ETHICAL ESSENTIALS:
“Doing Right When No One Is Watching”
LEARNING OBJECTIVES

As a result of reading this chapter, the student will be able to:

1. Articulate legitimate ethical dilemmas that arise with police, courts, and corrections practitioners
2. Describe the codes and canons of ethics that exist in police, courts, and corrections
3. Explain the philosophical foundations that underlie and mold modern ethical behavior
4. Explain why the “ends justify means” type of thinking poses problems for criminal justice and society
5. Discuss and provide examples of absolute and relative ethics
6. Define noble cause corruption
7. Review the utilitarian approach to ethics
8. Clarify the controversy surrounding the acceptance of gratuities, as well as a proposed model for determining whether or not such acceptance is corrupt in nature
9. Delineate the unique kinds of ethical considerations and obligations that exist with federal employees
10. Discuss the need for, and application of, ethical standards as they concern police, courts, and corrections practitioners
Watch your thoughts, for they become words.
Watch your words, for they become actions.
Watch your actions, for they become habits.
Watch your habits, for they become character.
Watch your character, for it becomes your destiny.
—Unknown

INTRODUCTION

As regular practice is essential to being a renowned musician, and a perfect cake is to a beautiful wedding, so too is ethics essential to being a criminal justice practitioner. A Latin term that might be used to describe this relationship is *sine qua non*—“without which, nothing.” Given that, a fundamental knowledge of ethics, as well as some guideposts concerning what constitutes unethical behavior, is an important topic in today’s society and for all criminal justice students—not only to guide their own behavior but also in light of the fact that unethical behavior at times appears to permeate the spheres of contemporary U.S. politics/government, business, and sports.

What specific behaviors are clearly unethical for criminal justice employees? What kinds of criteria should guide these employees in their work? To what extent, if any, should the public allow criminal justice employees to violate citizens’ rights in order to maintain public order?

This chapter attempts to address these questions and examine many types of ethical problems that can and do arise in police departments, courts, and corrections agencies. The focus will necessarily be on the police, who will find themselves in many more situations where corruption and brutality can occur than will the judges and corrections personnel.

This is not a black-and-white area of study; in fact, it will be seen that there is definitely a “shade of gray” for many people where ethics is called into question. Also problematical is that some people who are hired into criminal

ASSESS YOUR AWARENESS:

Test your knowledge of ethics by first reading and responding to the following seven true-false items; check your answers after reading this chapter’s materials.

1. The term *ethics* is rooted in the ancient Greek idea of *character*.
2. The “ends justify the means” philosophy is normally a good, safe philosophy for the police and judges to follow.
3. At times, communities seemingly tolerate questionable police behavior, if there is a greater public good (such as dealing with violent gang members).
4. During an oral interview, applicants for policing jobs should *never* state that they would be willing to “snitch out” another officer whom they observe doing something wrong.
5. The receipt of gratuities by criminal justice personnel is a universally accepted practice.
6. Whistleblowers exposing improper acts of their coworkers now enjoy no legal protection.
7. Because of their constitutional obligations, prosecutors and defense attorneys are not bound to ethical standards as are other criminal justice employees.

Answers can be found on page 401.
justice positions simply are not of good character. Furthermore, as stated in Chapter 1, we cannot train people to have high ethical standards; nor can we infuse ethics intravenously. In sum, character and ethics are largely something that someone either has or does not have.

Included are several scenarios and activities, providing you with opportunities to put the chapter’s materials into practice; among them are several “learn by doing” exercises. Note, too, that police brutality, judicial misconduct, and related problems in corrections will be discussed in Chapters 6, 10, and 13, respectively.

**GOOD EXAMPLES OF BAD EXAMPLES**

To frame the concept of ethics and demonstrate how one's value system can easily be challenged in criminal justice work, consider the following scenarios, all of which are true, and what might be an appropriate punishment (if any) for each (outcomes for each are provided in the notes at chapter’s end):

- **Police:** Upon seeing a vehicle weaving across the center line of the highway, Officer A stops the car, approaches the driver’s door, and immediately detects a strong odor of alcohol. The motorist is removed from the car and joins Officer A and a backup, Officer B, on the roadside. Officer A decides to use a portable breath test device to confirm his suspicions of driving under the influence, or DUI, and he gives a sterile plastic mouthpiece to the driver to blow into. The driver attempts to thwart the test by appearing (but failing) to blow into the mouthpiece. Irritated by this attempt, Officer A yanks the mouthpiece away, throws it on the ground, and arrests the driver for DUI. At trial, the driver claims the mouthpiece was flawed (blocked) so he was unable to blow through it; Officer A testifies under oath that it was not blocked, and as “evidence,” he takes a mouthpiece out of his pocket, stating it is the mouthpiece he used for the test that night. Officer B, sitting in the room, hears this testimony and knows differently, having seen Officer A impatiently throw the mouthpiece on the ground and leave it at the scene.

- **Courts:** For several weeks, a wealthy divorcée receives menacing telephone calls that demand dates and sexual favors. The caller’s voice is electronically disguised. The suspect also begins stalking the woman. After working some clues and tailing a suspect, a federal agent finally makes contact with a suspect, determining that he is the chief judge of the state’s supreme court. Upon confronting him, the agent is told by the judge to “forget about it, or you'll be checking passports in a remote embassy.”

- **Corrections:** A corrections officer in a minimum-security facility for young offenders is working the night shift when a youth is admitted. The youth is frightened because this is his first time in custody, and the officer places him in isolation because the youth told the staff he is feeling suicidal. Over the next several days, the officer develops a friendship with the youth. Looking through the youth’s file, the officer learns that the boy does not wish to remain male; rather, he wants to become a female. One day while doing a routine cell search, the officer observes the youth stuffing women’s panties into his pillowcase. With a terrified and pleading look, the youth explains he prefers them to boxer shorts and begs the officer not to mention this incident to other staff or youths in the facility. The officer ponders what to do; surely the boy would be seriously ridiculed if others knew of the panties, and it does not seem to be a “big deal.”
On the other hand, if the officer does not report the event and the boy’s choice of underwear is revealed later, the officer knows he will be accused of being lax and not watching over the youths as he should have, and at the very least lose credibility with other staff and the administration.\(^3\)

**PHILOSOPHICAL FOUNDATIONS**

The term *ethics* is rooted in the ancient Greek idea of *character*. Ethics involves doing what is right or correct and is generally used to refer to how people should behave in a professional capacity. Many people would argue, however, that no difference should exist between one’s professional and personal behavior. Ethical rules of conduct should apply to everything a person does.

