CHAPTER LEARNING OBJECTIVES:

1. Define police discretion and the factors that influence it
2. Assess factors that can affect the use of discretion by police
3. Define the term *ethics* and discuss its importance in the field of policing
4. Identify and describe organizational strategies that can be used to mitigate unethical police conduct
Due to the multiple roles the police are expected to perform, along with the myriad of external and internal influences that tend to shape police policy and public expectations, the right measure of discretionary authority by the police is essential. Fulfilling the police mission in a competent and responsible manner requires a sustained organizational and individual commitment to underlying ethics, accountability, and professionalism. If the police are to be perceived as professionals, they must exercise discretion wisely and ethically and remain accountable to the public they are sworn to serve.

Professional ethics outline the moral obligation to act in ways that are proper to accomplish professional goals. For police officers, ethical conduct is especially important because of the authority granted to them and because of the difficulty of overseeing the daily behavior of police officers on the street. The public must be able to trust the police to act as if someone were watching, when most of the time, there may be no witnesses.

Figure 10.1 highlights a recent poll that elicited responses regarding community members' confidence in their police officers. As will be discussed in greater detail in Chapter 12, there is often a discrepancy in confidence based on race.

It is appropriate to consider discretion and ethics together because they are closely interrelated. Discretion is a necessary and desirable part of policing and involves selecting among several possible courses of action. Reducing the number of unethical options is a continuing pursuit of attentive police administrators. Wise exercise of discretion by police officers demands ethical choices. Further, whether the police make wise choices or foolish ones, they are accountable to the public for their actions. Chapter 11 covers the consequences of unethical police behavior and accountability for it.

Figure 10.1 /// Confidence in Local Police, 2016
Percentage saying they have ______ confidence in local police

<table>
<thead>
<tr>
<th></th>
<th>a lot of</th>
<th>some</th>
<th>only a little</th>
<th>no</th>
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<tr>
<td>Blacks</td>
<td>17</td>
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<td>Whites</td>
<td>42</td>
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<td>All</td>
<td>36</td>
<td>41</td>
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POLICE DISCRETION

To perform their role competently and effectively, the police must regularly exercise their discretionary authority, and they must do so ethically and responsibly, if public trust is to be established and maintained. **Police discretion** can be defined simply as “the exercise of individual choice or judgment concerning possible courses of action.”1 Discretion amounts to the perceived ability to choose when, how, and in what order to complete assigned work.2 Efforts to define discretion are important. “If discretion is to be spoken of as a real and variable aspect of policing that is believed to influence police behavior, then it needs to be defined in such a way that it lends it to direct observation and to quantification.”3

Discretion is a normal, desirable, and unavoidable part of policing that exists at all levels and departments within a police agency and at all levels of policing. It is important that the police are not robotic but have a sense of autonomy, exercise common sense, and interpret the law. There is a great deal of complexity associated with the discretionary decision-making process:

Whether to enforce the full letter of the law, to simply advise a citizen, or to choose a middle ground, street-level officers must incorporate all of the tools of their trade and select the plan of action most appropriate or reasonable on a case-by-case basis. Though there are many factors to consider regarding officer discretion, personal biases, prejudices, and values are not to be employed in this decision-making process.4

Discretion is required because the code of criminal law—as well as departmental policies—is often expressed in intentionally imprecise terms that make interpretation a necessity. In addition, police resources are limited; the police cannot be everywhere at once. Policing, like many other occupations, consists of a number of specializations, and not all departments have the specialized personnel to investigate all types of crime or provide all types of services. Finally, the police are well aware that the other components of the criminal justice network also have limited capacities (e.g., court time, jail cells).

Although police officers are not in the strictest sense judges or jurors, they must and do perform the functions of both on certain occasions. That is, they must decide the facts in any given encounter, interpret the law with respect to the encounter, and decide how best to bring the encounter to a successful conclusion. They also consider extenuating and mitigating factors.

“The extent to which police officers are encouraged to exercise discretion varies from department to department, from shift to shift, and among divisions within the same department, but the exercise of discretion is routine in all police agencies.”5 This is true because of the nature of policing and because, in most cities, the police simply cannot enforce all the laws all of the time or perform all of the services demanded at the same time.

Thus, both law enforcement and policing are selective processes in which some laws are enforced and some services are provided most of the time, whereas others are not. The determination of which, and when, services are provided rests to some extent with police administrators, the general public, prosecutors, judges, and other politicians, but police officers do not typically operate under immediate, direct supervision. Therefore, they are relatively free to determine their own actions at any given time.

**Factors That Influence Discretion**

Police officer decisions are typically influenced by factors such as the situation, setting, and suspect; departmental policy and culture; the law; victims and public safety; and financial and political expectations. Further, the education, training, and length
of service of the officer and the wishes of the complainant have been shown to affect officer decisions.6

The Situation, Setting, and Suspect

Every situation is in some measure unique, and officers must use their personal judgment about the people involved and the context of the situation; a person’s age, gender, appearance, mental and emotional state, and economic status are important details that figure into the equation. The officer must calculate these characteristics in light of a host of other things.

