In the last chapter, we saw the turns and twists in the historical road that led us to what we now recognize as policing. In this chapter, we will discuss different aspects of contemporary policing. We will focus on the structure of police organizations throughout the country, discussing the differences between sheriffs, police officers, Marshals, detectives, and other law enforcement bodies. We will also examine some of the common things the police do in their average work day—if there is indeed such a thing for officers who work on the street. Afterward we will discuss some commonly held myths about policing before we turn to the legal restrictions that police face when interacting with citizens. This final section will include some practical advice on how to deal with police officers when you encounter them. Once this is done, we will turn to police misconduct and police deviance in the next chapter.

WHAT WOULD YOU DO?

Who Should Be a Police Officer?

Your roommate, Terrence, has wanted to be a police officer for as long as you’ve known him. He takes every criminal justice course he can, even though he’s about to graduate and has all the criminal justice credits that he needs. He reads books about crime on his spare time and researches prominent cold cases as a hobby. Almost every weekend he goes on ride-alongs with local police departments seeing how they work and taking careful notes about their operations. His father was an officer. His brother is an officer. All he wants to do is follow in their footsteps and put on a badge.

While he obviously wants to serve very badly, he would make a terrible officer in your view. He is emotionally volatile, viciously attacking people who he thinks have insulted him. You’ve had to drag him out of more than one party when he’s started fights with innocent people who he says “disrespected him” or “looked at him funny.” He’s sexist and treats all the women he dates terribly. His short fuse and violent temper are at times frightening, but he’s never been aggressive directly toward you.

Terrence is currently in the process of applying to be an officer for the state police department. You are contacted by the department conducting Terrence’s background check and they want to ask you some confidential questions. After a few routine questions about the history of your friendship with Terrence, the investigator asks, “Is there anything you think I should know about Terrence that would affect his ability to do his job?”

How do you answer this question? Do you ignore your concerns about Terrence or do you express them? Why?
THE ORGANIZATION OF POLICING

Learning Objective 6.1—List the five main types of police officers in the United States.

The American government is organized as a federation of 50 separate states, with a single federal government standing above them. Just as each state has its own constitution, its own laws, and its own court system, each state has its own array of police forces with a distinct organizational system. This means that there is no single uniform structure to American policing: Within each state, different police systems have overlapping jobs and jurisdictions, many of which operate independently of the others. There are over 17,000 separate law enforcement agencies in the United States, each of which is given different tasks and works in different ways with other federal, state, and local police forces (Banks, Hendrix, Hickman, & Kyckelhahn, 2016). Here we will discuss some of the different organizations and different types of police officers currently operating in the United States. Bear in mind that this list is not exhaustive, and it simplifies the very complicated system of policing that exists in many states.

State and Local Policing

Sheriffs and Police

Most states distinguish between sheriffs and police officers. Police departments usually work in cities, towns, and other population centers and do much of the everyday policing. They are usually created by the city and answer to a city commission on public safety or a police commission of some kind. Usually these bodies answer to the city’s mayor or to its board of supervisors. Some police systems are created by smaller bodies like university campuses.

Despite their organizational differences, most states have the same general requirement for different kinds of policing. Usually officers must complete the same training course at an academy, which is usually about a five- to six-month training period. Officers must also meet the Peace Officer Standards and Training (POST) criteria that are set out by the different state governments and include an exam that candidates must pass. These state regulations describe the requirements that candidates must fulfill to become sworn law enforcement officers, regardless of what jurisdiction they serve under.

Sheriffs on the other hand are a part of county government and usually have a wider jurisdiction, often including over unincorporated lands (that is, lands that don’t belong to any city). They are created by the state government and serve as the top law enforcement officer for the county. Most sheriffs are elected by the people rather than selected by a government body. In some smaller cities, they partner with local law enforcement to help provide 24-hour coverage. Beyond this, county sheriffs use their resources to support local law enforcement on issues that may be too big for the municipal police to handle. They can also deal with civil issues such as court protection along with serving warrants and evictions—services that other police agencies typically do not handle. Often sheriff’s departments have a county coroner’s office whose job is to certify deaths and to determine whose deaths merit police investigation.

State Police and Highway Patrol

In most states, there are state police or “state troopers.” Depending on the state, these officers usually have jurisdiction over two areas. First, they usually patrol interstate highways, handling traffic and speeding violations as well as catching criminal activity on the highway.
system. Second, they help coordinate investigations of offenses that cross city or county lines, serving as a statewide resource for city, county, and local police forces. Hawaii is the only state that does not have a statewide police force.

Within each police organization, there are several different types of officers.

**Investigators (Detectives)**

Investigators are officers who gather evidence and seek to determine who committed a crime. They often work with prosecutors and others both to determine who committed a crime and to gather evidence against the alleged criminals for prosecution. This includes interviewing witnesses, searching crime scenes, conducting surveillance, and interrogating suspects. Larger police departments will have different detective units that specialize in different types of crime such as homicide and sex crimes.

Most detectives spend several years as a regular uniformed officer before becoming a detective. Once they get there, however, many complain that detective work is boring and far removed from the action. Much of their time is absorbed by filling out reports and interviewing witnesses. According to one study of detective work, “Almost half of a typical investigator’s time is devoted to such activities as administrative work or general surveillance which are not directly related to casework and are unlikely to produce arrests” (Greenwood, 1979). According to the FBI, the overall clearance rate, that is the number of offenses that lead to arrests, is low. While violent crimes had an overall clearance rate of 45.6% in 2016 (and homicide a rate of 59.4%), the rate for property crimes was only about 18.3%, and for burglary it was 13.1% (U.S. Department of Justice, 2017).

**Special Weapons Officers**

Special weapons units (sometimes known as SWAT units—short for special weapons and tactics) exist to deal with dangerous situations that are beyond the capacity of traditional police forces. Often, they wield military grade equipment, including automatic rifles, and intervene in hostage situations, terror attacks, and other high-security situations. They were originally formulated as a response to terrorist attacks in the 1960s and 1970s and have since been used in raids on drug houses and similar highly dangerous operations (Balko, 2013). Many larger metropolitan police departments have dedicated SWAT units, while smaller forces have traditional officers that are on call and serve a special weapons role should the need arise. Otherwise, these officers serve a traditional policing role.

To become members of a SWAT team, candidates must first usually serve as a traditional officer for a length of time and prove their competence and their ability to function effectively in high-pressure situations. Afterward, officers must undergo rigorous testing and training in the weapons and tactics that the police deploy in hostage situations or terrorist attacks.

**Other Specialty Officers**

Along with the traditional forms of policing, there are many different specialty officers, particularly in larger police forces. The NYPD for example is the largest municipal police department in the United States and includes a SCUBA team and harbor unit, an aviation unit, an organized crime unit, and a mounted police unit. Most police forces have internal affairs units that investigate claims of police misconduct (we will discuss these in more depth in the next chapter) as well as training units and many other support personnel that help officers in a variety of ways.
DataUSA is a joint enterprise between academic and private research institutions that seeks to make different sorts of data available and comprehensible to the public. They combine and present a lot of useful information about the makeup of the modern American police.

There are about 744,600 police officers in the United States. About 79% of officers are white, which is slightly more than the 76% in America more generally (U.S. Census Bureau, n.d.). There are about the same percentage of black officers as black Americans (13%) (see Figure 6.1).