A central problem with understanding ethics concerns the questions of “whose ethics” and “which right.” This becomes evident when one examines controversial issues such as the death penalty, abortion, use of deadly force, and gun control. How individuals view a particular controversy largely depends on their values, character, or ethics. Both sides of controversies such as these believe they are morally right. These issues demonstrate that to understand behavior, the most basic values must be examined and understood.

Another area for examination is *deontological ethics*, which does not consider consequences but instead examines one’s duty to act. The word *deontology* comes from two Greek roots, *deos*, meaning “duty,” and *logos*, meaning “study.” Thus, deontology means the study of duty. When police officers observe a violation of law, they have a duty to act. Officers frequently use this as an excuse when they issue traffic citations that appear to have little utility and do not produce any great benefit for the rest of society. For example, when an officer writes a traffic citation for a prohibited left turn made at two o’clock in the morning when no traffic is around, the officer is fulfilling a departmental duty to enforce the law. From a utilitarian standpoint (where we judge an action by its consequences), however, little if any good was served. Here, duty and not good consequences was the primary motivator.

Immanuel Kant, an 18th-century philosopher, expanded the ethics of duty by including the idea of “good will.” People’s actions must be guided by good intent. In the previous example, the officer who wrote the traffic citation for an improper left turn would be acting unethically if the ticket was a response to a quota or some irrelevant motive. On the other hand, if the citation was issued because the officer truly believed that it would result in some good outcome, it would have been an ethical action.

Some people have expanded this argument even further. Richard Kania\(^5\) argued that police officers should be allowed to freely accept *gratuities* because such actions would constitute the building blocks of positive social relationships between the police and the public. In this case, duty is used to justify what under normal circumstances would be considered unethical. Conversely, if officers take gratuities for self-gratification rather than to form positive community relationships, then the action would be considered unethical by many.

**Types of Ethics**

Ethics usually involves standards of fair and honest conduct; what we call conscience, the ability to recognize right from wrong; and actions that are good and proper. There are absolute ethics and relative ethics. *Absolute ethics* has only two sides—something is either good or bad, black or white. Some examples in police ethics would be unethical behaviors such as bribery, extortion, excessive force, and perjury, which nearly everyone would agree are unacceptable for criminal justice personnel.

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**Ethics:** a set of rules or values that spell out appropriate human conduct.

**Deontological ethics:** one’s duty to act.

**Gratuities:** the receipt of some benefit (a meal, gift, or some other favor) either for free or for a reduced price.

**Absolute ethics:** the type of ethics where there are only two sides—good or bad, black or white; some examples would be unethical behaviors such as bribery, extortion, excessive force, and perjury, which nearly everyone would agree are unacceptable for criminal justice personnel.
Relative ethics is more complicated and can have a multitude of sides with varying shades of gray. What is considered ethical behavior by one person may be deemed highly unethical by someone else. Not all ethical issues are clear-cut, however, and communities do seem willing at times to tolerate extralegal behavior if there is a greater public good, especially in dealing with problems such as gangs and the homeless. This willingness on the part of the community can be conveyed to the police. Ethical relativism can be said to form an essential part of the community policing movement, discussed more fully later.

A community’s acceptance of relative ethics as part of criminal justice may send the wrong message: that there are few boundaries placed on justice system employee behaviors and that, at times, “anything goes” in their fight against crime. As John Kleinig pointed out, giving false testimony to ensure that a public menace is “put away” or illegally wiretapping an organized crime figure’s telephone might sometimes be viewed as “necessary” and “justified,” though illegal; this is the essence of the crime control model of criminal justice (discussed in Chapter 1). Another example is that many police believe they are compelled to skirt along the edges of the law—or even violate it—in order to arrest drug traffickers. The ethical problem here is that even if the action could be justified as morally proper, it remains illegal. For many persons, however, the protection of society overrides other concerns.

This viewpoint—the “principle of double effect”—holds that when one commits an act to achieve a good end and an inevitable but intended effect is negative, then the act might be justified. A long-standing debate has occurred about balancing the rights of individuals against the community’s interest in calm and order.

These special areas of ethics can become problematic and controversial when police officers use deadly force or lie and deceive others in their work. Police could justify a whole range of activities that others may deem unethical simply because the consequences resulted in the greatest good for the greatest number—the utilitarian approach (or utilitarianism). If the ends justified the means, perjury would be ethical when committed to prevent a serial killer from being set free to prey on society. In our democratic society, however, the means are just as important as, if not more important than, the desired end.

The community—and criminal justice administrators—cannot tolerate completely unethical behavior but may seemingly tolerate extralegal behavior if there is a greater public good, especially with regard to violent gang members. As examples, citizens in some jurisdictions may not object to the police “hassling” suspected gang members—pulling them over in their cars, say, and doing a field interview—or telling homeless people who are loitering in front of a heavy tourism area or public park to “move along.”

It is no less important today than in the past for criminal justice employees to appreciate and come to grips with ethical essentials. Indeed, ethical issues in policing have been affected by three critical factors: (1) the growing level of temptation stemming from the illicit drug trade; (2) the potentially compromising nature of the organizational culture—a culture that can
exalt **loyalty** over integrity, with a “code of silence” that protects unethical employees; and (3) the challenges posed by decentralization (flattening the organization and pushing officers’ decision making downward) through the advent of community-oriented policing and problem solving (the community era of policing will be discussed in Chapter 5).

**Noble Cause Corruption**

When relative ethics and the “principle of double effect,” described above, are practiced by the police, it is known as **noble cause corruption**—what Thomas Martinelli, perhaps gratuitously, defined as “corruption committed in the name of good ends, corruption that happens when police officers care too much about their work.” This viewpoint has been termed the “principle of double effect.” It basically holds that when an act is committed to achieve a good end (such as an illegal search) but its outcome is negative (the person who is searched eventually goes to prison), the act might still be justified.