However, an officer who decides to render service or enforce the law based solely on the gender, race, or physical appearance of the citizen involved is exercising discretion inappropriately. Agencies can discourage such behavior; proper training can teach why such decisions are unacceptable.

An officer must quickly figure into his or her decision of how to handle a situation by also considering the severity of the offense and the potential for harm, whether there is a clear victim and how vulnerable that person might be, especially to future harm. For example, an officer may decide to follow through on an arrest in a domestic violence situation if a family member is clearly at risk or if the complaint is not the first one. If an officer has trouble determining who is at fault in the situation, all parties may end up under arrest to ensure the safety of everyone involved.

Departmental Policy and Culture

For some decisions, there is a range of behaviors that the department may acknowledge and permit. Department practice may allow that a driver who is exceeding the speed limit by three or four miles per hour should not be subject to citation. Leadership may establish a tolerance limit of five miles per hour and instruct officers that those driving over the speed limit, but within the tolerance, need not be cited. Or (as is true in most cases), the decision of whether or not to cite the driver may depend completely on the officer’s discretion. Although officers can still cite a driver for driving two or three miles per hour over the speed limit, they know that it is permissible to ignore or warn those who are only marginally speeding.7
Officers exercise discretion in performing their duties, as they must do. The agency’s leadership and supervision, as well as organizational norms and culture, can lead them to ignore rules and policies; exercise restraint and tolerance and give a person a second chance; choose to refer an individual for treatment or services instead of arrest; resort to threats, “street justice,” or force; regard tasks not related to enforcement as less than “real” police work; and add another arrest charge to help facilitate an individual’s punishment.

Chapter 8 discussed the police subculture and some of its problematic ideas—for example, that people are not to be trusted to follow the law or that people do not like the cops—and officers have to control and demand respect from the public. Depending on the agency, the subculture might reinforce the idea of being lenient with people who have never been in trouble, or it might support the idea that flaws in the criminal justice system justify making decisions about innocence and guilt outside the courtroom. According to the culture of some agencies, preventing crime and enforcing the law depend largely on deterrence, and severe consequences are more likely to achieve deterrence.

The Law

Of course, officers must know and follow the law. But there is a great deal of gray area in the law, often quite deliberately, and in these situations, discretion plays a critical role. In an effort to curb intimate partner violence, for instance, some states passed laws that require an arrest in many of these instances, thereby removing or significantly limiting police discretion.¹ There are advantages and disadvantages to limiting police discretion. One advantage is greater consistency in terms of how and when police officers enforce a given statute. Among the disadvantages to removing discretion is that the law effectively might have a “new-widening” effect; the police may be constrained to make an arrest when it is not really necessary.

Political and Economic Pressure

The police are also subject to political pressure to respond to high-profile or hot-button issues, and to ease up or crack down on protestors, drunk drivers, celebrities with drug problems, or undocumented immigrants, to name just a few issues. Officers answer to supervisors, and department leaders have to answer to mayors, commissioners, and lawmakers.

CompStat and other performance measures can and do lead to pressure to meet political and department expectations for citations, which can translate into significant revenue for the jurisdiction.

The Challenge of Discretion

Clearly, the exercise of discretion is necessary for effective policing, but it is not neat or easy, and problems arise. The consequences of the police using discretionary authority unethically or otherwise improperly can have devastating outcomes. These consequences include poor morale, civil liability issues, tragic and unnecessary loss of life, and public mistrust of the police.

Maintaining ethical standards within the field of policing is important for reasons that may seem obvious. First and foremost, the police are public servants—agents of the government sworn to uphold the laws of the land. As such, they must be role models, on and off the job. When police officers engage in unethical or illegal behavior, it shakes the trust and confidence of the public they serve. Perhaps even more devastating, when the bond between the public and police is compromised or severed, the ideals of the entire criminal justice network may be called into question. As stated by then Federal Bureau of Investigation (FBI) Director Robert Mueller, “Public corruption is the betrayal of the public’s sacred trust. It erodes public confidence and undermines the strength of our democracy. Unchecked, it threatens our government and our way of life.” More specifically, another high-ranking official from the FBI stated,
The oath taken by the men and women of law enforcement to uphold the law is not an idle one. Corruption cases involving a police officer erode the public trust and thereby complicate and impede the efforts being made by the law enforcement community at all levels.\textsuperscript{10}

**Quotas**

Quotas—\textit{one type of biased enforcement}—are arbitrary and fixed numbers of citations or stops (or some other measure of activity) that officers are required to meet on a periodic basis. Quotas are unethical and often illegal because they pressure officers into making decisions to meet the quota requirement rather than what the situation should dictate. Quotas undermine healthy discretion.