They are also disproportionately male. About 86.7% of the police force is male (as opposed to 49.2% of the general population).

The Pew Center has done polling of police officers, asking them about their feelings regarding their job. Their report, Behind the Badge, collates their feelings about the work they do and the public that they interact with (Morin, Stepler, & Mercer, 2017). For example, only 8% of officers see their job primarily as enforcers, and a significantly larger majority see themselves as protectors of the public. Paradoxically, many officers believe that tough and aggressive policing tactics are sometimes necessary (see Figure 6.2).

On the other hand, many officers feel that they are not well understood by the public (see Figure 6.3).

Despite these challenges, many officers like their job. The Pew Center reports that about 74% of officers report being at least somewhat satisfied with their workplace (Morin et al., 2017).

Figure 6.1 Race and Ethnicity of U.S. Police Officers, 2016

Source: Based on data from DataUSA, https://datausa.io/profile/soc/333050/#demographics.
Figure 6.2 Officer Opinions on Aggressive Police Tactics, 2016

Some officers say tough, aggressive tactics are needed with some people and in some neighborhoods

% of officers saying they...with each of the following statements

- Strongly disagree
- Disagree
- Agree
- Strongly agree

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly disagree</th>
<th>Disagree</th>
<th>Agree</th>
<th>Strongly agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some people can only be brought to reason the hard, physical way</td>
<td>10</td>
<td>45</td>
<td>39</td>
<td>5</td>
</tr>
<tr>
<td>In certain areas of the city it is more useful for an officer to be aggressive than to be courteous</td>
<td>10</td>
<td>34</td>
<td>39</td>
<td>17</td>
</tr>
</tbody>
</table>

Note: No answer category not shown.

Figure 6.3 Public Perceptions of the Police, 2016

Do Americans understand the challenges police face on the job?

<table>
<thead>
<tr>
<th>Public say yes</th>
<th>Police say no</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of public saying they understand the risks and challenges that police face...</td>
<td>% of public saying the public understands the risks and challenges that police face...</td>
</tr>
<tr>
<td>Very well</td>
<td>38%</td>
</tr>
<tr>
<td>Somewhat well</td>
<td>45</td>
</tr>
<tr>
<td>Not too well</td>
<td>13</td>
</tr>
<tr>
<td>Not well at all</td>
<td>3</td>
</tr>
</tbody>
</table>

Note: No answer category not shown.
Federal Policing

Over the last century there has been a dramatic rise in the number and type of federal police officers in service, and they are spread across government. The federal government is composed of many different departments, all of which answer to a cabinet secretary and ultimately to the president. Along with these are numerous independent entities like the Central Intelligence Agency that have their own chains of command. Here are some of the most prominent arms of federal law enforcement.

Department of Justice

The most prominent federal law enforcement body is the Department of Justice (DOJ). Headed by the attorney general, the DOJ handles most federal law enforcement issues and includes the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Drug Enforcement Administration (DEA); the Federal Bureau of Prisons (BOP); as well as other related agencies. Each of these sections has its own set of highly trained federal law enforcement officers that handle issues that fall under its jurisdiction, though they often combine for certain types of cases, and there can be competition between them, too (Grossman, 2014).

Within the Justice Department are the U.S. Marshals. Marshals are officers tasked with a wide array of different duties, including apprehending fugitives from federal custody, protecting federal courts and judicial officials, transporting federal prisoners, and confiscating assets for the court.

Department of Homeland Security

The DHS oversees protecting the United States from a variety of external threats. It was created in 2003 as part of a series of responses to the terrorist attacks of September 11, 2001. It includes several high-profile law enforcement bodies that handle everything from terrorism to immigration to protecting high-level public officials. There are seven major departments within the DHS, each of which has a law enforcement element.

Among the most prominent of the DHS policing bodies are the two units that deal with border and immigration protection. The United States Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) are both in charge of making sure that everything and everyone that enters U.S. territory does so legally. Alongside these is the U.S. Coast Guard, which is responsible for protecting the coastal waters of the United States, preventing smuggling, preventing foreign attacks, and rescuing those who are stranded in coastal waters.

The Secret Service is also a part of DHS. The Secret Service's primary job is protecting the president, the vice president, and other VIPs. They are also in charge of investigating counterfeit U.S. currency.

Department of the Treasury

The Treasury Department has had law enforcement officials of some kind for many decades. One of the major law enforcement bodies within the Treasury Department is the Internal Revenue Service (IRS), which has investigators who search out tax fraud. The Office of the Inspector General is responsible for investigating criminal activity within the
government’s economic institutions as well as investigating certain financial crimes such as bank fraud. Many high-profile criminals have been imprisoned for financial crimes—including Al Capone, who was ultimately convicted of tax fraud, and many high-profile offenders such as celebrities who have gone to jail after failing to pay their taxes.

While these are the most significant forms of federal law enforcement, almost all departments have some sort of law enforcement component to them. For example, the Department of Health and Human Services regulates insurance markets to ensure that they fit federal health care regulations, the Department of Agriculture has a U.S. Forest Service Law Enforcement & Investigations organization, and the State Department has the Diplomatic Security Service. The Defense Department has military police (MPs) that enforce military law, and the Department of the Interior has National Park Service rangers who oversee law enforcement on federal lands. While some of these are higher profile than others, each plays a role in preserving law and order, particularly regarding crimes that occur outside of the jurisdiction of individual states as well as crimes that spill across state borders.

REALITY CHECK

Policing

Police officers probably have the most mythologized job in America. Between TV, novels, and movies, most of the public has a very clear and often very false conception of what policing is like. Just like their fascination with lawyers and doctors, the public fascination with the police is often based on a misunderstanding about what officers do on a day-to-day basis and is the product of stories that are meant to attract viewers rather than reflect reality. Here we'll dispel a few myths about American policing.

If you believed everything that you saw on TV, you would think that police officers are constantly drawing their weapons and chasing “perps” down dark alleys, grabbing murderers and slamming them onto the hood of their cars, and saving the lives of innocent people from dangerous predators. In reality, discharging firearms is not a common part of policing at all. Less than 1% of encounters between the police and the public require that officers use force, and only a small percentage of situations where the officer uses force require the use of lethal force (see section “The Use of Force” that follows).

According to the Bureau of Justice Statistics, “Among persons who had contact with police in 2008, an estimated 1.4% had force used or threatened against them during their most recent contact” (Eith & Durose, 2011).

There is surprisingly little good data available on police shootings. Critics have charged that police departments have withheld this information to prevent criticism or lawsuits (Balko, 2012). Despite resistance, the International Association of Chiefs of Police (IACP) produced a report in 2001 showing that very few officers ever discharge a firearm in the line of duty (International Association of Chiefs of Police, 2001). The private, crowd-sourced website Fatal Encounters (http://www.fatal-encounters.org/) that records public information about officer homicides shows approximately 7,100 individuals killed by officers. Although this data is rough, the site shows that approximately 6,100 of these fatalities were from a gunshot. While this may initially seem like a lot, officers across the United States interact with millions of people daily, and more people

(Continued)
die in the United States in traffic accidents every 2 days than died in 15 years from police shootings. In a recent development, the Justice Department announced in October 2016 that they will begin collecting nationwide data on the use of force by police, though they face many challenges in collecting quality data from local departments.

