OUTLINE

- Introduction
- Police Personality and Culture
- Corruption and Integrity
- The Dangers of Police Work
- Police Use of Force
- Racial Profiling and Biased Policing
- Police Civil Liability

LEARNING OBJECTIVES

After reading this chapter, you should be able to

- Describe the police working personality, and relate it to police culture.
- List and describe different types of police corruption, and discuss possible methods for building police integrity.
- Explain the dangers of police work, and discuss what can be done to reduce those dangers.
- Describe the situations in which police officers are most likely to use force, and provide some guidelines for determining when too much force has been used.
- Describe racial profiling and biased policing, and explain why they have become significant issues in policing today.
- Describe the civil liability issues associated with policing, and identify common sources of civil suits against the police.
INTRODUCTION

Today’s police officers and administrators face many complex issues. Some concerns, such as corruption, on-the-job dangers, and the use of deadly force, derive from the very nature of police work. Others, like racial profiling and exposure to civil liability, have arisen due to common practices, characteristic police values, public expectations, legislative action, and ongoing societal change. Certainly, one of the most significant challenges facing American law enforcement today is policing a multicultural society. All of these issues are discussed in the pages that follow. We begin, however, with the police recruit socialization process. It is vital to understand this process because the values and expectations learned through it not only contribute to the nature of many important police issues but also determine how the police view and respond to those issues.

POLICE PERSONALITY AND CULTURE

New police officers learn what is considered appropriate police behavior by working with seasoned veterans. Through conversations with other officers in the locker room, in a squad car, or over a cup of coffee, a new recruit is introduced to the value-laden subculture of police work. A definition of police subculture was given in Chapter 6. It can also be understood as “the set of informal values which characterize the police force as a distinct community with a common identity.” This process of informal socialization plays a much bigger role than formal police academy training in determining how rookies come to see police work. Through it, new officers gain a shared view of the world that can best be described as “streetwise.” Streetwise cops know what official department policy is, but they also know the most efficient way to get a job done. By the time rookie officers become streetwise, they know which of the various informal means of accomplishing the job are acceptable to other officers. The police subculture creates few real mavericks, but it also produces few officers who view their jobs exclusively in terms of public mandates and official dictums.

In the 1960s, renowned criminologist Jerome Skolnick described what he called the police working personality. Skolnick’s description of the police personality was consistent with William Westley’s classic study of the Gary (Indiana) Police Department, in which he found a police culture with its own “customs, laws, and morality,” and with Arthur Niederhoffer’s observation that cynicism was pervasive among officers in New York City. More recent authors have claimed that the “big curtain of secrecy” surrounding much of police work shields knowledge of the nature of the police personality from outsiders. Taken in concert, these writers offer a picture of the police working personality shown in Table 8–1.

Some characteristics of the police working personality are essential for survival and effectiveness. For example, because officers are often exposed to highly emotional and potentially
threatening confrontations with belligerent people, they must develop efficient, authoritarian strategies for gaining control over others. Similarly, a suspicious nature makes for a good police officer, especially during interrogations and investigations.

However, other characteristics of the police working personality are not so advantageous. For example, many officers are cynical, and some can be hostile toward members of the public who do not share their conservative values. These traits result from regular interaction with suspects, most of whom, even when they are clearly guilty in the eyes of the police, deny any wrongdoing. Eventually, personal traits that result from typical police work become firmly ingrained, setting the cornerstone of the police working personality.

There are at least two sources of the police personality. On the one hand, it may be that components of the police personality already exist in some individuals and draw them toward police work.8 Supporting this view are studies that indicate that police officers who come from conservative backgrounds view themselves as defenders of middle-class morality.9 On the other hand, some aspects of the police personality can be attributed to the socialization into the police subculture that rookie officers experience when they are inducted into police ranks.

