

## CHAPTER 2

# Ethics and the Police

## Ethics and Policing

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The study of ethics in policing has expanded considerably over the past few years as cases of police brutality and corruption have surfaced in the media and in the courtroom. Commentators agree that three issues have shaped the role of ethics in policing: *styles of policing*, *the police as an institution*, and *police culture*.

Generally, we think of the police as controllers of crime; however, the original English conception of the role of the police force emphasized the need for police to obtain the goodwill of citizens in performing their policing duties. The very first set of instructions to constables, published in England in 1829, reminded the new police officer:

There is no qualification more indispensable to a Police Officer than a perfect command of temper, never suffering himself to be moved in the slightest degree, by any language or threats that may be used; if he does his duty in a quiet and determined manner, such conduct will probably induce well-disposed by-standers to assist him should he require it. (quoted in Skolnick and Fyfe 1993: 70)

When policing came to the United States, there was little concern among police officers about adhering to legal norms, despite their formal policing role as enforcers of the law (Haller 1996: 7). In fact, police received little training in law, and most of those arrested were tried before justices who also had little legal training. Police were part of the larger political system, seen as a resource at the command of local political organizations. In the early period, it was common for police and other public officials to earn rewards by operating rackets (p. 8). Patrolmen worked on the streets with little supervision, and the main expertise a detective offered was his knowledge of the underworld. Violence was an accepted norm, because many policemen believed they were entitled to punish wrongdoers

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themselves and, on their patrols, were expected to be able to physically dominate the streets without resorting to arrest. Police operated in neighborhoods as authority figures, sometimes whipping delinquent boys as a more effective sanction than arrest and incarceration. Police commonly used violence to persuade suspected persons to confess, and newspapers reported interrogations of this nature without unfavorable comment (p. 22). In addition, the police culture of the time supported the use of violence in upholding the dignity of the police officer. Over time, and by the end of the 1930s, police organizations had become large bureaucratic structures organized along military lines (Walker 1996: 27).

During the 1930s era of reform, police began to narrow their functions to focus on crime control and the apprehension of criminals, and consequently police became enforcers of the law with the goal of controlling crime. Other activities that police formerly engaged in, such as solving problems in the community, became identified as “social work” and were ridiculed (Kelling and More 1996: 79). Notwithstanding the police attitude that constructs policing as crime fighting, many observers of police work regard the primary function of the police to be peacekeeping. In this view of policing, police occupy their time for the most part by attending to a range of problems that have little to do with law enforcement. In fact, they may spend as little as 10–15% of their time engaged in enforcing the law (Manning 1996: 225).

### The Nature of Policing

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Commentators on policing have struggled to adequately express and theorize the nature of policing in society, including its ethical base. Researchers have developed models of policing to assist in understanding the police function in society; these models are the crime fighter, the emergency operator, the social enforcer, and the social peacekeeper (Kleinig 1996: 24–29).

The *crime fighter* sees criminals as the enemy, and police and the community as the “good guys.” In other words, police see their role in punitive terms, for example, treating suspects as though they were already guilty. Perceiving the policing role as crime fighting runs the risk of ends justifying means and dramatizes policing so as to condone invasions of privacy and abuse of power. This is especially the case when citizens have surrendered their right to use force to the police.

The influence of media representations of police, either through police dramas on television or in reality programming depicting police carrying out their duties, should not be underestimated. In constructing images of police as “fighters against evil” in drama and as “protectors of society against permissiveness” in police reality programs, the media reinforce the notion of the police officer as crime fighter. In terms of audience response to this entertainment, three notions emerge: that offenders are professional criminals who are clever and motivated by greed; that the interests of justice are not well served by liberal judges or lawyers who are preoccupied with defendants’ legal rights; and that hardworking, dedicated cops are out there, on the streets, doing their best in the face of these constraints (Beckett and Sasson 2000: 118).

The *emergency operator* model sees the policing role as akin to that of other emergency personnel like ambulance operators and firefighters. Police offer emergency assistance, clearing the way for professionals such as social workers, who provide more substantive problem-solving services. This model emphasizes the policing mission as dealing with people rather than crime fighting; however, competence in crime control is still required in this model.

Viewing the police as *social enforcers* emphasizes coercion as the central feature of police work (Bittner 1967). This model sees the role of police as addressing many day-to-day problems whose solutions may require the use of force. The social enforcer model has been criticized for focusing excessively on coercion as a police function and for failing to recognize that other members of society may also use coercion, such as parents and schoolteachers.

In formulating the *social peacekeeper* model, Pollock-Byrne (1998) and Kleinig (1996) argue for the need to adopt a broader definition of policing, with Pollock-Byrne advocating for policing as public service rather than crime fighting and Kleinig promoting policing as social peacekeeping. For Kleinig, this characterization offers the most satisfactory definition of the actual tasks that police perform, and he locates it historically in the Anglo-Saxon notion of the King's Peace, breaches of which were considered crimes. According to Kleinig, the peacekeeper model incorporates the crime fighter and social service models and reflects the range of acts that might occupy the police in a community (1996: 28).

Skolnick (1975) noted the inherent tension between the police role of enforcing the law and at the same time protecting citizens, and he considered that tension as irreconcilable. He argued that police could reconcile this conflict by giving priority to their duty to uphold the law. Muir (1977) and Goldstein (1977) saw a need for officers to be trained properly to exercise their considerable discretionary powers, and Muir noted that because officers are free to choose their style of policing, this enables them to act ethically or otherwise according to their desires. Delattre (1989) and Sherman (1985) were concerned about issues of corruption in policing arising during the 1980s. Delattre argued that the best way to ensure ethical policing was to recruit officers with integrity. Sherman, however, saw the temptations open to police as an issue constituting a "slippery slope," where minor acts of corruption would lead to major acts, unless internal police controls and accountability sanctioned those minor acts.

## Police as an Institution

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The institution of policing has been perceived either as a profession or as a bureaucracy. Kleinig sees the police as possessing some of the aspects of a profession, such as discretionary authority and providing a public service, but not others, such as the possession of higher education and special expertise (1996: 30–46). The importance of the distinction between a profession and a bureaucracy for the study of police ethics is that professions emphasize ethical standards and a service ideal. Police commonly define themselves using the rhetoric of professionalism, sometimes to deflect criticism, arguing that outsiders are incapable of understanding police work and therefore should have no say in its performance (Walker 1996: 29).

## Police Culture

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Individuals within institutions carry out roles defined by the rules, regulations, and procedures of the institution, and these roles and their relationship to each other make up the structure of the institution. However, there is another dimension to the workings of an institution that commonly includes the attitudes, values, and norms of that institution, collectively described as the *institutional culture*. This culture largely determines the way in which institutional activity is performed, adding another layer to the official rules, regulations, and practices of the institution.

A number of commentators have attempted to analyze aspects of the police institutional culture. Manning (1997: 4) argues that it is the occupational culture interacting with regulations, policies, law, and politics that constitutes the driving force of policing. For Manning, immorality, violence, and lies are routine in policing; teamwork is essential; and secrecy is endemic. Sherman (1982) identifies a set of values that new police officers acquire through their training process, through conversations with veteran officers, and in interactions with the public. These include the notion that enforcement of the law is not limited to the question of whether an offense has been committed but also includes the nature of the suspect. Accordingly, aspects of the individual such as demeanor, the degree of cooperation with police, race, age, and social class are all significant considerations in law enforcement decision making. In a somewhat similar way, the institutional culture views any show of disrespect for police authority as a matter of great concern, and the perpetrator of such behavior is likely to be punished by arrest or use of force.

In terms of the use of force, the culture requires that police should never hesitate to use physical or deadly force against those who *deserve* it. Given that the role of police is to fight crime, police culture views due process as a process that merely protects criminals and therefore as something that should be ignored when possible. From this perspective, rules concerning the protection of suspects and accused persons should be circumvented when possible, because the function of such rules, so far as the police are concerned, is simply to handicap them in carrying out their true functions. Similarly, lying and deception are considered integral parts of the police function. Loyalty is a paramount duty, and the protection of one's colleagues, even when they perform acts of misconduct, is considered an overriding principle of police work. Finally, because the police engage in "danger work" in the protection of the public, it is considered appropriate for police to accept gifts from the public such as free meals, coffee, and Christmas gifts. Sherman (1982) contends that police culture argues in favor of taking a reward that has no impact on what a police officer would do, such as eating a meal, but he argues that the culture rejects acceptance of money that would affect the policing task itself, such as accepting money for not giving traffic tickets. Sherman judges that these values have weakened over time due to diversity within the police, the power of the police unions to defend individual officers, and the rise of investigative journalism, which has uncovered corruption in high places. Additionally, he points to the fact that police chiefs have taken significant steps to counter aspects of institutional culture.

In his explanation of police culture, Crank (1998: iii) argues that existing literature oversimplifies the police, describing them in simplistic terms and minimizing

the complexities of their employment. Crank presents various themes that he argues characterize police culture, ranging from “coercive territorial control” (the notion that the police view much of their work by reference to the use of force in controlling their assigned territory), to the vision of the police as “the new warriors,” to guns as the ultimate expression of police authority. Crank extends his discussion to include the importance of suspicion in police work; the theme of “turbulence and edge-control,” meaning triumph over unpredictable events, and cultural themes of solidarity. Other writers have identified suspicion as a characteristic of police work and the police personality, but Crank argues that it is a feature of police culture, a characteristic of the police worldview that provides a basis for all interaction between police and citizens. Importantly, in his discussion of the construction of police morality, Crank suggests that the police perceive themselves as “representatives of a higher morality embodied in a blend of American traditionalism, patriotism and religion” (1998: 151).

Muir (1977) argues that police loyalty results in complicity. Once a police officer breaks or violates a rule or standard, he or she is bound to remain silent about other officers’ violations, even if they are more serious. Scheingold (1984) asserts that there are three dominant characteristics of police culture:

1. *Cynicism.* Police view all citizens with suspicion, and all citizens are seen as a “problem,” especially if they can be categorized into a “type.” Those who can be categorized are to be dealt with as though they have already committed a crime, because they probably have. The very nature of police work leads police to the conclusion that all people are weak, corrupt, and/or dangerous.

2. *Force.* This is to be used in all situations where a threat is perceived. Threats can include perceived threats against the officer’s authority rather than physical threats, so that anyone with “an attitude” is thought to deserve a lesson in humility. Force, then, is both expressive and instrumental. It is a symbol of the officer’s authority and dominance and is seen as the most effective method of control, because it keeps all people in line.

3. *The Police Are Victims.* The idea that the police are themselves victims of public misunderstanding and scorn, recipients of low wages, and victims of vindictive administrators sets police officers apart from other people and legitimizes and rationalizes a different set of rules for them. Police perception is that the public does not mind when the civil rights of “criminal types” are violated; they are only upset when police misconduct targets “good people.” A study of community policing in Seattle, observing interactions between police and the community, reveals how police see themselves as “members of a politically vulnerable group that deserves protection from ill-informed public meddling; they possess an authority to control situations to which the public should defer; they command a unique base of knowledge, and thus deserve an elevated professional status” (Herbert 2006: 86). Commentators, therefore, generally portray police culture as negative, defensive, and isolationist. In contrast to this portrayal, police often promulgate statements of values or of their policing mission that are positive in nature, as in Box 2.1.

**A CLOSER LOOK****BOX 2.1****Foster City Police Department Basic Values**

1. Integrity is basic to the accomplishment of the law enforcement mission. Both personal and organizational integrity are essential to the maintenance of the F.C.P.D. This means that we:
  - Ensure that accurate reporting occurs at all levels;
  - Promote and recognize ethical behavior and actions;
  - Value the reputation of our profession and agency, yet promote honesty over loyalty to the Department;
  - Openly discuss both ethical and operational issues that require change;
  - Collectively act to prevent abuses of the law and violations of civil rights.
2. Due to the dynamic nature of our profession, the F.C.P.D. values innovation from all levels of the Agency. This means we:
  - Reward and recognize those who contribute to the development of more effective ways of providing policing service;
  - Strive to minimize conflict which negatively impacts our work product, yet we support the constructive airing and resolution of differences in the name of delivering quality police services;
  - Listen to and promote suggestions emanating from all levels of the Department; and
  - Wish to promote an atmosphere that encourages prudent risk taking, and that recognizes that growth and learning may be spawned by honest mistakes.
3. The law enforcement profession is recognized as somewhat close and fraternal in nature. The F.C.P.D. reflects this tradition, yet supports community involvement and ongoing critical self-appraisal by all its members. This means we:
  - Encourage employees to socialize with employees and community members alike to promote the reputation of the Agency;
  - Promote programs that improve the relationship between our members and the community at large;
  - Report and confront employees who violate laws and the basic values of the organization; and
  - Promote and discuss positive aspects of the Agency and its product throughout the county.
4. The provision of law enforcement services is a substantial expense to the taxpayer. The F.C.P.D. is obliged to provide the highest quality of police service for the resources expended. This means we:
  - Regularly assess the cost vs. benefits of the various programs of the Agency;
  - Require a standard of professional performance for all members of the Department;
  - Administer the Department funds in a prudent, cost-effective manner;
  - Publicly acknowledge and praise employees that excel at their jobs; and
  - Support and encourage employees in their pursuit of higher education.

5. Law enforcement, in the course of performing its primary mission, is required to deal with both dangerous and difficult situations. The F.C.P.D. accepts this responsibility and supports its members in the accomplishment of these tasks.

This means we:

- Review and react to an individual's performance during such an event based upon the totality of the circumstances surrounding their decision and actions;
- Encourage all employees, as the situation permits, to think before they act;
- Take all available steps and precautions to protect both the City's and employee's interests in incidents that provide either danger or civil exposure;
- Keep our supervisor informed of any incident or pending action that jeopardizes either the reputation of the Agency or individual employee;
- Attempt, conditions permitting, to reason with individuals in the enforcement setting prior to resorting to the use of force; and
- Recognize that it is our duty to prevent, report, and investigate crimes, together with the apprehension and the pursuit of vigorous prosecution of lawbreakers. We also recognize that it is the domain of the court to punish individuals convicted of crimes.

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The study of police ethics is especially important in light of the functions and duties of the police as well as the wide powers of discretion that they enjoy. Police decisions can affect life, liberty, and property, and as guardians of the interests of the public, police must maintain high standards of integrity (Pollock-Byrne 1998: 3–4). In addition, police have assumed the right to use intrusive, covert, and deceptive methods of law enforcement and have a crucial role in protecting minority groups. Lately, they have also suffered a series of blows to their reputation for integrity through acts of corruption, incompetence, and racism (Neyroud and Beckley 2001: 38). All of these factors point to the centrality of fostering ethical standards in policing. Police discretion concerning how to act in a given situation can often lead to ethical misconduct.

## Police Discretion

By law, police are given the power to deprive citizens of their freedom by arresting them and the right to use force in the performance of their policing function, including lethal force in certain situations. The police are therefore given great authority under the law, and that authority is to be employed ideally in enforcing the law and protecting the public. Police authority and power is exercised within the discretionary sphere given them; any exercise of power or authority is an exercise of discretion. As well as authority conferred by law, police have another kind of authority derived from their role as police officers and represented by their physical uniformed presence on the street. The public, therefore, tend to treat police officers with

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circumspection in most cases, aware in a general sense that police have specific powers, such as to arrest, but they are unclear as to the total extent of police authority. Police culture insists on the public giving the police respect and cooperation; flouting or resisting police authority can result in arrest or other consequences that may sometimes amount to misconduct; for example, threatening a future arrest or even assaulting a person to punish him or her for an attitude considered disrespectful.

