakeholder.asp>.

alarming ways, expressing their discontent with lyrics and movements in the streets. The Disconnect dwells in many corners of the system and will surely not be eradicated with ease. Our current technology driven era, however, provides innovative ways to increase the amount and the quality of two-way communication between the people and the government to unprecedented levels. Business as well as the government should view this as a worthwhile opportunity to close the Disconnect, and act on this opportunity for the benefit of the people and the betterment of communication in our modern society.



# GINA MARIA RUSSONIELLO

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## EDUCATION

**Pennsylvania State University** 2008 – present **Penn State Study Abroad** summer 2010  
**Smeal College of Business; Schreyer Honors College** Reggio Calabria, Italy  
Major: Marketing | Minors: Legal Environment of Business; Italian

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## AWARDS & ACHIEVEMENTS

**Schreyer Honors College Endowment for Academic Excellence Scholarship** – 4 year scholarship 2008 – present  
**Beta Gamma Sigma International Honor Society in Business** – Academically ranked in the top 7% of juniors in business 2011  
**Phi Kappa Phi Academic Honor Society** – Academically ranked in the top 7.5% of juniors of all academic disciplines 2011  
**Josephine Rhea Award for Excellence in Italian** – Grant from Penn State University Italian Department 2010

### Software

Skilled in advanced photo editing with Adobe Photoshop and Corel Paint Shop Pro; Microsoft Excel and Adobe Illustrator

### Languages

Fluent in English  
Proficient in Italian

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## ACTIVITIES & LEADERSHIP

**Phi Alpha Delta, Penn State Pre-Law Chapter** – *Vice President, Charter Recruitment Officer* 8/10 – present  
Founded a new chapter of the pre-law fraternity. Served leadership role in recruitment of new members during the first year. Elected as vice president for the second year, acquiring authority in overseeing general meetings, local events, and travel logistics.

**Global Law Brigades, Penn State Chapter** 10/11 - present  
Will travel to Panama in March 2012 to work with international lawyers providing pro bono legal aid to disenfranchised rural citizens through education.

**Penn State Equestrian Team** – *Points Chair Officer and Competitor* 8/09 – 5/11  
Held executive position responsible for logistics and scorekeeping in intercollegiate competitions. Placed first in 5 IHSA horse shows.

**UNICO (National Italian American Service Organization)** – *Past President and Co-Founder, Happy Valley Chapter* 3/09 – 5/10  
Founded a new chapter at Penn State of the national service organization. Conducted meetings of entire chapter's membership body. Implemented and oversaw community service activities and charity work as well as social and fundraising events.

**Penn State Equine Marketing (Quarter Horse Auction)** – *Advertising Committee Chair* 1/09 – 5/10  
Implemented advertising operations prior to the auction. Consulted with and advised clients regarding published advertisements. Extensively worked with Photoshop to design ads and edit sale program. Handled horses being shown at auction.

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## WORK EXPERIENCE

**Babst, Calland, Clements, and Zomnir** (State College, PA branch office) – *Intern* 6/11 – 9/11  
Accompanied attorneys to court, meetings in judge chambers, depositions, and numerous other legal matters. Spent a great deal of time in the courtroom and interacting with clients. Organized documents at the firm for various cases including categorizing pleadings, discovery, correspondence, attorney notes, and client documents with great attention to detail.

**Capital Wine and Spirits** (State College, PA) – *Promotional Specialist* 6/11 – present  
Led promotional events for various brand name wines and beverages. Interacted with consumers, restaurant management, and event staff. Responsible for holding company credit card, keeping expense logs, and submitting paperwork to corporate managers.

**EXPRESS** (State College, PA) – *Sales Associate (Retail)* 5/11 – present  
Balanced this retail job while holding another job, pursuing classes, writing honors thesis, and holding extracurricular leadership positions.

**Lackawanna Bar Association** (Scranton, PA) – *Intern* 5/10 – 6/10  
Managed and updated database of approximately 700 members. Observed and assisted in programs for Continuing Legal Education credits. Referred community members in need of legal assistance to suitable lawyers in the county.

**Technic Corporation** (Scranton, PA) – *Office/Accounting Assistant* 5/09 – 8/09  
Executed computer accounting program and handled operations including billing and payroll. Initiated online sales department.

**USA Sports (formerly B.O.S.S.)** (Scranton, PA) – *Office Assistant (Wholesale)* 5/07 – 8/08  
Handled files for nationwide wholesale distributor of sports nutrition and health products. Photographed supplements and edited photos using Adobe Photoshop CS to be uploaded to the company website. Utilized Microsoft Excel spreadsheets.