Most administrators would deny that there are quotas in their agencies, being fully aware of the controversy about quotas. Rather, they may point to performance standards, which tend to identify acceptable ticket and arrest activity of department members, using measures such as averages and medians. Regardless of the language, officer performance evaluations are often based in part on an officer’s number of tickets and arrests. One police chief in Maryland published a list of quotas of arrests and tickets each officer must perform each month to receive a satisfactory performance evaluation. The Fraternal Order of Police used this publication as evidence that a formal quota system existed in many law enforcement agencies in Maryland. In response, the Maryland Legislature enacted a law titled Prohibition Against Arrest and Citation Quotas. This law prohibits: (a) establishment of a law enforcement agency formal or informal quota system and (b) using the numbers of arrests or citations of a law enforcement officer as the sole or primary criteria for promotion, demotion, dismissal, or transfer of the officer.\textsuperscript{11}

In response, some officers may engage in unethical behaviors such as biased enforcement practices in attempting to meet agency expectations. The justification for quotas might be that it is a way to ensure productivity from officers, and such numbers are...
easy to calculate and compare. However, Laurie Robinson, cochair of President Obama's Task Force on 21st Century Policing, concluded that numbers-based policing sends the wrong message to the public. “If citizens believe that tickets are being issued or arrests are being made for reasons other than the goal of law enforcement, which is about public safety,” says Robinson, “then their trust in the legitimacy of the system is really eroded.” The problem can be made worse when officers receive pressure from city officials or police administrators to write more citations as a source of revenue. “That, according to the Justice Department, is exactly what happened in Ferguson, Missouri [where] the largely white police there wrote huge numbers of tickets for the city’s black residents, collecting millions of dollars in fines every year.”

Connie Koski, Author, Professor, and Former Police Officer

The Relationship Among Police Subculture, Misconduct, and Ethics

When we think of police ethics and police corruption, we often think of personal gain such as the acceptance of gratuities, officers taking bribes or dealing drugs, or stealing items from crime scenes. What happens when officers take advantage of their power to achieve positive policing outcomes? This noble cause corruption is either unethical or illegal behavior, but the motive is pursuit of a benefit to society.

Noble cause corruption represents a form of behavior that is both complex and difficult to study because, at first glance, officers who engage in such behaviors are passionate about protecting the public, a duty they were sworn to uphold.

The pressure is great on today’s police officers from administrators, politicians, and the public to “do something about crime,” but bolstering the insularity of the police subculture—the “thin blue line”—threatens the delicate bond of trust and legitimacy between the police and those they are sworn to protect.

I worked with a group of five officers who were the pride of my department; they were often used as example of what constitutes “good police work” by many of our top administrators. These officers consistently made the most arrests, were particularly devoted to ridding the city of guns, drugs, and the dealers who distributed them, and were particularly skilled at cultivating the information necessary to locate these perpetrators and illegal items. During my time on patrol, however, I often encountered people on the street (both criminals and noncriminals) who informed me that these officers regularly used “drop guns” and “drop bags”—evidence allegedly planted by the officers in question—to make their arrests. Additionally, many of my coworkers admitted to having heard these same accusations, and although no one would ever admit to having seen the behavior firsthand, many of my fellow officers believed these accusations to be true.

One day, I finally got up the nerve to ask one of the officers directly if he participated in such activities. I could tell by his facial expressions and body language that he was being evasive. He asked, “What difference would it make if I did?” He justified his position by stating that all of the officers in the department knew that this person or that person was a drug dealer who would be caught eventually. Therefore, why might the occasional act of “dropping a bag of dope” on a foot chase ultimately matter in the long run, so long as the dealer was off the streets? I recall being perplexed by this answer and feeling conflicted about this approach to policing. I could certainly agree that getting drugs, guns, and their dealers off the streets was a positive thing. Ethically, however, I was strongly opposed to the methods and told my fellow officer so. He simply responded that I was naïve and I needed to get some more “TOJ” (time on the job) to understand the value of this approach to fighting crime.

Although there was never enough evidence to substantiate any of the claims against my former coworkers, I often wondered how many residents in my jurisdiction had been affected by such practices. In many ways, I could tell that these behaviors directly and indirectly fed the long-standing mistrust of the police in the minority neighborhoods.
ETHICS AND POLICE CONDUCT

Perhaps the most important guide for officers as they make their decisions is ethics. Although there are many different bases for the study of ethics, for the purposes of this text, ethics is

the study of right and wrong, duty, responsibility, and personal character. . . .

[We] should regard all of these concepts . . . as having an implicit modifier—“moral”—attached to them. Ethics is concerned with moral duty, what is morally right and wrong.13

Ethical conduct involves “doing the right thing in the right way at the right time for the right reasons.”14 Although ethical issues have always existed in policing, the introduction of community-oriented policing is an example of an organizational transformation that relates to ethical decision-making on the part of officers. This focus assists the police in forming a partnership with the community and increasing accountability to the public. “Because of concerns about the types of information being collected by law enforcement and how that information is retained in records, concerns have been expressed that law enforcement may violate citizens’ rights in the quest for terrorists.”15

A greater need for more and different types of information has fostered the advancement of intelligence-led policing, which goes a step further than community-oriented policing. (See Chapter 7.)

Ethics has become an increasingly important topic in discussions of police discretion. Many behaviors that were once permitted are no longer tolerated by the public. The behavior of police officers in today’s society must be beyond reproach. Police agencies should emphasize ethics in their recruitment, selection, hiring, and promoting practices to ensure the agency employs and rewards individuals of excellent character. “Rewarding ethical behavior is the key to message sending for police executives and middle managers. The logical response to unethical behavior is the appropriate use of general orders, policies, and procedures to discipline officers for unethical behaviors and noncompliance.”16 Former president Theodore Roosevelt stated,

No man can lead a public career really worth leading, no man can act with rugged independence in serious crises, nor strike at great abuses, nor afford to make powerful and unscrupulous foes, if he is himself vulnerable to his private character.17

Ethics in Police Education

It is imperative that the criminal justice curriculum in colleges and universities incorporate and emphasize the study of ethics. The same is true of basic and advanced law enforcement training programs. Ethics should be emphasized continually and act as a thread that runs through all facets of police hiring, training, and continuing education.