Policing is a very important job, and officers do a great deal of good for the communities they serve. But it is far less glamorous than it is portrayed. Officers spend a great deal of their time involved in mundane activities: dealing with public nuisances, noise complaints and other issues involving neighbors who can’t get along, along with never-ending stacks of paperwork rather than high-speed chases or pursuing mysterious serial killers. TV shows about policing are exciting, but many officers often report that the most realistic depiction of policing on TV is *Barney Miller*, a 1970s sitcom based in a Manhattan precinct where officers spend most of their time at their desk chatting, drinking coffee, and filling out paperwork, and little drama happens. And every officer will tell you that paperwork—filling out reports for their superiors—sucks up far more of their time than does anything particularly exciting.

A Typical Police Officer’s Day

Most officers will tell you that there is no “typical day” for an officer of any rank or on any duty, and much of their activity depends on what happens on the streets as it were. Nonetheless, there is a sort of routine in their professional lives. Officers show up before their shift begins and usually change into their uniforms and check through their equipment. Usually, most shifts begin with a short briefing at the police department; here officers are informed about police news as well as any APBs (“all points bulletins”) or BOLOs (“be on the lookouts”). Further, any new policy regulations for the police may be discussed, so that officers are aware of the latest regulations that they must adhere to. In addition, any relevant events that the officers will have to deal with during their shift such as sporting events or other public gatherings are discussed.

Then the officers do their work. This can include vehicular patrol, where officers drive around a prescribed area in the city. Unless they are responding to a specific call, they are usually driving around, searching for drivers who break laws or things that JDLR, that is “just don’t look right,” and require further investigation. Some officers may be put on special assignment, attached to an investigation or a sting operation or some other special event. Through their shift, most patrol officers drive around waiting for a service call to which they can respond.

One thing all officers will tell you is that the only consistent part of daily police work is the paperwork that must be filled out. All police stops and arrests must be carefully documented. If a police officer is required to use force to subdue a suspect, this can trigger a mountain of paperwork, and shootings set off a complex set of procedures where different groups investigate the shooting and take a series of statements from everybody involved. More mundane activities like gasoline purchases and daily activity logs must also be completed by officers. Officers often complain that paperwork absorbs much of the time that could be spent for “real policing.”
Feminists have always argued that in a patriarchal society, women are treated unequally because of their gender. Women’s concerns are dismissed, and their contributions are not taken seriously by a male dominated culture. One of the places that this is most obvious in criminal justice is in the treatment of female officers. Law enforcement institutions, their (male) fellow officers, and the public at large often denigrate female officers, and they must struggle to be taken seriously. Historically, men considered women to be too physically or emotionally weak to be effective officers, though there has been notable progress in this area (Leger, 1997). On the other hand, some men may feel their masculinity threatened when they are forced to submit to the orders of a female officer. Regardless, when they have been allowed to serve, women have excelled in policing and provided benefits that most male officers cannot.

Women make up more than 50% of the U.S. population, but they are only a small part of American policing. The first female officer was hired by the police department in Portland, Oregon, in 1905, but she was restricted to social work and protecting women and children as part of what was known as the Women’s Protection Division. Many cities followed suit, hiring women to handle issues that were considered “unmanly.” Slowly over the last century, with the rise of feminist activists, more women were hired and began to take on less stereotypically feminine policing tasks. Currently, approximately 12% of officers in the United States are women (Reaves, 2015).

There are a lot of things that female officers bring to the law enforcement table that men don’t. While there is some disagreement on the subject, research has suggested that female officers tend to handle encounters with the public in a fashion different from men. They are less likely to resort to physical force, finding ways to defuse a situation without violence. Moreover, female officers are more likely to take the claims of rape victims seriously—and prioritize the investigation and prosecution of rapists who would otherwise go free. Female officers are also better at dealing with cases of domestic violence—often saving the lives of women who would die if left solely in the hands of male officers (Miller & Segal, 2016). As a former police chief in Madison, Wisconsin put it,

> Women in policing make a difference—a big difference—they make for a better police department. Haven’t you wondered why women police are not the ones involved in recent officer involved shootings? After all, they are usually smaller, somewhat weaker in physical strength, and yet they don’t appear to shoot suspects as often. (Spillar, 2015)

Clearly female officers provide a great deal of resources for a police force that can be useful in a variety of situations, and given the fact that physical force is only a small part of policing, whatever physical shortcomings some women may have (though certainly many do not) are balanced by these advantages (Archbold & Schulz, 2012).

Even though female officers can make a valuable contribution to policing, they often face resistance. Many female officers and their supporters complain that hiring women is not a priority in police departments, despite efforts to diversify police departments (Asquith, 2016). Women are still often associated with nurturing and caring, values that run contrary to those of most male officers, and thus some believe they are better suited toward social work or childcare. Female officers are sometimes viewed as interlopers in a macho policing culture. Many
female officers report harassment from their male colleagues and sometimes from the public. Though studies have found different results, it is widely agreed that sexual harassment is a pervasive problem for women who serve (Lonsway, Paynich, & Hall, 2013). This can include sexually suggestive comments, showing pornography in the office, unwanted sexual advances, and other actions that make female officers feel uncomfortable. Despite these behaviors, many female officers do not complain for fear of looking weak or out of fear that a reputation for complaining will harm their chances of advancing in the force (Lonsway et al., 2013).

What do you think are the main differences between how women and men deal with conflict? What are their relative strengths and weaknesses? How would these approaches translate into police work? Would you respond differently to orders given by a female officer? Why or why not?

THE USE OF FORCE

Learning Objective 6.2—Explain levels of the use-of-force continuum and legal restrictions on the use of force.

Even though it is not a common part of the police’s job, their ability to use force is in some sense the essence of policing—it is what distinguishes the police from any other part of the government. Without this power, the police would be a toothless regulatory body with no ability to make the unwilling to submit to their authority. The importance of the use of force to policing explains why it can be so controversial when it is used and why it is sometimes highly restricted and closely monitored. There are some guides that are meant to regulate how force is applied in the line of duty, but in practice, particularly when nobody is looking, they can be skirted or ignored outright.

The use of force by the police is commonly regulated by what is known as the use-of-force continuum. There are guidelines regarding the kinds and levels of force that an officer may use against a suspect should it be necessary. Though she may have some discretion in how she uses force on the job, too much force can get an officer into trouble. Officers charged with using excessive force (discussed in the next chapter) can face disciplinary actions from their department, can be sued by the victim, or can even be prosecuted themselves.

The use-of-force continuum starts at the “lightest” end of the spectrum with verbal commands from the officer to the suspect, and ends with the most extreme force available: lethal force. (You can see the entire continuum in Figure 6.4.) Though continuums can break down in different ways, the Department of Justice breaks officer force down in this way (adapted from National Institute of Justice, 2009):

**Officer Presence**—In this situation, the officers simply resolve the problem without using any force at all. This is considered the best way to resolve a situation.

**Verbalization**—The officers give commands, starting with a calm, nonconfrontational approach, but slowly increasing in tone and volume.

**Empty-Hand Control**—In empty-hand force, the officers use bodily force to gain control over the situation. These usually start with “soft hands”—the use of open hands (including grabbing and holding) and continue to “hard hands” (punching and kicking) to gain control of a suspect.
Nonlethal Force—In these cases, officers use a wide variety of less-than-lethal methods to subdue a suspect. These can include chemical sprays like OC (oleoresin capsicum) or pepper spray, tear gas, or a conducted electrical weapon (sometimes known by the brand name Taser).