Researchers have reported similar elements in police subculture throughout the United States. They have concluded that, like all cultures, police subculture is a relatively stable collection of beliefs and values that is unlikely to change from within. Police subculture may, however, be changed through external pressures, such as new hiring practices, investigations into police corruption or misuse of authority, and commission reports that create pressures for police reform. Learn more about police subculture and police behavior at Web Extra 8–1 at MyCrimeKit.com.
Policing a Multicultural Society

Members of some social groups have backgrounds, values, and perspectives that, although they do not directly support law-breaking, contrast sharply with those of many police officials. Robert M. Shusta, a well-known writer on multicultural law enforcement, says that police officers “need to recognize the fact of poor police-minority relations historically, including unequal treatment under the law.” Moreover, says Shusta, “many officers and citizens are defensive with each other because their contact is tinged with negative historical ‘baggage.’”

In other words, even though discrimination in the enforcement of the criminal law may not be commonplace today, it was in the past—and perceptions built on past experience are often difficult to change. Moreover, if the function of law enforcement is to “protect and serve” law-abiding citizens from all backgrounds, then it becomes vital for officers to understand and respect differences in habits, customs, beliefs, patterns of thought, and traditions. Hence, as Shusta says, “the acts of approaching, communicating, questioning, assisting, and establishing trust with members of different groups require special knowledge and skills that have nothing to do with the fact that ‘the law is the law’ and must be enforced equally. Acquiring sensitivity, knowledge, and skills leads to [an increased appreciation for the position of others] that will contribute to improved communications with members of all groups.”

How can police officers acquire greater sensitivity to the issues involved in policing a diverse multicultural society? Some researchers suggest that law enforcement officers of all backgrounds begin by exploring their own prejudices. Prejudices, which are judgments or opinions formed before facts are known and which usually involve negative or unfavorable thoughts about groups of people, can lead to discrimination. Most people, including police officers, are able to reduce their tendency to discriminate against those who are different by exploring and uprooting their own personal prejudices.

One technique for identifying prejudices is cultural awareness training. As practiced in some police departments today, cultural awareness training explores the impact of culture on human behavior—and especially on law-breaking behavior. Cultural awareness training generally involves four stages:

- Clarifying the relationship between cultural awareness and police professionalism. As Shusta explains it, “The more professional a police officer is, the more sophisticated he or she is in responding to people of all backgrounds and the more successful he or she is in cross-cultural contact.”
- Recognizing personal prejudices. In the second stage of cultural awareness training, participating officers are asked to recognize and identify their own personal prejudices and biases. Once prejudices have been identified, trainers strive to show how they can affect daily behavior.
- Acquiring sensitivity to police–community relations. In this stage of training, participating officers learn about historical and existing community perceptions of the police. Training can often be enhanced through the use of carefully chosen and well-qualified guest speakers or participants from minority communities.
- Developing interpersonal relations skills. The goal of this last stage of training is to help officers develop the positive verbal and nonverbal communications skills necessary for successful interaction with community members. Many trainers believe that basic skills training will result in the continuing development of such skills because officers will quickly begin to see the benefits (in terms of lessened interpersonal conflict) of effective interpersonal skills.

CORRUPTION AND INTEGRITY

Although most law enforcement officers perform their duties responsibly and with honor, some do not. In 2006, for example, Border Patrol Agent Oscar Antonio Ortiz pleaded guilty to charges of conspiracy to smuggle aliens into the United States, making a false claim to U.S. citizenship, making a false statement in the acquisition of a firearm, and being an illegal alien in possession of a firearm. Ortiz, a Mexican citizen who was born in Tijuana, secured a job with the Border Patrol in 2001 by using a fake birth certificate that listed Chicago as his place of birth. Court documents show that he conspired with at least one other border patrol agent to smuggle more than 100 Mexican nationals into the United States. Officials revealed that intercepted phone calls between Ortiz and another agent spoke of payments of up to $2,000 per person smuggled into the United States. The recorded calls also discussed rates that human traffickers working with the agents should be charged to secure the agents’ cooperation. On July 28, 2006, a federal district court judge sentenced Ortiz to serve 60 months in prison. He will likely be deported after his sentence is complete.
The kind of corruption seen in Ortiz’s case pales alongside that of two retired New York City police detectives who were convicted in 2006 of giving confidential information to mob leaders and of misusing their authority as law enforcement officers to kidnap and kill rival gangsters. Federal prosecutors successfully portrayed retired police investigator Louis Eppolito, 56, and his former partner, Stephen Caracappa, 63, as assassins working for the Luchese crime family. The two are suspected of killing at least eight men in one of the city’s most notorious police corruption scandals ever. Their convictions, on 70 counts of racketeering, came 20 years after their first victim was gunned down in a New York City parking garage. Caracappa, who may have been the triggerman in most of the killings, was known for helping to create the New York Police Department’s Organized Crime Homicide Unit and was described as “a gatekeeper of information about Mafia killings investigated by police.” Although the jurors remained anonymous throughout the trial for protection from possible retaliation, one of them, a building safety official from Long Island, told reporters after the trial that he was shocked at the detectives for having broken their oath to uphold the law. “When you’re given an oath, and an oath as precious as being a police officer, and a duty to protect and serve people, that is the highest oath ever,” said the juror. “It’s like, ‘How dare you violate that oath?’ . . . When you violate [that] oath, you lose the respect of the people you’re sworn to protect.”