Research on police ethics in education that compares criminal justice students and active police officers indicates a concerning level of tolerance for unethical behavior in both groups, albeit in different areas. Student respondents were nearly twice as likely as their police officer counterparts to respond ethically when dealing with a scenario about an off-duty police officer stopped for driving while intoxicated, theft by a police officer at the scene of a burglary, the use of excessive force by coworkers, witnessing supervisory misconduct, and stopping an off-duty police officer for a serious traffic offense.18

However, student respondents reported a willingness to perjure themselves to keep themselves or coworkers out of trouble or to ensure the conviction of someone they knew to be guilty. Far fewer police officers and other professionals reported a willingness to perjure themselves for the same reasons.19
To help change the cultural aversion to reporting wrongdoings of officers by other officers, criminal justice educators must understand, emphasize, and teach ethics at every opportunity. Also, police officials should require ongoing in-service training in ethical decision-making for their officers. Psychological testing and applicant background investigations can focus more on eliminating applicants who have demonstrated unethical behavior. All of these measures may ultimately prove to be ineffective, however, if the police subculture continues to reinforce nonfeasance as an indicator of group loyalty, which is deeply embedded in the tradition.

Officers are called on to recognize the moral dilemma in each situation, decide what to do within ethical boundaries, act with integrity, and follow through consistently. Peer pressure, or perceived legitimacy of reporting, and lax administration are just two of the forces that can thwart good intentions. Other factors include seriousness of the offense and perceived fairness of the established disciplinary action for the offense. In one study of 3,235 officers in 30 police agencies, officers were significantly more likely to report misconduct when they perceived the act or offense of their fellow officer to be serious. Likelihood of reporting also significantly increased when officers felt that their peers would report a similar incident and they perceived the discipline for the offense to be fair.

Research has demonstrated that ethics education can assist officers in better navigating moral challenges by increasing ethical awareness and moral reasoning—two critical aspects of ethical decision-making.

To be effective at changing bad behavior or maintaining good behavior, ethics education must go beyond lectures and must engage officers in challenging dialogue and active tests of reasoning skills.

To maintain high standards, departments must incorporate discussions of ethics into daily operations, stimulating those discussions through a variety of means including video clips, current events, and hypothetical scenarios.

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**You Decide 10.1**

Norwood Police Department is an agency that prides itself on community policing practices as well as its high level of professionalism and ethical standards. Norwood is a diverse city with a large population of African Americans and Lebanese immigrants. One of the police department’s many policies guiding officer ethics includes a strict prohibition against the acceptance of gratuities of any kind, no matter how small. Violations of this policy could subject an officer to disciplinary action.

Two officers in uniform and one detective in plain clothes enter a Lebanese restaurant and place their meal orders at the counter. Behind them in line are an African American woman and her 5-year-old son. As the employee finishes taking their order, she offers the officers in uniform their meals for free, thanking them for their service, but not the detective in plain clothes. The detective pulls out his badge, telling the employee that he, too, is an officer. The employee changes his order to free as well. The young boy behind them in line whispers loudly to his mother, asking her why they don’t ever get free food. She quietly hushes him but appears visibly disgusted with the officers, particularly because it is common knowledge around town that Norwood Police Department has a “no gratuities” policy.

1. Should the officers accept the gift of the free meal? Why or why not? Be specific.
2. What are the potential implications to public perceptions, both on the part of the mother and her son, as well as the restaurant employee, if the officers accept the meals? What are the potential disciplinary implications if someone tells the department about the officers’ acceptance of this gratuity? Should they be disciplined? Explain.

Suggestions for addressing these questions can be found on the Student Study Site: edge.sagepub.com/coxpolicing4e
Evaluating Police Ethics

The vast majority of criminal justice students indicate that they would not turn in a classmate who lied, cheated, or stole. A significant proportion of police officers indicated that when they became police officers, they would not turn in a fellow police officer who lied, cheated, or stole. Where does the message that it is acceptable to let others do these things without taking action originate? How has doing the right thing become the wrong thing to do?

In 1972, the Knapp Commission discovered that the majority of New York City police officers did not aggressively seek out opportunities to engage in unethical conduct, but may have engaged in minor acts of corruption, such as accepting gratuities. The commission referred to these officers as “grass eaters.” They generally chose not to get involved in unethical conduct; however, they also refused to turn in fellow officers who did—thus, in effect, condoned unethical acts. This reluctance to report wrongdoing is generally referred to as nonfeasance in the professional literature.

Do trainers and leaders somehow teach police recruits and tenured officers to condone unethical conduct? Unfortunately, the answer may be yes. And it may be more entrenched than is apparent. (See also Chapter 11.)

