

# 3

## POLICE ETHICS

### Use of Force, Investigations, Interrogations, and Lying

#### POLICE USE OF FORCE

Police use of force is a dominant and contentious issue in policing because the capacity to use force or coercion goes to the very core of the police role. The police are the only authority empowered to use physical force, and it is to be used only as a last resort. Further, police are to use no more force than is necessary to subdue a suspect (Skolnick and Fyfe 1993: 13). While there is general acceptance of the fact that police are entitled to use force, there is an equal degree of uncertainty as to what constitutes excessive or unnecessary force. For example, in the well-known Rodney King incident, although the majority of the public considered the force used in subduing King to be excessive, a jury acquitted the police officers charged for the beating. Writing in 2000, Lt. Arthur Doyle, a retired police officer with 29 years of service in the New York Police Department, offered his description of the police attitude toward using force:

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

In general, **police use-of-force incidents** are rare occurrences compared to the number of police and citizen interactions. In 2008, the national Police-Public Contact Survey (PPCS) conducted by the U.S. Department of Justice's Bureau of Statistics found that among persons having contact with police in 2008, about 1.4% had had force used or threatened against them during their most recent contact. This figure is not significantly different from percentages in 2002 (1.5%) and 2005 (1.6%; Eith and Durose 2011:1). This should be understood within the context of about 40 million persons who reported

face-to-face police contact in 2008. In the 2002 survey, 14% of respondents claimed they had suffered an injury in the encounter (Taylor, Alpert, Kubu, Woods, and Dunham 2011: 214). In relation to injuries during police and citizen interactions, both officer surveys and reports from police agencies have found most injuries to be minor, typically comprising bruises, sprains, and abrasions (Taylor et al. 2011: 214).

State and local law enforcement agencies employing 100 or more sworn officers received more than 26,000 complaints about officer use of force during 2002 (Hickman 2006: 1). Of this number, about 8% were judged as sustained in the sense that there was deemed to be enough evidence to justify disciplinary action. About 34% were not sustained, and 25% were unfounded. About one-fifth of large municipal police departments are accountable to a civilian complaints review board, and these departments received a higher rate of complaints than those without such boards (p. 1). Concerning the **use of excessive force**, there were more than 2,000 sustained citizen complaints in the United States in 2002 (p. 6).

This compares with a smaller number of complaints in *England and Wales*, where, during the 12-month period ending in March 2003, police received 6,154 complaints alleging assault by police officers. This reveals an overall rate of 4.6 complaints of assault per 100 officers, compared to the U.S. rate of 6.6 complaints per 100 officers (Hickman 2006: 3). In 2003, 82% of large municipal police departments in the *United States* had an internal affairs or similar unit with full-time personnel, and 33% of such departments maintained an operational computer-based early intervention system for responding to officer conduct.

#### Police Use of Force: Arrest-Related Deaths

The U.S. National Vital Statistics System tracks deaths and the causes of deaths, including deaths caused by

firearms and “legal intervention killings.” However, there is substantial underreporting of police lethal force deaths because many of these deaths are not included in the legal interventions category (Zimring 2017: 28). A further source of reports of police killings are found in media databases established by the *Guardian* and the *Washington Post*. According to Zimring, these crowd-sourced media reports “provide a more accurate estimate of the volume of killings than any of the official aggregations” (2017: 33). For the calendar year 2015, the *Post* and the *Guardian* reported 986 and 1,134 police killings respectively, about twice the number reported in official data (p. 35). An analysis of the media data reveals that 55.7% of the total number killed were armed with firearms and 16.5% with knives, but that 11.3% had no weapon (p. 57).

From 2003 to 2009, a total of 4,813 deaths were reported under the Department of Justice Arrest-Related Deaths Program. Of these deaths, about 6 in 10 (2,931) were classified as homicide by police, and 4 in 10 were attributed to other manners of death. The annual totals of arrest-related deaths for each year from 2003 to 2009 ranged from a low of 355 to a high of 417. The southern states reported the highest annual totals of arrest-related deaths, with Florida and Texas reporting the highest in that region (Burch 2011: 10). In a 2016 report on the redesign of this program, the Department of Justice noted, “Media reviews identified 1348 potential arrest-related deaths in the United States from June 1, 2015 through March 31, 2016,” averaging 135 deaths every month (Banks, Ruddle, Kennedy, and Planty 2016: 1). Following a further survey of law enforcement agencies, the department stated that an estimated 1,900 arrest-related deaths had occurred.

Over the same period, the Federal Bureau of Investigation (FBI) estimated that there were nearly 98 million arrests in the United States (p. 1). Whites accounted for 42% of reported arrest-related deaths, while 32% were Black deaths and 20% were Hispanic. Of the reported arrest-related deaths, 45% of those who died had allegedly engaged in assault either immediately before or during the arrest, and among such deaths attributed to homicide, 75% of those who died had allegedly engaged in violent offenses (p. 2). U.S. rates of police shooting and killing compare to a rate of about 10 per year in *Canada* and even lower rates in *Australia*, where 41 deaths occurred because of police shootings between 1990 and 1997, and *New Zealand*, where about 20 police shootings have occurred in the past 60 years. In the *United Kingdom*, seven incidents of police causing deaths by shooting occurred between 1991 and 1993. In

the *Netherlands* between 1978 and 1999, 67 fatal police shootings were recorded, and during the same period, police wounded 288 persons (Burch 2011: 230).

According to a report by Amnesty International in June 2015, none of the U.S. states meet international standards for police use of force that require legislation to state that “lethal force may only be used as a last resort with non-violent means and less harmful means to be tried first.” According to Amnesty, “the vast majority of laws do not require officers to give a warning of their intent to use firearms.” In addition, nine states and the District of Columbia lack any laws on the appropriate use of deadly force, and laws in 13 states fail to provide the protection to citizens granted by decisions of the Supreme Court.

On average, about 70 police officers are murdered each year in the United States, and approximately 60 officers are accidentally killed through incidents involving motor vehicles and aircraft (Burch 2011: 235). Compared to Canada, where there are about two murders of police officers each year, the risk of a police officer being murdered is about three times greater in the United States.

Lethal force is generally accepted as being morally justified when used in self-defense or by a third party to protect the life of another. Instances of police use of lethal force fall into both categories. Killing in these circumstances is morally justified because each person has a right to life, that is to say, a right not to be killed (Miller 2016: 21). Miller argues, however, that lethal force is also morally justified when used by police to uphold the law (2016: 113). Specifically, he contends that deadly force could morally be used in public order–related policing, for example, in cases of rioting or communal violence, or where there is widespread looting as part of a general breakdown in public order (2016: 131).

## Deaths in Police Custody

In the United States, the *Deaths in Custody Reporting Act 2000* was the first law to require states applying for certain grants to submit quarterly reports on the following:

- inmate deaths in state prisons and local jails,
- deaths in juvenile detention facilities and police lockups, and
- deaths occurring in transit and in the course of arrest.

In 2014, the *Deaths in Custody Reporting Act 2013* was signed into law and continued the previous reporting

requirements under the law of 2000. Deaths occurring when police attempt to apprehend or arrest a person are reportable under the act. Common examples of deaths occurring during apprehension include officer-involved shootings, deaths related to the use of force or police compliance weapons, vehicle accidents and collisions, other types of fatal accidental injuries sustained while persons attempt to elude police, and suicides committed during standoffs and barricade situations. Also reportable are deaths occurring during police interrogation, all deaths that occur before a physical arrest, and all deaths attributable to use of a weapon by state or local police (Planty et al. 2015: 3).

In its *Technical Report on Arrest-Related Deaths of March 2015*, the Bureau of Justice Statistics indicated a number of issues with collecting data on this topic. Different methodologies adopted by the reporting states (36 states have reported data every year since 2003) have produced the following results:

- Only 50% of the estimated law enforcement homicides were reported from 2003 to 2009 and in 2011.
- Even with improvements from 2003 to 2011 in data collection, from 31% to 41% of estimated homicides by law enforcement personnel were not captured in the 2011 data collection.
- Almost 40% of deaths occurring in the process of police arrest arise from causes other than officer-involved homicides of suspects.
- Deficiencies in data collection are due to a lack of standardized modes of data collection, definitions, scope, participation, and availability of resources (Planty et al. 2015: 1).

Inadequate data on deaths in police custody, or more generally relating to police encounters with citizens where force is applied, have constrained efforts to analyze the circumstances of such cases and formulate appropriate policy responses.

### Political Action on Police Use of Force, 2015

In 2014 and 2015, deaths in police custody or associated with police interactions with citizens gained intense media attention and caused concern that police might be targeting certain groups within a community. The use of lethal force by police came to be seen as a national concern and a civil rights issue and led to the formation

of the protest movement “Black Lives Matter” (Zimring 2017: 15). Following the deaths of a number of unarmed Black males by police shootings, President Obama established a task force on the issue of police shootings, which reported to him in March 2015. The *New York Times* reported that President Obama called for changes in police practice, including requiring independent investigations and independent prosecutors where police use of force results in injury or death. He recommended that police take steps to build trust with communities, collect more data on police shootings, address racial profiling, and take a more relaxed approach to public demonstrations. In addition, it was recommended that law enforcement agencies be diversified to better reflect the demographic composition of communities. Concerning the issue of police wearing body cameras, the task force indicated that the wholesale adoption of this technology would raise issues about privacy and costs (President Obama had already requested funding to buy 50,000 body cameras for police [Davis 2015]). By 2016, more than 95% of major cities reported using body cameras or had plans to introduce them (Stalcup and Hahn 2016: 486).

Since 2015, multiple research studies have sought to assess the value of body-worn cameras (BWC) as large and small law enforcement agencies have begun to adopt the technology. Underlying this move are theories of self-awareness and deterrence that contend that people change their behavior when they are under observation and therefore refrain from social and moral wrongdoing because they believe there is a strong chance of being apprehended (Ariel 2016: 736). It is argued, then, that equipping officers with BWCs will affect police activity in this manner. However, one study found that once officers become self-aware of observation because they are wearing BWCs, this may affect their risk of being assaulted. According to the study, the reason is that self-awareness may lead to “excessive self-inspection that strips power-holders of their ability to function under extreme situations” (Ariel, Farrar, and Sutherland 2015).

One study of the effect of equipping officers of the Mesa Police Department, Arizona, with BWCs revealed that officers wearing a camera were less likely to perform stop and frisks and arrest persons but were more likely to issue citations and initiate interactions with members of the public than the 50 officers not wearing cameras. The researchers explained this as officers being concerned they would incur reprimands for not writing citations when video evidence showed a clear violation of the law (Ready and Young 2015: 445, 454).

An Orlando, Florida, study found that BWCs were effective in reducing incidents of resistance to police (by 53.4%) as well as serious complaints about police conduct (65.4%; Jennings, Lynch, and Fridell, 2015: 480). A 2012 study in Rialto, California, had focused specifically on police use of force. It found that the likelihood that police would use force when they were not equipped with BWCs was about twice that when officers were equipped with and used BWCs. As well, the number of complaints against officers with BWCs fell from 0.7 complaints per 1,000 contacts to 0.07 per 1,000 contacts (Ariel et al. 2015: 509).

A 2016 study of the impact of BWCs on police use of force, complaints against police, and arrests in a large law enforcement agency—the Denver Police Department with over 1,500 officers (Rialto by comparison had just over 50 frontline officers)—noted that large police agencies faced a range of issues such as more serious crimes, a large nighttime economy, and a much greater volume of calls for police service. In contrast to the Rialto study, the results revealed that BWCs had no significant effect on police use of force. According to the researchers, this was likely attributable to the research design (Ariel 2016: 729). A similar study of BWCs in the Washington, D.C., Metropolitan Police Department also found that wearing cameras had no significant effect on the number of incidents of police use of force (American Civil Liberties Union 2017).

The relationship between police training in the ethics of policing and the new surveillance to which police are now subjected through BWCs and the activities of citizen journalists has developed new insights about surveillance. While studies of formal police training in the academy have revealed an emphasis on ethical practice and specifically on the moral obligations of law enforcement, it is argued that police body cameras are seen as “external to ethical police practice.” Accordingly, the surveillance to which police will be subjected while policing is not discussed in academy training as an issue involving ethical obligations. Rather, use of the body camera is a matter to be dealt with at the department level through procedures and practices. The result is that proper police conduct is seen by police to be governed only by the technologies of surveillance, thereby reinforcing attitudes that view policing through a lens of “us versus them” (Stalcup and Hahn 2016: 488, 497–498).

### The Rise of the Citizen Journalist and Police Use of Force

Events involving police shootings and use of force are now being regularly captured on telephone cameras by

bystanders and being published online and in the news media. This is especially the case where police and citizen interactions are associated with racial dynamics. The “rise of the citizen journalist” (Greer and McLaughlin 2010: 1041) brings with it an increased likelihood that police action will be captured visually by citizens and broadcast in the media, sometimes contradicting prior police accounts or at least casting doubt on public statements about justifications for police use of force, including lethal force.<sup>1</sup>

Confidence in and respect for police in some communities was affected by police shootings in 2014 and 2015, and generally the new visibility that citizens now possess has made them curious, skeptical, and better informed about police use of force (Brown 2015: 2). A poll conducted in August 2014 reported that 61% of Americans feel their police do a “poor” or “only a fair job” in using appropriate force (“Poll: Whites and Blacks” 2014), and it has been noted that “the rise of the citizen journalist has been accompanied . . . by a decline in deference to authority and a deterioration of trust in official or elite institutions” (quoted in Greer and McLaughlin 2010: 1054). The police perspective, which was formerly privileged by the media in their published accounts of police violence, is now being questioned and contested as never before.