Although noble cause corruption can occur anywhere in the criminal justice system, we might look at the police for examples. Officers might “bend the rules,” such as not reading a drunk person his rights or performing a field sobriety test; planting evidence; issuing “sewer” tickets—writing a person a ticket but not giving it to him, resulting in a warrant issued for failure to appear in court; “testilying”; or “using the magic pencil,” where police officers write up an incident in a way that criminalizes a suspect; this is a powerful tool for punishment. Noble cause corruption carries with it a different way of thinking about the police relationship with the law; here, officers operate on a standard that places personal morality above the law, become legislators of the law, and act as if they are the law. Such activities can be rationalized by some officers, however; as a Philadelphia police officer put it, “When you’re shoveling society’s garbage, you gotta be indulged a little bit.” Nonetheless, when officers participate in such activities and believe the ends justify the means, they corrupt their own system.

Obviously the kinds of “ends justify means,” noble cause behaviors mentioned above often involve arrogance on the part of the police and ignore the basic constitutional guidelines their occupation demands. Administrators and middle managers must be careful to take a hard-line view that their subordinates always tell the truth and follow the law. A supervisory philosophy of discipline based on due process, fairness, and equity, combined with intelligent, informed, and comprehensive decision making, is best for the department, its employees, and the community.

**ETHICS IN POLICING**

Having defined the types of ethics and some dilemmas, next we discuss in greater detail some of the ethical issues faced by police leaders and their subordinates.

**A Primer: The Oral Interview**

During oral interviews for a position in policing, applicants are often placed in a hypothetical situation that tests their ethical beliefs and character. For example, they are asked to assume the role of a police officer who is checking on foot an office supplies retail store that was found to have an unlocked door during early morning hours. On leaving the building, the officer observes another officer, Smith, removing a $100 writing pen from a display case and placing it in his uniform pocket. What should the officer do?

This kind of question commonly befuddles the applicant: “Should I rat on my fellow officer? Overlook the matter? Merely tell Smith never to do that again?” Unfortunately, applicants may do a lot of “how am I supposed to
respond” soul searching and second-guessing with these kinds of questions.

Bear in mind that criminal justice agencies do not wish to hire someone who possesses ethical shortcomings; it is simply too potentially dangerous and expensive, from both legal and moral standpoints, to take the chance of bringing into an agency someone who is corrupt. That is the reason for such questioning and a thorough background investigation of applicants.

Before responding to a scenario like the one concerning Officer Smith, the applicant should consider the following issues: Is this likely to be the first time that Smith has stolen something? Don’t the police arrest and jail people for this same kind of behavior?

In short, police administrators should never want an applicant to respond that it is acceptable for an officer to steal. Furthermore, it would be incorrect for an applicant to believe that police do not want an officer to “rat out” another officer. Applicants should never acknowledge that stealing or other such activities are to be overlooked.

Police Corruption

“For as long as there have been police, there has been police corruption.” Thus observed Lawrence Sherman about one of the oldest problems in U.S. policing. Indeed, the Knapp Commission investigated police corruption there in the early 1970s, finding that there are two primary types of corrupt police officers: the “meat-eaters” and the “grass-eaters.” Meat-eaters spend a good deal of their working hours aggressively seeking out situations that they can exploit for financial gain, including gambling, narcotics, and other lucrative enterprises.

Grass-eaters, the commission noted, constitute the overwhelming majority of those officers who accept payoffs; they are not aggressive but will accept gratuities from contractors, tow-truck operators, gamblers, and the like. Although such officers probably constitute a small percentage of the field, any such activity is to be identified and dealt with sternly.

Police corruption can be defined broadly, from major forms of police wrongdoing to the pettiest forms of improper behavior. Another definition is “the misuse of authority by a police officer in a manner designed to produce personal gain for the officer or for others.” Police corruption is not limited to monetary gain, however. Gains may be made through the acceptance of services received, status, influence, prestige, or future support for the officer or someone else.

To Inform or Not to Inform: The Code of Silence

Officer Brown witnesses another officer putting an expensive ink pen in his pocket after they found an unlocked office supplies retail business on the graveyard shift. If reported, the misconduct will ruin the officer, but if not reported, the behavior could eventually cause enormous harm. To outsiders, this is not a moral dilemma for Brown at all; the only proper path is for him to report the misconduct. However, arguments exist both for and against Officer Brown’s informing on his partner. Reasons for informing include the fact that the harm caused by a scandal would be outweighed by the public knowing that the police department is free of corruption; also, individual
episodes of corruption would be brought to a halt. The officer, moreover, has a sworn duty to uphold the law. Reasons against Officer Brown’s informing include the fact that, at least in Brown’s mind, the other officer is a member of the “family,” as well as that a skilled police officer is a valuable asset whose social value far outweighs the damage done by moderate corruption.16

A person who is in charge of investigating police corruption would no doubt take a punitive view, because police are not supposed to steal, and they arrest people for the same kinds of acts every day. Still, the issue—and a common question during oral boards when citizens are being tested for police positions—is whether or not Brown would come forth and inform on his fellow officer.

It is necessary to train police recruits on the need for a corruption-free department. The creation and maintenance of an internal affairs unit and the vigorous prosecution of lawbreaking police officers are also critical to maintaining the integrity of officers.

**The Law Enforcement Code of Ethics and Oath of Honor**

The Law Enforcement Code of Ethics (LECE) was first adopted by the International Association of Chiefs of Police (IACP) in 1957, and has been revised several times since then. It is a powerful proclamation, and tens of thousands of police officers across the nation have sworn to uphold this code upon graduating from their academies. Unfortunately, however, the LECE is also quite lengthy, covering rather broadly the following topics as they relate to police officers: primary responsibilities, performance of one’s duties, discretion,
use of force, confidentiality, integrity, cooperation with other officers and agencies, personal/professional capabilities, and private life.