Police corruption has been a problem in American society since the early days of policing. The combination of power, authority, and discretion in police work produces great potential for abuse. In today’s society, the personal and financial benefits of having the police “on your side” are greater than ever. Police officers face temptations that range from a small restaurant owner’s offer of a free cup of coffee in exchange for the officer’s future goodwill, perhaps for something as simple as a traffic ticket, to a drug dealer’s huge monetary bribe to guarantee that the officer will look the other way when a shipment of cocaine arrives. As noted criminologist Carl Klockars says, policing, by its very nature, “is an occupation that is rife with opportunities for misconduct. Policing is a highly discretionary, coercive activity that routinely takes place in private settings, out of the sight of supervisors, and in the presence of witnesses who are often regarded as unreliable.”

The effects of police corruption are far-reaching. As Michael Palmiotto of Wichita State University notes, “Not only does misconduct committed by an officer personally affect that officer, it also affects the community, the police department that employs the officer and every police department and police officer in America. Frequently, negative police actions caused by inappropriate police behavior reach every corner of the nation, and at times, the world.”

Exactly what constitutes corruption is not always clear.Ethicists say that police corruption ranges from minor offenses to serious violations of the law. In recognition of what some have called corruption’s “slippery slope,” most police departments now explicitly prohibit officers from accepting even minor gratuities. The slippery slope perspective holds that accepting even small thank-yous from members of the public can lead to a more ready acceptance of larger bribes. An officer who begins to accept, and then expect, gratuities may soon find that his or her practice of policing becomes influenced by such gifts and that larger ones soon follow. At that point, the officer may easily slide to the bottom of the moral slope, which was made slippery by previous small concessions.

Thomas Barker and David Carter, who have studied police corruption in depth, make the distinction between “occupational deviance,” which is motivated by the desire for personal benefit, and “abuse of authority, which occurs most often to further the organizational goals of law enforcement, including arrest, ticketing, and the successful conviction of suspects.”

The Los Angeles Police Department’s Rampart Station office, where a corruption scandal occurred in 2000 and 2001. A number of officers assigned to the Rampart Division were investigated on charges ranging from falsifying evidence to the theft and sale of illegal drugs. In what some have called “the biggest police scandal in Los Angeles history,” many criminal cases had to be dismissed. What other forms can police corruption take?
FBI Special Agent Frank Perry, former chief of the bureau’s ethics unit, distinguishes between police deviance and police corruption. Police deviance, according to Perry, consists of “unprofessional on- and off-duty misconduct, isolated instances of misuse of position, improper relationships with informants or criminals, sexual harassment, disparaging racial or sexual comments, embellished/falsified reporting, time and attendance abuse, insubordination, nepotism, cronyism, and noncriminal unauthorized disclosure of information.” Deviance, says Perry, is a precursor to individual and organizational corruption. It may eventually lead to outright corruption unless police supervisors and internal affairs units are alert to the warning signs and actively intervene to prevent corruption from developing.

Figure 8–1 sorts examples of police corruption in terms of seriousness, though not everyone would agree with this ranking. In fact, a survey of 6,982 New York City police officers found that 65% did not classify excessive force, which we define later in this chapter, as a corrupt behavior. Likewise, 71% of responding officers said that accepting a free meal is not a corrupt practice. Another 15% said that personal use of illegal drugs by law enforcement officers should not be considered corruption.