The capacity of citizens to make video recordings of police occurrences and to disseminate those recordings online was found in one study to have been “profoundly integrated into the consciousness of most rank-and-file officers” (Brown 2015: 1). Brown surveyed 231 rank-and-file Canadian police in Toronto and Ottawa with 10 or more years of frontline urban policing experience concerning the capacity of citizens to record such events and found that these capacities had “influenced significant behavioral changes through the deterrence of certain practices, including moderations in police violence.” The study found that half of the officers surveyed reported that citizen capacity to record events was “always present” in their consciousness, and 74% reported changes in behavior due to that capacity to video record (p. 11). One half of officers surveyed now employ less physical force than if video recording were not available, and slightly less than half now use force less often. Brown concludes that the new visibility associated with policing “can be characterized as a form of disciplinary power” (p. 11), that it operates to regulate police conduct, that it is likely to enhance police internal self-control, and that it will compel police to act in conformity with society-desired behaviors.

## A CLOSER LOOK

### SOME FATAL POLICE SHOOTINGS, 2014–2015

#### August 2014: Ferguson, Missouri

A white police officer, Darren Wilson, fatally shot an unarmed Black teenager, Michael Brown, 18, in a confrontation. His death sparked protests throughout the country and prompted a debate about police tactics and use of force. In November 2014, a St. Louis County Grand Jury decided not to bring charges against Wilson. An investigation by the Department of Justice cleared Wilson of any civil rights violations, found that the witnesses who corroborated Wilson's account of the event were credible, and that the evidence showed that Brown was shot by Wilson in self-defense.

#### November 22, 2014: Cleveland, Ohio

An officer shot and killed an unarmed 12-year-old boy who had been pointing a toy gun at people in a public park. A 911 caller reported the boy, Tamir Rice, who was Black, to police but stated in his call that the gun was probably not real. It is likely that the police dispatcher did not pass on that information. A video released by Cleveland police showed a police car pulling to a stop a few feet from Tamir. Within seconds, the rookie officer in the passenger seat fired and killed him. In December 2014, the death was ruled a homicide as opposed to an accident or suicide. Police claim that Tamir reached for a gun in his waistband and that an orange tip on the gun indicating it was a toy had been removed. In December 2015, a grand jury declined to indict the rookie police officer.

#### February 10, 2015: Pasco, Washington

Three officers fired 17 shots and killed a man who had thrown rocks at people. Police claimed the man hit some officers with rocks after they were called to the scene. It is not clear if Antonio Zambrano-Montes, a Hispanic, was mentally ill. A video by a witness shows him standing near the officers and throwing something at them or their car and then moving away. Two officers can be seen firing at him as he moved away, and then all three officers chased him. He turned to face them while lifting an object in his hand, and the three officers fired at him. In the video, a couple of shots can be heard after he fell to the ground. He was shot seven times, but police deny he was shot in the back. In September 2015, prosecutors declined to file charges against the three officers.

#### February 23, 2015: Omaha, Nebraska

A police officer shot and killed an unarmed man suspected of having just robbed a store. He was shot twice in the back. Four officers had responded to the robbery call and confronted Daniel Elrod, 39, who was white. Police stated he had climbed onto a car, ignored commands to get on the ground, and reached repeatedly toward his waistband. Police and witnesses said he had dared police

to shoot him. The deceased had an extensive criminal record, and there was evidence that he was distraught and suicidal. A grand jury later found no criminal wrongdoing, but following an internal affairs investigation, the officer who shot and killed Elrod resigned.

#### March 1, 2015: Los Angeles, California

Police shot and killed an unarmed homeless man who police claimed had attempted to seize an officer's gun during a struggle. Multiple videos of the incident by bystanders show the man, Charly Leundeu Keunan, 43, who had a history of mental illness, fighting with a group of police. They show him being forced to the ground by four officers, and the clicking of a Taser can be heard, followed by at least five shots. Police have not said how many officers fired. Keunan was from Cameroon, Africa. In December 2016, the Los Angeles County District Attorney announced that no criminal charges would be brought against the police officers involved in the shooting.

#### March 6, 2015: Madison, Wisconsin, and Aurora, Colorado

In Madison, a white police officer shot and killed an unarmed Black man after he responded to a report that the man, Tony Robinson, 19, had assaulted two people, had been jumping in front of moving vehicles, and had attempted to strangle someone. The police claimed that Robinson fought with and injured the officer. In May 2015, the Dane County district attorney found that the shooting was justified self-defense and that Robinson had taken a number of drugs hours before the incident, which may have contributed to his behavior.

In Aurora, an unarmed man was shot and killed as officers tried to arrest him. The police stated that the deceased, Naeschylus Vinzant, 37, who was Black, had a criminal history and was wanted for kidnapping and robbery and for removing an electronic parole monitor from his ankle. Police have not explained the reasons for firing at Vinzant. In December 2015, a grand jury declined to indict the police shooter.

#### March 9, 2015: Chamblee, Georgia

A white police officer shot and killed a naked, unarmed Black man who was knocking on doors and running and crawling in an apartment complex; Anthony Hill was mentally ill. The police account was that Hill had refused the officer's command to stop, but it was unclear if he actually charged at the officer. In January 2016, a grand jury indicted the police officer involved on two counts of felony murder and one count of aggravated assault.

*Source:* Adapted from "Fatal Police Shootings: Accounts Since Ferguson," by Richard Perez-Pena. *The New York Times*, April 8, 2015.

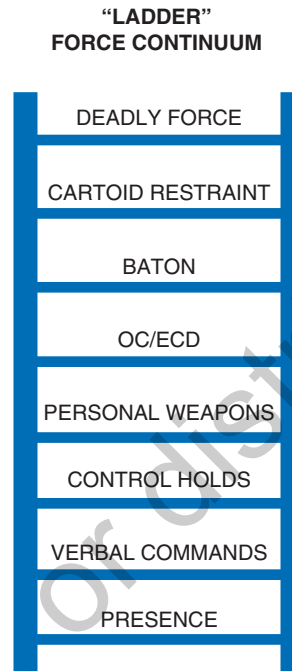
### The Continuum of Force

What guidance is given to police by their employer departments concerning the permissible degree of force to be used in interactions with citizens? The common approach is for policing agencies to instruct officers through a written policy that they must adhere to a continuum of force, which may be expressed in linear, matrix, wheel, or other designs. These policies are not only used to instruct officers but also applied after a use-of-force incident to assess whether an officer used the proper level of force. When courts become involved in such cases, judges may consider departmental policy in their decisions (Paoline and Terrill 2011: 180).

A typical linear continuum-of-force policy (represented by Figure 3.1) is described by Skolnick and Fyfe (1993: 38–39), showing an ascending scale of action that police can apply in handling street situations:

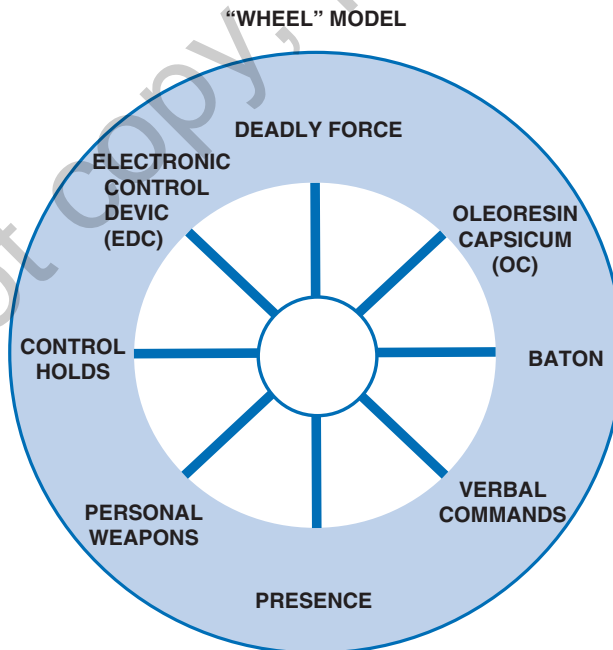
- *Presence.* Often, the mere presence of police will produce the desired outcome, and use of force is irrelevant.
- *Persuasive verbalization.* Where the mere presence of officers has not been successful, police now speak persuasively in tones that are firm but not commanding.

FIGURE 3.1 ■ “Ladder” Force Continuum



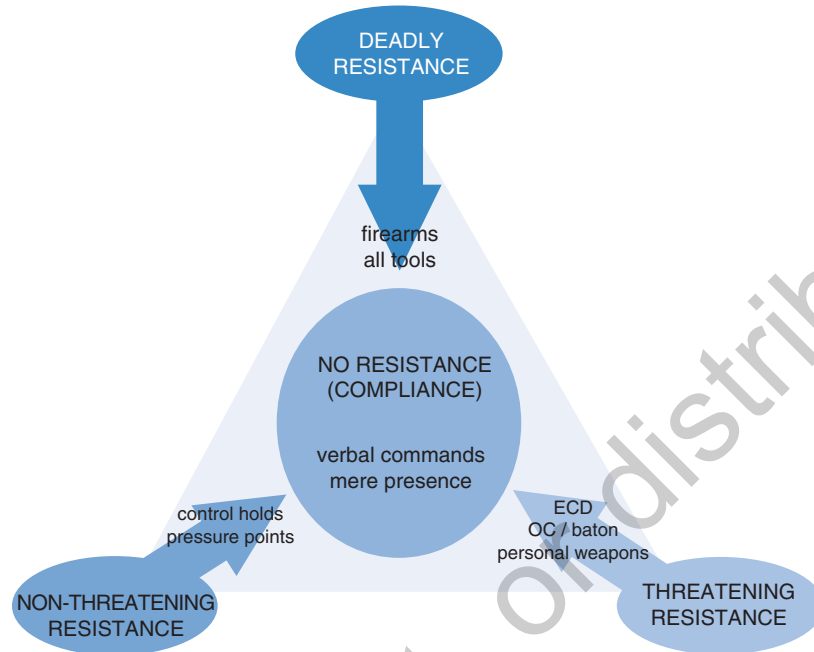
Source: Chuck Joyner, President of Survival Sciences, LLC.

FIGURE 3.2 ■ “Wheel” Model



Source: Chuck Joyner, President of Survival Sciences, LLC.

FIGURE 3.3 ■ Dynamic Resistance Response Model



Source: Chuck Joyner, President of Survival Sciences, LLC.

Note: ECD = Electronic Control Device; OC = Oleoresin Capsicum.

- *Command verbalization.* This is the next step up the scale from persuasive verbalization, which police call the “command voice.” Here, police will use a stronger tone and tell the person with whom they are interacting what behavior they expect.
  - *Firm grips.* This is the next step beyond verbalization; it consists of police gripping parts of the body to warn the individual that he or she is to remain motionless or move in a certain direction. The objective is to guide and coax, not to cause pain.
  - *Pain compliance.* At this next level of forcible contact, officers try to gain the cooperation of a person by inflicting pain in a way that does not cause lasting physical injury. These contacts include holds such as finger grips and hammerlocks.
  - *Impact techniques.* These actions are designed to overcome resistance that is forcible but not life threatening. Here, police may use batons or kicks or employ chemical sprays and the like. Over the past decade, conducted energy devices have been widely adopted by law enforcement in the United States. Especially well known is the Taser
- (discussed in the section “Police Use of Force: Tasers”). It should be noted that while police are obliged not to provoke confrontations, they are not obliged to use a lesser degree of force to counter the particular force used against them.
- *Deadly force.* This is the most extreme use of force, often involving firearms and defined by law as “force capable of killing or likely to kill.” Apart from firearms, some police are also trained in using neck holds intended to make a person unconscious. Under the law, police are permitted to use deadly force to apprehend fleeing persons who are shown to be dangerous, such as those who are armed or fleeing from a violent crime. Deadly force is not limited to the use of firearms; Kleinig (1996: 117) points out that each year police motor vehicle pursuits kill and maim more people, including innocent bystanders, than police firearms.
- Joyner and Basile (2007) argue that the dynamic involved in use of force is more accurately represented by the wheel model (Figure 3.2) because it “reflects the intent of the law and the changing expectations of society.” They suggest that when officers are provided what they term as “dynamic” training they are better equipped

to make appropriate use of force decisions depending on the reactions of broad categories of suspects. To them, the Dynamic Resistance Response model (DRM) (Figure 3.3) prepares officers to link the use of force continuum with four categories of suspects: not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant, and thus respond appropriately.

In a survey of police agencies in 2011, Terrill, Paoline, and Ingram (2011: ii) found that more than 80% of responding police agencies had a continuum-of-force policy in place and that 73% used a linear model. However, there was wide variation within agencies about force progression, with 123 different permutations. The greatest difficulty was properly placing the use of chemical sprays and Taser-type devices in the continuum. Thus, in one agency it might be acceptable to use a Taser device but not chemical spray on people pulling their arms away from police to avoid being handcuffed (defensive resistance), while in another agency chemical spray would be permitted in this situation but not the use of a Taser (Paoline and Terrill 2011: 178). About 30% of agencies placed chemical sprays within pain compliance techniques, 30% within hard-hand tactics, and over a third within impact weapons. In essence, there was no common approach to the issue of what modes of force should be used in relation to varying forms of suspect resistance (Terrill et al. 2011: iii).