Recently the IACP adopted a separate, shorter code that would be mutually supportive of the LECE—but also easier for officers to remember and call to mind when they come face-to-face with an ethical dilemma. It is the Law Enforcement Oath of Honor, and the IACP is hoping the oath will be implemented in all police agencies and by all individual officers. It may be used at swearing-in ceremonies, graduation ceremonies, promotion ceremonies, beginnings of training sessions, police meetings and conferences, and so forth. It is presented in Figure 4.3.17

**Accepted and Deviant Lying**

In many cases, no clear line separates acceptable from unacceptable behavior in policing. The two are separated by an expansive “gray” area that comes under relative ethics. Some observers have referred to such illegal behavior as a “slippery slope”. People tread on solid or legal ground but at some point slip beyond the acceptable into illegal or unacceptable behavior.

Criminal justice employees lie or deceive for different purposes and under varying circumstances. In some cases, their misrepresentations are accepted as an essential part of a criminal investigation, whereas in other cases they are viewed as violations of law. David Carter examined police lying and perjury and found a distinction between accepted lying and deviant lying. Accepted lying includes police activities intended to apprehend or entrap suspects. This type of lying is generally considered to be trickery. Deviant lying, on the other hand, refers to occasions when officers commit perjury to convict suspects or

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**FIGURE 4.3**

**Law Enforcement Code of Ethics and Law Enforcement Oath of Honor**

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The Law Enforcement Oath of Honor is as follows:

> On my honor,
> I will never betray my badge,
> my integrity, my character,
> or the public trust.
> I will always have
> the courage to hold myself
> and others accountable for our actions.
> I will always uphold the constitution,
> my community and the agency I serve.

are deceptive about some activity that is illegal or unacceptable to the department or public in general. Deception has long been practiced by the police to ensnare violators and suspects. For many years, it was the principal method used by detectives and police officers to secure confessions and convictions. Accepted lying is allowed by law, and to a great extent, it is expected by the public. Gary Marx identified three methods police use to trick a suspect: (1) performing the illegal action as part of a larger, socially acceptable, and legal goal; (2) disguising the illegal action so that the suspect does not know it is illegal; and (3) morally weakening the suspect so that the suspect voluntarily becomes involved. The courts have long accepted deception as an investigative tool. For example, in Illinois v. Perkins, the U.S. Supreme Court ruled that police undercover agents are not required to administer the Miranda warning to incarcerated inmates when investigating crimes. Lying, although acceptable by the courts and the public in certain circumstances, does result in an ethical dilemma. It is a dirty means to accomplish a good end—the police using untruths to gain the truth relative to some event.

MEXICO: WHERE POLICE “ETHICS” MATTERS LITTLE

Mexico has long been involved in fighting an epidemic of corruption as drug cartels bribe poorly paid police officers and state officials. Massive firings of police for corruption is not uncommon: In mid-2010 more than 3,200 Mexican federal police were fired for failing to do their work or being linked to corruption; of those, 465 were charged with crimes, and more than 1,000 officers faced disciplinary proceedings for failing confidence exams. Another 500 officers were dismissed in late 2012 after failing tests specifically targeted at weeding out corrupt officials.

The problem is real and goes beyond involvement in drug crime: Municipal officers have killed their own mayors, state jailers have assisted inmates who escape, federal agents are forced to rise up against corrupt commanders, and officers themselves have been murdered because they work for gangster rivals.

Nor have substantial amounts of U.S. aid and training under the Mérida Initiative (a cooperative agreement between the governments of the United States and Mexico to combat drug trafficking, organized crime, and money laundering) worked; Mexico’s 32,000 federal police remain understaffed and replete with graft.
In their examination of lying, Barker and Carter identified two types of deviant lying: lying that serves legitimate purposes and lying that conceals or promotes crimes or illegitimate ends. Lying that serves legitimate goals occurs when officers lie to secure a conviction, obtain a search warrant, or conceal omissions during an investigation. Barker found that police officers believe that almost one fourth of their agency would commit perjury to secure a conviction or to obtain a search warrant. Lying becomes an effective, routine way to sidestep legal impediments. When left unchecked by supervisors, managers, and administrators, lying can become organizationally accepted as an effective means to nullify legal entanglements and remove obstacles that stand in the way of convictions. Examples include using the services of nonexistent confidential informants to secure search warrants, concealing that an interrogator went too far, coercing a confession, or perjuring oneself to gain a conviction.

Lying to conceal or promote criminality is the most distressing form of deception. Examples range from when the police lie to conceal their use of excessive force when arresting a suspect to obscuring the commission of a criminal act.

Accepting Gratuities
Gratuities are commonly accepted by many police officers as a part of their job. Restaurants frequently give officers free or half-price meals and drinks, and other businesses routinely give officers discounts for services or merchandise. While some officers and their departments accept the receipt of such gratuities as a legitimate part of their job, other agencies prohibit such gifts and discounts but seldom attempt to enforce any relevant policy or regulation. Finally, some departments attempt to ensure that officers do not accept free or discounted services or merchandise and routinely enforce policies or regulations against such behavior.

There are two basic arguments against police acceptance of gratuities. First is the slippery slope argument, discussed earlier, which proposes that gratuities are the first step in police corruption. This argument holds that once gratuities are received, police officers’ ethics are subverted and they are open to additional breaches of their integrity. In addition, officers who accept minor gifts or gratuities are then obligated to provide the donors with some special service or accommodation. Furthermore, some propose that receiving a gratuity is wrong because officers are receiving rewards for services that, as a result of their employment, they are obligated to provide. That is, officers have no legitimate right to accept compensation in the form of a gratuity. If the police ever hope to be accepted as members of a full-fledged profession, then they must address whether the acceptance of gratuities is professional behavior.

Figure 4.1 is an example of a policy developed by a sheriff’s office concerning gratuities.

Greed and Temptation
Edward Tully underscored the vast amount of temptation that confronts today’s police officers and what police leaders must do toward combating it:

Socrates, Mother Teresa, or other revered individuals in our society never had to face the constant stream of ethical problems of a busy cop on the beat. One of the roles of [police leaders] is to create an environment that will help the officer resist the temptations that may lead to misconduct, corruption, or abuse of power. The executive cannot construct a work environment that will completely insulate the officers from the forces which lead to misconduct. The ultimate responsibility for an officer’s ethical and moral welfare rests squarely with the officer.
Most citizens have no way of comprehending the amount of temptation that confronts today’s police officers. They frequently find themselves alone inside retail businesses after normal business hours, clearing the building after finding an open door or window. A swing or graveyard shift officer could easily obtain considerable plunder during these occasions, acquiring everything from clothing to tires for his personal vehicle. At the other end of the spectrum is the potential for huge payoffs from drug traffickers or other big-money offenders who will gladly pay the officer to look away from their crimes. Some officers, like the general public, find this temptation impossible to overcome (see Figure 4.2).