In the early 1970s, Frank Serpico made headlines when he testified before the Knapp Commission on police corruption in New York City. Serpico, an undercover operative within the police department, revealed a complex web of corruption in which money and services routinely changed hands in “protection rackets” created by unethical officers. The authors of the Knapp Commission report distinguished between two types of corrupt officers, which they termed “grass eaters” and “meat eaters.” “Grass eating,” the more common form of police corruption, was described as illegitimate activity that occurs from time to time in the normal course of police work. It involves mostly small bribes or relatively minor services...
offered by citizens seeking to avoid arrest and prosecution. “Meat eating” is a much more serious form of corruption, involving an officer’s actively seeking illicit moneymaking opportunities. Meat eaters solicit bribes through threat or intimidation, whereas grass eaters commit the less serious offense of failing to refuse bribes that are offered.

In 1993, during 11 days of corruption hearings reminiscent of the Knapp Commission era, a parade of crooked New York police officers testified before a commission headed by former judge and Deputy Mayor Milton Mollen. Among the many revelations, officers spoke of dealing drugs, stealing confiscated drug funds, stifling investigations, and beating innocent people. Officer Michael Dowd, for example, told the commission that he had run a cocaine ring out of his station house in Brooklyn and had bought three homes on Long Island and a Corvette with the money he made. Most shocking of all, however, were allegations that high-level police officials attempted to cover up embarrassing incidents and that many officials may have condoned unprofessional and even criminal practices by the officers under their command. Honest officers, including internal affairs investigators, described how higher authorities had resisted their efforts to end corruption among their colleagues.

Repercussions from the Mollen Commission hearings continue to be felt. In 2004, for example, a New York State judge ruled that the city of New York had to pay special disability benefits to former police officer Jeffrey W. Baird, who served as an informant for the commission. Baird helped uncover corruption while working as an internal affairs officer but suffered from post-traumatic stress disorder after fellow officers threatened him, vandalized his work area, and sent obscene materials to his home.  

A corruption scandal in the Los Angeles Police Department’s (LAPD) Rampart Division began in mid-2000. Soon, the LAPD became embroiled in accusations of corruption that centered on the Rampart Division’s antigang unit, known as CRASH (Community Resources against Street Hoodlums). Many of the unit’s officers were accused of operating like a criminal organization to frame hundreds of people through threats and beatings, by planting evidence, and by committing perjury. They and other officers were alleged to be running a drug ring, eliminating competition from civilian dealers by framing them and seeing them sent to prison. Seven shootings and at least two killings were among the illegal activities allegedly committed by officers. The scandal came to light after LAPD Officer Rafael Perez was caught stealing $1 million worth of cocaine from an evidence room. In exchange for an offer of leniency, Perez turned informant and cooperated with prosecutors. Perez, who was also accused of murder by a former girlfriend, provided investigators with details about ongoing corruption in the Rampart Division. As events unfolded, prosecutors accused LAPD Chief Bernard Parks of withholding critical information needed to build a case against the accused officers. According to prosecutors, the LAPD, under the direction of Chief Parks, “failed to provide arrest reports, witness statements and background information.” The prosecutors claimed that “on several occasions, the LAPD . . . actually hindered the progress of the investigation.” Parks was replaced as chief by William J. Bratton in 2002.

By 2005, more than 100 falsely obtained convictions had been thrown out, and 20 LAPD officers had left active duty. Another seven officers were convicted of conspiring to frame innocent people, but a judge overturned three of the convictions on procedural grounds. The remaining four officers received sentences of up to five years in prison. The Los Angeles city attorney agreed to pay a total of $70.2 million to settle approximately 214 lawsuits stemming from the corruption scandal. At the time of the settlement, the Los Angeles Times complained that much of the money, averaging $400,000 per settlement, went to “drug dealers, gang members and other criminals who said they had been framed, shot, beaten or otherwise mistreated by police.” The largest settlement, $15 million, went to former gang member Javier Francisco Ovando, who had been paralyzed by a police shooting. In responding to critics, Cindy Miscikowski, chairwoman of the Los Angeles City Council’s Public Safety Committee, pointed out that “regardless of who the plaintiffs were, there was evidence of wrongdoing. That’s what we had to recognize. . . . Civil rights are civil rights,” Miscikowski said, “and they apply to everyone across the board.”