Although parents usually teach children not to lie, steal, or cheat, many also teach them not to get involved when others lie, steal, or cheat. “It’s not your business—stay out of it!” “Don’t get involved!” “You just worry about yourself, not about other people.” This advice may indeed lead youth to become grass eaters who simply turn away from lying, cheating, and stealing. They learn early that “ratting” on another individual is unacceptable behavior in many settings, which is perhaps as detrimental as being directly involved in unethical conduct. Of course, the police subculture often builds on this consideration. Loyalty to the group (other officers) is held out as a virtue, even when it means engaging in seemingly minor unethical conduct (covering, making excuses, telling “white lies”) to protect unethical individuals. Yet, police officers are required by the Code of Conduct as well as by federal law (Civil Action for Deprivation of Rights, 1871) not to condone such behavior. According to the International Association of Chiefs of Police (IACP), a number of factors negatively influence police ethics:

- Changing moral standards of contemporary society
- Americans “lacking a moral consensus”
- Increasing numbers of individuals who reject responsibility for their own actions
- High degree of frustration experienced by today’s police officers
- Misinformed or conflicting perceptions of the role of police and conflicting expectations about what is or should be expected from the police
- Law enforcement agencies that fail to clearly draw the legal, ethical, and moral lines in the form of clear policies and procedures, training, supervision, and discipline

Role modeling by leaders is important and especially significant in limiting unethical conduct in the context of personal relations. Employees seem to copy the leader’s integrity standards in their daily interactions with one another. A true leader’s moral code must be beyond reproach. Their conduct is appraised in three frames of reference: (a) what it actually is, (b) what he/she thinks it is, and (c) what it appears to be to others.

In some cases, policy issues reflect the values of administrators who are not adequately committed to ethical conduct.

After researching thousands of incidents of serious misconduct, the single most damaging category of misconduct in law enforcement is administrators intentionally ignoring obvious ethical problems. There is nothing as negative as a chief,
Sheriff, director or superintendent knowing his department has ethical problems and intentionally looking the other way, trying to make it to retirement.29

In some instances, administrators model unethical conduct on a regular basis, allowing officers to rationalize that their own misconduct is no worse. Placing all the blame for unethical conduct on administrators, however, may encourage individual officers who engage in such conduct to attempt to escape responsibility for their actions.

In a study that examined frontline supervisors’ perceptions of police integrity, the supervisors reported reluctance to act on the misconduct of their subordinates because of the perceived unethical practices of high-ranking supervisors in their organization. The researchers posed the following question: “Though supervisors may believe in the need for reform, will they act on those beliefs when they do not believe their own supervisors are legitimately committed to improvement?”30 Realistically, the answer is probably no.

Certainly, the majority of police officers perform their duties honestly, ethically, and professionally. Still, the officers who engage in inappropriate behavior tarnish the reputations of everyone in policing and place the field in the challenging position of having to constantly convince the public that acts of police malfeasance are not widespread. Far too often, those who do the right thing by telling the truth and exposing corruption and brutality are the victims of attacks from within their ranks.

Biased Enforcement and Racial Profiling

Racial profiling occurs when an officer considers race as part of a decision to take, or not to take, law enforcement action. Legally, an officer can consider race only as part of a specific, reliable suspect description tied to a particular crime. Considering a person’s race as a basis for action is unacceptable and grounds for disciplinary action.

The action is still racial profiling, even if the officer does not base his or her decision “solely on race” but considers it as one factor among many. For example, if an officer takes into account a person’s race when deciding whom to stop and cite for speeding, it is racial profiling even if the driver is actually violating the law. In this case, the officer has a perfectly legitimate reason to stop and cite, but the fact that he considered race as
one of many factors makes the stop illegal. That is different, however, from a case where a person's race is part of a reliable description tied to a crime—for example, “a male Hispanic wearing a red and blue sweater.” In that case, the officer can consider race.

Although it is impossible to know how many, certainly there are police officers who continue to engage in such practices. Indeed, some well-publicized police practices are criticized as overt profiling. New York City’s “stop and frisk” program is one such practice. Utilizing a 2012 database of New York Police Department “stop and frisk” data involving more than 500,000 enforcement actions, one study revealed that Black and Hispanic citizens were significantly more likely to experience non-weapon force than White citizens while controlling for other relevant situational and precinct-level variables. The findings suggest that minority citizens may be exposed to a racial or ethnic “double jeopardy,” whereby they are subjected to both unconstitutional stops and disparate rates of force during those stops.\(^3^1\) Even if the proportion of officers involved in such practices is small, all officers should be aware that racial profiling is grounds for disciplinary action.

Police are sworn to uphold the “rule of law” in the protection of individual rights while dutifully enforcing traffic and criminal laws for the protection of the public. It is essential that law enforcement administrators take every necessary action to ensure zero tolerance regarding enforcement actions that are discriminatory against any segment of the population.\(^3^2\) Harassment of individuals short of taking official action also is unacceptable. (See Chapter 12.)