The organization’s culture is also important in this regard. The police culture often exalts loyalty over integrity. Given the stress usually generated more from within the organization than from outside and the nature of

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life-and-death decisions they must make daily, even the best officers who simply want to catch criminals may become frustrated and vulnerable to bending the rules for what they view as the greater good of society.

**ETHICS IN THE COURTS**

Although the public tends to think of criminal justice ethics primarily in terms of the police, certainly other such criminal justice professionals—including the court work group—have expectations in this regard as well. The ethical standards and expectations—and some examples of failings—of those individuals are discussed next.

**The Evolution of Standards of Conduct**

The first call during the 20th century for formalized standards of conduct in the legal profession came in 1906, with Roscoe Pound’s speech “The Causes of Popular Dissatisfaction with the Administration of Justice.”28 However, the first canons of judicial ethics probably grew out of a professional baseball scandal in 1919, in which the World Series was “thrown” to the Chicago White Sox by the Cincinnati Reds. Baseball officials turned to the judiciary for leadership and hired U.S. District Court Judge Kenesaw Mountain Landis as baseball commissioner—a position for which Landis was paid $42,500, compared to his $7,500 earnings per year as a judge. This affair prompted the 1921 American Bar Association (ABA) convention to pass a resolution of censure against the judge and appoint a committee to propose standards of judicial ethics.29

In 1924, the ABA approved the Canons of Judicial Ethics under the leadership of Chief Justice William Howard Taft, and in 1972, the ABA approved a new **Model Code of Judicial Conduct**; in 1990, the same body adopted a revised model code. Nearly all states and the District of Columbia have promulgated standards based on the code. In 1974, the United States Judicial Conference adopted a Code of Conduct for United States Judges, and Congress over the years enacted legislation regulating judicial conduct, including the Ethics Reform Act of 1989.

**The Judge**

Judges will be discussed generally in Chapter 10; however, here the focus is on their ethical responsibilities. Ideally, our judges are flawless, not allowing emotion or personal biases to creep into their work, treating all cases and individual litigants with an even hand, and employing “justice tempered with mercy.” The perfect judge has been described as follows:

> The good judge takes equal pains with every case no matter how humble; he knows that important cases and unimportant cases do not exist, for injustice is not one of those poisons which... when taken in small doses may produce a salutary effect. Injustice is a dangerous poison even in doses of homeopathic proportions.30

Not all judges, of course, can attain this lofty status. Judges can become embroiled in improper conduct or overstep their bounds in many ways: abuse of judicial power (against attorneys or litigants); inappropriate sanctions and dispositions (including showing favoritism or bias); not meeting the standards of impartiality and competence (discourteous behavior, gender bias and harassment, incompetence); conflict of interest (bias; conflicting financial interests or business, social, or family relationships); and personal conduct (criminal or sexual misconduct, prejudice, statements of opinion).31
Following are examples of some true-to-life ethical dilemmas involving the courts:

1. A judge convinces jailers to release his son on a nonbondable offense.
2. A judge is indicted on charges that he used his office for a racketeering enterprise.
3. Two judges attend the governor’s $500-per-person inaugural ball.
4. A judge is accused of acting with bias in giving a convicted murderer a less severe sentence because the victims were homosexual.
5. A judge whose car bears the bumper sticker “I am a pro-life Democrat” acquits six pro-life demonstrators of trespassing at an abortion clinic on the grounds of necessity to protect human life.

Such incidents certainly do little to bolster public confidence in the justice system. People expect more from judges, who are “the most highly visible symbol of justice.”

Unfortunately, codes of ethical conduct have not served to eradicate these problems or allay concerns about judges’ behavior. Indeed, one judge who teaches judicial ethics at the National Judicial College in Reno stated that most judges attending the college admit never having read the Model Code of Judicial Conduct before seeking judicial office. According to the American Judicature Society, during one year 25 judges were suspended from office, and more than 80 judges resigned or retired either before or after formal

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**FOCUS ON JUDGES’ ETHICAL MISCONDUCT**

A former county juvenile court judge in Pennsylvania was sentenced to prison for 28 years after being convicted on federal racketeering charges—specifically, sentencing juveniles to a detention facility for minor crimes while accepting more than $1 million in kickbacks from the private company that built and maintained the facility. One fourth of this judge’s juvenile defendants were sentenced to detention centers, as he routinely ignored requests for leniency made by prosecutors and probation officers. Some of the nearly 5,000 sentenced juveniles were as young as 10. One girl, who described the experience as a “surreal nightmare,” was sentenced to three months of “hard time” for posting spoofs about an assistant school principal on the Internet. Some juveniles even committed suicide following their commitment. The judge was said to have maintained a culture of intimidation in which no one was willing to speak up about the sentences he was handing down. Although he pleaded guilty to the charges, he denied sentencing juveniles who did not deserve it or receiving remuneration from the detention centers.

The matter also raised concerns about whether juveniles should be required to have counsel either before or during their appearances in court. It was revealed that more than 500 juveniles had appeared before the judge without representation. Although juveniles have long had a right to counsel, Pennsylvania, like at least 20 other states, allows children to waive counsel, and about half of these Pennsylvania youths had chosen to do so.
charges were filed against them; 120 judges also received private censure, admonition, or reprimand.\textsuperscript{40}

The key to judicial ethics is to identify the troublesome issues and to create an "ethical alarm system" that responds.\textsuperscript{41} Perhaps the most important tenet in the code and the one that is most difficult to apply is that judges should avoid the appearance of impropriety—in other words, it is not enough that judges do what is just; they must also avoid conduct that would create in the public's mind a perception that their ability to carry out responsibilities with integrity, impartiality, and competence is impaired.

By adhering to ethical principles, judges can maintain their independence and follow the ancient charge Moses gave to his judges:

\begin{quote}
Hear the causes between your brethren, and judge righteously. Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and for the cause that is too hard for you, bring it unto me, and I will hear it.\textsuperscript{42}
\end{quote}

Ethical requirements for the federal judiciary and other federal employees are discussed below.