In performing their policing duties, police officers are able to exercise a high degree of discretion. This means that they have broad freedom to make decisions about how to act in a given situation. For example, a police officer may decide to investigate an occurrence, or he or she may decide that it is not worthy of his or her time and effort. Officers can also decide whether or not to make an arrest, and may make decisions about the amount of force required during a confrontation. Some commentators argue that police discretion should be limited so that, for example, the rules and regulations of the police department and ethical standards circumscribe that discretion. Reiman argues even more radically that “police discretion has no rightful place in a free society” (1996: 80). Manning (1997) points out that policing guidelines themselves create uncertain circumstances and that the impact of guidelines is unclear, because cases in which the guidelines were not adhered to are never reported to supervisors. From the police patrol officer’s point of view, Wilson (1968) notes that patrol officers may legitimately complain that having no agreed-upon standards for the exercise of discretion makes their task harder, especially if the existence of many procedural rules enables others to easily penalize them for acting in an allegedly improper manner. Manning (1997: 295) summarizes the issue of guidelines by noting that the solutions offered for limiting the wide powers of police discretion include judicial rule making, legislative regulation, and developing internal codes and regulations. Skolnick and Fyfe (1993: 120) point out, however, that elaborate police rule books, although purporting to be definitive, actually provide limited guidance of any worth to police, because hard and fast rules do not adequately assist police in dealing with the fluid and fast-changing situations they may be faced with.

Some police officers deliberately use their wide powers of discretion and their authority to perform acts of misconduct, as discussed in this section. Davis (in Cohen 1996: 97) argues that discretion ought to be confined, so that it is used only when truly required. In other words, where a rule, law, or policy can be applied to a situation, it should be applied. If this is not done, he argues, justice may be seen to be arbitrary or subject to inequalities. Fyfe (1996: 183) contends that police ought to enjoy some degree of discretion, but like discretion in any profession, it can be justified only to achieve a broadly agreed-upon purpose; in the case of the police, this purpose is often hard to define. Like Manning (1997), he attributes this lack of clarity about police goals to those same police chiefs who complain that discretion in police organizations is broad at the base and much narrower at the top. However, most citizens, including most police officers, support police having *wide discretion* on the basis that their hands should not be tied in their role as guardians of the public.

Many argue that if police are permitted wide discretion, a high level of accountability should match it, so that processes and machinery exist to investigate complaints of misconduct or abuse of discretion. (See section later in this chapter on



Combating Corruption.) Manning (1997: 146) notes that discretion creates uncertainty, and from the perspective of the police supervisor, creates randomness in patrol practice that makes it difficult for administrators to enforce accountability.

Kleinig (1996: 4–5) outlines a distinction between decisions about scope and decisions about interpretation in exercising discretion. In the former, police must decide whether a given situation requires them to act, and in the latter, questions of definition arise, such as “Has an offense been committed?” and “Is this a situation in which I should act at all?” Police also must consider questions of priorities and make what Kleinig calls “tactical decisions” that bear on police attitudes, such as whether to react strongly to circumstances or to follow a more mediatory role.

## Ethics and Codes of Ethics

Kleinig (1996: 234) traces the history of a police code of ethics, noting that it was not until 1928 that such a code was formulated for police in the United States. Professions commonly have codes of ethics regulating standards for the protection of clients and the public, and the desire for professional status is a major rationale for the development of police codes of ethics (Kleinig 1996: 243). Within the United States, individual police departments have codes or canons of ethics, and the International Association of Chiefs of Police (IACP), which is dominated by the United States, finalized its Law Enforcement Code of Ethics in 1991 (see Box 2.2).

### A CLOSER LOOK

#### BOX 2.2

#### Law Enforcement Code of Ethics\* International Association of Chiefs of Police

All law enforcement officers must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest possible standards of professional policing.

The International Association of Chiefs of Police believes it is important that police officers have clear advice and counsel available to assist them in performing their duties consistent with these standards, and has adopted the following ethical mandates as guidelines to meet these ends.

#### **Primary Responsibilities of a Police Officer**

A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community; safeguarding lives and property; protecting the innocent; keeping the peace; and ensuring the rights of all to liberty, equality and justice.

*(Continued)*

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### **Performance of the Duties of a Police Officer**

A police officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity.

Officers will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

### **Discretion**

A police officer will use responsibly the discretion vested in the position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest—which may be correct in appropriate circumstances—can be a more effective means of achieving a desired end.

### **Use of Force**

A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances. Force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person.

### **Confidentiality**

Whatever a police officer sees, hears or learns of, which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.

### **Integrity**

A police officer will not engage in acts of corruption or bribery, nor will an officer condone such acts by other police officers. The public demands that the

integrity of police officers be above reproach. Police officers must, therefore, avoid any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not receive private or special advantage from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.

### **Cooperation With Other Officers and Agencies**

Police officers will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. An officer or agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that a police officer assist colleagues fully and completely with respect and consideration at all times.

### **Personal/Professional Capabilities**

Police officers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence.

Through study and experience, a police officer can acquire the high level of knowledge and competence that is essential for the efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

### **Private Life**

Police officers will behave in a manner that does not bring discredit to their agencies or themselves.

A police officer's character and conduct while off duty must always be exemplary, thus maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach.

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\*Adopted by the Executive Committee of the International Association of Chiefs of Police on October 17, 1989, during its 96th annual conference in Louisville, Kentucky, to replace the 1957 code of ethics adopted at the 64th annual IACP conference.

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What is the relationship between ethics and codes of ethics? Kleinig (1996: 239) suggests that statements of values and ethical standards generally are likely to be briefer and more general than codes, with the latter detailing what kinds of acts may or may not be performed. Most codes of ethics are directed toward an undefined client or public base, and it may be in the public interest to establish certain standards expected of a particular profession. In this external sense, codes may be seen to have a rhetorical function and can provide some assurance that police do follow standards or are being urged to follow them by the code. Kleinig (1996) says that it is increasingly common for codes to be used as internal documents, so that even when they are phrased in generalities, they at least identify issues and provide criteria for decision making.

Police academies apparently use codes of ethics as a teaching device; however, codes cannot be considered definitive and do not usually include enforcement procedures (Kleinig 1996: 248). Kleinig cautions that although police officers pledge themselves to their codes of ethics, this does not mean that they are required to sacrifice their reflexivity as individuals, and police may well find that their codes do not respond adequately to the situational demands placed upon them. In one study, more than 75% of police officers surveyed responded that they depended mostly on their own personal ethics rather than the ethics of law enforcement to guide them in their professional activities (Felknes 1984: 217).

The standards of conduct incorporated in codes of ethics are directed at each individual police officer, and therefore each officer must decide his or her own level of compliance. While some studies suggest that ethical standards held by officers during initial training diminish once they are “on the job” (Crank and Caldero, 2000; Rokeach, Miller, and Snyder, 1971; Zhao, Ni, and Lovrich, 1998), Catlin and Maupin (2004: 299) suggest that socialization within law enforcement has no effect on an officer’s ethical orientation. Ultimately, compliance may become a question of character, and officers may be admonished to “do the right thing even when no one is watching.” Part II of this book will explore various ethical theories, including virtue theory, which emphasizes the importance of character, and deontology, which argues that one must do the right thing even though others are not there to see simply because there is a duty to do the right thing. Clearly this theory has considerable relevance for codes of ethics regulating standards of behavior in policing.

### Police Use of Force

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Police use of force is a major and contentious issue in policing, because the capacity to use force or coercion goes to the very core of the police role. The police are the only authority empowered to use physical force and it is to be used only as a last resort. Further, police are to use no more force than is necessary to subdue a suspect (Skolnick and Fyfe 1993: 13). While there is general acceptance of the fact that police are entitled to use force, there is an equal degree of uncertainty as to what constitutes *excessive or unnecessary force*. For example, in the well-known Rodney King incident, although the majority of the public considered the force used in subduing King to be excessive, a jury acquitted the police officers charged for the beating.

Approximately 300 persons are shot and killed by police in the United States every year (Parent 2006: 230). This compares to a rate of about 10 a year in Canada and even lower rates in Australia, where 41 deaths occurred because of police shootings between 1990 and 1997, and New Zealand, where about 20 police shootings have occurred in the past 60 years (p. 230). In the United Kingdom, 7 incidents of police causing deaths by shooting occurred between 1991 and 1993. In the Netherlands, between 1978 and 1999, 67 fatal police shootings were recorded, and during the same period police wounded 288 persons. On average, about 70 police officers are murdered each year in the United States, and approximately 60 officers are accidentally killed through incidents involving motor vehicles and aircraft (p. 235). Compared to Canada, where there are about two murders of police each year, the risk of a police officer being murdered is about 3 times greater in the United States.

State and local law enforcement agencies employing 100 or more sworn officers received more than 26,000 complaints about officer use of force during 2002 (Hickman 2006: 1). Of this number, about 8% were sustained in the sense that there was enough evidence to justify disciplinary action. About 34% were not sustained, and 25% were unfounded. About one fifth of large municipal police departments were accountable to a civilian complaints review board, and these departments received a higher rate of complaints than those without such boards (p. 1). This compares with a smaller number of complaints in England and Wales where, during the 12-month period ending March 2003, police received 6,154 complaints alleging assault by police officers. This reveals an overall rate of 4.6 complaints of assault per 100 officers compared to the U.S. rate of 6.6 complaints per 100 officers (p. 3). In 2003, 82% of large municipal police departments in the United States had an internal affairs or similar unit with full time personnel, and 33% of such departments maintained an operational computer-based early intervention system for responding to officer conduct. As to use of excessive force, there were more than 2,000 sustained citizen complaints in the United States in 2002 (p. 6).

Skolnick and Fyfe (1993: 38–39) outline the ascending scale of action that police can draw on in handling street situations:

- *Presence*. Often the mere presence of police will produce the desired outcome, and use of force is irrelevant
- *Persuasive Verbalization*. Where the mere presence of officers has not been successful, police now speak persuasively in tones that are firm but not commanding.
- *Command Verbalization*. This is the next step up the scale from persuasive verbalization, which police call the “command voice.” Here, police will use a stronger tone and tell the person with whom they are interacting what behavior they expect.
- *Firm Grips*. This is the next step beyond verbalization; it consists of police gripping parts of the body to warn the individual that he or she is to remain motionless or move in a certain direction. The objective is to guide and coax, and not to cause pain.
- *Pain Compliance*. At this next level of forcible contact, officers try to gain the cooperation of a person by inflicting pain in a way that does not cause

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lasting physical injury. These contacts include holds like finger grips and hammerlocks.

- *Impact Techniques.* These actions are designed to overcome resistance that is forcible but is not life threatening. Here, police may use batons or kicks or employ chemical sprays and the like. Skolnick and Fyfe maintain that it is at this point that misunderstanding arises about police action. It should be noted that while police are obliged not to provoke confrontations, they are not obliged to use a lesser degree of force to counter the particular force used against them.
- *Deadly Force.* This is the most extreme use of force, often involving firearms and defined by law as “force capable of killing or likely to kill.” Apart from firearms, some police are also trained in using neck holds intended to make a person unconscious. Under the law, police are permitted to use deadly force in order to apprehend those fleeing persons who are shown to be dangerous, such as someone who is armed or is fleeing from a violent crime. Deadly force is not limited to the use of firearms; Kleinig (1996: 117) points out that each year, police motor vehicle pursuits kill and maim more people, including innocent bystanders, than police firearms.

In what circumstances is it inappropriate for police to use force? Kleinig (1996: 99–102) identifies a number of factors that he considers relevant to assessing the use of force in ethical terms:

*Intentions.* Police may use force as a means of punishment rather than to contain a suspect. For example, tightening handcuffs may be employed to punish an arrested person, or police may use rough handling or an overnight stay in the lockup as punishment. Kleinig argues that measures of this kind are clearly unethical and outside the scope of the police function.

*Seemliness.* Force not only must be employed in good faith, but also must be seemly. When police methods shock the conscience or offend even hardened sensibilities, they are not considered seemly. In one case, for example, a suspect’s stomach was pumped to recover apparently swallowed evidence of drug possession, and the court judged this as unseemly (*Rochin v. California* 1952).

*Proportionality.* The force used to achieve legitimate police aims ought to be proportionate to the seriousness of the offense alleged or threatened. Thus, shooting a person suspected of committing a misdemeanor would be an example of employing disproportionate force.

*Minimization.* This requires that police use the least means to secure their aims, and is known as the principle of the least restrictive alternative. For example, if handcuffs will do the job, they should be used rather than some more draconian method of immobilization, and deadly force should not be employed if a person can be arrested without it.

*Practicability.* Since there is a presumption against using force, it must be shown that its use will achieve the purpose for which it is deployed. In other words, police need to appreciate those situations in which a forceful presence is required as opposed to those in which a softer strategy is called for. This relates back to the need for police to exercise their discretion according to the demands of a particular situation rather than applying one rule, such as to intimidate or punish, in all cases.

Historically, in the early days of policing, police on the streets employed police force as a matter of course to keep order and enforce their will. Skolnick and Fyfe (1993: 24) trace police brutality back to the lynching and vigilante acts invoked against African Americans, revealing how police violence links to racism and notions of white supremacy. Studies have shown that police routinely used excessive force in the riots and disturbances of the 1960s (Ericson 1992), and Crank (1998: 72) warns of the dangers of paramilitary-type police units, often used now to perform normal police functions, whose members often perceive themselves as “warriors.”

Two U.S. Supreme Court decisions are relevant in assessing use of force. In *Tennessee v. Garner* 1985 (as cited in Rahtz 2003: 21–23) the facts were that in October 1974 in the late evening, two Memphis police officers investigated a complaint about a prowler, and on arrival at the home owner’s address, investigated the rear of the house. There they observed someone running away across the backyard. The suspect had to stop at a chain link fence, and one of the officers was able to see his face and hands. He was 17 or 18 years old and unarmed. The officer called out “police—halt,” but the suspect began climbing the fence, and the officer, thinking he would escape, fired a shot that hit the suspect in the head and killed him. According to Tennessee law, police were permitted to use all necessary means to effect an arrest once they gave notice of their intention to arrest and consequent to the suspect fleeing or forcibly resisting. In considering the case, the Supreme Court issued guidance on police use of deadly force. They determined that whether or not deadly force was justifiable in a particular case depended upon whether or not it was “objectively reasonable.” An officer might only use deadly force “if he has probable cause to believe that the suspect posed a threat of serious physical harm, either to the officer or to others.”

In *Graham v. Connor* (1989, as cited in Rahtz 2003: 25) the Court applied the test of the reasonableness of the force used to all claims of the use of excessive force, noting that there is no precise definition of reasonableness but that four factors are relevant, namely, the severity of the crime, whether or not the suspect threatens the safety of the arresting officers, whether or not the suspect actively resists arrest, and whether or not he or she is attempting to evade arrest by fleeing from the scene. The Court also determined that “reasonableness” concerning the use of force must be judged after taking the perspective of a reasonable officer on the scene and must take account of the fact that police sometimes have to make split-second decisions concerning the use of force. The International Association of Chiefs of Police’s Code of Conduct (1991) offers guidance on the use of force (see Box 2.3).