Lethal Force—Obviously, the most significant use of force is the use of lethal weapons. Most often this force is done with firearms, but other forms of lethal force can be used when necessary.

It is important to note two things about this continuum. First, the officer determines the appropriate amount of force to use, which in turn is shaped by the behavior of the suspect. If a suspect does not respond to a lower level of force (say, verbal commands), the officer is significantly more likely to ratchet up the amount of force she uses in the situation. This is known as the “one plus one” approach—an officer is supposed to go one level higher on the continuum than the suspect (The Police Policy Studies Council, n.d.). This means that, to a great degree, the individual interacting with the officer has a good deal of control over how much force is used against her. Second, the categories are not hard categories: “soft hands” can easily become lethal force if the officer uses a chokehold to strangle a suspect. Similarly, nonlethal force (such as a police baton) can easily be lethal if the blow strikes a suspect in the wrong place or with too much force. While the use-of-force continuum can be a useful guide for officers using force, in practice, once fists are flying, it is easy for the violence to escape the control of both the officer and the suspect.
Finally, it is key to remember that this continuum is a model for officers. In practice, officers sometimes violate the prescriptions of the continuum. While many officers are highly professional, there is no guarantee that in any individual case the officer will stick to this model for force when an encounter get sticky. As with many other aspects of policing, officers have a great deal of discretion in when and how they use force.

**Legal Restrictions on Lethal Force**

The use of force by police officers is restricted by the Constitution, and the Supreme Court has issued numerous rulings regarding the appropriate use of force in general and lethal force in particular. In the case of *Tennessee v. Garner* (1985), officers in Memphis shot and killed a man who they suspected had just committed a burglary. Edward Garner, the alleged burglar, was unarmed at the time of the shooting, but was nonetheless killed by officers while fleeing the scene. Garner’s father sued the city, arguing that the Memphis police had violated his son’s rights by shooting him unnecessarily.

Under Tennessee law at the time, the killing was considered lawful. Tennessee law stated that “if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest.” This reflected the traditional *fleeing felon rule*, which stipulated that an officer may do whatever is necessary to stop a felon who is fleeing from the police. In the *Garner* case, the court ruled that Tennessee law was unconstitutional and violated Garner’s rights: “Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.” The only time that the use of deadly force is allowed, according to the court, is “where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.” These restrictions on police force remain in place, though as we will see in the next chapter, they are often very difficult to enforce in practice.

**THE CONSTITUTION AND THE POLICE: THE FOURTH AMENDMENT**

Learning Objective 6.3—Describe the different legal restrictions regarding police searches and arrests.

Policing is regulated by many different sets of rules, including state law, municipal codes, and departmental policies and regulations. The most important restrictions on policing activities come from the U.S. Constitution and the Bill of Rights. Since police officers are agents of the state, they are restricted by the Constitution just like all other parts of the government. While almost all the amendments in the Bill of Rights limit the powers of the criminal justice system, the most important of these for the purposes of policing is the Fourth Amendment. The Fourth Amendment restricts the right of government officials both to search and detain individuals, and since these are two of the police’s central jobs, knowing it is essential for understanding how policing works. The Amendment reads in full:

**Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants
shall issue, but upon probable cause, supported by oath or affirmation, and particu-
larly describing the place to be searched, and the persons or things to be seized.

This amendment limits the rights of the police to either stop or search suspects in certain
circumstances and restricts the ability of police officers to arrest a suspect. Effectively, it says
that without a warrant, the police cannot search anybody or take something that belongs to her.

While the Fourth Amendment restricts the police, it does not give citizens a blanket
protection from warrantless police searches. The courts have had to keep several compet-
ing factors in mind in interpreting the amendment. They must balance the needs of officers
to catch lawbreakers and to keep themselves safe on the job with the right of individuals to
be free from unreasonable government interference. Not only is understanding the limits
of the Fourth Amendment important for understanding the way that the police work, but
it can have very practical consequences for you: Many of you will have an encounter with
the police where they suspect you of breaking the law (perhaps they’ve been called to break
up your party, perhaps you’ve been pulled over by an officer, perhaps you’ve been stopped
outside of a bar late at night), and the Fourth Amendment is your shield. It’s important that
you understand your rights, as there is a possibility that they may be seeking to trick you
into consenting to a search that you don’t have to consent to.

In most cases the police need to obtain a warrant to conduct a search. A search war-
rant is an official document signed by a judge that details the areas where the police can
search and the times that the search can be conducted. To get the judge to sign a warrant,
the police must show the judge that they have **probable cause**. Probable cause is usually
defined as “a reasonable ground to suspect that a person has committed or is committing
a crime or that a place contains specific items connected with a crime” (Garner, 2004,
p. 1239). This means that the officers cannot simply harbor suspicions about the individual
or have a hunch that the person is up to something. They must have clear reasons for sus-
pecting that the individual has been involved in a specific crime and present these reasons
to a judge, and if she concurs with the officer, she signs the warrant.

An important corollary to the Fourth Amendment is the **exclusionary rule**. This states
that any evidence that the police discover because of an unlawful search cannot be used at
trial **no matter how important that evidence is to the prosecutor’s case**. Even further, under
the legal principle called **fruit of the poisonous tree**, any further evidence that is gathered
because of the tainted evidence cannot be used in court. Thus, if the police conduct an
illegal search of a murder suspect (say, they enter her house without a warrant) and find a
written confession along with clues that lead them to the murder weapon buried in a field
a mile away, neither the clues nor the weapon can be used during a trial. The defense attor-
ney would ask the judge to **suppress** this evidence at trial and thereby prevent the jury from
learning about it. Effectively, any unlawfully obtained evidence is useless, and so the police
have no incentive to violate the suspect’s rights by being overaggressive in their searches.

Even though it may sound like an oxymoron, not everything that we normally think of
as a “search” is considered such under the Fourth Amendment. There are many different
circumstances where the police may stop you, pat you down, or look through your things
without obtaining a warrant or without having probable cause. The Fourth Amendment
only prescribes specific things (“persons, houses, papers, and effects”) as being subject to
protection from unreasonable searches and seizures. When we’re not in a place or circum-
stances where we have a **reasonable expectation of privacy**, we do not necessarily have a
constitutional protection from unreasonable searches. Our actions in public, for example,
are not private, and so the police are not “searching” you when they see you act in public.
Photo 6.1  A Sample Search Warrant

UNITED STATES DISTRICT COURT
for the
District of Alaska

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Case No. 3:17-mj-00 135-BAJ

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, incorporated here by reference.

located in the ______________ District of ______________ Alaska ______________, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, incorporated here by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):
☐ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Offense Description:

Fraud and related activity in connection with computers, wire fraud, and illegal wiretapping.

The application is based on these facts:

See attached Affidavit in Support of Search Warrant.

☐ Continued on the attached sheet.
☐ Delayed notice of __7__ days (give exact ending date if more than 30 days: ______________ ) is requested
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Signature

Elliot Peterson, Special Agent, FBI
Printed name and title

Deborah M. Smith, Chief U.S. Magistrate Judge
Signature Redacted
Judge’s signature

Hon. Deborah M. Smith, United States Magistrate Judge
Printed name and title

Sworn to before me and signed in my presence.