\textbf{Prosecutors}

Given their power and authority to decide which cases are to be prosecuted, prosecuting attorneys must closely guard their ethical behavior. It was decided over a half-century ago (in \textit{Berger v. United States}, 1935) that the primary duty of a prosecutor is "not that he shall win a case, but that justice shall be done."\textsuperscript{43}

Instances of prosecutorial misconduct were reported as early as 1897\textsuperscript{44} and are still reported today. One of the leading examples of unethical conduct by a prosecutor is \textit{Miller v. Pate},\textsuperscript{45} in which the prosecutor concealed from the jury in a murder trial the fact that a pair of undershorts with red stains contained not blood but red paint.

According to Cohen,\textsuperscript{46} misconduct works: Oral advocacy is important in the courtroom and can have a powerful effect. Another significant reason for such conduct is the harmless error doctrine, in which an appellate court can affirm a conviction despite the presence of serious misconduct during the trial. Only when appellate courts take a stricter, more consistent approach to this problem will it end.\textsuperscript{47}

\textbf{Defense Attorneys}

Defense attorneys, too, must be legally and morally bound to ethical principles as agents of the courts. Elliot Cohen\textsuperscript{*} suggested the following moral principles for defense attorneys:

1. Treat others as ends in themselves and not as mere means to winning cases.
2. Treat clients and other professional relations in a similar fashion.
3. Do not deliberately engage in behavior apt to deceive the court as to truth.
4. Be willing, if necessary, to make reasonable personal sacrifices of time, money, and popularity for what you believe to be a morally good cause.
5. Do not give money to, or accept money from, clients for wrongful purposes or in wrongful amounts.
6. Avoid harming others in the course of representing your client.
7. Be loyal to your client and do not betray his or her confidence.
Other Court Employees

Other court employees have ethical responsibilities as well. For example, an appellate court judge’s secretary is asked by a good friend who is a lawyer whether the judge will be writing the opinion in a certain case. The lawyer may be wishing to attempt to influence the judge through his secretary, renegotiate with an opposing party, or engage in some other improper activity designed to alter the case outcome. Bailiffs, court administrators, court reporters, courtroom clerks, and law clerks all fit into this category. It would be improper, say, for a bailiff who is accompanying jurors back from a break in a criminal trial to mention that the judge “sure seems annoyed at the defense attorney” or for a law clerk to tell an attorney friend that the judge she works for prefers reading short bench memos.

ETHICAL CONDUCT OF FEDERAL EMPLOYEES

The laws governing the ethical conduct of federal employees are contained in a variety of statutes, the two major sources of which are Title 18 of the United States Code and the Ethics in Government Act of 1978 (enacted following the Watergate scandals of the early 1970s to promote public confidence in government). The latter act has been amended a number of times, with its most significant revision occurring in the Ethics Reform Act of 1989 (Public Law 101-194). A brief general description of that law, as well as expectations of the federal judiciary, is provided next.

The Ethics Reform Act

The Ethics Reform Act addresses a number of areas of ethical concern, including the receipt of gifts, financial conflicts involving employees’ position, personal conflicts that may affect their impartiality, misuse of position (for private gain), and outside activities or employment that conflicts with their federal duties (such as an expert witness, payment for speaking, writing, and teaching).

In 1989 the Whistleblower Protection Act, known as the WPA (Public Law 101-12), strengthened the protections provided in the Ethics Reform Act. These whistleblower protection laws prohibit reprisal against federal employees who reasonably believe that their disclosures show “a violation of law, rule, or regulation, gross mismanagement or waste of funds, an abuse of authority, and so on.

Whistleblower Protection Act: a federal law prohibiting reprisal against employees who reveal information concerning a violation of law, rule or regulation, gross mismanagement or waste of funds, an abuse of authority, and so on.

FOCUS ON PROTECTING WHISTLEBLOWERS

An example of protecting whistleblowers under federal law is the case of John Kopchinski, in what would become the largest health fraud settlement in U.S. history. Kopchinski, a sales representative for pharmaceutical giant Pfizer, Inc., discovered widespread deceptive advertising in connection with Bextra, an anti-inflammatory painkiller; he was fired by the company in 2003 (by then he was already talking with lawyers about evidence he had accumulated).

Pfizer eventually pled guilty to numerous criminal and civil charges and paid the U.S. government a total of $2.3 billion. Kopchinski and five other relators split another $102 billion in civil penalties.

The Federal Judiciary

Federal judges have the authority to resolve significant public and private disputes. Occasionally, however, a matter assigned to them may involve them or their families personally, or affect individuals or organizations with which they have associations outside of their official duties. In these situations, if their impartiality might be compromised, they must disqualify (or recuse) themselves from the proceeding.

Disqualification is required under Canon 3C(1) of the Code of Conduct for United States Judges of the ABA if the judge

- has personal knowledge of disputed facts;
- was employed in a law firm that handled the same matter while he or she was there;
- has a close relative who is a party or attorney;
- personally owns, or has an immediate family member who owns, a financial interest in a party; and
- as a government official, served as a counsel in the case.

The next “Focus On” box shows the canons of ethical conduct for federal judges as set forth by the Administrative Office of the United States Courts.

ETHICS IN CORRECTIONS

Corrections personnel confront many of the same ethical dilemmas as police personnel. Thus, prison and jail administrators, like their counterparts in the police realm, would do well to understand their occupational subculture and its effect on ethical decision making.

The strength of the corrections subculture correlates with the security level of a correctional facility and is strongest in maximum-security institutions. Powerful forces within the correctional system have a stronger influence over the behavior of correctional officers than the administrators of the institution, legislative decrees, or agency policies.51 Indeed, it has been known

Following are the canons of the Code of Conduct for United States Judges:

CANON 1: A judge should uphold the integrity and independence of the judiciary.
CANON 2: A judge should avoid impropriety and the appearance of impropriety in all activities.
CANON 3: A judge should perform the duties of the office impartially and diligently.
CANON 4: A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.

CANON 5: A judge should refrain from political activity.