### When to Use Force

In what circumstances is it inappropriate for police to use force? In the early days of policing, police on the streets employed force as a matter of course to keep order and enforce their will. Skolnick and Fyfe (1993: 24) trace police brutality back to the lynching and vigilante acts invoked against African Americans, revealing how police violence links to racism and notions of white supremacy. Studies have shown that police routinely used excessive force in the riots and disturbances of the 1960s (Ericson 1992), and Crank (1998: 72) warns of the dangers of paramilitary-type police units, often used now to perform normal police functions, whose members often perceive themselves as “warriors” (see Chapter 2).

Police who are military veterans and who have experienced combat and found it stimulating may find it difficult to jettison this mind-set when they take up a career in law enforcement. Miller (2015) argues that those affected by the so-called combat addiction syndrome may seek to re-create situations in which they can reexperience the excitement of combat. In law enforcement, a preoccupation with weapons and fighting and experiencing police violence followed by lulls in stimulation may become a cycle and establish a pattern (p. 101).

The International Association of Chiefs of Police (IACP) Code of Conduct (1991) offers guidance on the use of force (see the “Use of Force” Closer Look box). Research studies (Miller 2015: 107) have revealed that *deadly force* action is most likely to occur in the following circumstances in descending order of probability:

- Domestic violence and other disturbance calls
- Robbery in progress
- Burglary in progress
- Traffic offense
- Personal dispute and/or accident
- Stake-outs and drug busts

However, in any situation the line between correct and excessive use of force is not clear-cut, and much depends on the judgment of the officer, who should be guided in his or her decision-making by ethical standards and by use-of-force policies mandated by his or her agency. The FBI provides guidance to its agents by specifying four categories of threat to which it may be appropriate to *respond with deadly force*:

- A suspect is in possession of a weapon or is attempting to gain access to a weapon
- A suspect is armed and running to gain the advantage of cover
- A suspect who is capable of inflicting death or serious injury, with or without a weapon, demonstrates an intention to so
- A suspect is trying to escape a violent confrontation in which he or she has inflicted or attempted to inflict death or serious injury

It is important to note that agents are expected to react to a *threat* of violence and are not required to wait until a violent act has actually taken place (Miller 2015: 98).

### Police Perspectives on Use of Force

Surveys have found that police are more likely to use excessive force if they believe that “real” policework is action-oriented crime fighting and not solving problems (often referred to disparagingly as “social work”); it is also thought that when patrolling, there are too many restrictions that constrain them in their battle with crime (Miller 2015: 100). Generally, police believe the only persons entitled to pass judgment on their use of force in tense situations on the streets are fellow officers and not administrators or civilians and that in general, citizens they encounter on



## A CLOSER LOOK

### USE OF FORCE

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

Force should be used only with the greatest restraint and only after discussion, negotiation, and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary

infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person.

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their patrols will be hostile and disrespectful toward them and need to be taught to respect police (p. 100).

Research on police attitudes toward the use of less than lethal force has revealed that 43% of officers responding to a survey reported that abiding by rules about use of force was not always congruent with getting the job done. However, two-thirds of officers surveyed believed police were permitted to use sufficient force to make arrests, and about three-quarters of officers agreed that it was unacceptable to use more force than was permitted to control a person who assaults an officer (Paoline and Terrill 2011: 180). Officers generally agreed that verbal control was the starting point of the force continuum, followed by low-level hands-on force (soft-hand tactics and pain compliance techniques), followed by chemical spray and Taser, followed by hard-hand tactics, then a baton and a projectile launcher (p. 183).

Officers were found to perceive verbal and passive resistance as similar; however, while about 44% of officers believed pain compliance techniques appropriate for verbal resistance, this increased to about 60% for passive resistance (Paoline and Terrill 2011: 184). Once a person becomes physically resistant, officers viewed chemical spray, Taser, and hard-hand tactics as an appropriate response. While the survey revealed that the majority of officers believed there was no necessity to use high levels of force, a few officers favored hard-handed techniques and weapons for persons who did not resist physically—that is, they were compliant or resisted verbally or passively (p. 186).

In 2001, the Police Foundation surveyed police officers for their opinions on use of force, and after interviewing almost 1,000 officers from more than 100 agencies, the foundation reached the following conclusions:

- Most police officers disapproved of using excessive force.
- A substantial minority believed they should be permitted to use more force than the law allowed.

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

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

1. Force is applied that is likely to cause an injury or a complaint.
2. An injury results or may result from a struggle.
3. There is a complaint of an injury.
4. A chemical agent is discharged.
5. A baton is used.
6. The neck restraint is utilized.
7. There is an injury or complaint of an injury that results from guiding, holding, directing, or handcuffing a person who offers resistance (Alpert and Dunham 2004: 21). John Kleinig observes that

## CASE STUDY 3.1

### COP GETS 15 YEARS IN TORTURE CASE

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

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

At a second trial in March 1999, a jury found Schwartz and two other former officers, Thomas Bruder and Thomas Wiese, guilty of federal obstruction of justice

charges—a cover-up prosecutors said reflected a "blue wall of silence" code observed by some officers. Volpe—who is serving 30 years on his guilty plea—admitted wanting to punish Louima because he mistakenly thought the victim had punched him as police broke up a brawl outside a Brooklyn nightclub. But he claimed Schwarz was not the officer with him in the bathroom.

The attack by white officers on a Black prisoner touched off protests alleging widespread police abuse of minorities. It triggered an ongoing Justice Department inquiry into whether the New York Police Department fosters brutality through lax discipline of wayward officers. Louima, who suffered internal injuries, sued the city, the police officers' union, and several individual officers for \$155 million but later settled with the NYPD for \$9 million ("Louima to Settle NYPD Lawsuit" 2001). Louima insisted the second assailant—who put a foot in his mouth when he started to scream—was the same officer who drove him to the stationhouse. Records show the driver was Schwartz.

*Source:* Based on "Cop Gets 15 Years in Torture Case," by Tom Hays. Associated Press, June 27, 2000.

the overtightening of handcuffs is an exemplar of excessive force. He suggests that this is aggravated by U.S. practice that gives officers no discretion in the handcuffing of persons. Whatever their age, everyone arrested is handcuffed (Kleinig 2014: 88).

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

In March 2016, the Police Executive Research Forum, a police research and policy organization, issued *Guiding Principles on the Use of Force* following 18 months of research and discussion among U.S. and U.K. police agencies. Its focus included persons who are unarmed, or armed with a knife, baseball bat, rocks, or other weapons excluding firearms. The forum recommended "discontinuing outdated concepts, such as use-of-force continuums, the so-called '21-foot rule,' and the idea that police must 'draw a line in the sand' and resolve all situations as quickly as possible."

Sometimes, there is a clear case of police brutality, such as that in New York involving the Haitian immigrant Abner Louima (see Case Study 3.1).

## Police and Citizen Interactions

Studies concerning police encounters with citizens show that police should delay desires to immediately bring citizens into compliance with police orders and should take into account that angry or emotionally charged persons are less likely to instantly comply with police orders (Lee and Vaughn 2010: 198). Some studies have found that suspects brandishing weapons were more likely to be subjected to police force, but others report mixed results. For example, a study found that female officers were no more or less likely to resort to verbal or physical force when the suspect had a weapon, but their male counterparts were more likely to use physical rather than verbal force. One study even found that possessing a weapon did not influence the likelihood of an officer resorting to force (Klahm and Tillyer 2010: 222).

The *dynamic nature of police and citizen interactions* is well accepted, rendering it important to capture behaviors that might precipitate the use of force. Studies suggest that where officers proactively initiate contact with a person, they are more likely to apply force, but again, there are

contrary findings. Empirical studies suggest that suspects who resist through passive, verbal, defensive, or active actions are more likely than compliant suspects to experience police force (Klahm and Tillyer 2010: 222).

Alpert and Dunham (2004) coined the expression “authority maintenance ritual” to explain the nature of ongoing interactions during which police attempt to assert authority and control over persons through coercive means. The officers desire to control an encounter, and the citizen’s responses to that exercise of police power are significant dimensions of such encounters and their possible outcomes.

The *level of police coercion* will ordinarily increase relative to the perceived threat posed by the citizen until a “tipping point” is reached (Miller 2015: 102). It follows that passive resistance is likely to evoke a verbal rebuke, and weapons are likely to be used where there is physical resistance. In 1975, Sykes argued that because of the power they possess, police expect deferential behavior, and if they receive it, there is unlikely to be any escalation in the police response. However, if deference is not forthcoming and the citizen is judged to be guilty of “contempt of cop” (Miller 2015: 102), this will be read as a challenge to the officer’s power and authority, with the outcome that the encounter may involve physical resistance and use of force. Consequently, when expectations are confounded, disrespect on both sides is the likely outcome (Rojek, Alpert, and Smith 2012: 305).

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

Drawing on interviews of deputies of the Richland County (South Carolina) Sheriff’s Department who were involved in use-of-force incidents during the first half of 2007 and their use-of-force written reports, Rojek and colleagues (2012: 309) found that the *accounts of officers and witnesses differed*. All the officers described their actions in the encounters as reasonable and necessary behavior, but every citizen claimed improper or excessive force. Suspicion that drugs or alcohol was present elevated the threat level in the minds of officers because, as one officer explained, “When on narcotics, they [suspects] get stronger and have a higher pain tolerance.” Another responded, “In past experiences, I have seen where people under the influence of drugs and alcohol were not affected by pressure points

or a Taser” (p. 312). In such situations, officers were more likely to regard suspects as posing a serious threat to them and the public. The threat of losing a weapon was similarly associated with an immediate and high-level application of force to avoid serious injury to the officer or the public.

Citizen accounts in Rojek and colleagues’ study (2012) stressed overzealous actions by police in that levels of force were regarded as excessive. In one case, after leading police in a high-speed pursuit, the driver complained that he was taken from the car and thrown on the ground.

Fifteen officers jumped on me, kicked and punched me, kicked me in the head. Threw me in the car and booked me. . . . I didn’t hit one of them, I didn’t hit no citizen. It wasn’t a violent crime or anything. (p. 314)

These encounters reveal *citizens’ lack of knowledge of likely police reactions* to their conduct and show that each account, whether by police or citizens, is essentially self-serving, as it seeks to justify actions as proper and reasonable. Public ignorance about police use of force extends to assuming that when a suspect does not possess the same weapons as police or match the police physically, he or she cannot be regarded as a menace; therefore, applying deadly force would violate some kind of “fair play” rule. However, this perspective fails to take account of the unpredictability of encounters in which, for example, any nearby object can function as a sometimes-deadly weapon (Miller 2015: 101).

Another issue that causes public confusion is the *number of shots police fire* when using deadly force. Multiple shots at a subject may simply reflect the fact that police are generally poor shots and that the average police officer misses the target at least as often as he or she hits it, even after extensive firearms training. Police training stresses that once a decision has been made to use deadly force, that force must be applied quickly and must be deadly (Miller 2015: 102).

In relation to *police arrests*, empirical research has consistently found police more likely to use force when making an arrest, but this may be a product of policies that require use of levels of force to handcuff suspects, including verbal commands (Klahm and Tillyer 2010: 223).

When a number of officers are involved in an incident, studies are mixed as to whether this increases the likelihood of use of force. However, in the case of *bystanders*, the recent evidence suggests that the number of bystanders has no influence, but there are also conflicting studies that found the opposite to be the case (Klahm and Tillyer 2010: 223).

*Officer age* was found to be unrelated to the propensity to use force in one study, but another found that older officers were less likely to resort to force, and when they did, it was less severe than that used by younger officers (Klahm and Tillyer 2010: 226). Concerning an *officer’s*

years of experience, some evidence suggests that officers with greater experience are less likely to use force and hold less favorable attitudes toward the use of force than do their counterparts with fewer years of experience, but there are studies that found that greater experience was not an influencing factor. Research has shown that the *level of education of an officer* impacts the outcome. For example, the research reveals that officers with a college degree are less likely to use verbal and physical force compared to their counterparts with only a high school degree. Other studies of this aspect have produced mixed results (p. 227).

### Police–Citizen Interactions and Procedural Justice

Most recently, studies about police and citizen interaction have focused on *procedural justice* and *police legitimacy*. For example, Jackson and colleagues (2012: 1053) argue that if police ensure procedural justice when they interact with citizens, this will increase the legitimacy, or public favorability, of the police, because police will be regarded as “rightful holders of authority; that they have the right to dictate appropriate behavior and are entitled to be obeyed; and that laws should be obeyed simply because *that is the right thing to do*” (p. 1053).

**Procedural justice** describes how police can exercise their powers in a way that is fair and just through the quality of treatment they give citizens and through the quality of their decision-making (Mazerolle, Bennett, Davis, Sargeant, and Manning 2013: 245). This has been termed process-based policing. When police treat citizens unfairly, they can be regarded as communicating the message that you are not valued by society (Jackson et al. 2012: 1053). As well, some studies have shown that people are more concerned about being treated fairly by police than they are about the outcome of their experience (Tyler 2011: 258).

An example of a police strategy that may call into question police legitimacy and fairness is the strategy known as *hot spots policing*, which is based on geographic location and involves a concentrated police presence in an area that has a greater-than-average number of criminal incidents (Kochel 2011: 350). Typically, hot spots policing will comprise aggressive-order maintenance and zero-tolerance policing. Conceived in the time of high crime rates, hot spots policing has been well received in law enforcement, but there has been a lack of investigation into how it affects perceptions of police legitimacy among residents in targeted areas. Hot spots policing requiring police saturation of the selected area does not easily coexist with community policing because it involves sweeps, crackdowns, and multiple arrests. Research in Chicago in 1998 found that residents living in highly disadvantaged communities with high crime rates (likely by

definition to be designated hot spots) are less likely to regard police as legitimate, less likely to be satisfied with police, and more likely to tolerate deviance (p. 350).