Date: __4/5/17__

City and state: Anchorage, Alaska

Source: U.S. Department of Justice.
Determining what is or is not a search and what are the exact requirements that police must meet for conducting kinds of searches is an immensely complicated and confusing area of the law.

There are a few types of searches where the police do not need a warrant to conduct a search but nonetheless need to have probable cause. The most significant of these are searches that take place while on the road. The police do not need a warrant to search your car—they only need probable cause. This principle, known as the automobile exception to the Fourth Amendment, allows the police to search a car if they have probable cause to believe a crime has been committed, but they need not have to get an actual warrant to conduct the search. This rule, known as the Carroll Doctrine (from the 1925 Supreme Court case *Carroll v. United States* that established it) exists because a suspect could easily drive off before the officer could get a warrant from a judge. If it turns out that the officer did not have probable cause, but thought she did, then it is likely that the evidence she obtained could not be used against you in court.

There are even fewer restrictions on the ability of the police to conduct what are known as special needs searches. In these searches, the typical Fourth Amendment rules don’t apply, and officers can search anybody without probable cause. Special needs searches exist because there are a few places where there are good reasons to want to search everybody. At the airport, for example, TSA officials do not need a warrant to open your suitcase to see if you are carrying illegal or dangerous substances. You may be searched entering a prison. Similarly, when crossing the border into the United States from Canada or Mexico, officers may look through your car without warrants. Any evidence gathered during such searches is valid in court despite the lack of a warrant.

Another type of search that can be done without a warrant is a search that takes place when an officer makes an arrest. When arresting an individual, a police officer may search anything within the suspect’s immediate area. Under a rule known as the Chimel Rule, named from the case *Chimel v. California* (1969), the police may search your body and anything that you could conceivably access (the so-called “grabbable area”) when they arrest you. This rule exists because arresting an individual can be very dangerous for an officer, as the suspect could have weapons hidden nearby or have attempted to destroy any evidence nearby.

There are several other types of searches that do not require officers to obtain a warrant. If police officers see something criminal in plain view, even if it is on your property, then they may use it to arrest you. This can include things like a bong or open containers of alcohol inside a house if the door or windows are open. It could also include drugs or a gun that is in the seat of your car or on the floor of the car during a routine stop. Sometimes officers will use a flashlight to get a better view of what is inside the car so that more things are in “plain view.” If the officer can see something without moving anything (moving things inside your car or in your house makes it a search), then that evidence is admissible. Similarly, if officers fly over an open field and see marijuana plants or other obviously illegal activity, even if they would not see this evidence if they were on the ground, the open fields doctrine allows this evidence to be admitted at trial or used as the basis for getting a search warrant.

Another obvious way that officers can gain access to evidence is through consent. If you allow officers to search your car/house/backpack, they can use any evidence that they find. This does not mean that they may turn the place upside down to search for evidence, but they may perform a quick protective sweep of the residence to make sure that they are safe and that there’s nobody hiding somewhere to ambush them. They must ask for further permission to search the entirety of your home.
Technology and the Fourth Amendment

The modern world has many technologies that have increased the ability of the police to detect illegal activity—mostly drugs and explosives. Many of these innovations have challenged the protections envisioned by the authors of the Fourth Amendment, which, after all, was written for a world where horses were the primary mode of transportation and communication took place largely with a quill and paper. Over the last half century or so, courts have struggled to determine the limits of privacy in a world of cell phones, the internet, and high-tech surveillance technology. Each invention requires the courts to figure out exactly which searches are permissible and which are not, usually making their decisions on a case-by-case basis. This makes the court's interpretations of the Fourth Amendment one of the most interesting fields of constitutional law, one that is constantly evolving over time.

The simplest of these enhanced searches are canine searches. Officers often use “K-9 units” to find drugs in places where they could not be detectible by humans. While they are not using technology per se to discover drugs, dogs have a sense of smell that is thousands of times stronger than a human's and can pick up tiny traces of substances that no human could. They can sniff out marijuana, cocaine, and explosives even when they are carefully concealed. In 2004 in Illinois v. Caballes, the court ruled that a routine canine sniff was not a search under the Fourth Amendment and did not require probable cause. Later, in the 2015 case of Rodriguez v. United States, the Court ruled that although canine searches can be conducted, an officer cannot hold an individual simply to wait for a canine unit to arrive to the scene. If there happens to be a dog with the officer and it smells drugs, the officer can use this as the basis for a search, but the officer cannot call in a canine unit, make the suspect wait for it to arrive, and then have the dog sniff for drugs if the officer does not have other legal bases to hold the suspect.

The use of heat-detecting or thermal cameras has also been addressed by the Supreme Court. Previously, officers had mounted these cameras into helicopters and flown over neighborhoods to find the locations of “grow rooms”—marijuana growers use high-powered lamps to grow the plants indoors away from the eyes of law enforcement. Then, they would use suspicious thermal readings as grounds for obtaining a warrant to search the house. In the 2001 case Kyllo v. United States, the Supreme Court ruled that even though the thermal camera did not go through the walls, but detected heat emanating from the exterior of the house, such searches violated an individual's privacy and therefore violated the Fourth Amendment.

Like pretty much everybody else, criminals carry cell phones. Also, like everybody else's phones, criminals’ phones contain a great deal of useful information about the offenders’ lives. In Riley v. California (2014), the court found that an officer could look at a phone if he found it while searching a suspect, but could not look through the data on the phone without a warrant:

Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.
Given the importance of modern smart phones to our private lives, it makes sense that the court would restrict the ability of officers to search these devices during an arrest. Think of all the personal material, incriminating or otherwise, that somebody could find if she examined your phone.

These are only a small slice of the cases setting out the limits of police searches, and the courts will undoubtedly face novel questions as new technologies arise. Nobody can predict what new innovations will challenge law enforcement and force the police (and criminals) to adapt. One recent development in discussions of privacy and the Fourth Amendment is the use of remote searches to gather data from the computers of alleged criminals, as well as hacking e-mails, texts, and cell phone conversations. At this point, the courts have clearly struggled to determine what can be done in a search with no clear geographic boundaries—such as with the internet. While it’s comforting to think, as some legal experts do, that we should stick to the original intent of the founding fathers, it’s difficult to see what Alexander Hamilton would say about cell phones, GPS technology, drones, or remote searches over the internet.

Seizures

The Fourth Amendment not only regulates the right of the police to search you, your home, or your car, it also includes restrictions on the government’s right to seize your property. “Seizure” has been interpreted by the courts to include not only your stuff, but also your body. When the police stop you, either through a traffic stop, a search, or an arrest, their activities are constrained by the restrictions set out in the Fourth Amendment.

There are different rules for seizures than for searches for several reasons. When the officer stops a person, the officer’s safety may be jeopardized in a way that it isn’t in a simple search. A police officer who suspects that an individual may be armed cannot afford to wait for probable cause to stop her. Second, arresting a suspect is limiting her freedom in a dramatic way, something that the courts are often very concerned about. The law should protect citizens from undue police interference, and holding a person unlawfully, or harming her without proper justification, are very serious forms of such interference. Thus, the Fourth Amendment’s restriction on police seizures is among the most important parts of the Constitution.