**A CLOSER LOOK****BOX 2.3**  
Use of Force

A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances.

Force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person.

SOURCE: Center for the Study of Ethics in the Professions 2003.

Writing in 2000, Lieutenant Arthur Doyle, a retired police officer with 29 years service in the New York Police Department, offers his description of the police attitude toward using force:

A(n) . . . unwritten law covered chases as well. If an officer had to chase someone, by car or by foot, the person would invariably be beaten when captured. After a long chase, the officers would be pumped up, angry. They would want revenge for having put their lives in danger. That was the case in the Rodney King situation. It was taken to the extreme. (Doyle 2000: 174)

When faced with complaints of excessive force, police often adopt the strategy of characterizing the excess as an aberration by a particular officer, but many argue that police brutality is systemic (Lawrence 2000). Given that incidences of police abuse now often attract media attention, researchers have investigated the relationship between the media and police and have revealed that police are on intimate terms with the media in their role as providers of news, and the police have developed a high level of competence in public relations. In fact, one researcher has suggested that the police employ a media-centered framework in their work, because police believe that the public obtains its notions of acceptable police standards and conduct from television and the movies (Perlmutter 2000).

Generally, as noted earlier, the use of force in a given situation by police is nearly always ambiguous, and hence the boundary between excess and adequate force becomes difficult to establish. As an example of procedures that police must follow if force is used in an interaction with the public, the Miami-Dade Police Department requires that officers file a report in the following circumstances:

1. Force is applied that is likely to cause an injury or a complaint.
2. An injury results or may result from a struggle.
3. There is a complaint of an injury.
4. A chemical agent is discharged.
5. A baton is used.



6. The neck restraint is utilized.
7. There is an injury or complaint of an injury that results from guiding, holding, directing, or handcuffing a person who offers resistance. (Alpert and Dunham 2004: 21)

Clearly a report of this kind would be a vital document to any authority reviewing a particular instance of use of force.

Sometimes, there is a clear case of police brutality, such as that in New York involving the Haitian immigrant Abner Louima (see Case Study 2.1)

### **CASE STUDY 2.1 COP GETS 15 YEARS IN TORTURE CASE**

A former patrolman was sentenced to more than 15 years in prison for holding down Haitian immigrant Abner Louima as he was tortured in a police station bathroom. The sentencing came after former officer Charles Schwarz delivered a vitriolic speech declaring his innocence. U.S. District Court Judge Eugene Nickerson sentenced Schwarz to 15 years and 8 months, about half of the 30-year term given to fellow officer Justin Volpe, who pleaded guilty to carrying out the attack on Louima. He also ordered Schwarz to pay Louima \$227,495 in restitution.

Schwarz, 34, was convicted in 1999 of violating Louima's civil rights by holding him down while Volpe viciously sodomized the skinny, handcuffed victim with a broken broomstick in August 1997. "But for Volpe's extraordinary brutality, it is unlikely Schwarz would now face a sentence for sexual assault carried out with such force," Nickerson said.

At a second trial in March 1999, a jury found Schwarz and two other former officers, Thomas Bruder and Thomas Wiese, guilty of federal obstruction of justice charges—a cover-up prosecutors said reflected a "blue wall of silence" code observed by some officers. . . . Volpe—who is serving 30 years on his guilty plea—admitted wanting to punish Louima, because he mistakenly thought the victim had punched him as police broke up a brawl outside a Brooklyn nightclub. But he claimed Schwarz was not the officer with him in the bathroom. . . .

The attack by white officers on a black prisoner touched off protests alleging widespread police abuse of minorities. It triggered an ongoing Justice Department inquiry into whether the New York Police Department fosters brutality through lax discipline of wayward officers. Louima, who suffered internal injuries, has sued the city, the police officers union, and several individual officers for \$155 million. . . . Louima insisted the second assailant—who put a foot in his mouth when he started to scream—was the same officer who drove him to the stationhouse. Records show the driver was Schwarz.

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SOURCE: From "Cop Gets 15 Years in Torture Case," by Tom Hays. Associated Press, June 27, 2000. Reprinted with permission.

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Fundamentally, whether or not force is excessive must depend on the context, and even witnesses often cannot resolve the issue. According to Lawrence (2000), ambiguity about the use of force has the effect of reducing or limiting media coverage of police abuse, because ultimately journalists ask for proof of abuse, and this can almost never be demonstrated. She argues that so long as much of the public is willing to give police the discretion they seek, incidents, such as the one involving Rodney King, can always be rationalized by police as “collateral damage” in the “war against crime.” In the following examples of police violence (see Case Study 2.2), the first case was explained as an “unintentional outcome” and the second as violence used as punishment. Westmarland (2001: 325) witnessed these two incidents of police violence while observing general police life as part of a study into police culture in England.

**CASE STUDY 2.2 BLOWING THE WHISTLE ON POLICE VIOLENCE**

While driving around the city center, a crew, including a female officer, drove past a woman whose male companion seemed to be assaulting her. The police van came to a sudden halt, and the female officer jumped out to check whether the woman needed any help. At this point, it became obvious that the woman was very drunk, and she started shouting and abusing the police officer. After a warning, she was arrested and physically bundled into the back of the “cage” in the police van. Upon reaching the custody suite, she sobered up somewhat but then decided to become even more uncooperative, refusing to give her name and address. At this, the woman officer who had arrested her grabbed her in a headlock, twisted her over the bench and made her scream that she would provide the required information.

On patrol, early one morning at the end of a long night shift, some officers were dragging a “druggie” out of the back of a police van along the ground. His bare skin was being grazed along the concrete leading up to the custody suite door. He was then picked up by four of the officers, one at each “corner,” and his head was used as a battering ram to attract the attention of those inside operating the automatic doors. From most people’s perspective, this would be excessive, as the emaciated heroin addict did not pose a physical threat to the much larger, stronger officers who in any case outnumbered him. His “crime” had been to be “lippy” to the officers who were arresting him for suspected possession of illegal substances and a refusal to submit to a body search.

SOURCE: Westmarland 2001: 525.

Research on excessive force reveals that it is rarely used. For example, studies conducted from the 1960s to the 1990s show that in Boston, Chicago, and Washington, DC (Reiss 1971 in Alpert and Dunham 2004: 38), approximately 9%

of offenders were handled using force, and other researchers report 8% and 10% use of force (p. 38). In 2001, the Police Foundation surveyed police officers for their opinions on use of force, and after interviewing almost 1,000 officers from more than 100 agencies, the foundation reached the following conclusions:

- Most police officers disapproved of using excessive force.
- A substantial minority believed they should be permitted to use more force than the law allowed.
- A substantial minority believed that using more force than permitted by the law was sometimes acceptable.
- In the case of a physical assault on a police officer, almost 25% believed that using more force than was legally allowed in that situation was acceptable.
- More than 4 out of 10 police officers said that always following the rules was not compatible with doing police work.
- Only 7% of officers thought that police should be allowed to use physical force as a response to verbal abuse. (Alpert and Dunham 2004: 38)

In Alpert and Dunham's (2004: 66) study on the use of force in the Miami-Dade Police Department based on written reports from 1996 to 1998, they reported that almost all cases involving police use of force concerned acts of resistance by the suspect (97%), with resisting arrest (39%) and attempting to escape or fleeing the scene (26%) rating highest. In 21% of cases the police officer was assaulted, and the most common type of force was striking or hitting an officer (36%) (p. 66). In terms of force used by officers to subdue suspects, the primary method was using hands and fists (55%), but officers also used dogs, batons, other weapons, and firearms in 23% of cases (p. 68).

Internationally, excessive force is said to be prevalent in all Asian countries. Fernando (2003) comments that in these countries police officers "are expected to use coercion, including torture, in criminal investigations" (p. 30). This is justified by reference to the need to maintain order, because the maintenance of public order has a higher priority than law enforcement in Asian countries. In Nigeria, Alemika (2003) suggests that the maintenance of the colonial policing model has resulted in police-citizen interactions being largely involuntary and "characterized by, police brutality, corruption and hostility to citizens" (p. 72). Citizens see police as oppressor and repressor, and police employ various methods of torture including

whipping with electrical cables; hanging or suspending suspects from ceiling fan hooks; chaining suspects to the ground in a squatting position or against the wall in a standing position; shock batons and chairs; insertion of sharp objects into male genitals and blunt objects (such as bottles) into female organs; forceful removal of fingernails; deprivation of sleep, food and medical care; and solitary confinement and denial of access to relations, friends and attorneys. (Alemika 2003: 78)

Alemika explains that the police are primarily used to maintain order.

In Argentina, a crime survey conducted in 1998 revealed that 18.5% of those reporting believed that retired police and military personnel most frequently

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committed crimes and about 7% believed that active police officers committed crimes (Smulovitz 2003: 132). In Brazil, according to Mesquita Neto and Loche (2003: 191) government and police responses to crime control have been “undermined by the persistence of police brutality and the low level of respect for and cooperation with the police and the criminal justice system on the part of the community.”

Associated with questions about police use of force is the notion that within police culture, there is a perspective that the ends always justify the means. This perspective is termed “*Dirty Harry*/dirty hands.”

### ***Dirty Harry/Dirty Hands***

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The use of *dirty hands* or *dirty means* by police to secure their goals (Kleinig 1996) has been characterized as the “*Dirty Harry* problem” (Klockars 1980). Drawing on the 1971 film, *Dirty Harry*, which shows Inspector Dirty Harry Callahan using torture to establish the whereabouts of a kidnapped girl, Klockars raises the issue of the morality of using force to extract information from suspects. Dirty means is not limited to actual torture, but it can include beating confessions out of suspects, making false arrests, stopping and searching without proper cause, and using threats and coercion to obtain evidence. An analysis of the components of the *Dirty Harry* situation reveals four conditions faced by the police officer (Miller, Blackler, and Alexandra 1997: 119):

1. The police officer has an opportunity to achieve a morally good end or outcome and intends to do so. (In the *Dirty Harry* movie, Callahan used torture to discover the location of the girl.)
2. The means used to achieve this good end are normally considered morally wrong (dirty). (In the *Dirty Harry* case, the torture included standing on the suspect’s mangled and wounded leg to obtain the location of the girl.)
3. The use of these means is perceived by the police officer to be the best or only practicable means of ensuring that the good end is met.
4. The good likely to be achieved by using dirty hands far outweighs the bad consequences of using dirty means, a perspective held by utilitarianism (see Chapter 10).

The crux of the problem raised by *Dirty Harry* is whether means that are illegal and morally questionable may be used to achieve ends that may themselves be considered moral. In policing, employing dirty means to achieve moral ends is known as *noble cause corruption*. Using dirty hands is, of course, morally problematic, because it involves the use of unlawful methods. Some argue that public life necessarily involves dirtying one’s hands (Walzer in Kleinig 1996: 55), whereas others like Kleinig (1996: 56) are not convinced that the scenarios usually presented justify the use of dirty hands. Others suggest that such situations should be avoided as much

as possible, because the person using dirty hands will often feel moral qualms about what he or she has done, and frequent use of dirty means may induce a moral callousness in an individual (Miller et al. 1997: 123).

Klockars (1980) concludes that police officers who use dirty means should be punished, because they will grasp the wrong moral choice they have made only if this happens. Importantly, Klockars implies that so far as the public is concerned, if it fails to condemn the use of dirty means, it becomes complicit in noble cause corruption. Conversely, if the public insists on punishing police officers who use dirty means, the ironic effect is to increase our fear of crime since criminals may go unpunished.

Police abuse of their right to use force, or noble cause corruption in the form of dirty hands or dirty means, is a specific issue within policing that raises ethical questions. Ethical issues also arise in general police work, and police corruption can occur in a variety of situations involving police power or in day-to-day interactions between the police and the public.

In Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment, a body that was established by the European Convention on Human Rights which prohibits torture or inhuman or degrading treatment or punishment, can investigate the improper use of force by the police (Jobard 2003). Members of the committee have the right to visit places in which people are held against their will, including police stations, at any time. By the year 2000, the committee had visited France five times, and in 1999 the European Court of Human Rights found that France had tortured a person held in custody by its Criminal Investigation Service (p. 424). When the committee visited France, it heard accusations against the police that included punching and slaps, depriving prisoners of food and medication, and psychological pressures (p. 424).

## Police Corruption

Police corruption has been variously defined as the following:

- Accepting money or its equivalent for doing something that a public official is already required to do, or not required to do, or in consideration of exercising a discretion for improper reasons (McMullan in Kleinig 1996: 165)
- Accepting goods or services for performing or not performing duties that are part of one's employment. A gift becomes a gratuity according to the reason for which it is given, and it is the reason the gift is accepted that constitutes the corruption (Cohen and Feldberg in Kleinig 1996: 165).
- The misuse of authority by a police officer in a way intended to produce personal gain for the officer or others (Goldstein in Kleinig 1996: 165).
- Actions taken by a police officer that exploit police powers in exchange for considerations of "private-regarding benefit" that violate standards governing the officer's conduct (Johnston 1995: 287). In this definition, *private-regarding benefit* means a range of rewards acquired by the officer, the officer's colleagues, family, and friends.

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The above definitions do not exhaust all forms of police misconduct. For example, improperly eliciting confessions and lying to secure a conviction are distinct forms of misconduct and will be discussed later in this chapter (see *Ethical Issues in Investigation, Interrogation, and Custody*).

Accepting gratuities like free meals and coffee, free lunches, half price dinners, and gifts from merchants during holiday seasons is a vexed and much discussed issue within policing. In 1988 Richard Kania (in Coleman 2004: 37; also see Kania 2004) argued that under certain circumstances police ought to be encouraged to accept gratuities, because most people offering them do not have the intention of corrupting police but are expressing a debt to police for their services, which they are attempting to repay through the offer of gratuities. Kania, a former police officer from Louisiana, suggested an analogy with tipping, where the recipient is being tipped for services rendered and where no future obligations are being created by the transaction. He argued that only in situations where the provider of the gratuity was seeking to establish credit for future use were such transactions problematic and that if police did not vary the way in which they carried out their duty as a result of receiving gratuities, then receiving them was ethically appropriate.

Responding to Kania's arguments, Stephen Coleman (2004) argues that police should refuse gratuities that could in the public mind be regarded as influencing their judgment in the conduct of their duties. He argues that the practice cannot be regarded as analogous to tipping, because those who commonly receive tips come to expect them and perhaps even make a demand for them. Also, he argues that there may be a future orientation toward tipping, and he suggests that giving a generous tip may give rise to an expectation of above average service in the future. Another objection is that police regard themselves as professionals, and most professionals do not receive tips. Further, accepting gratuities may well have an effect on how police conduct themselves, even if they fail to appreciate that fact. For example, if the police patronize establishments that offer gratuities, and this causes them to visit and spend time there more often to the detriment of other establishments, the result affects the distribution of police services in the community (p. 38).