The LAPD is now operating under a consent decree, a legally binding agreement with the U.S. Department of Justice that calls for major reforms. The decree requires the department to install a computer system to track complaints and disciplinary actions against LAPD
officers; to collect data on the racial makeup of citizens stopped for traffic violations; and to create a special unit within the department to investigate shootings and beatings by police officers to determine whether excessive force was used.31 Rafael Perez, sentenced to five years in prison, warned young officers as he was sentenced that “whoever chases monsters must see that he not become a monster himself.”32 Learn more about the Rampart scandal at Web Extra 8–2 at MyCrimeKit.com.

Money—The Root of Police Evil?

Years ago, Edwin Sutherland applied the concept of differential association (discussed in Chapter 3) to the study of deviant behavior.33 Sutherland suggested that frequent, continued association of one person with another makes the associates similar. Of course, Sutherland was talking about criminals, not police officers. Consider, however, the dilemma of average officers: Their job entails issuing traffic citations to citizens who try to talk their way out of a ticket, dealing with prostitutes who feel hassled by police, and arresting drug users who think it should be their right to do what they want as long as “it doesn’t hurt anyone.” Officers regularly encounter personal hostility and experience consistent and often quite vocal rejection of society’s formalized norms. They receive relatively low pay, which indicates to them that their work is not really valued. By looking at the combination of these factors, it is easy to understand how officers often develop a jaded attitude toward the society they are sworn to protect.

Police officers’ low pay may be a critical ingredient of the corruption mix. Salaries paid to police officers in this country have been notoriously low compared to those of other professions that require personal dedication, extensive training, high stress, and the risk of bodily harm. As police work becomes more professional, many police administrators hope that salaries will rise. However, no matter how much police pay increases, it will never be able to compete with the staggering amounts of money to be made through dealing in contraband. Working hand in hand with monetary pressures toward corruption are the moral dilemmas produced by unenforceable laws that provide the basis for criminal profit. During Prohibition, the Wickersham Commission warned of the potential for official corruption inherent in the legislative taboos on alcohol. The immense demand for drink called into question the wisdom of the law while simultaneously providing vast resources designed to circumvent it. Today’s drug scene bears similarities to the Prohibition era. As long as there is a market for illegal drugs, the financial as well as societal pressures on the police to profit from the drug trade will remain substantial.
Building Police Integrity

The difficulties of controlling corruption can be traced to several factors, including the reluctance of police officers to report corrupt activities by their fellow officers, the reluctance of police administrators to acknowledge the existence of corruption in their agencies, the benefits of corrupt transactions to the parties involved, and the lack of immediate victims willing to report corruption. However, high moral standards embedded in the principles of the police profession and effectively communicated to individual officers through formal training and peer-group socialization can raise the level of integrity in any department. Some law enforcement training programs are increasingly determined to reinforce the high ideals many recruits bring to police work and to encourage veteran officers to retain their commitment to the highest professional standards. As one Federal Bureau of Investigation (FBI) publication explains it, “Ethics training must become an integral part of academy and in-service training for new and experienced officers alike.”

Ethics training, which was discussed in Chapter 6, is part of a “redefining” strategy that emphasizes integrity to target police corruption. In 1997, for example, the National Institute of Justice (NIJ) released a report entitled Police Integrity: Public Service with Honor. The report, based on recommendations made by participants in a national symposium on police integrity, suggested (1) integrating ethics training into the programs offered by newly funded Regional Community Policing Institutes throughout the country, (2) broadening research activities in the area of ethics through NIJ-awarded grants for research on police integrity, and (3) conducting case studies of departments that have an excellent track record in the area of police integrity.