On Halloween 1963, Officer Martin McFadden, a Cleveland Police detective, spotted two individuals, John Terry and Richard Chilton, standing on a street corner in downtown Cleveland. Though he could not provide an explanation as to why he was concerned about the men, he had spent many years in the area, and he declared, “When I looked over, they didn’t look right to me at the time.” In its opinion, the Supreme Court described the defendant’s suspicious activities:

He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece—in all, roughly a dozen trips.
Upon seeing this, McFadden stopped the two men, patted them down, and discovered that both were armed with handguns concealed underneath their jackets. The defendants complained that the officer did not have probable cause to search them, and therefore the weapons should not have been admitted at the trial.

In its opinion on the case, Terry v. Ohio (1968), the Supreme Court said that McFadden’s stop was lawful, even though it was conducted without probable cause. Unlike an ordinary search, which does require probable cause, a stop on the street is not just about finding evidence that might be used to arrest an individual. Such stops can be necessary to protect both the officer herself as well as the public.

We cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is, in fact, carrying a weapon and to neutralize the threat of physical harm.

Thus, officers do not need probable cause to stop and frisk an individual that they suspect might be armed. Rather, they may do so if they have a reasonable suspicion that the suspect is carrying a weapon, a much lower standard to meet. A reasonable suspicion must be based on “specific and articulable facts” rather than based on a mere hunch, but is still less than probable cause. Such a stop, now known as a Terry stop, is a common practice in modern policing, though critics believe that they are disproportionately used to target minorities.

WHERE DO I FIT IN?

HANDLING POLICE SEARCHES

The simplest piece of advice regarding police searches is to avoid engaging in any illegal activity and to obey all traffic rules while driving. Nevertheless, if you are a driver, you will probably be pulled over by the police or have the police knock on your front door some time in your life. You may even be pulled over while carrying something that could get you into trouble with the law or have the police come to your door with illegal substances around. Even if you are “driving clean,” somebody else in your car may be carrying drugs or some other illegal substances and not have told you. While there is no need to be provocative toward the police, you have rights, and it is not wrong for you to assert these rights when confronting the police. Here are a few tips about how to protect yourself and your rights during this encounter and at the same time make sure that the officer does not make your life any more difficult than it needs to be. These are taken from a variety of sources, including the American Civil Liberties Union, a group of lawyers dedicated to protecting the constitutional rights of citizens.
1. Being polite and respectful is going to make your interaction with the police much easier. Always call the officer “sir”/ “ma’am” or “officer” when you are talking with her. Remain polite and calm and speak with a clear voice. If you are not going to answer a question from the officer, say, “I’m sorry officer, but I don’t wish to answer that question.” If you don’t wish to allow the officer to search your car, say, “I’m sorry officer, I know you’re just doing your job, but I don’t consent to this search.” Being obnoxious or aggressive to the officer is going to make the officer more antagonistic toward you and less willing to cut you a break should the need arise. If the officer asks you to do something and it’s not obviously illegal, it’s probably best to do it.

2. You don’t have to consent to a search by the police.

You have the right to refuse if the police ask if they may search your car. If they ask for permission to search your car, this means that they most likely don’t have probable cause. Don’t let them intimidate you into consenting and don’t let them trick you into casually consenting. Failing to consent to a search does not give officers probable cause for a search. They may still look at what is in plain view, but they may not search further without either probable cause or your permission.

3. Be mindful of your movements.

Keep your hands in clear view the whole time you are interacting with the officer. Do not make any sudden movements. If you’re the driver, keep your hands on the steering wheel as much as possible. If it is night time, turn on the dome light so the officer can see your movements better. If you must get something out of your glove compartment, clearly explain to the officer what you are doing and get her permission to do it. “I am reaching into my glove compartment to get my identification. Is this okay officer?” This will prevent any terrible misunderstandings. Do not try to slyly hide something from the officer by subtly tossing it aside. Most likely the officer will see you do it and it will make your situation worse.

4. “Am I free to go?”

Some officers will count on the fact that you are scared to leave when a police officer has stopped you. But there are some important limits on how long an officer may hold you without probable cause. The officer may not keep you for any longer than it takes for her to finish whatever she is doing. If she is just asking you a few questions, then when she’s done, she should let you go. If she is writing a ticket, there is only a short period of time she can detain you, but she may be expecting you to be too intimidated to assert your right to leave. Asking if you are free to go establishes that the officer either has or doesn’t have a reason to hold you.

5. During a routine stop, officers can insist that you get out of a car if they believe that there is a potential threat to their safety.

If they ask you to get out of your car, do it slowly and carefully, keeping your hands clearly visible. Officers have a right to tell drivers and passengers to step out of a car.

6. You do not need to let officers into your house if you do not wish to.

Unless they have a warrant or have a legal basis for entering your house, they cannot come inside without your permission. You may go outside to talk with the officers or you may open the door only slightly, but you need not let them in your house. If they smell marijuana or see young people drinking in your apartment, they will use that as grounds for a warrant.
Photo 6.2  A Sample Arrest Warrant

UNITED STATES DISTRICT COURT
for the

United States of America
v.

) Case No.
)
)
)

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay (name of person to be arrested) , who is accused of an offense or violation based on the following document filed with the court:

☐ Indictment  ☐ Superseding Indictment  ☐ Information  ☐ Superseding Information  ☐ Complaint
☐ Probation Violation Petition  ☐ Supervised Release Violation Petition  ☐ Violation Notice  ☐ Order of the Court

This offense is briefly described as follows:

Date: ____________________________

Issuing officer’s signature
City and state: ____________________________

Printed name and title

Return

This warrant was received on (date) ____________________________ , and the person was arrested on (date) ____________________________
at (city and state) ____________________________ .

Date: ____________________________

Arresting officer’s signature

Printed name and title

Source: U.S. Courts.
Arrests

Stopping a person is a rather low-level form of seizure, as it usually has no long-term consequences. If there are no problems, the person can soon leave. A more serious form of seizure takes place when officers arrest a suspect, that is, when she is placed in police custody. An arrest is not the same as being charged with an offense—this happens later after the prosecutor has become involved in the process. At this point, the officer is simply placing the individual under her authority and preventing her from leaving at will. The police can only hold a suspect for a short time (24–72 hours) without charging her with an offense.

There are several ways for officers to make an arrest. The simplest grounds for arrest is when the officer herself witnessed the suspect commit a crime. If this happens, the officer can immediately arrest the individual without providing any further justification. The second basis for arresting a suspect is if the officer has probable cause for arresting her: if the defendant matches the description of a suspect in a crime that was recently reported, for example. Finally, an officer may arrest an individual if she is executing an arrest warrant. An arrest warrant is a document signed by a judge that authorizes officers to take a person into custody. These can specify the time that the individual is to be arrested and sometimes include the bail that is to be asked of the defendant.

Once an individual is arrested by an officer, the suspect is read her rights before she is questioned. This Miranda Warning (taken from the 1966 case Miranda v. Arizona; see Figure 6.5) informs suspects of their basic rights after arrest, including the right to remain silent and the right to an attorney (including the right to an attorney, even if they cannot afford one on their own). This warning is essential, because persons charged with a crime can claim that any confessions that they made after arrest were invalid if they were not informed of their rights.

After arrest, the suspect is taken to the police station, where she is booked. Booking involves gathering information about the suspect, including fingerprints, a mug shot, and a full body search to make sure that the suspect does not have any contraband on her.

Figure 6.5 Miranda Warning

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
5. You can answer at any time to exercise these rights and not answer any questions or make any statements.