Ruiz and Bono (2004) also take issue with Kania, arguing that accepting gratuities is a harmful practice that should be actively discouraged. The authors are unable to accept that a police officer's acceptance of daily gratuities (amounting to thousands of dollars each year) will not give rise to expectations on the givers' part (p. 46). One of the authors, a former police officer, recounts that merchants who gave gratuities "were quick to remind him of their generosity when stopped for a traffic violation . . . at the very least they expected to be given special consideration when calling for service" (p. 46). Ruiz and Bono contend that the annual value of regular gratuities in the form of coffee, donuts, lunch, cigarettes, alcohol, laundry, and free movie tickets could be between \$8,000 and \$10,000 each year, and with an average national police gross salary of around \$35,000, these gratuities comprise an increase in gross salary of more than 33% (pp. 50–51).

Feldberg (in Del Pozo 2005: 28) links gratuities with distributive justice, arguing that the effect of a gratuity is to induce a police officer to "distribute the benefit of his presence disproportionately to some taxpayers and not to others, a practice that undermines the democratic ethos of public service." Thus, if police eat lunch daily

at one restaurant that offers a free or half price lunch, they are providing their presence and therefore police protection and security to one restaurant during that period. In this view, their presence skews the distribution of police service in favor of a particular restaurant. One solution to this argument about distributive justice is to follow the approach tried in England in the 1970s where all police officers were required to eat their meals in a canteen located inside the police headquarters. However, Del Pozo argues (p. 33) that this would “also have the effect of cutting off one’s nose to spite one’s face: were officers forced to take meals at the stationhouse, no location would benefit from their presence.”

What policy should police departments follow in relation to the issue of accepting gratuities? Many departments strictly prohibit their acceptance, but because police officers are often out of direct supervision, enforcing such a policy is very problematic. As well, those giving the gratuities have no incentive to report officers for violating their departmental policy (Withrow and Dailey 2004: 174). Some departments attempt to regulate gratuities by imposing a policy that limits the amount of gratuity on the basis that the value of the gratuity is related to the level of corruption (p. 175). Arguably the most important factor in the acceptance of gratuities is the rationale for offering the gratuity. Thus a policy that merely seeks to limit the extent of the gratuity appears unrelated to the real likelihood of corruption.

An example of how those who give gratuities to police do so with an expectation of police assistance is given by Brian Withrow, as shown in Box 2.4.

### A CLOSER LOOK

#### BOX 2.4 No More Free Meals

Withrow, while a headquarters staff officer in a state police agency, was conducting a routine inspection tour and was invited to lunch by local troopers. In the restaurant, when the bills came, the troopers argued with the waitress about the full price stated on the bills. They were regulars at the restaurant, but the waitress told them that restaurant policy had changed, and now everyone had to pay the full price. One of the troopers responded very loudly, “We never pay full price, and we are not going to start now.” In order to defuse the situation, Withrow told the troopers to pay the full price plus a tip, and Withrow apologized to the waitress. He later discovered that the restaurant owner’s son had recently been arrested for driving while intoxicated (DUI).

SOURCE: Withrow and Dailey 2004: 165

Kleinig (1996: 166) offers the following definition of corruption: “Police officers act corruptly when, in exercising or failing to exercise their authority, they act with the primary intention of furthering private or departmental/divisional advantage.” Kleinig admits that his definition covers many acts and practices that are never explicitly revealed as corrupt—for example, ignoring small jobs for the large visible ones—but makes the point that such acts are not motivated by a spirit of corruption. The

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important point is that a police officer is motivated by a personal desire for gain regardless of what acts he or she actually performs to secure that gain.

It may be helpful to characterize corruption in typologies, because they explain, illustrate, and add specificity to the kinds of acts defined as corruption. The following represents a typography produced by Barker (in Kleinig 1996: 168).

*Corruption of Authority.* This involves authorized and unearned benefits officers are given by virtue of their employment as police officers. Included are free meals, liquor, sex, entertainment, discounts on purchases, payments for property protection extending beyond normal police duties, secret payments by property owners to arrest robbers and burglars at their places of business, and payments by bondsmen to police for the arrest and notification of those who jumped bail where the bondsmen are acting as bounty hunters. It is common practice for restaurants to offer police free or half price meals or free coffee. This raises the issue of the expectations of those businesses in giving these benefits. In one survey in Reno, Nevada, of 116 people, about half reported that if they were to run a small business like a coffee shop or movie theater, they would offer police free coffee, meals, or movie tickets (Ivkovic 2005a: 39). Significantly, one third of those who would make such offers explicitly reported that they would expect special favors in exchange. An example of this kind is shown in Box 2.5.

**A CLOSER LOOK****BOX 2.5****Detectives Receive Sex Services in Antiprostitution Campaign**

Undercover police detectives from Spotsylvania County in northern Virginia involved in “rooting out prostitution” in the massage parlor business received sexual services from “masseuses” (Jackman 2006: B01). According to court papers, “detectives allowed women to perform sexual acts on them on four occasions and once left a \$350 tip” (p. B01).

The sheriff argued that this practice was “not new, and only unmarried detectives are assigned to such cases. Most prostitutes are careful not to say anything incriminating, so sexual contact is necessary. If I thought we could get a conviction without that, we wouldn’t allow it. If you want to make them, this has to be done.”

However, numerous police and experts told the reporter that they had no knowledge of any law enforcement agency in the Washington, DC, area or in the nation that permitted sexual contact in prostitution investigations. As they put it, “Police should not break the law to enforce it.”

It is normal practice for a verbal agreement to provide services plus an explicit act such as undressing or producing a condom to be considered sufficient evidence in charges of soliciting prostitution.

SOURCE: Jackman 2006: B01



*Kickbacks.* These include goods, services, and money received for a multitude of services, such as referring business to various professionals, like lawyers and bondsmen, with whom police regularly interact in their duties. Kickbacks have been condoned within police culture, as long as the rewards are modest and the businesses legitimate, the rationalization being that businesses providing kickbacks are simply demonstrating their enterprising nature.

*Opportunistic Theft.* This takes a number of forms, including stealing property from those arrested, those involved in traffic accidents, and other victims; stealing money or goods left behind by a burglar when investigating a burglary; removing items from unprotected property sites, such as building materials; or stealing parts of confiscated evidence, such as drugs, drug money, or liquor.

*Shakedowns.* This is understood to include accepting payments for not making an arrest or issuing a summons that in the ordinary course of events would have been made or issued. Shakedowns may be protected by a police code of silence, but if revealed, they are usually strongly condemned by police supervisors.

*Protection of Illegal Activities.* There are many forms of protection that police may provide to those engaging in illegal enterprises so they may operate with the minimum of official harassment. Examples are payments to police by cab companies to park illegally and to operate cabs in breach of safety standards; payments by trucking firms to haul overloaded cargoes; and payments by construction companies to overlook violations of regulations. According to Roebuck and Barker (1974: 430), some of these activities, where there are no complainants, are difficult to prosecute and have the effect of causing "resignation, ritualism, inaction or corruption" in honest police officers. Kleinig (1996) proposes that selling confidential police information should also be included in this category.

*The Traffic Fix.* This involves taking money or other reward for disposing of traffic citations.

*The Misdemeanor Fix.* Here a police officer quashes proceedings for a misdemeanor by, for example, not proceeding with a prosecution, tampering with evidence, or perjuring him- or herself in proceedings.

*The Felony Fix.* This is the same as the misdemeanor fix, except that felonies are involved.

*Direct Criminal Activities.* These occur when officers commit criminal acts for personal gain as if they were themselves criminals.

*Internal Payoffs.* There are various forms of internal corruption where police officers may buy, barter, or sell aspects of their employment, such as off days, holidays, and promotions. Officers who administer assignments may receive rewards for assigning officers to particular divisions or for providing transfers to or from specific or preferred assignments.

The results of investigations into police corruption in Australia are shown in Box 2.6.

**A CLOSER LOOK****BOX 2.6****Police Corruption in Australia**

There have been two major investigations of police corruption in Australia: the Royal Commission into the New South Wales Police Service (1997) and the Fitzgerald Commission in Queensland (1989). Their findings of corruption in these two states are described below:

<i>Royal Commission Into the New South Wales Police Service (1997)</i> <i>New South Wales, Australia</i>	<i>Fitzgerald Commission (1989)</i> <i>Queensland, Australia</i>
A state of systemic and entrenched corruption (p. 33), well organized	Corruption by prostitutes, gambling, drug dealers
A very serious state of corruption that is widespread and of long-standing origin (p. 101)	Thefts
Types: thefts of drugs and money; shake-downs of drug dealers; regular payments from drug dealers, gambling operations, clubs, and brothels; assaults	
“Process corruption” (noble cause corruption)	
Supervisors unaware or unwilling to respond	

SOURCE: Ivkovic 2005a: 52–53.

**Conditions Contributing to Police Corruption**

What justifications or explanations do police and others offer to explain the existence of police corruption? This is an important issue, because an analysis of the explanations for police corruption can contribute to possible solutions. Johnston (1995: 285) argues that explanations for police corruption may be personalistic, institutional, or systemic.

*Personalistic Explanations*

Three major explanations emphasize the individual police officer as the ultimate cause of corruption: the rotten apple, the recruitment perspective, and the police personality explanation.

In the *rotten apple* explanation, corruption is described by police chiefs and others as merely the acts of a few rotten apples in an otherwise honest department. The aim of this explanation is to divert attention away from the possibility that

corruption might be systemic. This argument may also function as an excuse for not instituting investigations that might uncover other corruption, as a way to limit investigations, or as a means to protect individuals. It implies that recruiting persons of the right character will eliminate corruption. Barker (1996: 39) asserts that police use the term *rotten apple* because they wish the public to believe that a publicly identified corrupt or racist cop is an aberration and not a departmental problem. He regards the labeling of individual police as rotten apples to be a management technique used to explain away corrupt behavior.

In the United Kingdom, investigations of corruption have revealed how close links between police and their criminal informants can result in passing information that can be used for criminal activities. Box 2.7 shows an example of this kind of individual corruption.

### A CLOSER LOOK

#### BOX 2.7

#### The Rotten Apple

Local criminals regularly visit a gym that is also used by a police officer. The officer becomes friendly with some of the criminals and begins to socialize with them. As their relationship develops, they ask him to provide information from the police national computer and from the police intelligence system. In return for some favors, such as free meals or drinks, he passes this information on to them and it is used by the criminals to build up a picture of the activities of the police.

SOURCE: Miller 2003: 10.

In the *recruitment perspective*, it is argued that personal traits shared by officers recruited from similar social backgrounds make them particularly susceptible to corruption. It is true that in the early days of policing, officers tended to be recruited from certain groups. However, over the last decade, police forces have become more heterogeneous, and now it is common to see women, African Americans, Hispanics, and others in police departments. The argument is that whites with working-class, lower-status backgrounds and a lack of advanced education might harbor certain attitudes and values that could make them susceptible to corruption.

The *police personality* argument is analogous to one that asserts that the institutional police culture is responsible for creating an environment that encourages or fails to discourage police corruption. It contends that certain traits make up the police personality, including suspiciousness, authoritarianism, and loyalty. Caldero (in Crank and Caldero 2000: 58–60), in a 1997 survey of the values of police officers, found that over the past 25 years, police values have remained constant, that these values are imported from particular groups in society, and that education has had little effect on these values. This contention concerning the influence of police values or police personality suggests that corruption therefore is linked to personality and values.

### *The Institutional Approach*

The wide discretionary powers that police officers enjoy, as well as the difficulties in supervising that discretion, are aspects of policing as an institution, and it is argued that police discretion makes corruption more likely to occur. Police discretion can be used for illegitimate purposes, and while its existence does not make corruption inevitable, it does give a police officer scope to hide unethical decisions. The problems inherent in the task of supervising officers who have wide discretionary powers mean that corruption can be allowed to go unchecked and unrevealed.

Two factors that may bear on corruption from the institutional viewpoint are the *low public visibility* of police and the issue of *secrecy* within the institution. The public has little knowledge or sense of what police officers do, and much police activity is shielded from the public. This low visibility can provide opportunities for corruption. In terms of secrecy, it is argued that the person most likely to observe corruption first hand is another police officer. Frequently, however, he or she will not reveal the corruption to anyone due to fear of retaliation, bonds of friendship, loyalty, or an institutional ideology that sets police against the public in an isolationist approach. It follows that information about corruption may be difficult to collect, and officers may refuse to testify against their colleagues.

This so-called *wall of silence* is also found in other nations as well as among U.S. police forces. For example, in the Netherlands, a survey conducted to ascertain the views of police on the seriousness of ethics violations and on their willingness to report such violations (either self-reporting or reporting others)—that is, to break the wall of silence—found that receiving free meals and discounts was seen as serious or very serious (Huberts, Lamboo, and Punch 2003: 226). Comparing these results to a similar survey in the United States, the researchers found that police in the Netherlands were significantly more ready to report receipt of such benefits than were U.S. police officers. A similar survey undertaken in Finland and Croatia revealed that while Croatian police regarded free meals and discounts as more serious than accepting occasional gifts, police in Finland took the opposite view regarding receiving free merchandise as a serious wrongdoing (Ivkovic 2005b: 557). A similar survey conducted in the United Kingdom revealed that most officers surveyed believed that accepting free meals and gifts was contrary to police policy, but only 14% thought it was very serious behavior, and 11% considered it not serious at all (Westmarland 2005: 149). Similarly, accepting gifts during holiday periods such as Christmas was not regarded as very serious, but nevertheless, 36% of respondents said they knew that it was contrary to police policy (p. 149).

A final factor is *managerial secrecy*, suggesting that those in supervisory positions who were formerly patrol officers and who have risen through the ranks share police values and culture, including those values that ensure that corruption is hidden. This kind of secrecy extends to feelings of resentment about what is perceived to be interference by outsiders in police processes, including formal inquiries like the Knapp Commission's investigation into corruption. Essentially, managerial secrecy will be strengthened by the values fostered by police culture.

### *Systemic Explanation*

This type of explanation looks at pressures placed upon the police by society that might provoke police corruption and suggests that police corruption is rooted within the police interaction with society, rather than within the individual police officer. For example, legislation dealing with social behavior such as alcohol consumption, gambling, and prostitution is often regarded by the public as an attempt to impose moral standards and is therefore often resisted. Thus, underage persons purchase alcohol, and citizens gamble and engage in prostitution. This ambivalence in society about personal morality tends to encourage police reluctance to enforce the law and can ultimately result in those engaged in crimes of vice offering bribes and incentives to police to look the other way. From the police point of view, violations of vice laws often constitute victimless crimes, providing further encouragement toward corruption.

In developing countries, low police salaries operate as a contributing factor to police corruption. For example, in Bosnia during the postwar period, police received low salaries and were not paid consistently, rendering them vulnerable to corruption (Ivkovic and Shelley 2005: 444). Examples of police corruption in Bosnia include taking bribes and looking the other way when cars are stolen and later the thieves handing them back to their owners in exchange for a kickback to the police officers concerned (p. 445).