*Stop and frisk* is another police practice that raises questions about police fairness and legitimacy and is discussed fully in Chapter 2. Research among young urban men in New York City revealed that when stopped by police in the city, young males evaluated the encounter with police by its fairness and by whether police acted lawfully. The study suggested that widespread use of stop and frisk undermined police legitimacy and that diminished legitimacy affected young men’s willingness to abide by the law and their readiness to cooperate with police (Tyler, Fagan, and Geller 2014: 751).

Generally, *four components make up procedural justice*:

- Dialogue exists that encourages citizen participation before a decision is made by an officer—the existence of a dialogue has been found to be important in establishing legitimacy.
- Neutrality in decision-making is demonstrated by conducting a dialogue with citizens.
- Respect for citizens is demonstrated throughout the interaction.
- Trustworthiness is present, evidenced by adherence to the preceding components.

Research has shown that when these principles are applied in police and citizen interactions, citizens are more satisfied with the interaction itself and the outcome. When even one of these elements is applied in an encounter, there is likely to be increased citizen cooperation and compliance (Mazerolle et al. 2013: 265). One study by Dai, Frank, and Sun (2011: 159) looked at whether procedural justice specifically influenced two types of behavior toward police: citizen disrespect toward police and citizen noncompliance with police requests. It found that only police demeanor and their reception of citizen voices were significant factors in reducing citizen disrespect and noncompliance.

When citizens are dealt with fairly by applying procedural justice, they are less likely to believe they have been racially profiled and more likely to accept the decision. When an encounter lacks procedural justice, citizens are more likely to disobey and resist police commands (Mazerolle et al. 2013: 247). This approach to police and citizen encounters has found support in studies in the United Kingdom, Australia, and Israel, but it may not produce similar results in countries where consent and cooperation are regularly obtained by force, such as in Ghana, which experiences high crime rates and significant police abuse of powers (p. 248).

Research reveals that when police treat people with courtesy and respect, police legitimacy is enhanced, and this treatment promotes compliance with police commands. As Tyler (2011: 260) points out, *changing police procedures to incorporate procedural justice means*

- allowing citizens to offer explanations before making decisions,
- explaining to citizens how and why decisions are being made,
- providing citizens with a means to complain, and
- always treating citizens with respect.

**Why should police implement process policing?** Police might claim that policing is dangerous and that they are therefore safer if they project dominance, but studies have shown that using coercion in the form of handcuffing, commanding, or arresting has minimal impact on compliance (Tyler 2011: 260). Some evidence exists that procedural justice extends beyond police and citizen interactions. For example, one study showed that persons who had observed police acting violently were more likely to distrust police compared to those who had not seen police acting in that way. Similarly, it is possible that media reports of police violence may undermine confidence in the police (Jackson et al. 2012).

Procedurally, fair policing would seem to require that police agencies develop strategies to foster the principles discussed above. While improved training would seem an obvious strategy, it has been suggested that “fair supervision” of police is equally crucial. The reasoning is that where officers believe internal policy justice is fair to them, this is likely to promote similar fairness toward the public. Police, it is argued, will model the behavior of their supervisors and behave similarly toward citizens, and this will encourage police trust in citizens (Van Craen and Skogan 2017: 6, 14).

### U.S. Supreme Court Decisions on Use of Force

Two U.S. Supreme Court decisions are relevant in assessing use of force. In the case of *Tennessee v. Garner* (1985), late one evening in October 1974, two Memphis police officers investigated a complaint about a prowler, going to the rear of the house on arrival at the homeowner’s address. They observed someone running away across the backyard, and as the suspect stopped at a chain-link fence, one of the officers saw that he was 17 or 18 years old and unarmed. The officer called out, “Police—halt!” However, when the suspect began to climb the fence, the officer, thinking he would escape, shot him in the head and killed him. According to Tennessee law at the time, police were permitted to use all necessary means to effect an arrest once

they gave notice of their intention to arrest, consequent to the suspect fleeing or forcibly resisting. In considering the case, the Supreme Court determined that whether or not deadly force was justifiable in a particular case depended on whether or not it was “objectively reasonable.” An officer might use *deadly force* only “if he has probable cause to believe that the suspect poses a threat of death or serious physical injury either to the officer or to others.”

In *Graham v. Connor* (1989), the Court applied the test of the reasonableness of the force used to all claims of the use of *excessive but nondeadly force*, noting that there is no precise definition of reasonableness but that four factors are relevant:

- The severity of the suspected crime
- Whether or not the suspect threatens the safety of the arresting officers
- Whether or not the suspect actively resists arrest
- Whether or not the suspect is attempting to evade arrest by fleeing from the scene

The Court also determined that “reasonableness” concerning the use of force must be judged after taking the perspective of a reasonable officer at the scene and must take account of the fact that police sometimes have to make split-second decisions concerning the use of force. Studies have revealed that this split-second syndrome is often the result of functioning in low-lit areas, pursuing suspects who try to hide from police or officers, speculating about dangerousness, and inaccurate shooting by police (Lee and Vaughn 2010: 197). Therefore, following the two previous cases, “objective reasonableness” is now established as the standard for excessive force, and each case of alleged excessive force must be judged and assessed on its merits (p. 194).

In cases that followed, such as *Scott v. Harris* (2007), the Court validated police use of deadly force during a high-speed vehicle pursuit when the suspect endangered the lives of police and innocent strangers because a speeding vehicle attempting to evade police is itself an instrument of deadly force. Additionally, in *Canton v. Harris* (1989), the Court held that municipalities are liable civilly for failure to train police officers when “failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.” This case prompted more police training and policy formulation on police use of force.

### Race and Use of Force

Research on the association between race and police use of force is inconclusive. While several studies document that race did not influence a decision to use force, other studies

report contrary results, some finding that Black suspects were more likely to be subjected to force than their white counterparts and others finding that race produced mixed results, depending on the circumstances of the encounter. Thus, one study found that Black suspects were more likely to have force used against them in situations where police expected compliance with orders, but race was not considered a factor in encounters that involved suspect resistance (Klahm and Tillyer 2010: 218). A series of studies has shown that the race of an officer is not related to the likelihood or appropriateness of officer use of force (p. 224).

In 2006 and 2008 in a series of interviews with urban youth, frequent complaints of excessive force were reported, especially among Black males. Respondents claimed police had bad attitudes toward them, used force that was usually unprovoked, and frequently coerced from them information about criminal activity. In addition, the respondents complained that officers tended to use force against them if it appeared they were showing insufficient respect or deference to police (Rojek et al. 2012: 304). Unfortunately, these studies did not include the police perspective.

### Policing and Implicit Racial Bias

**Explicit racial bias**, in the sense of conscious expressions of racism, is rare these days. Recent research studies have, however, shown how implicit racial bias can affect any form of decision-making in the criminal justice system and elsewhere. **Implicit racial bias** refers to implicit associations that our minds draw upon subconsciously; these associations help us to order the categories into which we place persons, places, and things we encounter in order to make sense of our daily life. As we make these associations, over time they become “hardwired” into our minds, and we unconsciously call upon them when needed. Implicit association is a useful tool because it frees our conscious mind from having to consider basic functions, but it also sustains biases. Psychologists test for implicit bias through the Implicit Association Test (IAT), which measures differences in reaction times as persons sort words on a subject into different categories. A short reaction time indicates a subconscious association is being made and therefore an implicit association, and a longer reaction time indicates a conscious and not implicit-based reaction (Clemons 2014: 693).

Implicit associations about race become translated into implicit racial bias because of the **negative racial stereotypes** to which we are all exposed. That implicit bias will then shape the reaction to an event. According to Clemons (2014), the majority of Americans harbor negative implicit associations about Black Americans. This has been demonstrated by a sample of about 760,000 persons who between

2000 and 2006 took either a “race-attitude” or “child-race attitude” IAT at an online project site. Of those tested, 68% showed significantly faster response times when black/dark skin was paired with “bad” and when white/light skin was paired with “good.” Only 14% showed the reverse (p. 694). Researchers have found implicit associations that link Blackness with danger, violence, aggression, and criminality and, in reverse, criminality with Blackness.

Most empirical research on implicit racial bias has been conducted with law enforcement officers, who are often required to make difficult decisions very quickly within their wide discretion. When police speak of their “gut reaction” and of “hunches” about persons who may be suspicious, subconscious associations between race and criminality may be influencing them. This helps explain why police stop Black citizens at disproportionate rates (Clemons 2014: 694). Research has also demonstrated the presence of implicit bias in police decisions concerning the use of deadly force. However, the “counter-bias” perspective contends that police are likely to use less force against Black citizens in situations where there is time for a “controlled response” to events because of officer concerns that using force against minorities will result in departmental disciplinary action, prosecution, media attention, and even threats of physical harm to the officer concerned (Fridell and Lim 2016: 36, 40).

Police use of force tends to be more frequent in higher-crime areas that are often associated with minorities, and it has been argued that neighborhood factors such as minority disadvantage may engender psychological factors in officers that make recourse to excessive force probable (Prenzler et al. 2013: 344). Police profiling of young Black males as suspicious or dangerous may also be a factor (Miller 2015: 106), and racial bias has been shown in shoot/don’t-shoot decisions. For example, in one study, a simplified video game presented Black and white males as targets, with each holding a gun or threatening object. Participants were told to shoot only armed targets but were required to decide shoot/don’t shoot immediately after seeing each target. The results indicate racial bias, given that participants fired more quickly on an armed target when he was Black than when he was white, and they decided not to shoot more quickly when the unarmed target was white than when he was Black. This study found there was no difference in shooter bias between Black and white participants (Lawson 2015: 340–341).

Police profiling of young Black males as dangerous may reflect a stereotypical fear of Black males among police. A 2004 study tried to assess if officers perceived Black males as violent and criminal; it asked 182 police officers to view Black and white faces and to indicate if they thought a face “looked criminal.” The outcome was that Black faces

looked more criminal to police, and in fact, the darker the skin color, the more an officer tended to believe him criminal (Lawson 2015: 341).

### Explaining Excessive Force

There are three theoretical approaches to the causes of police use of excessive force. The first comprises psychological theories that focus on individual officers and apply the

“rotten apple” argument that contends there is no systemic issue and the incident is merely an aberration, the second comprises sociological theories that regard police culture as a determining factor because police are seen as isolated from citizens, and the third comprises organizational theories that focus on the systems in place in police agencies for managing officers. Generally, the issue of police use of excessive force is complex, and none of these theoretical approaches can claim to be an adequate explanation of why

## A CLOSER LOOK

### U.S. DEPARTMENT OF JUSTICE: INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT

On September 4, 2014, the Civil Rights Division of the Department of Justice opened an investigation of the Ferguson (Missouri) Police Department under the Violent Crime Control and Law Enforcement Act of 1994. The investigation followed the shooting of an unarmed Black teenager, Michael Brown, in August 2014 by a white Ferguson police officer, which provoked unrest, protests, demonstrations, and some looting by residents who believed the shooting was not justified and may have exhibited racial bias. The investigation into the Ferguson police force, comprising 54 sworn officers, uncovered a policing culture that included the following elements:

- Officers expected and demanded compliance with their commands, even when they lacked any legal authority. They made enforcement decisions based on how persons spoke to them or what they said to police, and police reacted quickly to challenges and verbal slights. Officers believed that arrest was the appropriate response to “contempt of cop,” and such arrests were commonly associated with charges of failure to comply, disorderly conduct, interference with an officer, or resisting arrest.
- There was a pattern of stops without reasonable suspicion and arrests without probable cause and with use of excessive force. African American citizens accounted for 85% of vehicle stops, 90% of citations, and 93% of arrests by officers from 2012 to 2014, despite the fact that they constituted only 67% of the town population. These disparities were the outcome of “unlawful bias against and stereotypes about African Americans.”
- Police engaged in a *pattern of excessive force*. Officers quickly escalated encounters with persons they perceived to be disobeying commands or resisting arrest; they came to rely on Tasers when less or no force would have sufficed; they released canines on unarmed persons unreasonably and before attempting to use force less likely to cause injury; and almost 90% of the force used was applied to African Americans. Instances of excessive use of force included an incident in August

2010 when a lieutenant used a Taser in stun mode against a Black woman in the city jail who refused to remove her bracelets, even though five officers were present and the woman presented no physical threat. This action violated the department’s own use-of-force policy, which required that force not be used until all reasonable alternatives had been exhausted or would be ineffective. A policy direction describes the Taser as “designed to overcome active aggression or overt actions of assault.”

- Police used force to punish behavior that was annoying or distasteful but did not pose any threat. In January 2013, a patrol sergeant stopped an African American male and detained him without any explanation. When the man declined to answer questions or to submit to a search, the officer grabbed him by the belt and drew his Taser, ordering the man to comply. The man crossed his arms and stated he had done nothing wrong. Video from the Taser showed no aggression toward the officer. The officer fired the Taser, causing the man to fall to the ground, and then applied the Taser again, claiming later that the man had tried to stand. The video showed he had not moved from the ground. The man was charged with failure to comply and resisting arrest but with no substantive criminal charge.
- The system of oversight for use of force was ineffective because force use was often not reported; when it was, there was seldom any meaningful review of it. Policies on use of force were routinely ignored, and supervisors almost never investigated use-of-force incidents, even though policy required they do so. Supervisors almost never interviewed nonpolice witnesses, and there was a presumption that the officer’s account of the incident was correct. Supervisors readily accepted “boilerplate” justifications for use of force, such as that the person took “a fighting stance.”