The NIJ report was followed in 2001 by a U.S. Department of Justice document entitled Principles for Promoting Police Integrity. The foreword to that document states, “For . . . policing to be successful, and crime reduction efforts to be effective, citizens must have trust in the police. All of us must work together to address the problems of excessive use of force and racial profiling, and—equally important—the perceptions of many minority residents that law enforcement treats them unfairly, if we are to build the confidence in law enforcement necessary for continued progress. Our goal must be professional law enforcement that gives all citizens of our country the feeling that they are being treated fairly, equally and with respect.” The report covered such topics as the use of force; complaints and misconduct investigations; accountability and effective management; training; nondiscriminatory policing; and recruitment, hiring, and retention. Read the full report, which provides examples of promising police practices and policies that promote integrity, at Library Extra 8–1 at MyCrimeKit.com.

In 2000, the International Association of Chiefs of Police (IACP), in an effort to reinforce the importance of ethical standards in policing, adopted the Law Enforcement Oath of Honor, shown in the “Ethics and Professionalism” box in this chapter. The IACP suggests that the Law Enforcement Oath of Honor should be seen by individual officers as a statement of commitment to ethical behavior. It is meant to reinforce the principles embodied in the Law Enforcement Code of Ethics, which is printed in the “Ethics and Professionalism” box in Chapter 6.

In December 2005, the U.S. Department of Justice weighed in on the issue of police integrity with a Research for Practice report entitled Enhancing Police Integrity. The report said that “an agency’s culture of integrity, as defined by clearly understood and implemented policies and rules, may be more important in shaping the ethics of police officers than hiring the ‘right’ people.” The report’s authors also noted that officers tend to evaluate the seriousness of various types of misconduct by observing and assessing their department’s response in detecting and disciplining it. If unwritten policies conflict with written policies, the authors observed, then the resulting confusion undermines an agency’s overall integrity-enhancing efforts. Enhancing Police Integrity is available online at Library Extra 8–2 at MyCrimeKit.com.

Most large city law enforcement agencies have their own internal affairs divisions, which are empowered to investigate charges of wrongdoing made against officers. Where necessary, state police agencies may be called on to examine reported incidents. Federal agencies, including the FBI and the Drug Enforcement Administration, get involved when corruption
violates federal statutes. The U.S. Department of Justice (DOJ), through various investigative offices, has the authority to examine possible violations of civil rights resulting from the misuse of police authority. The DOJ is often supported in these endeavors by the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People (NAACP), and other watchdog groups.

Drug Testing of Police Employees

On November 17, 2000, the U.S. Court of Appeals for the Fourth Circuit found that the chief of police in Westminster, Maryland, had acted properly in asking a doctor to test an officer’s urine for the presence of heroin without the officer’s knowledge. Westminster Police Officer Eric Carroll had gone to the local hospital complaining of tightness in his chest and fatigue. The doctor who examined Carroll diagnosed him as suffering from high blood pressure. Carroll was placed on disability leave for three days. While Carroll was gone, the police chief received a call from someone who said that the officer was using heroin. The chief verified the caller’s identity and then called the department doctor and asked him to test Carroll for drugs—but without informing the officer of the test. When Carroll returned to the physician for a follow-up visit, the doctor took a urine sample, saying that it was to test for the presence of blood. Although no blood was found in Carroll’s urine, it did test positive for heroin. As a consequence, Officer Carroll’s employment with the department was terminated. He then sued in federal court, alleging conspiracy, defamation, and violations of his constitutional rights. The Fourth Circuit Court of Appeals, however, determined that the chief’s actions were reasonable because, among other things, Carroll had signed a preemployment waiver that permitted the department to conduct drug tests at any time, with or without cause.40

The widespread potential for police corruption created by illicit drugs has led to focused efforts to combat drug use by officers. Drug-testing programs in local police departments are an example of such efforts. The IACP has developed a model drug-testing policy for police managers. The policy, designed to meet the needs of local departments, suggests the following41:

- Testing all applicants and recruits for drug or narcotics use
- Testing current employees when performance difficulties or documentation indicates a potential drug problem
- Testing current employees when they are involved in the use of excessive force or when they suffer or cause an on-duty injury
- Routine testing of all employees assigned to special “high-risk” areas, such as narcotics and vice

Courage is having the strength to withstand unethical pressure, fear or danger. Accountability means that you are answerable and responsible to your oath of office. Community is the jurisdiction and citizens served.

THINKING ABOUT ETHICS

1. How is the Law Enforcement Oath of Honor similar to the Law Enforcement Code of Ethics found in Chapter 6? How does it differ?
2. How do the two reinforce each other?