### *Drugs and Corruption*

Miller et al. (1997: 105–106) single out illegal drugs as a major contributing factor to police corruption, arguing that police operate in an environment where there is a widespread use of illegal drugs and a vast amount of drug money. They describe the circumstances of enforcing antidrug laws as follows:

- There exists a large amount of money and a willingness on the part of drug users and dealers to bribe police.
- There are no complainants, because the “victims” are not likely to report that they have been the victim of a criminal act.
- In light of this victimless crime, bribes can be accepted and drugs or drug money stolen with relative impunity.
- Sections of the public see drug addiction as a medical condition rather than as a crime and therefore see corruption as less morally damning.
- Younger police officers may well share the attitudes of their peers who are not police officers and regard the use and sale of illegal drugs as a minor matter.
- Police officers working in drug investigations may, out of fear, turn a blind eye to drugs, or even take drugs themselves, entering a spiral of corruption moving from moral compromise to covert corrupt activities.

The contention that there is a relationship between drug dealing and police corruption finds support in a 1998 government report that cites examples of drug-related police corruption in a number of cities and reports that one half of all police officers convicted following FBI-led investigations into corruption cases between

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1993 and 1997 were convicted for drug-related offenses. Particular forms of drug-related corruption identified in the report include stealing money and/or drugs from drug dealers, selling stolen drugs, and protecting drug operations (Government Accounting Office 1998).

In the United Kingdom, a notorious example of the linkage between police corruption and drug dealing occurred in the early 1990s; it highlights the temptations of drug dealing as a source of corrupt benefits for police as well as the dangers of consorting with informants without following police policies and procedures (see Box 2.8).

**A CLOSER LOOK****BOX 2.8**

### Corrupt Arrangements Within the Southeast Regional Crime Squad, South London, England

Members of a particular team within the Southeast Regional Crime Squad, who called themselves The Groovy Gang, engaged in corrupt activities that were organized around Detective Constable Bob Clark. Clark maintained a close relationship with Evelyn Fleckney, an informant who regularly socialized with the police team. She not only joined the team for evening social occasions but was romantically connected with Clark and took several holidays with him. Senior police officers failed to properly enforce policies regulating contacts between police and informants like Fleckney.

Fleckney was a drug dealer, and in return for police protection from investigation and prosecution, she passed on information about rival drug dealers to the team, who would then be able to claim successes in arresting and prosecuting Fleckney's drug-dealing competitors. Also, drugs seized in searches could be recycled back onto the streets by Fleckney, and team members stole cash discovered during drug raids.

SOURCE: Miller 2003: 12.

### *Slippery Slope*

An important explanation for police corruption is termed the *slippery slope*. This notion was developed by Sherman (1985) and suggests that taking rewards and money begins on a small scale and is tacitly acknowledged by other police officers. Sherman suggests that officers who become accustomed to taking small rewards will eventually develop connections to other officers involved in corruption on a grander scale. In other words, officers become desensitized to the moral implications of their acts, and the acts themselves become addictive.

According to Sherman, police officers find themselves on this slope as the result of social considerations that bind police together and because of the way in which police perceive their own behavior. He argues that young recruits learn early on that as police officers, they are bound to one social group and are alienated from others.

The pressures of the social group and the acceptance of minor perks alter the self-image of the young recruits to make them vulnerable to more substantial corruption. Sherman also suggests that the slide down the slippery slope is eased by the relatively small moral gap along the continuum of graft stages.

Sherman's solution to this problem is to decriminalize those activities that most easily tempt police into graft, and his solution finds anecdotal support from those corrupt police officers who have described their lapse into corruption. However, Feldberg (1985) disagrees, claiming that police officers can make a distinction between accepting minor perks and bribes intended to affect the performance of their duties. Fundamentally, the dispute between Feldberg and Sherman rests on a moral basis, in that Sherman believes that to accept a free cup of coffee constitutes a moral compromise, whereas Feldberg does not. Kleinig (1996) offers the opinion that people commonly offer each other cups of coffee as a gesture, not with the intention of creating any obligation, and that police supervisors who see the acceptance of such small rewards as morally compromising are likely to be seen as over-reacting and risk losing the respect of their rank-and-file officers.

Crank and Caldero (2000: 74) offer an alternative slippery slope model, describing a process of *noble cause corruption* rather than simply economic corruption. This slope begins with encouragement to accept free meals, not to test the willingness to accept graft but to establish whether an officer's loyalty to others in the squad can be relied upon. This is followed by loyalty backup, where the officer is tested for his or her own willingness to back up other officers, which may involve giving false testimony or taking part in the shakedown of a suspect. The next stage is using physical violence against citizens, involving greater risks to the officer in terms of detection, risk of injury, or retaliation. Finally, "flaking" drugs is described as a much more serious form of noble cause corruption, in which police plant drugs to enhance the seriousness of the crime. In this model, therefore, police are able to justify their progress down the slippery slope by employing the justification of noble cause.

In England, in a case involving alleged Irish Republican Army (IRA) terrorist suspects, it seems that the English police justified their actions in the noble cause of jailing IRA terrorists (Punch 2003: 185–189). Six suspects were imprisoned for up to 16 years on the basis of false confessions and doubtful evidence before they were released because of this police wrongdoing. In the early 1970s, the IRA commenced a bombing campaign in Britain, and in 1973 in Birmingham, two explosions occurred in pubs resulting in 21 deaths. This caused a national outrage, putting pressure on the police to secure convictions. A number of the suspects arrested were assaulted by police, intimidated with threats of violence, and assaulted by fellow prisoners while on remand. Doubts arose about the convictions, which were upheld by the court of appeal in 1977. Ultimately, another group of alleged terrorists were arrested and admitted the bombings for which the Birmingham Six were jailed. It emerged that the confessions were fabricated by the investigating officers, important evidence was withheld from the courts, and forensic evidence turned out to be highly questionable. According to Punch (2003: 187), the concept of noble cause corruption applied to this case, and the police involved believed that the ends justified the means, having already satisfied themselves about the prisoners' guilt.

### *Consequences of Corruption*

One implication of corruption is that corrupters gain influence over the police, subverting police from their proper role and creating conditions that favor crime in the sense that there is an increase in public tolerance for some crimes. In the inner cities, corruption may permit crime to flourish. Most importantly, corruption undermines public trust in the police force and diminishes credibility in the integrity of individual police officers.

### **Combating Corruption**

Some (for example, Miller et al. 1997) suggest that corruption can be reduced through examining four basic aspects of policing, namely, recruitment, reducing the opportunities for corruption, detecting and deterring corruption, and reinforcing the motivation to act morally. With *recruitment*, it is clearly essential that only those with the highest moral character be recruited into policing (Delattre 1989), as well as those capable of becoming competent police officers, because the incompetent might easily become disaffected and open to corruption. *Reducing opportunities for corruption*, for example, by regularly rotating officers employed in drug squads, may be effective, but the very nature of police work, especially the wide discretion given to police at the street level, makes opportunity reduction a daunting task. Ultimately, legislative and other policies that promote decriminalization will reduce opportunities for corruption. *Detection and deterrence* are achieved through accountability, internal and external, and through tools such as investigation, auditing, surveillance, and the use of informants.

In the United Kingdom, a number of police forces have recently established professional standards units whose task is to “proactively cultivate and analyse information or ‘intelligence’ on unethical police activity from a range of sources, and mount formal investigations . . .” (Miller 2003: 2). These units are divided into an intelligence cell and a number of operational teams, with the intelligence cell staffed by analysts tasked to manage a central database of information relevant to anticorruption efforts. The operational teams then conduct formal investigations into individuals. Examples of corrupt activities in the English police forces have included accepting protection money from criminals, stealing and recycling drugs to criminals, the theft of cash from crime scenes, and fabricating evidence to secure convictions (p. 6). Contemporary corruption was found in scale to be smaller than that revealed by, for example, the Knapp Commission in 1972 and the Mollen Commission in 1994 in the United States or the Fitzgerald Commission in 1987 in Australia. According to the report, the level of staff identified as potentially corrupt amounted to between 0.5% and 1% of police staff, including both police and civilian staff (p. 6). The report suggests that corruption is for the most part committed by individuals, and the passing of sensitive information from police sources to those outside the force, including criminal informers, is a significant form of corruption in the United Kingdom (p. 10). Corruption was also found to arise from interactions between police and criminals in social networks outside of work involving, for example, friends or relatives of police staff or persons using the same



gyms as police staff or the same pubs and clubs. Officers in the professional standards units believed that criminals involved in organized crime targeted police with the aim of gaining information to assist with their criminal activities (p. 21).

*Motivating police to do what is morally correct* ought to reduce the temptations for corruption. Providing a just system of rewards and penalties within the police organization, and rejecting systems of promotion that are unjust, as well as addressing police complaints about unfair workloads, will assist in motivating police to resist inducements to illegality. The publication and dissemination of ethical standards and an emphasis on the ethical ends of policing can contribute to the development of proper motivation, especially if such statements of ethical standards are the subjects of ongoing discussion in training programs and supervision. Finally, an emphasis on the collective responsibility of police for controlling corruption will effectively assist in changing an attitude that only isolated individuals who heroically blow the whistle on others reveal corruption. Whistle-blowing is discussed in the next section.

### *Ensuring Police Accountability*

The question of how to make police accountable is a complex one. Most police departments employ a wide array of mechanisms like police boards and other structures that involve the community to provide oversight and accountability. Arguments in favor of citizen review include the following:

- Involving citizens in oversight is likely to result in more objective and thorough investigations.
- Involving citizens is likely to deter police misconduct; citizen involvement leads to a greater rate of conviction, because police are less able to conceal wrongdoing.
- Individual complainants and the public will have a higher level of confidence in the integrity of police practice. (Alpert and Dunham 2004: 33)

Citizen oversight of the police began in the 1920s and has seen a steady growth despite consistent police resistance to the notion that outsiders should judge their conduct (Walker 2001). The heyday of citizen oversight and review was during the 1980s and 1990s, when police ceased to be the sole judges of whether their conduct toward citizens reached an acceptable standard (Bayley 1994: 91). In his comprehensive exploration of the “new police accountability” in the United States, Samuel Walker (2005: 7) explains how police accountability refers both to holding law enforcement agencies accountable for services like crime control and also to the accountability of individual officers for the treatment they offer to the public in their use of force and discrimination. Ensuring police accountability involves setting up complex administrative arrangements, some of which have been introduced under pressure as a result of court proceedings and settlements secured by the Department of Justice in its mandate to ensure police accountability (p. 11). According to Walker, there are two elements in the new police accountability: specific strategies intended to enhance accountability and a framework that brings

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strategies and tools together into a program of reform (p. 12). Best practices within policing have focused on a set of strategies relating to the following:

- Reporting the use of force and other critical incidents
- Maintaining an open and accessible citizen complaint procedure
- Establishing an early intervention system that systematically collects and analyzes data on police performance for the early identification of issues needing correction
- External citizen oversight, which may take various forms, including the new concept of the police auditor. (Walker 2005: 12–13)

The conceptual framework within which these strategies operate comprises the following:

- Moving police organizations away from an emphasis on the rotten apple theory and in the direction of actual organizational change that addresses organizational and management issues related to police misconduct
- Controlling street level officer behavior through devices such as use of force reporting systems
- Systematic collection and analysis of data (a process essential to police reform) so as to develop a fact-based depiction of officer activity, including the program known as COMPSTAT that collects and analyzes data on crime patterns
- Convergence of internal and external accountability so that these are seen as interrelated and not as alternatives. (Walker 2005: 14–16)

As well as the typical civilian review board, a new form of oversight in the shape of the police auditor emerged in the 1990s. According to Walker (2005: 135) this office is likely to be more effective as a form of oversight than the civilian review board because of the auditor's focus on organizational change. Unlike civilian review boards, which are concerned with investigating individual complaints against police, the auditor scrutinizes organizational problems that generate such incidents. This opens up examination of systemic issues within the organization that affect training and policy making. For example, if the department provides insufficient training on a policy or procedure, this can lead to inadvertent violations. As of 2005, there were 12 police auditors within the United States, basically clustered in the western half of the country (p. 136). They perform five basic functions (pp. 139–142):

1. Auditing the department's citizen complaint process, including the procedures and records relating to complaints
2. Auditing police operations such as narcotics enforcement, personnel selection for particular policing activities, and specific training
3. Conducting policy review as an outcome of auditing citizen complaints and police operations. Policy is crucial, because recommendations for change in

organizational structures and practices are designed to prevent future misconduct. Thus, the auditor will produce a set of policy recommendations for police chiefs and managers.

4. Community outreach. This includes the auditor meeting with community groups and providing information about the complaints procedure and related activities.
5. Creating transparency. The auditor exposes issues and concerns within the police department to the public gaze, rejecting the historically closed and secretive nature of American policing organizations.

External citizen review takes a number of forms, and Walker and Kreisel (1996) have analyzed 65 citizen review procedures and structures that existed in January 1995. Among the various structures, many lack full independence, because police rather than citizens conduct the initial fact-finding investigations (p. 71). Some have no role in the investigation of individual complaints, while others are empowered to review police policies. A multimember board conducts the vast majority of review procedures, but a small percentage comprise administrative agencies headed by an executive director (p. 75). Boards may range in size from 3 to 24, with an average of 10 members, and some include police representatives. According to the authors, black and Hispanic communities are represented on almost all citizen review boards, reflecting the conception that the review body directly involves all elements of the community, especially minorities, in the review process (p. 77). The authors found that 27% of the 65 review boards include police officer members, and this membership raises questions about the degree of independence of the boards.

The procedures adopted by these citizen review bodies center on four processes: independent investigating power, the power to issue subpoenas, public hearings, and legal representation. Collectively, these elements produce a criminal trial model of complaint investigation. The alternative is an administrative investigation model that is closed to the public and closely resembles an organizational personnel procedure (Walker and Kreisel 1996: 78–79). The authors found that 34% of all citizen review bodies possess independent investigative power, 38% have subpoena power, about half conduct public hearings, and 32% allow legal representation. However, only about 10% possess all these four elements. There are questions about the appropriateness of the criminal trial model, because in practice in the criminal field, few cases actually go to trial (p. 80). As well, in only a handful of cases do the citizen review bodies have the power to impose discipline on police, and most may only make recommendations to the head of the police department. If the criminal trial model is considered inappropriate, other possibilities are the administrative process, which is more inquisitorial in nature, and forms of mediation that are provided by about 19% of review bodies (p. 80).

From a comparative perspective, in many countries police accountability is lacking, because the administrative response to police wrongdoing is deficient. For example, in Argentina, Ecuador, and Paraguay, police fabricate or destroy evidence for disciplinary proceedings (Mendes 1999: 16). In these countries, police forces tend to be militarized, and the police culture reflects an attitude of isolation and animosity

toward citizens. Thus, a crime control approach based on the notion of combat has produced torture and extrajudicial violence (p. 17). Chevigny (1999: 74) reports that in Brazil, where criminal prosecution may often be the only viable method of enforcing police accountability, police often resist the prosecution or interfere in investigations. For example, in Sao Paulo it is common for military police to remove forensic evidence by taking already deceased suspects whom they have murdered to a hospital “as though they are still alive” for this purpose. Similarly police will plant a weapon in the hand of a victim they have killed in a shootout (p. 74).