*Source:* U.S. Department of Justice: Investigation of the Ferguson Police Department, March 4, 2015.

some police use excessive force and others do not (Lersch and Mieczkowski 2005: 552).

### The “Rotten Apple” Explanation

While there may not be a “police personality” type as such, research suggests there are personality types among police that appear to be associated with high rates of use of force, including deadly force. Some officers may suffer from personality disorders or other dysfunctions and have typically been found to have personality traits that may be antisocial, narcissistic, borderline, or paranoid. Dysfunctional personalities may manifest egocentricity, impulsivity, immaturity, inflexibility, and a lack of empathy, which can predispose them to abusive behavior—especially when they perceive threats to their authority from citizens. Such officers are unlikely to learn from mistakes or change their style of policing and tend to be the subject of a disproportionate number of citizen complaints (Miller 2015: 100).

There is some evidence of a relationship between police shootings and low self-control. Researchers applied Gottfredson and Hirschi’s 1990 general theory of crime<sup>2</sup> to a sample of about 2,000 officers in the Philadelphia Police Department to assess this relationship and therefore the extent to which this theory can predict officer-involved shootings. The sample comprised almost equal representation among white and Black officers. The results showed a positive correlation between low self-control and officer-involved shootings. Other significant correlations were found with being male, prior service in the armed forces, having a parent in law enforcement, length of service, and having a prior arrest record. The findings clearly suggest the need for agencies to adopt stringent recruiting criteria and for psychological testing of potential recruits (Donner, Maskaly, Piquero, and Wesley 2017: 222, 226).

Other proposals for responding to the rotten apple view include establishing early warning systems to target officers who show indicators of poor conduct, such as multiple citizen complaints.

### Sociological and Organizational Theories

Sociological approaches recommend community policing and civilian review boards as mechanisms for lessening the distance between police and the public, and organizational approaches argue that designing better policies for internal control—such as setting explicit rules instead of allowing broad discretion, and thoroughly assessing use-of-force reports—will be effective strategies.

When faced with complaints of excessive force, police often adopt the strategy of characterizing the excess as an aberration by a particular officer, but many argue that police brutality is systemic (Lawrence 2000). Given

that incidences of police abuse now often attract media attention, researchers have investigated the relationship between the media and police. Results have revealed that police are on intimate terms with the media in their role as providers of news and have developed a high level of competence in public relations. In fact, one researcher has suggested that the police employ a media-centered framework in their work because they believe that the public obtains its notions of acceptable police standards and conduct from television and the movies (Perlmutter 2000). Media coverage of claims of excessive police violence may therefore rely significantly on police narratives of an incident, but as noted previously, media privileging of police accounts is now being challenged by the activity of citizen journalists.

### Assessing the Level of Force

Fundamentally, whether or not force is excessive must depend on the context, and even witnesses often cannot resolve the issue. Kleinig (1996: 99–102) identifies a number of factors that he considers relevant to assessing the use of force in ethical terms:

- *Intentions.* Police may use force wrongfully as a means of punishment rather than to contain a suspect. For example, tightening handcuffs may be employed to punish an arrested person, or police may use rough handling or an overnight stay in the lockup as punishment. In *Graham v. Sauk Prairie Police Commission* (1990, in Lee and Vaughn 2010: 196), a suspect was shot twice in the head and killed after being handcuffed behind his back, despite the fact that at the time he was not fleeing from police and not behaving threateningly. Kleinig argues that measures of this kind are clearly unethical and outside the scope of the police function.
- *Seemliness.* Force not only must be employed in good faith but also must be seemly. When police methods shock the conscience or offend even hardened sensibilities, they are not considered seemly. In one case, for example, a suspect’s stomach was pumped to recover apparently swallowed evidence of drug possession, and the Court judged this as unseemly (*Rochin v. California* 1952).
- *Proportionality.* The force used to achieve legitimate police aims ought to be proportionate to the seriousness of the offense alleged or threatened. Thus, shooting a person suspected of committing a misdemeanor would be an example of employing disproportionate force.



- *Minimization.* This requires that police use the least means to secure their aims and is known as *the principle of the least restrictive alternative*. For example, if handcuffs will do the job, they should be used rather than some more draconian method of immobilization, and deadly force should not be employed if a person can be arrested without it.
- *Practicability.* Since there is a presumption against using force, it must be shown that its use will achieve the purpose for which it is deployed. In other words, police need to appreciate those situations in which a forceful presence is required as opposed to those in which a softer strategy is called for. This relates to the need for police to exercise their discretion according to the demands of a particular situation rather than applying one rule, such as to intimidate or punish, in all cases.
- The Metro-Dade Police Citizen Violence Reduction Project began as a partnership in 1985 between the Metro-Dade Police Department and a research and policy institute, The Police Foundation. The project aimed at enhancing patrol officers' skills in diffusing conflicts. Four areas of policing were identified as mostly closely associated with police violence and public complaints: routine traffic stops, high-risk vehicle stops involving offenses other than traffic violations or DUIs, reported or suspected crimes in progress, and disputes. A three-day training program was developed using role play, pre-intervention data were collected, and a thorough analysis of incidents was performed. These interventions were generally positive, largely because of enhanced dispute settlement procedures.

According to Regina Lawrence (2000), ambiguity about the use of force has the effect of reducing or limiting media coverage of police abuse because ultimately journalists ask for proof of abuse, and this can almost never be demonstrated. She argues that as long as much of the public is willing to give police the discretion they seek, incidents such as the one involving Rodney King can always be rationalized by police as “collateral damage” in the “war against crime.” In the examples of police violence in Case Study 3.2, the first case was explained as an “unintentional outcome” and the second as violence used as punishment.

### Reducing the Level of Force

What has been the impact of interventions designed to reduce police use of force? Several case studies of such interventions are described by Prenzler and colleagues (2013: 345). Examples of these programs include the following:

- In 1969, the Oakland Police Department created a Violence Reduction Unit following criticism of its strategy for crime fighting that depended on making maximum arrests. This strategy led to high rates of police and citizen conflict and the alienation of the Black community. A reforming police chief, Charles Gain, established the Violence Reduction Unit and staffed it with officers to study the issue of police violence and develop interventions to address the problem. One strategy was to establish a peer review panel that was tasked to assess officers referred by supervisors for having been involved in an above-average number of violent conflicts with citizens. The program was not adequately evaluated and was phased out in the 1970s.
- The New York Police Department (NYPD) began a project in 1969 aimed at assessing and reducing the incidence of police shootings. The success of the program can be measured by the fact that from 2008 to 2010, the total number of shots fired by police showed an 80% reduction over figures in 1995. The number of persons shot by police showed a decline of 91.8% from a peak of 221 in 1971 to an average of 18 in the period 2008 to 2010. The NYPD attributes the decline to the operation of the “SOP 9” process that involves analysis of the elements and sequence of each shooting and then feeds the results into training and improved procedures. For example, a policy of “shoot to stop” and not “shoot to kill” was introduced. Despite these significant improvements, police shootings in the city continue to attract controversy.
- In Portland, Oregon, in the 1990s, there was considerable public concern over police shootings and alleged use of excessive force. Responding to the concern, the city developed two projects: one focused on officer-involved shootings and the other on broader issues relating to police use of force. The Police Assessment Resource Center (PARC) was engaged to assess shooting incidents, and it recommended the mandatory use of use-of-force reports as well as improvements to policy and police tactics. A new use-of-force review board examined all shootings. In 2006, a task force that included a citizen review committee worked with police to analyze use-of-force data to improve

## CASE STUDY 3.2

### FIVE POLICE OFFICERS SENTENCED FOR SHOOTING UNARMED FAMILY

On April 4, 2012, five officers from the New Orleans Police Department were sentenced to terms of imprisonment of 38 to 65 years for events arising out of the devastation caused to New Orleans by Hurricane Katrina in August 2005.

The trial revealed that a group of police opened fire with assault rifles and a shotgun on an unarmed family walking on the east side of the Danziger Bridge in New Orleans on September 4, 2005. Police had received a call from an officer at the bridge reporting gunfire, and the five police officers arrived at the scene in a rental truck. The family had been walking to a grocery store and took shelter behind a concrete barrier when the gunfire began.

Police claimed initially they had been fired on, but it was shown that this story had been fabricated and a cover-up had been arranged. Police inflicted multiple wounds on the family, and two died. Five other officers pleaded guilty before trial and testified at the trial that the shooting was unjustified and a massive police cover-up had taken place. The cover-up included one officer bringing a gun from his home and planting it on the bridge and later claiming he had found it there the day following the shooting. The existence of two eyewitnesses and their alleged statements of what occurred were also fabricated.

*Source:* Federal Bureau of Investigation, New Orleans, April 4, 2012. Excessive Force in the Cleveland Police Department.

the management of force and made a series of recommendations, which included the following:

- Have officers report their justification for use of force
- Give more attention to reducing officer provocations
- Require a debriefing for all force complaints in order to raise the threshold for use-of-force intervention
- Conduct a review of street policing strategies in the precincts with the highest use-of-force ratios

Generally, all the recommendations were implemented, with a consequent reduction in complaints about use of force, a 35% decline in force incidents from 2007 to 2009, and a fall in citizen and officer injuries.

#### Excessive Force: Other Countries

Internationally, excessive force is said to be prevalent in all *Asian* countries. Basil Fernando (2003) comments that in these countries, police officers “are expected to use coercion, including torture, in criminal investigations” (p. 30). This is justified by reference to the need to maintain order, because the maintenance of public order has a higher priority than law enforcement in Asian countries. In *Nigeria*, Etannibi E. O. Alemika (2003) suggests that the

maintenance of the colonial policing model has resulted in police–citizen interactions being largely involuntary and “characterized by police brutality, corruption and hostility to citizens” (p. 72). Alemika explains that the police are primarily used to maintain order, but citizens see police as oppressor and repressor, and police employ various methods of torture, including

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

In *Argentina*, a crime survey conducted in 1998 revealed that 18.5% of those reporting believed that retired police and military personnel most frequently committed crimes, and about 7% believed that active police officers committed crimes (Smulovitz 2003: 132). In *Brazil*, according to Paulo Mesquita Neto and Adrianna Loche (2003), government and police responses to crime control have been “undermined by the persistence of police brutality and the low level of respect for and cooperation with the police and the criminal justice system on the part of the community”

(p. 191). Police killings of civilians in Brazil are not recorded as homicides. Rather, Martha K. Huggins (2010) reports, they are registered as police having used “legitimate force” against a “criminal’s threatening actions” (p. 73). She notes that regular police in Brazil are accustomed to supplementing their low police incomes by moonlighting as private security for upper-class, white, gated communities (p. 74). Within a framework of violence in one of the most violent countries in the world, police are responsible for a high proportion of all homicides. Huggins concludes that police violence is systemic, and death squads (that include police officers) undertake killing for profit (p. 81).

### Police Use of Force: Tasers

The Taser was originally developed during the mid-1970s as a nonlethal replacement for the firearm and was one of a collection of devices with that objective that included chemical sprays. Tasers and other devices were therefore portrayed as having the capacity to humanely control persons. Despite these claims, Tasers have always remained controversial because of instances where persons are said to have died after being subjected to “Tasering” (Wolf and De Angelis 2011: 659).

One of the most common forms of Taser is the X26 made by Taser International. It is a handheld weapon that delivers a high-voltage electrical charge using two delivery systems: as a “stun gun,” it can be used for compliance enforcement and deliver a high-voltage shock by pressing two probes against the body; in “probe mode,” two modified fishhook barbs can be fired at a person up to a distance of several dozen feet. When the two probes attach to the skin or clothing of the target, they create a circuit, and a rapid, pulsed electrical charge is delivered that impacts the nervous system, causing severe pain, intense muscle contractions, and a loss of control over voluntary muscles. Consequently, Tasers deliver an exceedingly painful electrical shock, bring about almost instant paralysis, and bring the target to the ground. Taser discharges can be recorded and downloaded, and recent models incorporate a video system (Wolf and De Angelis 2011: 659, 667).

Over the past decade, Tasers and similar electro-shock devices have become standard equipment in numerous U.S. police forces. In 2005, the Government Accounting Office estimated that almost half of law enforcement agencies had adopted the device, and by 2008, according to the National Institute of Justice, more than 11,500 law enforcement agencies had acquired Tasers (Wolf and De Angelis 2011: 659). There are no common standards for the use of Tasers among police forces, but in a 2008 survey of 40 law enforcement agencies, Amnesty International found that most agencies had policies stating that

Tasers may be used when officers face “active resistance” to a lawful attempt at controlling a person. The Department of Justice gave guidance in 2011 that the Taser was a “less-lethal” and not a “non-lethal” weapon (U.S. Department of Justice and Police Executive Research Forum 2011).

Many policing agencies place Tasers on the same level in the use-of-force continuum as pepper spray and other less-than-lethal weapons. The U.S. Court of Appeals for the Ninth Circuit held in 2009 that Tasers constitute an “intermediate, significant level of force that must be justified by a strong government interest that *compels* the employment of such force” (emphasis in the court decision; *Bryan v. McPherson* 2009). Other court decisions on Taser use state the following:

- An officer uses excessive force when he or she deploys a Taser against a person whose crime is minor and who is not actively resisting, attempting to flee, or posing any imminent danger to others (*Brown v. City of Golden Valley* 2011).
- Minimal defensive resistance, including stiffening the body to impede being pulled from a car and raising an arm in defense, does not make use of a Taser reasonable.
- Use of a Taser is not objectively reasonable when the suspect pulls away from an officer but does not actively resist arrest, attempt to flee, or pose an immediate threat (*Casey v. City of Fed. Heights* 2007).