**LEADERSHIP AND IMPROVING DECISION-MAKING**

Every police department must establish a clear code of ethical conduct that is based on a set of core values and a mission statement and then go beyond that. Chiefs and supervisors must lead by example, demonstrating that the code applies to everyone in the organization and that everyone is accountable for it. The ethical climate, then, is a perception of how policies, rules, and procedures define and influence proper behavior, within the organizational context. It serves as the mechanism by which organizational values are translated into actions by individual members. The ethical climate provides the guidance to organizational members as to what factors are more or less important as criteria for ethical decision-making.\(^3^3\)

Because the police department is a public service agency, honesty and accountability to the public are particularly important. It is extremely valuable to recognize and communicate the importance of discretion at all levels in policing. In reality, it is impossible to treat everyone exactly the same. A necessary first step in dealing with discretion is to recognize its existence and importance. Only then can departments address the proper and improper applications of discretion, be more transparent with the public, and improve on effective training.

Although it may not be possible to arrive at a comprehensive set of guidelines for the exercise of police discretion, it is clearly possible to improve on current guidelines. Clarifying guidelines for discretion will assist officers themselves in behaving according to professional standards. It will also assist the community in understanding police actions. The most effective officers grasp the social and historical context in which they operate.

Leaders set the tone for the entire organization; therefore, without a strong commitment to ethical decision-making by the chief executive officer and his or her entire command staff, instances of unethical or illegal practices are sure to follow.

Leaders can and must affect the ethical climate in their organizations. Subordinates learn from observing the behaviors of their superiors and the consequences of those behaviors. If leaders are rewarded for ethical behavior
and punished for unethical behavior, their subordinates will learn to emulate the ethical behavior. Nothing any leader can say will have a more powerful effect than what he or she does.\textsuperscript{34}

Police agencies must have clear policies and practices. Only then will officers and community members know what is expected. Police leaders must address unethical conduct or other breaches of public trust in the most open, honest, and transparent ways possible. Any reluctance to respond will almost certainly arouse suspicion of wrongdoing and acts as a barrier to the trust and confidence of the public in the police that are essential if the police are to operate effectively.\textsuperscript{35}

When authority, power, and discretion are granted to public officials . . . rational people presume that they will not use more than they need for their legitimate purposes, because rational people would never grant more authority or discretion to abridge liberty or use force than they believed necessary. The presumption is not of guilt but of official respect for restraint. Citizens expect public officials to justify their use of authority or power when questions arise.\textsuperscript{36}

In a 2017 Gallup poll on honesty/ethics in professions, 56% of respondents rated police honesty and ethical standards as high or very high. Figure 10.2 shows how police officers are ranked in comparison to other professions.

\textbf{Figure 10.2 /// Ethics and Honesty Ranking by Profession, 2017}

<table>
<thead>
<tr>
<th>Profession</th>
<th>% Very high/High</th>
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<tbody>
<tr>
<td>Nurses</td>
<td>82</td>
</tr>
<tr>
<td>Medical doctors</td>
<td>65</td>
</tr>
<tr>
<td>Pharmacists</td>
<td>62</td>
</tr>
<tr>
<td>Police officers</td>
<td>56</td>
</tr>
<tr>
<td>Clergy</td>
<td>42</td>
</tr>
<tr>
<td>Bankers</td>
<td>25</td>
</tr>
<tr>
<td>Lawyers</td>
<td>18</td>
</tr>
<tr>
<td>Business executives</td>
<td>16</td>
</tr>
<tr>
<td>Advertising practitioners</td>
<td>12</td>
</tr>
<tr>
<td>Car salespeople</td>
<td>10</td>
</tr>
<tr>
<td>Members of Congress</td>
<td>11</td>
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One approach that may be more effective in guiding officer discretion involves the use of incentives to promote voluntary compliance with policies. Such incentives include officer participation in policy formulation, establishment of specialized units to deal with specific tasks, positive disciplinary practices aimed at correcting the problem behavior without humiliating the officer involved, and more and better training on discretion in a variety of different situations.37

Another departmental approach is to regularly discuss discretion, ethics, and decision-making, weaving such discussions into the organizational culture. Rather than waiting for a critical incident to occur, supervisors and managers should engage their officers with scenarios and case studies, taking the opportunity to communicate important agency values, clarify law and policy, and challenge officers to think critically. By making it acceptable to talk about ethics, police agencies can better prepare their officers to face the inevitable difficult choices required of law enforcement officers. However, by discussing common dilemmas before they occur, officers will be better prepared to make the right decisions rather than to rely solely on individual judgment. In the same way that officers continually train for tactical situations, they should continually train for ethical decisions as well.

Departments must also create systems and foster a culture that rewards ethical behavior. Administrators send key messages by taking allegations of misconduct seriously, protecting confidentiality, and counteracting retaliation for whistleblowing.

It is also important that leaders realize that informal leaders in a police organization also affect police officer attitudes and behaviors. Police leaders must be prepared to immediately confront ethical violations and punish immoral behavior.38 Law enforcement executives who are committed to ethical behavior can encourage it as follows:

1. Incorporate the ideals of ethics and integrity into their organization’s mission statement.
2. Make ethical decision-making part of the organization’s formal functions.
3. Emphasize ethical behavior as part of the agency’s organizational philosophy.
4. Implement zero tolerance policies for unethical behavior or decision-making.39

Police administrators can also mandate the study of ethical decision-making during training and press training directors to stress this activity at the recruit level. In addition, training directors should revisit their curriculum designs and ensure that trainers are experienced educators who understand and emphasize the importance of ethical considerations and discretionary activities. All policies governing individual and collective police behavior should be consistent with the ideals of justice and morality.