In Canada, a media focus on wrongdoing by provincial police departments has resulted in a number of public enquiries that have generated a demand for effective police accountability. Thus, in 1987 in Manitoba, in 1989 in British Columbia, and in 1990 in Quebec, provinces created structures of civilian oversight, and in 1986, the Royal Canadian Mounted Police Public Complaints Commission was established (Mendes 1999: 25). The Canadian model of civilian oversight leaves it to the police department concerned to make the initial investigation of a complaint and, where appropriate, to conduct any disciplinary proceedings. Civilian oversight arises only if there is a complaint concerning the internal police process (p. 26).

An Australian study on police accountability suggests a number of criteria that need to be satisfied to establish a viable civilian oversight of policing. These include the following:

- Capacity to conduct independent investigations
- Direct access to the legislature in the form of regular reporting
- An independent resource base, so that government cannot thwart efforts to ensure accountability
- Political and moral support to the oversight body and links between government and the oversight body
- Decentralizing the operations of the civilian oversight body, so that it has the capacity to capture all valid complaints rather than being isolated in one or two large cities (Goldsmith 1999: 54–61)

Police anticorruption measures in Australia have been classified in terms of three models: the minimalist, the intermediate, and the advanced (Prenzler and Ronken 2003: 149). Prenzler and Ronken (2003) suggest that the minimalist model gives primary responsibility to the internal police disciplinary mechanisms. Associated with this model is judicial scrutiny of police misconduct and political oversight through reports to the legislature. The authors judge this minimalist model to be inadequate in terms of preventing police misconduct.

The intermediate model adopts the establishment of internal affairs departments as the key to a more aggressive anticorruption approach. This allows police to develop specialist anticorruption skills and provides a stronger focus for anti-corruption efforts. This model emphasizes stricter processes of recruitment and increased stress on ethics in training. As well, this model includes the establishment of independent review bodies. The problem with this approach is that it remains essentially passive and relies substantially on recruitment rejecting undesirable potential police officers and on compliance with codes of ethics and conduct.

In the advanced model, there is recognition that police misconduct can take multiple forms. For example, different sections or units of a police department may experience different problems, and systems must be able to cope with a multiplicity of issues (Prenzler and Ronken 2003: 152). In this model there is a much more proactive approach to corruption. Technology and covert methods of investigation are employed; integrated ethics training is considered essential. There may be random integrity testing, and there is a system of external review that is independent and may adjudicate alleged wrongdoing (p. 153). The authors found that within the eight Australian police departments (there are six state police departments, the Northern Territory Police, and the Australian Federal Police), none had adopted the advanced model, and many had hardly advanced beyond the minimalist model.

In Latin America accountability for wrongdoing is said to be exceptionally deficient, with police accountability structures lacking resources and constrained by corruption (Eijkman 2006: 414). Members of the public are reluctant to complain about police because of fear of retribution and because the lack of political will to eradicate corruption tends to generate police impunity in the region. In Costa Rica, police regard accountability as an activity that interferes with the task of policing, and being held accountable is regarded as something hindering police work (p. 415). The majority of police are never involved in charges of misconduct; nevertheless, internal disciplinary mechanisms do impose accountability; for example, in 2002 eight police officers were dismissed for illegal use of force (p. 419).

## Whistle-Blowing

Two general types of whistle-blowers have been identified: *internal whistle-blowers*, who report misconduct to another person within the organization who in turn may take corrective action, such as a supervisor or union representative, and *external whistle-blowers*, who expose abuse to outside agents such as police, lawyers, and the media (Miethe 1999: 15). Both external and internal whistle-blowers blow the whistle because they themselves lack the power to directly change organizational practices. Kleinig (1996: 184) suggests that within police departments, whistle-blowing is often defined as involving any reporting outside of an immediate circle of officers. The term *whistle-blowing* is a substitute for derogatory terms such as *snitch*, *fink*, and *sneak* and was developed in response to the recognition that although citizens have become more vulnerable to the acts of large organizations, many of those same organizations demand a loyalty of their employees that can conflict with the public trust they seek to foster.

Whistle-blowers may have to pay a heavy price for blowing the whistle, and some have been dismissed, demoted, ostracized, and even assaulted and their families threatened because they have violated organizational loyalty (see Case Study 2.3). Miethe (1999: 227) reports that for many whistle-blowers, the experience of whistle-blowing is a transformation of their lives, and the process permanently scars many, because the whistle-blowing event overpowers all other aspects of a person's life. Kleinig (1996) argues that whistle-blowers should be offered protection and suggests anonymity and legislation to protect them against harassment or discrimination.

According to Miethe (1999: 212), whistle-blowers are protected by the Constitution, by federal and state statutes, and by common law. However, protection focuses on the disclosure of particular information to particular sources, and so its extent in a particular case may be unclear. For example, under federal and state law, protection is often restricted to *particular* types of workers who disclose *particular* violations of conduct in a *particular* sequence to *particular* agents.

### CASE STUDY 2.3 PUNISHED FOR WHISTLE-BLOWING?

In December 2000, two police officers in Wilksburg, Pennsylvania, were punished after questioning their chief about his handling of drug money. The police chief, Gerald Brewer, resigned after an investigation resulting from the two officers' complaints.

The officers were punished through the demotion of Sergeant Robert Tuite to patrol officer and the removal of a police vehicle allocated to Lieutenant Thomas Kocon. A lawyer representing the two officers indicated that he would be filing a retaliation charge against the Borough of Wilksburg and would also be taking court action to reverse the officers' punishments. Mayor Wilbert Young, who imposed the punishments, denied they were connected to the whistle-blowing acts of the two officers. Their lawyer noted, however, that the action taken against them could have a chilling effect on police officers in that state.

SOURCE: The Pittsburgh Channel 2000.

When is whistle-blowing morally justified? Bowie (in Kleinig 1996: 185) suggests that moral justification exists if the following conditions have been satisfied:

1. It is done in good faith with the intention of exposing wrongdoing that violates human rights, causes harm to third parties, or violates the purpose of the organization. In other words, it should not be motivated by personal revenge, advancement, or other self-interested reasons.
2. Except in special circumstances, the whistle-blower has exhausted all other internal avenues before going public.
3. The whistle-blower has ensured that there is a proper evidential basis for his or her allegation of misconduct.
4. The whistle-blower has carefully analyzed the seriousness of the misconduct, its immediacy, and its definition.
5. The action of the whistle-blower is consistent with the general responsibility of a citizen to avoid or expose moral violations.
6. It has some chance of success, because if it is unlikely to accomplish any significant change, the act of blowing the whistle lacks credibility.

According to Kleinig, these considerations apply equally to police officers who become aware of corruption; however, he warns that any act of whistle-blowing should be regarded as a last resort, because it indicates that a department has failed to look after its own affairs. His view seems to apply primarily to Miethe's (1999) category of external whistle-blowing.

Thus far, corruption has been explained in terms of the receipt of goods and services and the performance of acts that generally involve some kind of financial or other benefit to a particular individual. However, there are other forms of corruption that have their source in discriminatory practices by police.

## Discrimination as Corruption

This discussion is concerned with two aspects of discrimination: racial discrimination, in the form of police discrimination against minorities, and discrimination that the police may exercise in the enforcement of the law, either as individuals or as a result of department policy. Police racism and discrimination against minorities refer to the process through which police stigmatize, harass, criminalize, or otherwise discriminate against certain social groups on the basis of cultural markers or national origin (Chan 1997: 17). Police racism can arise in various situations, can take different forms and levels of intensity, and can reveal itself in the form of acts ranging from prejudicial attitudes and discriminatory law enforcement practices to the use of excessive violence against minority groups. Police, like other citizens, may show insensitivity to language and cultural diversity, and while this may not amount to racial discrimination as such, it may well have an influence on police attitudes toward certain minority groups.

Studies have shown evidence of prejudicial attitudes and the regular use of racist language among police officers (Skolnick 1966). The Christopher Commission in Los Angeles, formed after the Rodney King incident, found abusive language by police officers to be prevalent and identified many computer messages between patrol officers that contained racially offensive language such as "I'm back here in the project, pissing off the natives" and "Just got mexercise for the night." White, Cox, and Basehart (in Walker, Spohn, and DeLone 2000: 105) argue that the employment of general profanity by police serves the function of labeling, dominating, and controlling citizens.

In relation to prejudicial attitudes, a study comparing the attitudes of Denver police officers with those of the general public found that police officers were only slightly more prejudiced than the community as a whole. This may suggest that police are essentially ordinary citizens and not significantly different from the general population in their attitudes. However, police have a fundamental desire to be respected, and their inclination when they perceive a community as showing a lack of respect is to react by increasing police activity in that community. It is significant that officers assigned to racial or ethnic minority communities, high-crime areas, and poor neighborhoods in the Denver study believed they received less respect from the public than officers working in other areas.

Skolnick (1994 in Walker et al. 2000) argues that the tendency of police to stereotype people, also called *racial profiling*, is an intrinsic aspect of police work, because

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officers are trained to be suspicious and to search for criminal activity. Consequently, they develop a “perceptual shorthand” that they believe allows them to pick out suspects among the general population. They identify suspects by relying on visual signs such as dress, demeanor, gender, and age (see Case Studies 2.4 and 2.5). Additionally, Reiner (1985) found that young, low-income, ethnic males were more likely to be stopped and questioned by the police, and minorities were also more likely to be arrested, although there is some discussion that this might be due to factors such as perceived disrespect shown by suspects to police. The same study noted that while police used excessive force against white citizens twice as much as against blacks, the findings were reversed in cases of the use of deadly force.

Racial profiling has become a source of major concern to the African American community, particularly in light of the Rodney King incident and others, where police are alleged to have used excessive force and to have racially profiled African Americans. Studies show that in the 1960s and early 1970s, police fatally shot seven African Americans for every white person (Walker et al. 2000: 95), but following the Supreme Court’s decision to declare unconstitutional the *fleeing felon rule* (allowing police to shoot to kill any fleeing suspected felon), the racial disparity between persons shot and killed has narrowed to about 3 to 1 (p. 96). The fact remains that while police continue to profile minority groups in law enforcement activities, there is a greater likelihood that disparity between whites and African Americans in shooting incidents will continue. Case studies 2.4 and 2.5 provide examples of racial profiling.

**CASE STUDY 2.4 “LOOKING MEXICAN”**

In July, 1997, the city of Chandler, a suburb of Phoenix, Arizona, with a population of 143,000, began Operation Restoration, which was intended to construct a new civic center, including police headquarters, municipal court, and library and revitalize the town. Since its founding in 1912, Chandler had become two cities: one affluent, the other the old impoverished downtown area.

Seeking a cause for the city center’s decay, city officials fixed on illegal immigration and focused on alleged criminal activity by illegal immigrants. The city police and the border patrol collaborated on a plan linked to Operation Restoration, and on the first day of the operation, two dozen police officers and five border patrol agents moved through the downtown area, chasing suspected illegal immigrants from worksites and filling up buses with those they captured. In all, police eventually removed 432 illegal immigrants, all but 3 from Mexico.

However, the illegal immigrants in Chandler coexist with a large, well-established Mexican American community, with Latinos making up about 15% of the population. As police questioned those leaving markets favored by Latinos, they encountered U.S. citizens from whom they also demanded identification and immigration papers. The police operations targeted legal residents and U.S. citizens who “looked Mexican.”



Four months later, the Arizona attorney general revealed the results of his inquiry into this raid. These included that Chandler police had stopped residents, questioned them, and entered their homes without warrants, relying only on skin color, Mexican appearance, or use of Spanish language to identify them as suspected illegal immigrants. Moreover, the city officials had not requested formal permission from the U.S. attorney general to act against illegal immigrants as is required by federal law.

The city manager officially reprimanded the police chief for the raid, and a group of Latinos launched a \$35 million lawsuit against the city. Latinos commented that it would take 10 or 15 years for people to feel comfortable again in the town.

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SOURCE: Tobar 1998.

### **CASE STUDY 2.5 RACIAL PROFILING: WHEN COLOR SIGNALS DANGEROUSNESS**

*Case One.* In Phoenix, Arizona, police questioned a man sitting in his car outside an apartment building. Why was he questioned? Police said he appeared nervous, he moved his car when a marked police car approached, and most of all, as one police officer reported, he was a Mexican male just sitting in his car in a mainly white neighborhood.

*Case Two.* At the Kansas City airport, a Drug Enforcement Agency agent stopped and questioned a young man. Why was he stopped and questioned? The agent reported that the man was young and not well dressed and had arrived on a direct flight from Los Angeles, known to be a source for drugs. He had no checked luggage, only two carry-on bags, and he walked rapidly to a taxi after his flight. He appeared also to be nervous. The fact that he was black was a factor in the agent's decision to stop him.

*Case Three.* In California, officers of the Border Patrol questioned the driver of a vehicle at the highway checkpoint some 30 miles north of the U.S.–Mexico border. They also searched his vehicle. Why was he questioned? They were prompted to do so because he was of Mexican ancestry.

*Case Four.* In Boston, over a period of several weeks, police stopped, questioned, and searched young black men at random following a report that a white man's pregnant wife had been shot and killed in that neighborhood by a black man.

*Case Five.* In New York City, police stopped and searched a young black man who alighted from a commuter train. He was clean shaven, was carrying a briefcase, and was 6 feet 4 inches tall. Why was he stopped and searched? Police were investigating a report that a black man who regularly rode the train

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carried a gun. The report came in the form of an anonymous letter, and the man described in the letter was 5 feet 10 inches tall and had a mustache.

*Case Six.* After police received a tip that a white man with a bomb was inside an office building, they surrounded the building and entered. They examined white men more closely than nonwhite men.

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SOURCE: Kennedy 1991.

*Case Seven.* Complaints by Arab Americans against racial profiling by airlines have reportedly increased since 9/11, according to the American-Arab Anti-Discrimination Committee. The committee is aware of passengers with a Muslim or Middle Eastern appearance who have been removed from planes. For example, an Iranian-born U.S. citizen who was a software developer living in Dallas was on his way home from Seattle, and, while reading his paper on an American Airlines plane, was approached by an airline employee holding a passenger manifest. He was told to leave the plane because the pilot did not feel comfortable with him aboard. Reportedly, the pilot did not like how he looked. He was questioned by three airport police about where he lived, his marital status, his religion, and where he worked, and he was treated like a suspect. He was allowed to board the next flight to Dallas, and when the plane landed, apologies were offered by an airline official.

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SOURCE: CNN.com/Travel 2001.

Analyzing cases of physical assault on minorities by police, Rice (in Walker et al. 2000: 98) found that almost half the victims of excessive police force had either defied the officer's authority or resisted arrest, and that African American suspects were more likely to be disrespectful than whites. He also found that police were more likely to use force against marginalized persons, such as alcoholics and the homeless, and that race in itself was not a determining factor in the use of force. Rather, he concluded, class and not race determined police misconduct, and the typical victim of excessive force was a lower-class male. Whatever may be the true position, it is significant that a 1991 Gallup Poll reported that 45% of African Americans believed there was police brutality in their neighborhood, compared to only 33% of whites (p. 99). Ultimately therefore, it appears, rightly or wrongly, that police are perceived by certain sections of the public to be more likely to brutalize them, and police must address this perception in their interaction with minorities.