### Ethical Constraints on Taser Use

In police and citizen encounters involving police use of force, a balance has to be struck between the risks faced by police officers and efforts to curtail injury to those whom police seek to bring under control. These encounters are not for the purpose of inflicting punishment but rather for control purposes only. A number of devices provide police with the capacity to inflict severe pain, and in ethical terms, police may be tempted to employ a device whose use would be inappropriate in a situation that calls for a lesser level of force (Kleinig 2007: 284). A key issue is assessing the level of risk to the officer.

It therefore becomes critical for police departments to develop rules and procedures for correct Taser use in order to avoid misuse so that Tasering does not become an automatic police response to every risk situation. Incorporating these instructions in training courses on Taser use helps to ensure that procedures are applied by all officers armed with these devices; this in turn will add public legitimacy to instances where Tasering is justified (Kleinig 2007: 288). Such procedures ought also to consider groups for

whom Taser use would be inappropriate, even where there is an active level of resistance. Examples would be with young children, pregnant women, the elderly, the disabled, and persons already placed in handcuffs (p. 291).

Police forces that authorize the use of a Taser where an officer is faced with only passive resistance may be criticized for applying too much force because the threat to an officer is negligible. In one incident that occurred on the campus of the University of California, police Tasered a student who failed to provide adequate identification to enter a library and then refused to leave (Kleinig 2007: 290). At all times, his resistance was passive, and he posed no danger to police or to others. This clearly seems to have been a police overreaction to a person resisting their orders and authority.

While there is scant research on the effectiveness of use-of-force policies in controlling officer actions, one recent study of Dallas, Texas (with a population of about 1.2 million and a police force of about 3,500), examined this issue when a policy change on police Taser use was put into operation at the end of 2005. Originally, all patrol officers who had completed a four-hour training program could check out a Taser, though they were instructed to use it only when met with what the police department termed “defensive resistance,” meaning any form of physical non-compliance to a police order, such as refusing to stand when seated if ordered to do so (Bishopp, Klinger, and Morris 2014: 5). This permissive policy lasted only one year, and by the end of 2005, officers were no longer permitted to use Tasers against those who failed to comply with verbal orders. Under the new policy, Taser use was limited to situations referred to by the department as “active aggression,” meaning that some sort of physical action was being directed at an officer, such as punching, grabbing, or kicking. Thus, the Taser was relocated to a higher level on the use-of-force continuum. Researchers compared use-of-force reports before and after the policy change and found that the change had affected the frequency of Taser use: officers used Tasers more than 60% fewer times during the study period of 2007 than in the eight-month period in 2005 before the policy change.

### Analysis of Taser Use

Research into police use of Tasers includes an analysis by Crow and Adrion (2011: 366) of the use-of-force data for a medium-sized municipal police department (144 officers for a population of about 54,000) over the period 2004 to 2010. Following a use-of-force incident, officers were required to complete a report, and the study examined aggregate reports over the period. Previous studies had revealed that the level of resistance offered by a person is a

significant determinant of the level and type of force used by an officer and that the resistance level is an important indicator of the dangerousness of the person. Thus, dangerousness is assessed according to the level of resistance. In the police department studied, subject resistance followed an ascending continuum from Presence, Verbal, Flight, Physical, and Weapons stages. The analysis revealed the following (p. 376):

- The Taser was used in more than half of all use-of-force incidents over the study period—a rate of use similar to that found in a previous study.
- Cases involving Taser use were associated with more minority and male subjects compared to other incidents where force was used.
- The incidents in which the Taser was used tended to involve relatively lower levels of resistance compared to instances in other studies.
- The Taser was less likely to be employed when the level of resistance was only Presence or Physical or involved a Weapon; therefore, officers were most likely to use Tasers in Verbal and Flight situations.
- Nonwhite subjects were almost twice as likely as white subjects to be Tasered.
- Older officers and female officers were more likely to use the Taser.

In addition to the level of resistance shown by a subject, psychological factors also play a role in determining Taser use. The effects of stress on police officers are discussed in detail in Chapter 2, but generally, policing has been described as an especially stressful occupation because it can involve dangerous incidents, disturbing crime scenes, and bureaucratic rules that exacerbate stress. Consequently, an association has been found between policing and burnout, poor health, and alcohol abuse. It has also been suggested that police tend to see threats to their safety more frequently and to respond to such threats more aggressively than would nonpolice (Stinson, Reynolds, and Liederbach 2012: 6).

### Improper Use of Tasers

In a study of the criminal misuse of Tasers, Stinson and colleagues (2012: 1) conducted a content analysis of 24 newspaper accounts of cases involving officers arrested for crimes involving inappropriate use of Tasers between 2005 and 2010. In the cases examined, there was little or no situational risk to the officer concerned, and criminal misuse of a Taser was found to be associated with suspects

## A CLOSER LOOK

### EXCESSIVE FORCE IN THE CLEVELAND POLICE DEPARTMENT

In May 2015, the Department of Justice announced that after an almost two-year investigation of the Cleveland Police Department, it had found a pattern of “unreasonable and unnecessary use of force” by police officers. The Justice Department reported that the excessive use of force by Cleveland police involved Tasers, chemical sprays, and fists, which were used for retaliation. Police had also used force against the mentally ill. The instances of excessive force included police using Tasers and assaulting and pepper-spraying persons who were already under restraint. In one case in 2014, police fired two shots at a man who was fleeing from two armed assailants. In 2011, a man who was restrained on the ground with spread arms and legs was kicked by police and treated for a broken facial bone.

The city of Cleveland agreed to enter into a consent decree that would tighten policies and practices

concerning the use of force and make police subject to oversight by an independent monitor. While the city is 53% Black and 37% white, its 1,551-person police department is 25% Black and 65% white. In 2004, the city had entered into a similar settlement with the Justice Department following a federal investigation of reported police abuses.

The 2015 settlement mandates new rules that include new firearms rules that prohibit warning shots and neck holds; enforce better data collection on use-of-force incidents; state that Tasers must not target head, neck, or genitals; and provide improved use-of-force training to ensure that force is constitutional and lawful.

*Sources:* Taken from *The New York Times*, May 12, 2015 and *The Guardian*, May 26, 2015: “Cleveland Announces Historic Second Settlement Over Chronic Police Abuse.”

already in handcuffs or against persons who were not criminals. In the 24 cases, the majority of the officers were charged with assault-related offenses—half with misdemeanors and half with felonies, with aggravated assault being the most common felony. In eight cases, the officers were convicted. The victims were commonly handcuffed criminal suspects, and many cases involved victims with apparently close relationships to the officers, including their wives and girlfriends.

In six cases, the victim was female, including one case where an off-duty officer shot his 15-year-old stepdaughter in the eye with a Taser during a family dispute while he was driving a police cruiser. All the off-duty cases involved some form of domestic violence, and one-third of those cases involved an intoxicated off-duty officer armed with a Taser. In two cases, off-duty police Tasered their spouse or girlfriend, having found them *in flagrante delicto* with another man (Stinson et al. 2012: 12). In one case, an officer fired a Taser at a homeless man standing in a church parking lot until it ran out of power, then hit him with a baton so hard that it crushed his face bones. In another, the officer shocked a Black suspect nine times, and he died of a heart attack. None of the cases examined involved much situational risk to the officer involved, and as described earlier, in a number of cases the objective seems to have been to teach the victim a lesson.

Associated with questions about police use of force is the notion that within police culture there is a perspective that the ends always justify the means.

This perspective is termed **Dirty Harry** or *dirty hands*, but in more contemporary terms, it can also be referenced to the character Jack Bauer from the television series *24*.

### Excessive Use of Force: Dirty Harry/ Dirty Hands and Jack Bauer in *24*

The use of *dirty hands*, or dirty means by police to secure their goals (Kleinig 1996), has been characterized as the “Dirty Harry problem” (Klockars 1980). Drawing on the 1971 film *Dirty Harry*, which shows Inspector Harry Callahan using torture to establish the whereabouts of a kidnapped girl, Carl Klockars raises the issue of the morality of using force to extract information from suspects. Dirty means are not limited to actual torture, but they can include beating confessions out of suspects, making false arrests, stopping and searching without proper cause, and using threats and coercion to obtain evidence.

Modern-day popular culture has conspicuously featured torture—not by police but by the counterterrorist agent Jack Bauer in the very popular television show *24*. Bauer often uses torture in “ticking-bomb scenarios” and also in the normal course of his antiterrorist activities; a television watchdog group counted 67 scenes of torture during the first five seasons of the show (Keslowitz 2009: 1126). Critics have complained that the show glorifies torture, but in the seventh season, characters are shown to be struggling with the morality and legality of torture, and Bauer stands trial for his acts of torture, which he justifies

as necessary to protect the innocent (p. 1129). (See Chapter 10 for a full discussion of the ethics of torture.)

An analysis of the components of the *Dirty Harry* situation reveals four conditions faced by the police officer (Miller, Blackler, and Alexandra 1997: 119):

1. The police officer has an opportunity to achieve a morally good end or outcome and intends to do so. (In the *Dirty Harry* movie, Callahan used torture to discover the location of the girl.)
2. The means used to achieve this good end are normally considered morally wrong (dirty). (In *Dirty Harry*, the torture included standing on the suspect's mangled and wounded leg to obtain the location of the girl.)
3. The use of these means is perceived by the police officer to be the best or only practicable means of ensuring that the good end is met.

4. The good likely to be achieved far outweighs the bad consequences of using dirty means, a perspective held by utilitarianism (see Chapter 13).

The crux of the problem raised by *Dirty Harry* and *24* is whether means that are illegal and morally questionable may be used to achieve ends that may themselves be considered moral. In policing, employing dirty means to achieve moral ends is known as *noble cause corruption* (see Chapter 2). Using dirty hands is, of course, morally problematic because it involves the use of unlawful methods. Some argue that public life necessarily involves dirtying one's hands (Walzer in Kleinig 1996: 55), whereas others, such as Kleinig (p. 56), are not convinced that the scenarios usually presented justify the use of dirty hands. Others suggest that such situations should be avoided as much as possible because the person using dirty hands will often feel moral qualms about what he or she has done, and frequent

### CASE STUDY 3.3

#### VIDEO SHOWS POLICE OFFICER USING BATON TO HIT MAN

On June 18, 2010, jurors in Manhattan watched a video showing a police officer, charged with second-degree assault, hitting a suspect with a baton over and over as he lay handcuffed on the floor of a housing project on West 93rd Street, Manhattan. Nevertheless, as the police officer's lawyer pointed out, the video footage (shot from five different angles from lobby cameras) also shows the suspect, Walter Harvin, struggling with the officer David London, resisting his directions, and shoving him with his hands before the officer hit him. Officer London was charged with second-degree assault, filing false reports, falsifying business records, and making a false written statement and faced up to seven years in prison.

The video shows Officer London in uniform, closing the door of the building and then opening it as he sees Mr. Harvin approaching. The prosecution claimed Mr. Harvin did not have his key, but when the officer asked him whether he lived there, Harvin ignored his questions. They exchanged words, and then Harvin pushed the officer's hand away and entered the building. The video then shows Harvin turning and pushing

the officer with both hands as he followed him in and tried to stop him. Officer London's partner came into the building, and then as Mr. Harvin stepped into the elevator, Officer London grabbed him and tried to spin him around. Harvin drew himself up, but Officer London took out his baton and struck him near the face, causing him to fall to the ground. There, the officer began hitting him repeatedly with more than a dozen blows from his baton.

Mr. Harvin tried to avoid the blows until he was handcuffed by the two officers, and even after that, Officer London struck him again with the baton a few times. Officer London's lawyer claimed that Mr. Harvin had threatened to kill Officer London, but the prosecution said that even though Mr. Harvin should have cooperated with him, the fact that he did not was no justification for the beating he suffered and that Officer London used excessive force.

On June 28, 2010, Officer London was acquitted of the charges. Mr. Harvin, an Iraq war veteran, did not give evidence at the trial because he could not be located. Prosecutors indicated he had suffered some mental problems after returning to the United States from Iraq.

Source: Eligon 2010.

use of dirty means may induce a moral callousness in an individual (Miller et al. 1997: 123).

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

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

## POLICING, MENTAL ILLNESS, AND CRISIS INTERVENTION TEAMS (CITS)

One of the challenges faced by police is interacting with persons suffering from mental illness who may become confrontational or even violent during such interactions. It has been estimated that police are involved with persons suffering from mental illnesses between 7% and 10% of their time (Franz and Borum 2011: 265; Morabito 2007: 1582). How are police to handle such cases?

Police have generally been considered to be major contributors to the involvement of persons with mental illness in the criminal justice system. They have been criticized for actively arresting such persons for minor offenses as a means of handling difficult behavior, as an act of compassion, or based on police beliefs that persons with mental challenges are more violent than others without such challenges (Morabito 2007: 1582).

In 2006, the U.S. Bureau of Justice Statistics found that at midyear 2005, more than half of all prison and jail inmates had a mental health problem explained as a recent history or symptoms of a mental health problem that had occurred in the 12 months prior to the survey interview

(James and Glaze 2006: 1). Female inmates had higher rates of such problems than males: in state prisons, 73% of females compared to 55% of males, and in local jails, 75% of females compared to 63% of males.