Administrators must build safeguards into department policy that anticipate and address any tendency toward taking shortcuts or other predictable secondary leanings toward the unethical. Leaders must communicate that they support ethical practice.

**Media Relations**

As discussed in Chapter 6, the media, both print and broadcast, have the technological ability to transmit news stories throughout the world in a matter of seconds. For a variety of reasons, police–media relations in this country have been problematic. Violent incidents between members of the public and the police are not new. What changed in the first decade of the 21st century is that cameras and social media became prevalent enough among cell phone-wielding citizens and in official use by police departments, other parts of government, and businesses, to generate ambient surveillance, and thereby a greatly intensified “mediated visibility” was created.40 Policing has now become a high-visibility profession.
Many police officials—line and staff personnel alike—tend to shun media representatives whenever possible, withholding information on newsworthy events even when disclosing information that could not possibly harm anyone or compromise a criminal investigation. In such cases, the media rely instead on questionable sources for information, which frequently results in inaccuracies in the story. Transparency with respect to police operations—for example, when such transparency does not jeopardize ongoing investigations—even if it involves disclosing unethical conduct or poor discretionary choices on the part of the police, may result in more balanced coverage and more focus on the positive contributions of the police.

The conventional wisdom about the most effective way of dealing with the media appears to be changing. Forward-thinking departments are viewing the media as a tool and a partner rather than an adversary from whom they must conceal as much of the truth as possible. Police chiefs are learning from past mistakes and recognizing that clear and effective communication to the public through the media is a necessity in today’s world. They are finding that their integrity and their reputation are key assets in public relations.

Progressive administrators are seeking training in media and public relations. Specialists dedicate themselves to coaching and educating police administrators on interviews, how to respond to reporters in a crisis situation, and defining the conversation and the issues. Trainers advocate for a proactive attitude, stressing the need for the police to “face tough issues head-on and speak-out when news coverage is skewed or inaccurate. . . . Law enforcement has been a victim too long. It's time to stand up and fight back when people make false allegations about [a] department.”

Police departments, like this one in Dallas, use Twitter to inform citizens about crime and traffic enforcement locations but also to build community relations.
Police departments are increasingly using social media as a tool to counter false information, define the version of events as official, and build public relations and community. (See Chapter 6.)

**Police Stories 10.2**

**Dave King, Commander, Vancouver Police Department**

**Communication Between Police and the Community**

Communication between police and the community is arguably one of the most important functions of any police agency. A police department that is able to share information internally but lacks the ability to engage in meaningful communication with the community will fail during times of crisis. Communication is the life blood of trust. With it, trust between police and the community will deteriorate rapidly.

Although media releases are still the most common form of communication for many of today’s police agencies, there are other technologies available today that did not exist when many of today’s police chiefs started their careers. The departments that show the most success in getting their message out to the community have learned to use these new technologies to their benefit. Many police departments now use social media as a way to highlight the department’s accomplishments or outreach efforts. A funny Facebook video with department members engaged in lip-syncing a popular song can reach thousands of viewers while painting the department in a positive light. It can spotlight the human side of a department and allow the community to see the department members as “real people.”

Police agencies are also relying on social media to recruit potential officers from the local community, providing a more representative department. Instagram, Facebook, and YouTube have all proven to be valuable tools for police departments that are serious about improving the quality of communication. Still, the most effective form of communication platform is the interaction that occurs every day between individual officers and members of the community. This is the communication that occurs every time an officer makes a traffic stop, conducts a field contact, or takes a police report. It is the conversation that occurs at coffee shops or when chatting with residents during community events.

Recently, I experienced firsthand the importance of trust that comes with good communication when a woman reported how her disabled brother had been robbed by a group of local gang members. She trusted me enough to come directly to me with important information because of my reputation in the community. Because of her help, all of the gang members involved were arrested and convicted. And although any effort to communicate effectively should incorporate the latest advances in social media, face-to-face communication is still the best way to mitigate social unrest, reassure community members during difficult times, and build a solid foundation of trust.

**Intolerance of Malfeasance**

Although the next chapter will discuss police misconduct in detail, the discussion of ethics inevitably comes around to how leaders must react to breaches of ethics. Rather than focus on zero tolerance arrest policies, some police administrators adopted zero tolerance policies concerning inappropriate conduct by department members. As previously asserted, the vast majority of our nation’s police officers perform their duties ethically, professionally, and competently. Those officers who engage in unethical or criminal activities and the departments that allow it damage the reputation of the entire field of policing. Most honest, hardworking officers know who the problem officers are, as do the command staff. The snag here is often the reluctance of officers who believe their own ethics are sound to report the wrongdoings of their colleagues. A National
Institute of Justice (NIJ) study designed to promote integrity in the police profession focused on the following issues for agency staff:

- Do they know the rules?
- How much individual and organizational support is there for those rules?
- Are staff familiar with disciplinary actions associated with violations of rules and policies?
- Do staff view disciplinary measures as fair?
- How willing are staff to report misconduct?42