The question raised by racial profiling is whether it is morally right to use a person's race as an indication of increased likelihood of criminal conduct. Should police stop African Americans simply because there is official statistical evidence that young African American men are disproportionately involved in drug or gang activity? Kennedy (in Walker et al. 2000: 104) argues that race should be used as the basis for a police action only in extraordinary circumstances. Prohibiting arrest by

reference to racial profiling reduces the possibility of police harassment and the perception among minorities that police harbor racial attitudes toward them. Additionally, the hostility created by profiling tends to form barriers in those communities where police find it most difficult to operate, and profiling may also support segregation in the sense that African Americans become reluctant to venture into white neighborhoods for fear of police harassment.

The general public associates racial profiling with traffic stops, and some have argued that the police practice of stopping a disproportionate number of minority citizens for their driving infractions is so pervasive that it should be termed the crime of "driving while black." According to the Bureau of Justice Statistics (Smith and Durose 2006), in 2002 an estimated 8.7% of drivers aged 16 or older were stopped by police, and 11% of young male drivers were physically searched or their vehicle was searched. Among these, blacks (22%) and Hispanics (17%) were searched at higher rates than whites (8%). A number of studies suggest that targeting minority motorists does occur at least in some jurisdictions, and a number of police departments are now recording traffic stop information to establish whether they are racially biased (Warren et al. 2006: 710).

Racial profiling is less likely to be a factor in a routine speeding stop by a highway patrol officer, because it is often difficult to identify the driver's race because of the speed of the vehicle, and also such stops are usually the result of speed detectors rather than sighting the race of the driver (Warren et al. 2006: 714). In one study conducted in 2000 in North Carolina that compared race disparities in highway patrol stops and in local police stops, researchers found only slight evidence of racial disparity in the highway patrol stops but stronger evidence in stops by local police (p. 709).

Police may act on their stereotypical images of suspicious conduct by stopping, questioning, and frisking people on the street, and this practice is a source of tension between police and the community. A study in San Diego found that nearly half of those stopped and questioned were African Americans, despite the fact that African Americans made up only 17.5% and 4.8%, respectively, of the populations of the two precincts covered by the study (Walker et al. 2000). Moreover, all those stopped and questioned were male, and about 60% were juveniles.

The furor concerning racial profiling has spread to Canada, and in 2003 the police in Kingston, Ontario, conducted the first racial profiling survey, in which police officers were asked to record data on pedestrians and drivers they interrogated, suspected, questioned, searched, or detained (Closs and McKenna 2006: 144). The study found that black male residents of the city between the ages of 15 and 24 were three times more likely to be stopped and questioned by police than people from other racial backgrounds (p. 149). Police justify stopping and questioning on the street as an effective crime fighting measure, intended to deter potential offenders through police scrutiny of them and to provide reassurance to the general public that patrol officers are protecting ordinary citizens.

Racial profiling is not confined to the police; other government agencies have also been accused of the same practice. For example, in 2000 the General Accounting Office revealed that even before the War on Terror commencing in 2001, African American women traveling by air into the U.S. were being disproportionately

targeted for custom searches (Newsome 2003: 32). The report found that these women were more likely than members of other groups to receive intrusive searches, including X-rays and strip searches.

From the point of view of the public, race and ethnicity play a major part in shaping public attitudes toward police. For example, in a 1998 survey, 61% of white Americans surveyed reported “a great deal” or “quite a lot” of confidence in the police, whereas only 10% had “very little” confidence. However, of the African Americans surveyed, only 34% fell into the first category, and 25% had “very little” confidence in the police (Walker et al. 2000: 91). Police tend to be negatively evaluated by residents in high-crime neighborhoods and by those who fear the incidence of crime in their neighborhoods (Schafer, Huebner, and Bynum 2003: 447), especially when they use aggressive policing techniques designed for zero tolerance policing which have resulted in disproportionate arrest rates for blacks (Eck and Maguire 2005: 228). In the case of Hispanics, attitudes fall somewhere between those of whites and African Americans. As already noted, age can be a factor in police profiling, and age also factors into the views of young people toward the police, because young people, regardless of race, consistently have a more negative view of police than their elders. This can be explained by their more active presence on the street and their greater level of contact with police (Walker et al. 2000: 92).

Police selectivity in enforcing laws may have the effect of discriminating against certain groups in society. For example, police treatment of domestic violence cases has historically involved a pattern of noninterference based on the assumption that such violence was not a proper subject of crime control, unless it involved injury that could be defined as felony assault. Additionally, police gave priority to family solidarity and acted or failed to act in accordance with that goal (Fyfe in Kleinig 1996: 184). Thus, women who were battered by their partners received discriminatory treatment by police, because whether or not action was taken against the batterer depended on whether the crime was considered a felony or a misdemeanor. Similarly, selective enforcement by the police can offer less protection to rape victims, because most rape victims are victimized by known intimates, and police enforcement practice focuses on stranger rapists.

Having discussed various forms of police corruption, this analysis of ethical issues in policing will now consider how ethical issues arise in the detection and investigation of crime. Police regularly interact with suspects and arrested persons, and seek to solve crime through the processes of interrogation and investigation. These interactions can generate important ethical questions and issues.

## Ethical Issues in Investigation, Interrogation, and Custody

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Ethical issues may arise when police are investigating incidents that suggest a crime has been committed and where persons are suspected of criminal conduct. In investigating crime, police must have regard for the rights of suspects, be sensitive to issues of privacy, and be aware of the moralities associated with attempting to entrap individuals.

## Rights of Suspects

A suspect—that is, a person who is only *suspected* of having committed a crime—has certain moral rights as well as specifically defined legal rights. These include a right to life, a right not to suffer ill treatment, and a right to privacy. *Suspects* who become accused persons are entitled to a fair trial, and a trial can be considered fair only if it is based on evidence. It follows that suspects are morally entitled to be convicted based only on evidence that is real and not fabricated and on evidence given by truthful witnesses. Fabricating evidence or committing perjury violates the moral rights of suspects, affects the fairness of trials and ultimately undermines the administration of justice.

Police also have a duty to the *victim* of a crime that extends to the victim's family if there is a need to protect persons who have been terrorized by the crime, although not its direct target. Fundamentally, police are under an obligation to employ the greatest possible effort to apprehend a suspect and to provide evidence for a successful prosecution. In doing this, they satisfy their ethical obligation toward the victim (Miller et al. 1997).

## Privacy

This is a constitutional right and a moral right that a person possesses in relation to others, particularly with regard to information possessed by others or in relation to the observation of others. A violation of privacy takes place through acts such as observation and body searches. Similarly, a person's intimate personal relations with others must be regarded as a privacy issue, as is information relating to the ownership of objects or assets where there is a presumption that the person need not disclose assets except in defined circumstances, such as tax collection. Also regarded as private are facts concerned with a person's public roles, such as voting decisions and business plans. Finally, the law grants privacy in respect of certain data collected relating to an individual that may be released only under defined conditions.

The right to privacy is clearly not absolute, and a balance has to be achieved between rights to privacy and confidentiality and rights to protection from crime. In achieving this balance, Miller et al. (1997: 204–205) advocate applying the following principles:

1. Accessing and interception are *prima facie* an infringement of privacy and are presumed a violation that ought not to be overridden except in exceptional circumstances.
2. The benefits of violating privacy must be greater than the likely costs, especially the cost of reducing public trust in those who seek to violate privacy.
3. Accessing and interception ought to relate to a serious crime; there ought to be probable cause that the person whose privacy is to be violated has committed the crime and that the resulting information is likely to further the investigation of that crime.

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4. There must be no practicable alternative method of gathering the information.
5. Law enforcement officials must be accountable for the violation in terms of obtaining any necessary warrant.
6. Persons whose privacy has been violated should be informed of the violation at the earliest possible moment consistent with not compromising the investigation.

Miller et al. (1997) suggest this framework of principles should regulate police action that might violate the right to privacy.

### Entrapment

Miller et al. (1997: 206–207) suggest that the practice of entrapment includes operations, such as surveillance, undercover investigations, and entrapment itself, which are of a covert nature and involve deception of one kind or another. Deception seems to be an inevitable part of law enforcement and may not necessarily infringe on moral rights. Entrapment, however, is regarded as morally problematic because of the belief that the offender involved in a case of entrapment has not attained the required degree of criminality to be arrested and must therefore be entrapped. Entrapment may be random or targeted at a particular person or persons, and random entrapment is considered particularly morally problematic. In the case of targeted entrapment, moral objections may cease to apply if certain conditions are met. These are the following:

1. There is sufficient evidence to believe that the target is likely to commit a crime.
2. The person would have committed the crime or a similar crime whether he or she was a victim of the entrapment or not.
3. The entrapment succeeds as a technique of detection where other methods, such as complaints investigation, have failed.

The second condition is the most morally problematic, because it assumes facts that cannot really be clearly ascertained and relies on evidence such as the suspect's disposition to commit crimes, which is a matter of subjective interpretation. It also relies on evidence of opportunity, and this, together with disposition, would lead to the formation of an intention to commit the crime.

In the United States, entrapment is considered a legal limit on the government's use of deception in investigation, and it occurs when a government agent, usually a police officer, initiates action that induces an otherwise innocent person to commit a crime so that he or she may be prosecuted. Entrapment operates as a defense, which, if established, will result in an acquittal. The courts apply a *subjective test* in determining whether the defense of entrapment has been proven. This involves the court looking at the mental predisposition of the offender to commit the crime rather than the objective methods of the police (Marx 1985; Skolnick 1982; Stitt and James 1985). In 1958, a minority of the Supreme Court, in *Sherman v. United States*, proposed an *objective test*, focusing on the nature of the police conduct, as

opposed to the predisposition of the offender. Under this test, the court would look at the character of the state's involvement in the commission of the offense; in other words, it would make an assessment of whether the police acted in such a way as would be likely to instigate or create a criminal offense.

Kleinig (1996: 158) suggests an alternative approach based on the nature of the government's involvement in the entrapment, arguing that sometimes this involvement figures so large that it suggests a lack of confidence that the individual would have committed the particular offense. He suggests that if this degree of involvement can be determined, the defense of entrapment should be available (see Box 2.9). He focuses on the power of the government to draw into the entrapment those who might not otherwise engage in that kind of conduct. Barker and Carter (1995) offer the example of the Broward County, Florida, sheriff's department, which began to manufacture \$20,000 worth of crack cocaine when it did not have enough crack to provide to undercover officers, to illustrate a situation where the government's involvement could easily be objectively assessed as entrapment. Box 2.10 shows an example of an unsuccessful entrapment defense.

### A CLOSER LOOK

#### BOX 2.9

#### A Successful Entrapment Defense

On July 31, 2000, Indianapolis police officer Genae Gehring was working an undercover vice detail as a prostitute on the east side of the city along with about 10 other officers, with the objective of arresting those soliciting for prostitution. At about 4 p.m. on that day, James Ferge was driving his truck and was stopped at a two way stop sign. Officer Gehring was walking and made eye contact with Ferge in his stationary truck. She walked over to his vehicle and they spoke. He asked if she needed a ride and invited her to get in. She asked him if he was "looking for a little more," and he replied in the affirmative. She then asked if he was "looking for a little head," and again he replied in the affirmative, and she then suggested a price of \$20, to which he agreed.

She told him to meet her in an alley behind a building close to the intersection and walked over to that location. Instead of proceeding to the alley, Ferge drove in another direction for about seven blocks until he was stopped by the police and arrested.

On August 1, 2001, Ferge was charged with patronizing a prostitute, which is a Class A misdemeanor, and at his trial he claimed that he offered the officer a ride because it was raining, that he could not understand everything she said because of the noise of the diesel engine, that he was surprised when she asked him some questions about sex, and that so far as he was concerned, he would give her a ride if she wanted, but if she did not, that was the end of it. He was found guilty, sentenced to serve a year, and given credit for 4 days. The remaining 361 days were suspended, and he was placed on probation for 180 days.

*(Continued)*

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(Continued)

Ferge appealed, arguing that the state had failed to produce enough evidence to negate his defense of entrapment. Under Indiana Code, entrapment is a defense if the conduct charged was the result of a law enforcement officer using persuasion likely to cause the person to engage in the conduct and if the person charged was not predisposed to commit the offense. The court on appeal said that the defense of entrapment turns on the defendant's state of mind, and, in this case, the state had to prove beyond reasonable doubt that Ferge had a predisposition to commit the crime.

The court said that the evidence at trial showed that the police officer initiated the conversation about sex and that the defendant did not meet the officer in the alley but instead drove away until stopped by the police. According to the court, the suggestion of criminal activity, that is, sexual activity, was made by the police officer after Ferge offered her a ride, and his action in driving away from the alley where he had been told to meet her showed that he did not intend to make a deal with her and was therefore evidence that he was not predisposed to commit the crime. Accordingly, the state had not presented enough evidence to prove the crime, and Ferge had successfully established the defense of entrapment.

SOURCE: *Ferge v. State* 2002.

**A CLOSER LOOK****BOX 2.10****An Unsuccessful Entrapment Defense**

On January 8, 2007, Shahawar Matin Siraj, a Pakistani, was sentenced to 30 years in prison for planning to blow up the Herald Square subway station on 34th Street in New York City. Siraj claimed that he was entrapped by a paid police informant who showed him photographs of inmates being abused at Abu Ghraib prison in Iraq and who recorded on tape his responses in the form of threats against the United States. He was convicted of conspiracy based partly on testimony of police informant Osama Eldawoody, an Egyptian American who was recruited by New York police to monitor radical Muslims following 9/11. Siraj admitted taking preliminary steps to attack the subway station but claimed he had only done so at Eldawoody's prompting. His entrapment defense seemed to have convinced at least half the members of the jury early in the trial, but they later dismissed it. His defense was aided by the fact that the police paid Eldawoody a total of \$100,000 for his work as an informer. The defense claimed it was this salary that kept Eldawoody interested in interacting with Siraj and in encouraging Siraj in his plotting.

SOURCE: Hays 2007.



## Deception

To what extent, if any, are police entitled to rely on deception in order to promote law enforcement? There are many forms of verbal and nonverbal deception, and police deception may take forms such as withholding and manipulating information, lying, using ruses, using informants, enacting sting operations, installing wiretaps and bugging devices, creating false friendships, manufacturing evidence, and using the good cop/bad cop routine in interrogations (Kleinig 1996: 124). Many of these forms of deception involve lying in one form or another.

Skolnick (1982), in considering police deception, focuses on three stages of deception: investigative deception, interrogatory deception, and testimonial deception. He makes the point that the acceptability of deception varies according to the stage reached in the criminal process. Deception is most acceptable to police and the courts at the investigation stage, less acceptable during interrogation, and least acceptable in the courtroom. The reason for this is that each stage implies a greater number of constraints in the criminal justice process. For example, testimony in court is given under oath, but in the process of interrogation, it is not.