During the 1970s and 1980s, a "criminalization hypothesis" emerged to explain the increasing number of persons with mental illness entering the justice system. The contention was that following deinstitutionalization and the release of persons from state mental institutions, along with stricter rules about commitment for mental illness but no corresponding increase in community mental health facilities, the issue of controlling the sometimes-deviant behavior of people with mental illness was displaced onto the criminal justice system. Behavior that was previously constructed as a psychiatric problem was now reconstructed as an issue of public order and safety and as quasi-criminal (Johnson 2011: 128; Morabito 2007: 1583). This hypothesis has since been called into question, including for its lack of attention to police decision-making and behavior. Studies also found that when other factors were controlled for, police were, in fact, less likely to arrest persons with mental illness compared with other persons (Morabito 2007: 1583). Nevertheless, when such persons show resistance to police commands or are substance abusers, as is often the case, police will decide to arrest. Overall, however, studies have shown that police are more lenient toward the mentally ill, but they are disproportionately represented in arrests because they disproportionately commit serious crimes and resist police (Johnson 2011: 127, 129).

## Police Perceptions of Mentally Ill Persons

### Do Police Expect Mentally Disordered Persons They Encounter to Display Hostility and Violence?

While research suggests that persons who are mentally ill are no more hostile or violent than the general population, there are some exceptions:

- Studies in 1992 and 1996 found that those with psychotic symptoms were more likely to self-report having engaged in illegal and violent behavior.
- When treatment and medication regimes are not followed, mentally ill persons' self-control is diminished. One study in 1998 found that in delusional and psychotic persons, medication noncompliance almost tripled the likelihood of violent acts.
- Use of alcohol or illegal drugs aggravates the symptoms of mental disorder and negates the effect of medications, again lowering self-control

levels. In 2005, about 74% of state prisoners and 76% of local jail inmates met the criteria for substance dependence or abuse (James and Glaze 2006: 1). A recent study that analyzed use of force reports from the police in Portland, Oregon, over the period 2008 to 2011 noted a tendency to conflate mental illness and alcohol and drug abuse (Morabito and Socia 2015: 6), but the study showed that perceived mental illness in itself did not significantly affect the likelihood of injury to police or a suspect when it was not combined with substance abuse. Substance abuse alone did increase the likelihood of injury to the suspect and, to a lesser extent, the officer. In encounters where there was a perception of mental illness and substance abuse combined, the likelihood of injury to both parties was increased (p. 16).

- When mentally disordered persons experience stressful events such as homelessness or conflicts with others, their emotional reaction is likely to be more intense and to express itself in negative ways.

Consequently, overall a population exists of violent, mentally disordered persons, comprised mainly of those having personality disorders with psychotic or delusional features (Johnson 2011: 133).

### Do Police Commonly Use Force Against Those Perceived to Be Mentally Ill?

Officers are concerned about interactions with mentally ill persons because of their perceived unpredictability. These encounters can also be time-consuming, with officers waiting hours to have a person admitted to hospital (Morabito et al. 2012: 59). Using self-report data from two municipal police forces, Johnson (2011: 140) found that generally physical force was used less often against those perceived by police to be mentally ill than against mentally stable persons. All suspects, whether mentally stable or unstable, who physically resisted, possessed a weapon, or displayed hostility were significantly more likely to receive force compared to others without these characteristics. Finally, it was found that mentally unstable suspects were significantly more likely to physically resist or assault officers and possess a weapon than were persons not perceived to be unstable.

### Crisis Intervention Teams

The issues associated with mental illness and policing have led to the development of specific police strategies, such as crisis intervention teams (CITs), intended to improve police response to this population. Police lack the training

to handle mental health crises and, as noted earlier, may resort to arrest because they lack alternative options.

Beginning with a pioneer scheme in the Memphis Police Department, law enforcement agencies have developed teams of trained officers who are often paired with mental health professionals in the community to respond to calls involving mentally unstable persons. The specialist officers, trained in de-escalation techniques, are able to relieve patrol officers of the duty of responding to such calls. This initiative was intended to reduce the arrest and incarceration of the mentally ill through “jail diversion,” which can occur before or after a person is booked or arrested and has become accepted as a best-practice model or prebooking diversion (Franz and Borum 2011: 266). Officers who participate in CITs have received 40 hours of specialist mental health training to provide on-scene intervention and are able to act as liaisons to the formal mental health system in a state. CIT officers conduct regular patrol duties, but when a mental disturbance call is received, the CIT officer can be called to the scene where he or she acts as the principal officer present (p. 66). Studies have shown that the existence of operational CITs has prevented arrest so that in many regions the arrest rate is only 3%, compared to one study finding that 19% of calls would probably have resulted in arrest before the CIT program was implemented (p. 269; Compton et al. 2014: 523).

CIT training is not intended to eliminate the use of force, and police may still find it necessary to apply an appropriate level of force to bring a person under control. Findings from a survey of CIT and non-CIT officers in two Chicago districts indicated that a CIT-trained officer was likely to respond with less force for an increasingly resistant demeanor in comparison to a non-CIT officer because a CIT officer might be able to identify resistant behavior as a symptom of mental illness and utilize deescalation techniques (Morabito et al. 2012: 71). To the contrary, a study by Compton and colleagues (2014: 523) found that there was no difference in the force level between CIT and non-CIT officers, probably because encounters involving force are driven by the risk of violence and the person’s resistance, but the highest level of force tended to be used by non-CIT officers.

### ETHICAL ISSUES IN INVESTIGATION, INTERROGATION, AND CUSTODY

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



associated with attempting to entrap individuals. Most importantly, police investigations ought to be regarded as processes having the moral purpose of gaining knowledge in order to discover truth. Consequently, “rational evidence gathering is necessarily guided by truth,” and this moral purpose will be undermined by any acts of police corruption (Miller and Gordon 2014: 7, 52). Investigators should not simply gather evidence so that the courts can decide the truth of an incident. Rather, police investigators should be committed to truth-seeking when conducting investigations and interacting with witnesses and suspects. In fulfilling their ethical duty of truth-seeking, investigators ought to have a true belief in the evidence they collect, and that belief should be based on sound and rational reasoning.

### Rights of Suspects and Victims

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

Police also have a duty to the **victim** of a crime that extends to the victim’s family if there is a need to protect persons who have been terrorized by the crime, although not its direct target. Fundamentally, police are under an obligation to employ the greatest possible effort to apprehend a suspect and to provide evidence for a successful prosecution. In doing this, they satisfy their ethical obligation toward the victim (Miller et al. 1997). It is suggested also that police have a moral responsibility to provide an appropriate level of care to vulnerable victims, such as the victims of the crime of rape. The responsibility extends to conducting medical and forensic examinations of rape victims in a private nonpolice venue, ensuring that interviews of such victims are conducted by officers with specialized training, and assessing whether victims require protection, counseling, or other special services (Miller and Gordon 2014:140).

### Privacy

This is a constitutional right and a moral right that a person possesses in relation to others, particularly with regard to information possessed by others or in relation to the observation of others. A violation of privacy takes place through

acts such as observation and body searches. Similarly, a person’s intimate personal relations with others must be regarded as a privacy issue, as is information relating to the ownership of objects or assets where there is a presumption that the person need not disclose assets except in defined circumstances, such as tax collection. Also regarded as private are facts concerned with a person’s public roles, such as voting decisions and business plans. Finally, the law grants privacy in respect to certain data collected relating to an individual that may be released only under defined conditions. Given that there is a moral right to privacy, an unauthorized invasion of privacy is morally wrong regardless of whether the person is aware that his or her privacy has been violated, and irrespective of the consequences, harmful or otherwise (Miller and Gordon 2014: 253).

Most recently, issues such as retaining DNA profiles on national databases have raised questions about privacy. It was formerly the practice in England to retain DNA profiles of any person who had been charged with a crime even though he or she was not convicted. In 2008, the European Court of Human Rights decided that this policy violated the human rights of innocent persons, and English practice has since been modified (Miller and Gordon 2014: 142).

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

1. Accessing and interception are *prima facie* an infringement of privacy and are presumed a violation that ought not to be overridden except in exceptional circumstances.
2. The benefits of violating privacy must be greater than the likely costs, especially the cost of reducing public trust in those who seek to violate privacy.
3. Accessing and interception ought to relate to a serious crime; there ought to be probable cause that the person whose privacy is to be violated has committed the crime and that the resulting information is likely to further the investigation of that crime.
4. There must be no practicable alternative method of gathering the information.
5. Law enforcement officials must be accountable for the violation in terms of obtaining any necessary warrant.
6. Persons whose privacy has been violated should be informed of the violation at the earliest possible moment consistent with not compromising the investigation.

Miller and colleagues suggest that this framework of principles should regulate police action that might violate the right to privacy.

## Entrapment

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

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

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

In the United States, entrapment is considered a legal limit on the government's use of deception in investigation, and it occurs when a government agent, usually a police officer, initiates action that induces an otherwise innocent person to commit a crime so that he or she may be prosecuted. Entrapment operates as a defense, which, if established, will result in an acquittal. The courts apply a **subjective test** in determining whether the defense of entrapment has been proved. This involves the court looking at the mental predisposition of the offender to commit

the crime rather than the objective methods of the police (Marx 1985; Skolnick 1982; Stitt and James 1985). In 1958, a minority of the U.S. Supreme Court in *Sherman v. United States* proposed an **objective test**, focusing on the nature of the police conduct as opposed to the predisposition of the offender. Under this test, the court would look at the character of the state's involvement in the commission of the offense; in other words, it would assess whether the police acted in such a way as would be likely to instigate or create a criminal offense.

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

## Deception

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

Skolnick (1982), in considering police deception, focuses on three stages of deception: investigative deception, interrogatory deception, and testimonial deception. He makes the point that the acceptability of deception varies according to the stage reached in the criminal process. Deception is most acceptable to police and the courts at the investigation stage, less acceptable during interrogation, and least acceptable in the courtroom. The reason for this is that each stage implies a greater number of constraints

## A CLOSER LOOK

### A SUCCESSFUL ENTRAPMENT DEFENSE

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

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

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

remaining 361 days were suspended, and he was placed on probation for 180 days.

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

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

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*Source: Ferge v. State 2002.*

## A CLOSER LOOK

### AN UNSUCCESSFUL ENTRAPMENT DEFENSE

On January 8, 2007, Shahawar Matin Siraj, a Pakistani, was sentenced to 30 years in prison for planning to blow up the Herald Square subway station on 34th Street in New York City. Siraj claimed that he was entrapped by a paid police informant who showed him photographs of inmates being abused at Abu Ghraib prison in Iraq and who recorded on tape his responses in the form of threats against the United States. He was convicted of conspiracy, based partly on testimony of police informant Osama Eldawoody, an Egyptian American who was recruited by New York police to monitor radical Muslims following 9/11. Siraj admitted taking preliminary

steps to attack the subway station but claimed he had only done so at Eldawoody’s prompting. His entrapment defense seemed to have convinced at least half the members of the jury early in the trial, but they later dismissed it. His defense was aided by the fact that the police paid Eldawoody a total of \$100,000 for his work as an informer. The defense claimed it was this salary that kept Eldawoody interested in interacting with Siraj and in encouraging Siraj in his plotting.

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*Source: Hays 2007.*

in the criminal justice process. For example, testimony in court is given under oath, but in the process of interrogation, it is not. Deceptive practices can include acts associated with the fabrication of evidence, such as the following:

- Telling a suspect that he or she has been identified by an accomplice when this is not true
- Showing a suspect faked evidence, such as fingerprints, to confirm his or her guilt
- Telling a suspect that he or she has been identified by an eyewitness<sup>3</sup>
- Holding a lineup in which a supposed witness identifies the suspect
- Getting a suspect to agree to a lie-detector test and telling him or her that it has proved his or her guilt (Skolnick and Fyfe 1993: 61)

In modern policing, physical evidence generated by processes such as DNA testing, advances in forensic science, and the images produced by CCTV systems have come to play a major role in criminal prosecutions. However, even physical evidence can be tampered with to improperly secure a conviction (Miller and Gordon 2014: 67).

## Informants

*What ethical issues are associated with police use of informants?* Harfield (2012: 73) indicates the use of informants is ethically problematic on several levels. He describes informers as “individuals who supply information about other persons covertly to the authorities, usually in expectation of some form of reward and usually at the instigation of the authorities.” Commonly, the informant’s information cannot be acquired by any other means, and the informant has gained that information through a relationship with the subject of the information. Scholars have developed typologies of informants that categorize them as, for example, “indentured informants,” who are typically offenders arrested for minor drug offenses and who accept police offers to inform on other drug dealers in exchange for leniency for the offense for which they have been arrested; “entrepreneurial agents” who are motivated by money or revenge and who seek out an arrangement with police; and civic-minded informers within the community who value links with law enforcement (Dabney and Tewksbury 2016: 38–43).

Harfield (2012) argues that using informers who inform against a third person, unknown to that person, is itself unethical. In terms of policing, it can only be justified morally if

- it facilitates the purpose of policing;
- reasonable suspicion exists that the person informed against is intending to commit a crime;
- the crime is sufficiently serious in nature to justify recourse to an informant in order to obtain knowledge of it;
- no other less morally harmful means of obtaining the information exists;
- the information itself is central to an investigation in the sense that the investigation or a prosecution could not proceed without it; and
- the information is not simply desirable, but essential (p. 76).

Numerous risks are associated with the use of informants, including the following:

- Usually, there are no written records of meetings, and therefore, the officer’s account of what he or she may have promised to the informant may not be credible.
- Because the relationship is limited to the informant and the officer he or she is informing, there is no corroboration of whatever payments are made.
- The secrecy that attaches to the relationship means that informants cannot be tasked by other officers.
- Officers may promise large rewards or favorable judicial or prosecutorial action but may not be able to deliver on those promises.