As stated in the executive summary of the report, “An agency’s culture of integrity, as defined by clearly understood and implemented policies and rules, may be more important in shaping the ethics of police officers than hiring the ‘right’ people.”43

The data also indicated that officers quickly learn how acts of misconduct will be treated by observing their organization’s ability to identify unethical conduct and discipline errant officers. “If unwritten policy conflicts with written policy, the resulting confusion undermines an agency’s overall integrity-enhancing efforts.”44 The report also offered recommendations for encouraging officers to come forward to report acts of misconduct by their coworkers. They included the following:

1. Making it clear that officers and supervisors who do not report misconduct will be disciplined
2. Terminating any department member caught lying during an internal investigation
3. Issuing rewards, in anonymous fashion, to officers who do report misconduct
4. Allowing for anonymous or confidential reporting
5. Regularly rotating supervisors and officers among shifts, districts or precincts, and other units of assignment (which keeps officers from becoming too comfortable)45

Case in Point 10.1

A Morgan City, Louisiana, police officer was terminated from the department for malfeasance. The termination was based on Officer April Hudson’s failure to report her knowledge of illegal activity taking place at a home within the jurisdiction, which was considered a failure in her duties as a public servant. As a police officer, she was required by law to report such activity. Following her termination, she was subsequently arrested on warrants charging her not only with malfeasance in office but also possession of both marijuana and drug paraphernalia.

In a news release, Morgan City Police Chief James Blair emphasized the importance of Officer Hudson’s termination. “While it is unfortunate that this incident led us to investigate and affect an arrest of a member of our department, it is also an example of how serious this department takes the responsibility that the public we serve has entrusted us with,” Blair said.

1. Could there have been a legitimate purpose for the officer failing to report the criminal activity or being in possession of marijuana?
2. How should the agency leadership handle discussing the termination of Officer Hudson for malfeasance with other members of the department? Be specific.
3. What privacy issues might there be for an officer who is under investigation?

/// CHAPTER SUMMARY

The use of discretion by police is a necessity in the world of policing. The exercise of this broad power is not always underscored by responsible and ethical decision-making, and the police subculture has a tremendous influence on the use of discretion.

Discriminatory law enforcement practices erode the public trust, which creates strained police community relations and a dangerous societal divide. One of the most significant such issues is racial profiling, or the targeting of minorities and other certain classes by police for no other reason than race, ethnicity, or perhaps social class. This has weakened the trust between the public and the police, particularly among minority populations.

This was not the only cost as Congress and state legislatures in the nation created laws that require mandatory data collection by police agencies regarding police encounters with citizens pertaining to detention, search and seizure, and arrests or other legal sanctions. The economic cost for the implementation of these new policies came at great expense to individual agencies.

Ethics in policing is extremely important. Unethical conduct by police ranges from violations of department rules and regulations to more serious issues such as unlawful searches and seizures, the use of excessive force, covering up for the malfeasance of fellow officers, and abuse of authority or criminal misconduct.

Police officers must be held to a higher ethical standard than most other citizens because of the oath they take when they enter the field of policing. Honesty, integrity, responsibility, accountability, and professionalism (on and off duty) are the underlying tenets of that oath. When officers breach their fiduciary responsibilities, the consequences can be damaging to the individual officers, their respective agencies, and the communities they serve. A loss of faith or trust by those communities is a serious consequence that is difficult to remedy and helps further degrade public safety.

There are many reasons why unethical practices by some police officers continue, and chief among them are the negative influences of the police subculture, lack of strict accountability on the part of all police officers, ineffective supervisory practices, and weak or ineffective leadership structures.

Discretion, ethics, accountability, and professionalism are dynamically interrelated and must be addressed in a coordinated way.

Ethical practice is requisite for professional status, and if the field of policing is to progress further along the path to professionalization, all parties concerned must commit themselves to achieving this end. Whether the police are able to attain this end depends, in large part, on the responsible and accountable exercise of discretionary authority.

/// KEY TERMS

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/// DISCUSSION QUESTIONS

1. What are some of the more important ethical issues in policing? Should police recruits be taught ethics?
2. What is police discretion? How extensive is its use?
3. Why is the police subculture important in understanding discretion?
4. What are some possible negative consequences of the exercise of discretion? What are some positive consequences?
5. What factors besides the police subculture affect the exercise of police discretion?
6. Can we eliminate the exercise of police discretion? Should we eliminate it? How might we gain better control over it?
7. Discuss racial profiling as an example of poor discretionary decision-making.
8. Discuss the evolution of the police code of ethics or conduct. Why are ethics especially important for the police?
9. List and discuss strategies that may be undertaken to improve the current state of ethical decision-making.

Test your understanding of chapter content. Take the practice quiz.
/// INTERNET EXERCISES

1. Using the key words “international police accountability,” locate and discuss information concerning attempts to establish police accountability in at least one foreign country.

2. Use the Internet to locate the code of ethics or code of conduct for a police agency in your area. How does this code compare to the code established by the IACP? In your opinion, is the code enforceable?

3. On the Internet, locate information concerning racial profiling or bias.

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