Waiver

Do you understand each of these rights I have explained to you? Having these rights in mind, do you wish to talk to us now?

Source: MirandaWarning.org.
Usually, suspects are given a free phone call that they can use to contact a family member, loved one, or their attorney before they are taken to their cell. The suspect is then placed into a holding cell or local jail to await her initial appearance in court and for the court to determine bail.

Most states allow for nonofficers to carry out a so-called citizen’s arrest under some circumstances if they believe an individual has committed an offense. For example, the so-called shopkeepers’ privilege allows for stores to detain suspected thieves against their will. While this right is recognized in the United States, a civilian who seeks to arrest another civilian under a false pretext or based on a mistaken identity may face serious legal consequences. Be careful: You make a citizen’s arrest at your own risk!

WHERE DO I FIT IN?

GETTING ARRESTED

If you are arrested, there are a few things to keep in mind. Much of this is common sense, but often when the police arrive on the scene, adrenaline is high, and some people aren’t thinking rationally. This can escalate things and make it very dangerous for you and for the officers. Often, suspects are intoxicated when they are arrested, which only makes it more difficult to remain calm and collected when the officer pulls out the cuffs. Here are a few tips for getting through your arrest:

1. Remain polite.
   Even though you’re mad and may feel bullied by the officers, being hostile toward the police will not improve your situation—it will only make things worse for you. You’re most likely going to jail regardless, and the only possibility you have of not going to jail and being let off with a warning will happen if you are polite to the officer. Call the officer “sir,” “ma’am,” or more neutrally, “officer,” and be polite, which is not the same as answering all their questions (see #3).

2. Don’t resist the officers.
   Nothing good will come from this. As we’ve already seen, the officer’s use of force is usually a response to the suspect’s conduct. If you struggle against the officers, you are likely to get treated more roughly. Again, you’re going to jail regardless of how much you struggle, so there’s no point in making it worse for yourself simply because you’re angry. Resisting arrest is often a misdemeanor and will make your situation worse. Assaulting a police officer lawfully carrying out her duties is a felony.

3. Shut up.
   Often suspects believe that their arrest is simply a misunderstanding and that they can convince officers to let them go. Usually they are wrong. Particularly if you are charged with a serious offense, it is far more likely that you will give the police and prosecutors information that they will use against you than you will be able to talk yourself free. Statements, even casual comments, can be used against you later, so beyond basic identifying information, it’s best to say as little as possible. (But remember to say it politely!) You do not have to answer questions the police ask you.

4. Contact an attorney.
   As we will see in the next chapter, your attorney (particularly if you are paying her) is most likely the only person in this process who is in your corner. Before you even consider talking to the police, get a lawyer, consult with her, and have her present whenever you are questioned by the
police. Talking to investigators without your attorney present is a terrible idea. Even if you believe that your arrest is the result of a giant misunderstanding, it is very unlikely that you will be able to talk your way out of jail.

5. Don’t talk to anybody you are in jail with about the arrest.

You’re stressed and nervous. It’s easy to pour your thoughts out to somebody in the cell with you, but jails are not private spaces, and there is no reason to think that somebody you are talking to will not immediately sell you out to the police if it helps her out. Your cell can be bugged—you have no expectation of privacy there.


If you believe that you have been abused by officers during or after your arrest, clearly document the damage done. Photograph bruises, noting the date, time, and location of the abuse as well as the identities of the officers that were involved. This information could be very useful in a civil case should you later decide to pursue one.

7. Video-record.

Several courts have ruled that citizens have the legal right to video-record officers while they are on duty, if they are not interfering with the officers’ activities. The police cannot confiscate the camera of a bystander who is lawfully recording officers. Video-recording your own interactions with officers can annoy and frustrate officers and be interpreted as provocation. You may still do it, but it could make your situation worse.

POLICE DISCRETION

Learning Objective 6.4—List the various factors that impact police discretion.

One essential aspect of policing that is often left unmentioned in criminal justice textbooks is police discretion. Police discretion refers to the freedom that officers have in their interactions with the public. They can choose to be harsh, or they can choose to be lenient. When pulling over a driver who has broken traffic laws, an officer may choose to let the driver off with a warning, she may decide to give the driver a ticket, or she may choose to escalate the encounter further, treating the individual more harshly. This power is in the hands of the individual officer and is largely unregulated by the police department. This means that at the point of contact between officers and the public, a great deal of power is in the hands of the individual officer.

Discretion is necessary for policing because of the simple fact that officers cannot enforce every law all the time. A trained officer can find infractions virtually anywhere, and she must choose which infractions matter and which ones are best left ignored or handled informally. Moreover, in particularly complicated situations, arresting an individual may do more harm than good. The criminal justice system would be clogged with cases and overwhelmed if officers chose to pursue every legal infraction fully. In addition, officers on the ground are best suited to making an informed judgment about how to deal with a situation—commanders often are far away and do not have sufficient information to make a decision. Giving officers a free hand in how they handle suspected lawbreakers, particularly people who commit less serious offenses, can save everybody a great deal of trouble.

Given that officers have this sort of discretion and use it every day, what sort of factors shape how officers respond to a situation? What are the factors that make officers more
likely to treat an individual harshly, and what factors are most likely to make an officer be lenient? Obviously, serious offenses are far more likely to lead to arrests—no officer is going to let a person suspected of murder get away with a warning. Beyond this, one of the most significant factors is, unsurprisingly, the attitude of the individuals toward the officer. If suspects are rude or disrespectful toward the officer, they are more likely to be treated harshly, while deference and respect is likely to result in more lenient treatment (Black, 1970; Schafer & Mastrofski, 2005). Another significant factor is the wishes of other people involved in the situation—if a victim wishes to see the individual arrested, the officers are more likely to arrest the suspect. A study of drunk driving stops showed that “officers in the two larger, bureaucratized departments were much less likely to arrest than those in the smaller departments” (Mastrofski, Ritti, & Hoffmaster, 1987). The decision officers make in the moment can be shaped by a great number of factors, some of which are under the control of the suspect herself, but many of which are not.

One particularly difficult challenge for police officers is handling domestic violence. One of the most common issues that officers must deal with on the job is responding to a conflict between partners or other family relations. These are often very difficult situations for officers to navigate for a variety of reasons. While the weaker individual may want her partner to stop threatening or harming her, she may not want him arrested and can even turn on the police when they threaten to do so. She might depend on her spouse for financial support that would be lost if he were in jail, or she might not want to see her child in prison, even if he is hurting her. She may fear retaliation when her partner is released from jail, particularly if prosecutors elect not to press charges against the suspect. All of this means that officers face a very delicate task when dealing with domestic situations and must use their discretion carefully.

The Minneapolis Domestic Violence Experiment was an attempt to understand the effects that different approaches to police discretion had in domestic violence situations (Sherman & Berk, 1984). From 1981 to 1982, officers in Minneapolis tried three different approaches to handling domestic violence calls, based on a random assignment. Some of the suspects were arrested, some were sent away from the scene for eight hours to cool down, and others were given counseling by the officers. The results showed that arresting a suspected abuser was the most effective of the three ways for preventing future violence. As a result, many states began a mandatory arrest policy in domestic violence cases, but this too can create problems, as battered spouses may hesitate to call the police if they fear that their partner will go to prison if they call. Ironically, then, restricting the discretion in domestic violence cases forces victims of this kind of violence to use their own discretion in deciding whether to call the police.