These and other factors point to the need to devise informant management systems that ensure proper record keeping, day-to-day control of the informant, and maintenance of appropriate levels of security and secrecy. Such systems ought to protect officers from the risks associated with using informants (Miller and Gordon 2014: 233, 235). It is interesting to note that in the Netherlands and Belgium, informants are supervised and approved by magistrates (Miller and Gordon 2014: 237).

There are also risks associated with police forming close relationships with informants that might result in police disclosing confidential information about cases or about an officer’s family or life generally. For this reason, police generally ensure that social relationships and certainly sexual contacts are avoided (Dabney and Tewksbury 2016: 121, 172). Contrary to popular belief, police do not give informants a “free pass” on crimes they may commit

while working with police. Although police may not take action for very minor misdemeanors, where an informant commits a felony, this will always be prosecuted (p. 145).

In the United States, law enforcement agencies commonly require that informants be registered, a process that includes documenting an informant's basic identifying and criminal history information, the name or number allocated to the informant, and any signed materials relating to the arrangement made with the informant, such as the terms of payment for information. Information from the informant is recorded. Often, registration must be approved by a supervising officer. While some officers see these requirements as safeguards against any claims of corruption in their dealings with informants, others regard the process as unnecessary bureaucracy. Informants may themselves be uncomfortable with the notion of registering because they fear their identity may be revealed and they will be regarded as snitches on the street (Dabney and Tewksbury 2016: 108–109).

In addition, it is common for police agencies to set out scales of payment for information in policy statements or standard operating procedures. Generally, payments will not exceed \$100, except that federal agencies may pay much larger sums where cases involve significant quantities of drugs or high-level offenders (Dabney and Tewksbury 2016: 58–59).

### Investigative Deception

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

### Interrogatory Deception

Moral issues associated with police interrogations include the imbalance of power between the parties and the resulting loss of autonomy suffered by the person being interrogated, challenges to a person's right to privacy, possible misuses of power and violation of the rights of those who are innocent of criminal conduct, and the possibility that physical coercion might be applied to a person (Hartwig, Luke, and Skerker 2017: 328–329).

In the 1966 case of *Miranda v. Arizona*, which dealt with the interrogation of a suspect in the custody of the police, the Court held that arrested persons must be informed of their right to remain silent, that any statement they make may be used as evidence, that they have the right to the presence of an attorney, and that an attorney will be provided if they cannot afford one. In addition, the Court determined that the state is under a heavy burden in attempting to prove that any waiver of these rights occurred voluntarily, knowingly, and intelligently. Under *Miranda*, police are not required to give a suspect his or her rights unless they have taken the suspect into custody or “otherwise deprived [him] of his freedom . . . in any significant way” (quoted in Ross 2008: 452). Therefore, police are able to avoid the *Miranda* requirements by delaying an arrest until after they have finished questioning a suspect.

The *Miranda* decision evolved out of the admission in courts of confessions that were obtained in the early period with the use of torture, later with the use of the third degree,<sup>4</sup> and then with the use of techniques of deception and psychological pressure. Over time, police have devised strategies that minimize the effect of *Miranda*. For example, police may question suspects in apparently non-custodial settings, or they may read suspects their rights but then proceed to question them as if the rights did not really exist. Police also try to persuade suspects to waive their rights, suggesting this would be in their own best interests. In any event, studies have shown that suspects routinely waive their rights—up to 80% of the time—often because they fail to understand their nature, effect, and purpose (Kassin et al. 2007: 383), and that persons with no prior felony record are far more likely to waive their rights than those with a criminal history (Meissner and Kassin 2004: 97).

As Kleinig (1996: 138) notes, sometimes interrogations are characterized as “interviews,” where the language used is more respectful and the investigating officer constructs himself as a “seeker of truth” rather than “an accuser.” Police interviews do not require the police to *Mirandize* the suspect. However, every custodial situation is inherently coercive and, depending on the circumstances, bears on the issue of whether what a person says can be said to be

voluntary. It is clear that in a custodial interrogation, police are able to control the physical conditions of the encounter, the length of the interrogation, the time given to the suspect to respond to questioning, and, generally, the terms under which it takes place. The outcome of the coercive nature of the interrogation, when combined with the police control of it, is that an innocent person or a person easily intimidated may react in ways that imply guilt. Further, a guilty person may be persuaded to confess to a more serious offense than the one he or she has committed. Questions of the mental capacity of the person being interrogated may also arise.

Leo (2008: 20) argues that police ought to be fact finders and not identify with the role of the prosecution. However, in practice, police have become partisan and committed to the aim of incriminating a suspect so as to help the state conduct a successful prosecution. Leo notes that police demonstrate this partisanship through their values and culture, through the goals of the process of interrogation, in the psychological methods they employ to secure confessions, and in the impression management they perform for suspects, judges, and juries. He suggests that while police techniques are not illegal, they do raise normative concerns about the process and quality of American criminal justice (p. 36) in the sense that fraud and deception in the interrogation process corrupt the integrity of the criminal justice process. Police interrogation remains one of the most secretive and morally questionable of all police activities because it involves behaviors that in other contexts would be ethically unacceptable (p. 187).

## Confessions

*What are the ethical concerns surrounding the techniques used by police to solicit a confession?* Studies have revealed that for jurors, confession evidence is a potent indicator of guilt, possibly exceeding eyewitness evidence (Meissner and Kassin 2004: 86). However, in its investigations, the Innocence Project has uncovered many cases in which confessions have been shown to be false, and some of these were given in response to police threats that, absent a confession, the accused person would face the death penalty. In the first DNA exonerations, 37 out of 123 exonerations involved homicides, and in two-thirds of those cases, false confessions or incriminating statements figured in the convictions (Lassiter and Ratcliff 2004: 3).

Research into the personal and situational influences that lead both guilty and innocent persons to confess shows that interrogation tactics such as minimizing a crime by suggesting to a suspect that he or she was morally justified in committing it makes suspects believe that that they will be dealt with leniently after confessing. As

well, presenting false evidence can lead innocent persons to confess to acts they did not commit (Meissner and Kassin 2004: 86).

In seeking to elicit confessions, police may seek aid from numerous manuals that describe appropriate techniques. The so-called Reid manual (*Criminal Investigations and Confessions*) is the most widely used and describes a nine-step process that includes minimizing the moral seriousness of the alleged crime to encourage a confession. If this is unsuccessful, the interrogator may instead maximize the alleged crime to emphasize the serious consequences of continuing to deny guilt. These manipulative techniques have been criticized for contributing to the incidence of false confessions (Hartwig et al. 2017: 330).

The **polygraph** or **lie detector** has been made a familiar police tool through television and movies and is essentially a means of intimidating a suspect into making a confession. It was invented to overcome the issues associated with the third degree and remains a powerful interrogation tool. The device measures changes in a person's physiology that occur in response to questions, based on the theory that the act of lying causes fear and anxiety, bringing about internal tensions that can be measured on a chart. It is said that truth telling is signified by a suspect who is "composed and very direct while answering questions," "light-hearted," "talkative," and "cooperative and sincere" (Leo 2004: 61). As Leo expresses it, this device is "a testament to the triumph of scientific ideology in American police work" (p. 60), and its effectiveness is associated with its appearance as an instrument of science and its supposed infallibility (p. 62).

Confessions are elicited through the polygraph by the polygraph examiner, who plays on the fears of exposure of the suspect that arise before, during, and after the test and particularly when the suspect is informed that he or she has "failed" the test. The suspect will be told that the polygraph has found him or her to be "deceptive," and that since it never makes mistakes, the suspect might as well confess (Leo 2004: 62).

Police interrogation manuals teach officers that they too can recognize when a suspect is lying by using "behavioral analysis." Since 1986, when this method was developed, police have claimed to be able to detect lying by conducting an interview (prior to an actual interrogation) in which a set of questions designed to evoke particular behavioral responses is put to the suspect. There are 15 suggested questions to which, according to the manual writers, suspects who are lying will react defensively and evasively. Guilt can also be inferred, it is said, by analyzing the behavior of the suspect during the questioning: abrupt body movements, grooming and cosmetic actions

like stroking the back of the hair or head, shuffling the feet, biting fingernails, and supportive gestures such as placing the hand over the mouth while speaking or crossing the legs are all claimed to signal guilt (Leo 2004: 65). Behavioral analysis therefore functions like the lie detector, with the interrogator being a kind of human polygraph, because it too examines stress reactions and deviations from the normal that indicate deception and therefore guilt.

Leo explains that since no unique physiological or psychological response that can be explained as signifying lying or deception has ever been discovered, the theory behind the polygraph and this kind of behavioral analysis, which finds no support in research studies, remains “implausible” (2004: 67). Most recently, polygraphs have been utilized in the monitoring of registered sex offenders. Questions addressed to sex offenders seek to identify their movements and any contacts they have had with children. However, the value of the polygraph in relation to sex offenders is to be found in its intimidating effect and not in its accuracy in obtaining information: it is the expectation of a test that causes offenders to reveal information and not the test itself (Meijer and Verschuere 2015: 66–67).

### Testimonial Deception

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

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

### Police Lying

Barker and Carter (1995) propose a typography of police lying, comprising accepted lying, tolerated lying, and deviant lying.

#### Accepted Lying

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

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

#### Tolerated Lying

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

In the important area of police interrogation, lies are tolerated, and police are even trained to lie. Standard police texts on interrogation techniques advocate and instruct in deceptive and lying practices employed in interrogation. For instance, it is recommended that the officer conducting an interrogation seem sincere to such an extent that he may appear tearful or that an interrogator present a fabricated evidence file to a suspect. A familiar interrogation technique is to separate two suspected offenders and play off one against the other, and here, the interrogation texts suggest that the interrogator may actually inform one suspect that the other has confessed. There is also no legal rule that prevents police from pretending that a suspect's fingerprints were found on the murder weapon (Ross 2008: 447).

The leading text on police interrogation, Fred Inbau and John E. Reid's (1962) *Criminal Interrogation and Confessions*, is now in its fourth edition, and Reid suggests that a trained investigator can achieve 85% accuracy in differentiating truthful and untruthful statements. Research indicates that police are confident in their skills and believe they possess a "sixth sense" in truth-seeking (Kassin et al. 2007: 382). As Leo notes (2008: 21), influenced by their values and the police culture, police assume that suspects will lie to them unhesitatingly. They also believe they can assess guilt or innocence in advance of an interrogation (Meissner and Kassin 2004: 88). Several studies have provided evidence of an investigator bias—that is, a tendency for police to perceive those they interview as guilty, despite the fact that research has revealed that people generally do not perform above the level of chance in determining whether there is deception and that police and professional interrogators perform "only slightly better than chance, if at all" (p. 89).

The courts have held that police may employ deceit to obtain confessions as long as their actions do not "shock the conscience" or constitute actions that would induce an innocent person to confess (Alpert and Noble 2009: 242). Again, the justification for these techniques is said to be the noble cause of enforcing the law. Nevertheless, an attitude suggesting that using lies in interrogation is an acceptable practice because it serves the end of the noble cause can constitute the beginning of another slippery slope toward what Barker and Carter call deviant lying.

### Deviant Lying

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

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

### Electronic Recording of Interrogations

Electronic recording of interrogations is gaining favor in the states. For example, in 1985, the Alaska Supreme Court required that the police record all custodial interrogations; if not, they would be inadmissible at trial. In 2003, Illinois legislated to require all custodial interrogations in homicide cases to be recorded (Leo 2008: 292). However, the FBI maintains its refusal to record, as do several other major urban police departments. In 1984, England and Wales enacted the Police and Criminal Evidence Act (PACE) that requires all police interrogations to be recorded. The act has changed police interrogation practice in that country from an adversarial model to an investigative model designed to obtain information and not to secure confessions. There has been no falloff in the confession rate; in fact, it has increased (p. 326).

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

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

Summarizing the objections raised by scholars to police lying in interrogation, Leo (2008: 191) notes the following: it is not required to solve most crimes; it breaches social trust and infringes the suspect's dignity; it taints the integrity of the fact-finding process and may therefore reduce public confidence in the criminal justice system; it tends to expand into other areas of policing, such as police lying in evidence at trials; and it produces false confessions.



## SUMMARY

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

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

## DISCUSSION QUESTION

1. Is it entrapment if the police attempt to catch child molesters on the Internet by pretending to be juveniles?

## NOTES

1. For a discussion of the law and policy concerning civilian recording of police activity, see Kies 2011.
2. This theory argues that persons with lower self-control are more likely to engage in unwise, irresponsible, or hasty behavior because they lack the capacity to appreciate the immediate or long-term consequences of their actions. They are therefore likely to be impulsive, to be easily provoked, to be unable to tolerate frustration, and to tend to seek immediate gratification (Donner, Maskaly, Piquero, and Wesley 2017: 218).
3. Since the 1970s, studies have been conducted on the accuracy of eyewitness evidence, and now more than 2,000 studies in various disciplines have shown that eyewitness accounts are subject to a variety of influences that can affect their reliability (Lassiter and Ratcliff 2004: 1).
4. The term *third degree* connotes extreme forms of interrogation. The Wickersham Commission (in Leo 2008: 46) explains the term as “the employment of methods which inflict suffering, physical or mental, upon a person in order to obtain information about a crime.” It was common practice in the 1930s for police to kick and beat suspects with nightsticks, leather saps, pistol butts, and baseball bats (p. 47).



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