### *Investigative Deception*

The line between deception and entrapment, and the fact that police justify lying in the investigative stage as the means justifying the end (noble cause corruption), has already been discussed. Skolnick (1982) suggests that the courts impose fewer constraints on lying during this stage, and that judicial acceptance of deception in the investigation process tends to have the effect of making deception in the other stages of the process more acceptable morally, and, therefore, likely to increase its occurrence. In other words, deception in one context is likely to increase its probability in others. For example, Kleinig (1996: 135) points out that both the courts and society accept the limited use of investigative techniques such as the use of informants, wiretapping and bugging, unmarked patrol cars, and concealed radar traps. Marx (2001: 262) contends that there are minimal ethical objections in using decoys as potential victims to combat a pattern of sexual assault and harassment. He gives the example of a policewoman used as a decoy after a series of rapes in a public park. Acceptability here is judged by the fact that crimes have already been committed, that there has been coercion by an offender, and that the policewoman acting as decoy is a relatively passive response.

### *Interrogatory Deception*

In the 1966 case *Miranda v. Arizona*, which dealt with the interrogation of a suspect in the custody of the police, the court held that arrested persons must be informed of their rights to remain silent, that any statement they make may be used as evidence, that they have the right to the presence of an attorney, and that an attorney will be provided if they cannot afford one. In addition, the court determined that the state is under a heavy burden in attempting to prove that any waiver of these rights occurred voluntarily, knowingly, and intelligently. The *Miranda* decision

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evolved out of the admission in courts of confessions that were obtained with the use of torture, in the early period, and later, with the use of the third degree, and then using techniques of deception and psychological pressure.

As Kleinig (1996: 138) notes, sometimes interrogations are characterized as “interviews,” where the language used is more respectful and the investigating officer constructs himself as a “seeker of truth” rather than “an accuser.” Police interviews do not require the police to Mirandize the suspect. However, every custodial situation is inherently coercive, and depending on the circumstances, bears on the issue of whether what a person says can be said to be voluntary. It is clear that in a custodial interrogation, police are able to control the physical conditions of the encounter, the length of the interrogation, the time given to the suspect to respond to questioning, and, generally, the terms under which it takes place. The outcome of the coercive nature of the interrogation, when combined with the police control of it, is that an innocent person or a person easily intimidated may react in ways that imply guilt. Further, a guilty person may be persuaded to confess to a more serious offense than the one he or she has committed. Questions of the mental capacity of the person being interrogated may also arise. In its investigations, the Innocence Project has uncovered many cases in which confessions have been shown to be false, and some of these were given in response to police threats that, absent a confession, the accused person would face the death penalty.

### *Testimonial Deception*

Kleinig (1996) points out that a good deal of police testimonial deception is said to be directed at securing *worthy ends*; that is, the control of crime and the conviction of those responsible (noble cause corruption). However, the police often take the view not only that deception in testifying is done with the aim of furthering the noble cause, but also that they are forced to practice deception in order to correct deficiencies in the criminal justice system. Police might argue that the standards of proof required of the state, the constitutional restraints under which police operate that protect the rights of suspects, and the abilities of cunning defense lawyers and unsympathetic judges mean that the odds are stacked against them, and that evidence therefore ought not to be excluded by technicalities or a case lost because of a clever lawyer. This ignores the fact that *the task of the police is to arrest and apprehend and not convict*, and that police ought to be satisfied at having fulfilled their role within the criminal justice system.

However, like others, police experience dissatisfaction if their work does not produce the desired end. Proposals for reducing police perjury, such as sensitizing police to the dangers of perjury, having laypersons accompany police when executing a search warrant, subjecting police witnesses to lie detection, and requiring that all police action be videotaped, are discussed by Slobogin (1996).

### **Lying**

Barker and Carter (1995) offer a typography of police lying comprising accepted lying, tolerated lying, and deviant lying. In considering *accepted lying*, they note that

certain forms of lying are an accepted part of police work, the justification being that they fulfill the objective of controlling crime and arresting the guilty; that is, the noble cause of policing. While lying may be acceptable to the police themselves, this does not answer the question of whether their lies are ethically acceptable. Many deceptive practices involve lying in the broad sense, especially in undercover operations, and in such cases, police must be aware of the possible defense of entrapment. According to Barker and Carter, police believe that it is proper to lie to the media or the public when necessary to protect the innocent, to protect the image of the department, or to bring calm in a crisis. So far as the police are concerned, a lie is acceptable if the following are true:

- The lie is made in pursuit of a legitimate organizational goal.
- There is a clear relationship between deceiving and achieving that organizational goal.
- The lying is such that police and management within the police believe that lying will better serve the public interest than providing the truth.
- The ethical and legal aspect of lying is not considered a concern.

In *tolerated lying*, lies are tolerated as necessary evils, and police will admit a lie when confronted. Again, from the police perspective such lies are seen as necessary to the policing mission. An example is using lies and deception to handle what police regard as “nuisance work” as opposed to “real police work.” Given that police are called out to deal with a wide variety of problems, most of which do not involve criminal activity, they sometimes promise to investigate a matter or threaten to take action when they have no intention of doing so, for example, in domestic violence cases, where the officer may have no warrant to arrest, but feels that something needs to be done and may threaten to take action. Similarly, sometimes police lie in a situation where they have no legal authority, for example, telling people on the street to move along when they have no legal basis for giving such a direction.

In the important area of police interrogation, lies are tolerated, and police are even trained to lie. Standard police texts on interrogation techniques advocate and instruct in deceptive and lying practices employed in interrogation. For instance, it is recommended that the officer conducting an interrogation seem sincere to such an extent that he may appear tearful or that an interrogator present a fabricated evidence file to a suspect. A familiar interrogation technique is to separate two suspected offenders and play off one against the other, and here, the interrogation texts suggest that the interrogator may actually inform one suspect that the other has confessed. Again, the justification for these techniques is said to be the noble cause of enforcing the law. Nevertheless, an attitude suggesting that using lies in interrogation is an acceptable practice, because it serves the end of the noble cause, can constitute the beginning of another slippery slope toward what Barker and Carter (1995) call deviant lying.

In *deviant lying*, police use lies that violate police regulations as well as the law. The major example here is police perjuring themselves in giving evidence in court, and at least one well-known defense attorney believes that almost all police lie in court (see Dershowitz 1983). Some police have even developed their own term for

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police perjury called “testilying” (Commission to Investigate Allegations of Corruption and Anti-Corruption Procedures of the Police Department, City of New York 1994). Barker (1996) has asserted that the public has lost confidence in the police as a result of high-profile cases like the O. J. Simpson trial, and he argues that the effect of this is to create an expectation that police will engage in testilying.

Kleinig (1996: 126) discusses the consequences of police lying and identifies three deleterious consequences:

- *Others Are Harmed.* This occurs in the sense that persons are led to do what they have not chosen to do. They may also be deprived of their possessions or placed at physical risk.
- *Social Trust Is Destroyed.* The argument here is that a person who is lied to and who discovers the lie suffers the consequence of cynicism, and this may in turn affect his or her interactions with others, because suspicion erodes trust.
- *The Liar Is Harmed.* This may occur through the liar becoming more evasive for fear of being found out, developing a suspicion of others, and perhaps developing a reduced ability to resist other forms of corruption.

Finally, having reviewed the major forms of police corruption within the overall framework of noble cause corruption, it is necessary to consider the rationale for police corruption.

### Explanations for Police Corruption

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How can we explain or understand why police corruption occurs? As we have seen, explanations focus on the individual police officer, on the institutional culture of policing, and on society in general. In the individual approach, corruption is explained as a consequence of a bad moral character, and the principal motive is the pursuit of personal gain. This explanation also accounts for the rotten apple theory, which argues that a handful of corrupt officers can corrupt an entire department. Explanations founded on the institutional culture of policing suggest that the police commitment to good ends, also called the noble cause, can produce a way of thinking about police work that justifies acts of misconduct on the basis that the noble cause of policing justifies bending the rules (Crank and Caldero 2000: 29). The noble cause

is a profound moral commitment to make the world a safer place to live. Put simply, it is getting bad guys off the street. Police believe that they're on the side of angels and their purpose in life is getting rid of bad guys . . . it's something to which they are morally committed . . . the noble cause is practical and immediate. It's about an officer's conduct in day to day police work. It motivates an officer's behavior with citizens and mobilizes a great deal of police solidarity. (Crank and Caldero 2000: 35)

One aspect of noble cause corruption is the tendency of police to believe that suspects are guilty even where there may be insufficient evidence, or no evidence at all, of guilt. For the police, the following elements justify their thinking (Klockars 1980):

1. *The Operative Assumption of Guilt.* As part of police culture, police assume suspects are guilty, believing that questionable behavior is evidence of some offense.
2. *The Worst of All Possible Guilt.* Not only do police assume guilt, but they also associate danger with that guilt in the belief that someone who has the most to hide will try to hide it by all possible means, including putting the police themselves at risk. It follows that police must discover the truth as quickly as possible, and this justifies the use of severe interrogation techniques.
3. *The Great Guilty Place Assumption.* Given that police are suspicious and tend to operate in selective environments, they see danger where others might see none.
4. *The Not Guilty (This Time) Assumption.* Police do not conclude that a person is innocent when they find no evidence of guilt. They believe that most people have committed crimes but have been fortunate enough not to be caught and that using a little pressure will often show the guilt of the seemingly innocent.

Crank and Caldero (2000) argue that the idea of the noble cause represents a value imported into police work from broader American life. In this sense, the police are no different than others, and they reflect a particular cultural value incorporating a concern for victims and the notion that no one should stand above the law. Other commentators (Delattre 1989; Klockars 1980; Muir 1977) have recognized the existence of noble cause thinking in police work. In addition, Skolnick and Fyfe (1993: 89), in their discussion of police culture, argue that aspects of that culture, such as the police notion of suspicious persons, the *Dirty Harry* problem, the siege mentality (the idea that police emphasize crime control over all police work, this being the police concept of professionalism—a notion that tends to isolate the police from the community), and the code of silence within police departments, together with the police perception of themselves as soldiers engaged in a war on crime, shapes the worldview of the individual police officer on the street. This leads to the conclusion, for example, that “police brutality is inevitable” (Skolnick and Fyfe 1993: 133). It is easy to see that such a worldview can be employed in justifying misconduct in pursuit of the noble cause.

Crank and Caldero (2000: 75) emphasize that when applying the justification of noble cause to corruption, police place personal morality above the law and act as if they are the law. In such an ethical environment, any efforts to control police behavior will be viewed as disloyal, because, in their view, if police are the law, what they do must be right. Consequently, accepting free dinners to look after a restaurant is considered acceptable practice because “society owes it to them,” and mistreating suspects means suspects are “getting what they deserve,” because police have already decided they are

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guilty. In contrast to the rotten apple explanation for corruption, when corruption is justified on grounds of noble cause, officers who carry out acts of misconduct themselves are not considered rotten apples but are perceived to be dealing with crime efficiently and effectively. During the O. J. Simpson murder trial, the noble cause explanation came to light when it was revealed that Mark Fuhrman had once stated,

(If you find a (needle) mark (on a drug suspect) that looks like three days old, pick the scab. Squeeze it. Looks like serum's coming out, as if it were hours old. . . . That's not falsifying a report. That's putting a criminal in jail. That's being a policeman. (Dershowitz 1996: 55)

Another, more sympathetic explanation for police corruption is offered by Johnston (1995: 301), who suggests that corruption is produced by the pressures society has imposed on police. Citizens place the police in a position of tension, where they are expected to enforce the law but also to obey regulations about how they may obtain information and gather evidence. They are also expected to enforce personal morality while respecting constitutional rights to privacy and due process. Johnston argues that so long as we continue to place these pressures on police, we are fated to endure a certain degree of police corruption and that we should move on to consider the sorts of social behavior we have no choice but to accept and consider questions such as how much police corruption we can tolerate. In essence, therefore, this argument sanctions a level of police corruption and leaves open the question of the extent to that level.

## Summary

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In the past, effective policing in the United States depended on the police being able to physically dominate the streets. Police were seen as an arm of whichever political party was in power, and there was little or no conception that police needed to observe ethical standards and norms. Police corruption and police abuse of power are inextricably linked to the nature of policing and to police culture. The policing model may be that of the officer as the crime fighter, the emergency operator, or the social peacekeeper, and the type of model chosen by a police department influences relations between the police and community, police culture, and the overall ethical standards employed in policing. Police culture is enormously important in determining the level of police corruption or misconduct, because if the culture adopts the characteristics of cynicism, the use of force in all situations, and the notion that police themselves are victims, ethical standards will take second place to the noble cause of fighting the war against crime.

The police have extensive discretionary powers that can be used for good or ill, and some argue that this discretion is too wide and should be curtailed by the law and by departmental rules and regulations. Others argue that placing limits on discretion is the only feasible option but acknowledge that enforcing these limits can be problematic. Public opinion seems to accept that police should have wide

discretion to counter crime, but individual members of the public complain when that wide discretion is directed at them.

Codes of ethics may be one way of limiting police discretion, but there are problems with codes of ethics being rhetorical instruments directed toward a vaguely defined “public.” In any event, the evidence seems to show that police mostly depend on their personal notion of ethics.

Police misuse of force is a major area where ethical considerations come up against the practicalities of police work. Although there are rules that stipulate the degree of force to be used in given situations, ultimately the police themselves decide in their discretion what degree of force it is necessary to employ. Their decisions will be influenced by police culture and by the historical fact that force was employed as a matter of course. Often incidents of excessive force will be characterized as aberrations by particular officers rather than as a systemic issue. Questions about appropriate levels of force will continue to be raised, especially where egregious instances of brutality and violence occur.

Police practices in apprehension, investigation, and interrogation may be ethically questionable, because they may violate the rights of suspects, entrap them, and invade their privacy. Methods of deception, especially lying, are an accepted part of police work. Again, these techniques are often justified as the means of supporting the “noble cause,” although some argue that it is necessary to accept a degree of police corruption as the price we pay for keeping communities safe.

## DISCUSSION QUESTIONS

1. Discuss the ways in which the noble cause argument explains and helps police rationalize police misconduct and involvement in corruption.
2. Are codes of ethics important in guiding police practices and minimizing police misconduct? Explain.
3. How does police culture influence police perceptions about their role and about the means they should use to carry out their duties?
4. Is there any relationship between the style of policing chosen by a department and the ethical practices it feels are legitimate for its officers to use in carrying out their duties?
5. Is it possible or desirable to limit police discretion, and would this step have the effect of minimizing ethical misconduct by police officers?
6. Is it entrapment if the police attempt to catch child molesters on the Internet by pretending to be juveniles?
7. Why do some argue that it is correct to describe racial profiling as a form of police corruption? Explain the effects of this practice.
8. Compare systemic and individualistic explanations of police corruption.
9. What measures can be taken to control the use of excessive force by police?

## WEB RESOURCES

Bureau of Justice Statistics, U.S. Department of Justice. <http://www.usdoj.gov/bjs>

Community Centered Policing: A Force for Change. PolicyLink. <http://www.policylink.org/pdfs/ForceForChange.pdf>

International Association of Chiefs of Police. <http://www.theiacp.org>

National Organization of Black Enforcement Executives (NOBLE). <http://www.noblenational.org/>

Organized for Change: An Activist Guide to Police Reform. <http://www.policylink.org/Research/PoliceAdvocacy/>

Police Executive Research Forum. <http://www.policeforum.org>

Racial Profiling Data Collection Resource Center, Northeastern University. <http://www.racialprofilinganalysis.neu.edu>

Vera Institute of Justice. <http://www.vera.org>