Implicit in these canons are restrictions on judges’ soliciting or accepting gifts, outside employment, and payment for appearances, speeches, or written articles.

for several decades that the exposure to external danger in the workplace creates a remarkable increase in group solidarity.52

Some of the job-related stressors for corrections officers are similar to those the police face: the ever-present potential for physical danger, hostility directed at officers by inmates and even by the public, unreasonable role demands, a tedious and unrewarding work environment, and dependence on one another to effectively and safely work in their environment.53 For these reasons, several norms of corrections work have been identified: always go to the aid of an officer in distress; do not “rat”; never make another officer look bad in front of inmates; always support an officer in a dispute with an inmate; always support officer sanctions against inmates; and do not wear a “white hat” (participate in behavior that suggests sympathy or identification with inmates).54

Security issues and the way in which individual correctional officers have to rely on each other for their safety make loyalty to one another a key norm. The proscription against ratting out a colleague is strong. In one documented instance, two officers in the Corcoran, California, state prison blew the whistle on what they considered to be unethical conduct by their colleagues: Officers were alleged to have staged a gladiator-style fight among inmates from different groups in a small exercise yard. The two officers claimed that their colleagues would even place bets on the outcome of the fights, and when the fights got out of hand, the officers would fire shots at the inmates. Since the institution had opened in 1988, eight inmates had been shot dead by officers, and numerous others had been wounded. The two officers who reported these activities were labeled by colleagues as “rats” and “no-goods” and had their lives threatened; even though they were transferred to other institutions, the labels traveled with them. Four correctional officers were indicted for their alleged involvement in these activities, but all were acquitted in a state prosecution in 2001.55

In another case, a female corrections officer at a medium-security institution reported some of her colleagues for sleeping on the night shift. She had first approached them and expressed concern for her safety when they were asleep and told them that if they did not refrain from sleeping, she would have to report them to the superintendent. They continued sleeping, and she reported them. The consequences were severe: Graffiti was written about her on the walls, she received harassing phone calls and letters, her car was vandalized, and some bricks were thrown through the windows of her home.56 Obviously, she deserved better, both in terms of protection during these acts, and with the investigation and prosecution of the parties involved.

It would be unfair to suggest that the kind of behavior depicted here reflects the behavior of corrections officers in all places and at all times. The case studies do demonstrate, however, the power and loyalty of the group, and correctional administrators must be cognizant of that power. It is also noteworthy that the corrections subculture, like its police counterpart, provides several positive qualities, particularly in crisis situations, including mutual support and protection, which is essential to the emotional and psychological health of officers involved; there is always the “family” to support you.
Ethical Essentials: “Doing Right When No One Is Watching” • CHAPTER 4

ETHICAL DILEMMA IN CORRECTIONS

Correctional Officer Ben Jones has worked for one year in a medium-security housing unit in a state prison and has gotten on friendly terms with an inmate, Stevens. Known to have been violent, manipulative, and associating with a similarly rough crowd while on the outside, now Stevens appears to be a model inmate; in fact, Officer Jones relies heavily on Stevens to keep him informed of the goings-on in the unit as well as to maintain its overall cleanliness and general appearance. Over time, the two address each other on a first-name basis and increasingly discuss personal matters; Jones occasionally allows Stevens to get by with minor infractions of prison rules (e.g., being in an unauthorized area or entering another inmate’s cell). Today Stevens mentions that he is having problems with his fiancé—specifically, that he has received a “Dear John” letter from her, stating that she is dating other men and is “moving on.” Upon arriving home from work that evening, Jones finds a case of wine on his porch. There is no card left on the case of wine, but at work the next morning Stevens winks at Jones and asks if he “ventured into the vineyard last night.”

1. Should Officer Jones report the incident?

2. Has Jones’s behavior thus far violated any standards of ethics for correctional officers? If so, what form of punishment (if any) would be appropriate?

3. What should be the relationship between Jones and Stevens in the future?

4. What could Jones have done differently, if anything?

ETHICS TESTS FOR THE CRIMINAL JUSTICE STUDENT

Following are some tests to help guide you, the criminal justice student, to decide what is and is not ethical behavior:

- **Test of common sense.** Does the act make sense, or would someone look askance at it?

- **Test of publicity.** Would you be willing to see what you did highlighted on the front page of the local newspaper?

- **Test of one’s best self.** Will the act fit the concept of oneself at one’s best?

- **Test of one’s most admired personality.** What would one’s parents or minister do in this situation?

- **Test of hurting someone else.** Will it cause pain for someone?

- **Test of foresight.** What is the long-term likely result?

Other questions that the officer might ask are “Is it worth my job and career?” and “Is my decision legal?”

Another tool is that of “the bell, the book, and the candle”: Do bells or warning buzzers go off as I consider my choice of actions? Does it violate any laws or codes in the statute or ordinance books? Will my decision withstand the light of day or spotlight of publicity (the candle)?

In sum, all we can do is seek to make the best decisions we can and be a good person and a good justice system employee, one who is consistent and fair. We need to apply the law, the policy, the guidelines, or whatever it is we dispense in our occupation without bias or fear and to the best of our ability, being mindful along the way that others around us may have lost
their moral compass and attempt to drag us down with them. To paraphrase Franklin Delano Roosevelt, “Be the best you can, wherever you are, with what you have.”

In closing, it might be good to mention that ethics is important to all criminal justice students and practitioners, not only because of the moral/ethical issues and dilemmas they confront each day, but also because they have a lot of discretion with the people with whom they are involved—such as the discretion to arrest or not arrest, to charge or not charge, to punish or not punish, and even to shoot or not shoot.

**The bell, the book, and the candle** test can be used guide against making unethical decisions.

**The term** ethics **is rooted in the ancient Greek idea of character and involves doing what is right or correct in a professional capacity. Deontological ethics examines one’s duty to act. Immanuel Kant expanded the ethics of duty by including the idea of “good will.” People’s actions must be guided by good intent.**

**There are absolute ethics and relative ethics. Absolute ethics has only two sides—something is either good or bad, black or white. Relative ethics is more complicated and can have a multitude of sides with varying shades of gray. What is considered ethical behavior by one person may be deemed highly unethical by someone else.**

**The “principle of double effect”—also known as noble cause—holds that when one commits an act to achieve a good end and an inevitable but intended effect is negative, then the act might be justified. The community cannot tolerate completely unethical behavior but may seemingly tolerate extralegal behavior if there is a greater public good, such as with gang members.**

**The Knapp Commission identified two primary types of corrupt police officers: the “meat-eaters” and the “grass-eaters.” The branch of the department and the type of assignment affect opportunities for corruption. Stodard, who coined the term blue-coat crime, described eight different forms of deviant practices among police. Officers’ code of silence can exacerbate the efforts of police leadership to uncover police corruption.**

**The Law Enforcement Code of Ethics (LECE) was first adopted in 1957; recently**
a separate, shorter code was adopted, easier for officers to remember when they come face-to-face with an ethical dilemma; it is the Law Enforcement Oath of Honor.