Another problem surrounding police discretion is favoritism. Giving officers wide discretion presents them with the temptation to use it in ways that we might not find appropriate. Anecdotal evidence shows that some officers, particularly male officers, show a predisposition to be lenient toward young, attractive women who they pull over, particularly if they respond emotionally to the stop (though there is no hard evidence for this.) Some drivers put stickers on their cars that declare that they support police organizations in the hope that officers will give them a break if they are pulled over. Many small businesses provide a discount to officers or give them free food in the hope that they will receive preferential treatment by officers should problems arise. While we may not find these uses of discretion to be corrupt, they can certainly damage the general public’s perception of the police as fair-minded agents of the law.
Discretion cannot be taken out of policing; it is an essential part of how officers function and allows them to do their job more effectively. Even when it is restricted by police departments, there is probably no way to fully prevent officers from fudging the books—they can hide the fact that they ever showed up to a scene or conceal the exact nature of what happened in a case. Regulating police officers’ behavior to prevent the use of discretion is probably impossible and is probably undesirable. Nonetheless, when officers use discretion, and how they use it, is fascinating and reveals a lot about how we use the police to regulate and control people in the modern world.

CIVIL FORFEITURE

Learning Objective 6.5—Describe the laws governing the confiscation of property by law enforcement.

One of the most controversial aspects of modern policing is the practice of civil asset forfeiture. Civil forfeiture allows officers to confiscate property that they suspect was involved in criminal activity, such as vehicles used for transporting drugs or cash profits from drug transactions. They can do this without charging any person with a crime. (Criminal forfeiture occurs when material is seized by the police as part of an arrest.) The police forces then either sell or keep the property and use a portion of it to fund their operations, often without having to prove in court that the goods were associated with any explicit crime. Many critics have charged the police with abusing civil forfeiture to steal money from innocent people, while some defenders have claimed that it is an essential practice for removing some of the rewards of criminal activity (ACLU, n.d.; Ford, 2017; Snead, 2014).

This controversial practice dates back to medieval England but was first used extensively during Prohibition, when police departments confiscated and auctioned bootlegging equipment and vehicles used to smuggle illegal liquor into the United States (Mellor, 2011; Mihm, 2017). The material was often confiscated after the criminals fled the scene, meaning that nobody claimed it, but the materials were nonetheless implicated in illegal activities. It was modernized during the war on drugs and in the Controlled Substances Act in 1970, which allowed government officers to seize property if they suspected that it was related to drug trafficking. The only way for the individual to have her assets returned to her is to go to court and fight for them. Effectively, owners must prove that the confiscated goods were gained legally to get them back. This can be a very expensive proposition, and, in many states, especially so for drivers who are just passing through the territory and are unlikely to come back or to be able to afford the legal expertise required to have their materials returned (Friedersdorf, 2015; Sallah, O’Harrow, Rich, & Silverman, 2014). Those whose goods are confiscated must travel back to the jurisdiction where the goods were taken and prove that they have a legal right to possess them, an effort that would often cost more than the confiscated goods are worth.

When it is used against drug traffickers, civil forfeiture is a powerful tool for fighting crime, depriving the traffickers of vital funding and resources—after all, what drug trafficker is going to come forward to claim her goods in a court of law? Some departments have abused the practice and taken large amounts of cash or other valuable goods from completely innocent people, or people whose offenses are minor. To use one example, William Barton Davis and John Newmerzhycky were driving through Iowa on their way to gamble in Las Vegas. They reported being “stalked” by a police officer, and when they were
pulled over, officers stalled and delayed the two as they tried to leave until a canine unit showed up and gave the officers probable cause to search the car. In the trunk of the car, police found a marijuana grinder and $100,000 that the two had planned to use to gamble. The officers confiscated the money and let them go with a minor citation. In another case, a man in Washington, D.C., had $11,000, 5 years of savings, taken on the grounds that the police smelled marijuana in his bag. He had booked a one way ticket on Amtrak, and had no documentation for his money—none of which is crime (Ingraham, 2015).

As these and similar abuses of civil forfeiture have come before the public, several politicians on both the right and left ends of the political spectrum have sought to curb the power of the police to seize suspected drug assets, but at present seizure remains a common way to deal with drug traffickers as well as a way for police departments to boost their own revenue. The last attorney general, Jeff Sessions, has spoken highly of the practice, calling it a “key tool that helps law enforcement defund organized crime, take back ill-gotten gains, and prevent new crimes from being committed” (Ford, 2017). In early 2019, the Supreme Court found some uses of civil forfeiture to be unconstitutional (Timbs v. Indiana, 2019), but as of this writing it is not clear whether the practice will be curtailed by the recent ruling.

CHAPTER SUMMARY

This chapter has been a catchall chapter dealing with various aspects of modern policing. Policing is a complicated activity with a lot of dimensions to it: Police are the “muscle” of government, enforcing the laws that the government passes, but they’re also social workers, crisis responders, and marriage counselors, and they perform a million other jobs. For an officer on the street, every day is different, and every day brings new challenges and new frustrations. The job is diverse and complex, which is probably why so many people find it so appealing. Undoubtedly, your university’s criminal justice program has at least one course that focuses exclusively on policing, and if you are interested in the subject, this course is well worth your time. Many police departments have ride-along programs that allow civilians to spend a day traveling with officers to get a taste of what it’s like being an officer, which is a great way to learn more about life in law enforcement.

In the next chapter, we will look more closely at some of the darker sides of law enforcement. While most police officers are conscientious professionals, seeking to do the best job that they can, the unique powers, the unique pressures, and the unique temptations of police work create opportunities for some officers to stray from the principles of good policing. In the next chapter, we will look at some of the ways that policing can go wrong, ways that police officers can become dangerous or outright harmful to the people that they are supposed to protect.

REVIEW/DISCUSSION QUESTIONS

1. Have you ever been arrested or searched by the police? What was the experience like?

2. How much discretion should officers have on the job? What are the dangers of too much and too little discretion?

3. Should law enforcement be able to confiscate property that they believe is related to criminal activity without charging anybody with a crime? Why or why not?
## KEY TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile exception</td>
<td>153</td>
</tr>
<tr>
<td>Civil forfeiture</td>
<td>163</td>
</tr>
<tr>
<td>Fruit of the poisonous tree</td>
<td>151</td>
</tr>
<tr>
<td>Minneapolis Domestic Violence Experiment</td>
<td>162</td>
</tr>
<tr>
<td>Miranda Warning</td>
<td>159</td>
</tr>
<tr>
<td>Open fields doctrine</td>
<td>153</td>
</tr>
<tr>
<td>Plain view doctrine</td>
<td>153</td>
</tr>
<tr>
<td>Probable cause</td>
<td>151</td>
</tr>
<tr>
<td>Protective sweep</td>
<td>153</td>
</tr>
<tr>
<td>Reasonable expectation of privacy</td>
<td>151</td>
</tr>
<tr>
<td>Reasonable suspicion</td>
<td>156</td>
</tr>
<tr>
<td>Shopkeepers’ privilege</td>
<td>160</td>
</tr>
<tr>
<td>Special needs searches</td>
<td>153</td>
</tr>
<tr>
<td>Terry stop</td>
<td>156</td>
</tr>
<tr>
<td>Use-of-force continuum</td>
<td>148</td>
</tr>
</tbody>
</table>

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