- **Accepted lying** includes police activities intended to apprehend or entrap suspects. This type of lying is generally considered to be trickery. **Deviant lying** refers to occasions when officers commit perjury to convict suspects or are deceptive about some activity that is illegal or unacceptable to the department or public in general.

- There are two basic arguments against police acceptance of gratuities. First is the slippery slope argument, which proposes that gratuities are the first step in police corruption. In addition, officers who accept minor gifts or gratuities are then obligated to provide the donors with some special service or accommodation.

- The first call for formalized standards of conduct in the legal profession came in 1906, with Roscoe Pound’s speech “The Causes of Popular Dissatisfaction with the Administration of Justice.” In 1924, the ABA approved the Canons of Judicial Ethics, and in 1972 the ABA approved a new Model Code of Judicial Conduct; in 1990, the same body adopted a revised model code. Nearly all states and the District of Columbia have promulgated standards based on the code.

- In 1974, the United States Judicial Conference adopted a Code of Conduct for United States Judges, and Congress over the years has enacted legislation regulating judicial conduct, including the Ethics Reform Act of 1989.

- Judges can engage in abuse of judicial power (against attorneys or litigants); present inappropriate sanctions and dispositions (including showing favoritism or bias); not meet the standards of impartiality and competence; engage in conflict of interest (bias; conflicting financial interests or business, social, or family relationships); and be unethical in their personal conduct (criminal or sexual misconduct, prejudice).

- Prosecutors and defense attorneys, too, must be legally and morally bound to ethical principles as agents of the courts.

- Federal employees are governed by the Ethics Reform Act of 1989 (Public Law 101-194). The Ethics Reform Act addresses a number of areas of ethical concern, including the receipt of gifts, financial conflicts involving an employee’s position, personal conflicts that may affect employees’ impartiality, misuse of position (for private gain), and outside activities or employment that conflicts with their federal duties (such as an expert witness, payment for speaking, writing, and teaching).

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**Terms & Concepts**

- Absolute ethics
- Accepted lying
- Deontological ethics
- Deviant lying
- Ethics
- Gratuities
- Model Code of Judicial Conduct
- Noble cause corruption
- Relative ethics
- “Slippery slope”
- Utilitarianism
- Whistleblower
- Protection Act
How would you define ethics?

What are examples of relative and absolute ethics?

What specific examples of legitimate ethical dilemmas arise with police, courts, and corrections practitioners in the course of their work?

How would you describe the codes and canons of ethics that exist in police departments, courts, and corrections? What elements do they have in common?

How does the principle of double effect—“ends justify means” type of thinking—pose problems for criminal justice and society?

Why was the Law Enforcement Oath of Honor developed recently, and how does it differ from the Code of Ethics?

What constitutes police corruption? What are its types, and what are the most difficult ethical dilemmas presented in the case studies? Consider the issues presented in each.

Do you believe criminal justice employees should be allowed to accept minor gratuities? Explain your reasoning.

In what ways can judges, defense attorneys, and prosecutors engage in unethical behaviors?

What forms of behavior by corrections officers in prisons or jails may be unethical?

What are some components of the ethics “test” for criminal justice students?

Following are several brief, real-life case studies involving criminal justice employees. Having read this chapter’s materials, determine for each the ethical dilemmas involved, and explain what you believe is the appropriate outcome.

1. You are sitting next to a police officer in a restaurant. Upon the officer’s attempt to pay for the meal, the waiter says, “Your money is no good here. An officer just visited my son’s school and made quite an impression. Plus, I feel safer having cops around.” Again the officer offers to pay, but the waiter refuses to accept payment. The police department has a policy prohibiting the acceptance of free meals or gifts.

2. A municipal court judge borrows money from court employees, publicly endorses and campaigns for a candidate for judicial office, conducts personal business from chambers (displaying and selling antiques), directs other court employees to perform personal errands for him during court hours, suggests that persons appearing before him contribute to certain charities in lieu of paying fines, and uses court employees to perform translating services at his mother’s nursery business.

3. A judge often makes inappropriate sidebar comments and uses sexist remarks or jokes in court. For example, a woman was assaulted by her husband who beat her with a telephone; from the bench the judge said, “What’s wrong with that? You’ve got to keep her in line once in a while.” He begins to address female lawyers in a demeaning manner, using such terms as sweetie, little lady lawyer, and pretty eyes.

4. (a) An associate warden and “rising star” in the local prison system has just been stopped and arrested for driving while intoxicated in his personal vehicle and while off-duty. There are no damages or injuries involved, he is very remorseful, and he has just been released from jail. His wife calls you, the warden, pleading for you to allow him to keep his job. (b) One week later, this same associate warden stops at a local convenience store after work; as he leaves the store, a clerk stops him and summons the police—the individual has just been caught shoplifting a package of cigarettes. You have just been informed of this latest arrest.
The wave of feminism during the 1970s consequently gave women equal opportunity, bringing female involvement in a wide variety of crimes—sometimes termed feminist theory—as well as new studies and questions of that involvement: do the traditionally male-centered theories of crime that apply to men apply to women as well? And what explains the long-standing fact that women commit far fewer crimes than men?

In their own words, criminals explain and rationalize their acts in a variety of ways, including financial gain, the need to maintain street status and a partying lifestyle, revenge, and for “thrill-seeking” purposes.

Crimes in the U.S. are measured and reported in three primary ways: the FBI’s Uniform Crime Reports, the National Incident-Based Reporting System, and the National Crime Victim Survey. Each had its unique approaches as well as advantages and disadvantages.