There is more to being a professional than just looking like one.
—Rob Edwards
The courts have supported drug testing based on a reasonable suspicion that drug abuse has been or is occurring, although random testing of officers was banned by the New York State Supreme Court in the case of Philip Caruso, President of P.B.A. v. Benjamin Ward, Police Commissioner (1986). Citing overriding public interests, a 1989 decision by the U.S. Supreme Court upheld the testing of U.S. Customs personnel applying for transfer into drug-law enforcement positions or into positions requiring a firearm. Many legal issues surrounding employee drug testing remain to be resolved in court, however.

Complicating this issue is the fact that drug and alcohol addictions are “handicaps” protected by the Federal Rehabilitation Act of 1973. As such, federal law enforcement employees, as well as those working for agencies with federal contracts, are entitled to counseling and treatment before action can be taken toward termination.

Employee drug testing in police departments, as in many other agencies, is a sensitive subject. Some claim that existing tests for drug use are inaccurate, yielding a significant number of “false positives.” Repeated testing and high threshold levels for narcotic substances in the blood may eliminate many of these concerns. Less easy to address, however, is the belief that drug testing intrudes on the personal rights and professional dignity of individual employees. Learn more about employee drug-testing policies in police departments at Web Extra 8–3 at MyCrimeKit.com, and discover more about corruption and the continuing drive toward police integrity at Library Extras 8–3 and 8–4 at MyCrimeKit.com.

THE DANGERS OF POLICE WORK

On October 15, 1991, the National Law Enforcement Officers’ Memorial was unveiled in Washington, D.C. The memorial contained the names of 12,561 law enforcement officers killed in the line of duty, including U.S. Marshals Service Officer Robert Forsyth, who in 1794 was the nation’s first law enforcement officer to be killed on the job. More than 6,000 names have been added since opening day. At the memorial, an interactive video system provides visitors with brief biographies and photographs of officers who have died. Tour the memorial by visiting Web Extra 8–4 at MyCrimeKit.com.

As the memorial proves, police work is, by its very nature, dangerous. Although many officers never once fire their weapons in the line of duty, some do die while performing their jobs. On-the-job police deaths occur from stress, training accidents, and auto crashes. However, it is violent death at the hands of criminal offenders that police officers and their families fear most.

Violence in the Line of Duty

At one o’clock on the morning of April 17, 2005, 50-year-old Providence (Rhode Island) Police Department Detective Sergeant James L. Allen was shot and killed with his own service weapon inside the Providence Public Safety Complex. Allen was in the process of questioning 26-year-old Esteban Carpio about the stabbing and robbery of an 86-year-old woman that had taken place the day before. Carpio, who was not under arrest and whose handcuffs had been removed, apparently grabbed Allen’s weapon during a brief struggle and shot the officer. After the killing, Carpio shot out a third-story window, jumped to the ground, and attempted to escape. Injured in the fall, he was apprehended a few blocks away. Detective Allen, whose father is a retired police captain, had served with the Providence Police Department for 27 years. He is survived by a wife and two daughters.
Most officers who are shot are killed by lone suspects armed with a single weapon. In 2008, 134 American law enforcement officers were killed in the line of duty. Figure 8–2 shows the number of officers killed in different types of incidents. In 2001, the attacks on the World Trade Center resulted in the greatest ever annual loss of life of on-duty law enforcement officers when 72 police officers perished.

A study by the FBI found that, generally, slain officers were good natured and conservative in the use of physical force, “as compared to other law enforcement officers in similar situations. They were also perceived as being well-liked by the community and the department, friendly to everyone, laid back, and easy going.” Finally, the study, which was published before the September 11, 2001, terrorist attacks, also found that most officers who were killed failed to wear protective vests.

For statistics on police killings to have meaning beyond the personal tragedy they entail, it is necessary to place them within a larger framework. There are approximately 732,000 state and local (full- and part-time) sworn police employees in this country, along with another 105,000 federal agents. Such numbers demonstrate that the rate of violent death among law enforcement officers in the line of duty is small indeed.

**Risk of Disease and Infected Evidence**

Dangers other than violence also threaten law enforcement officers. The increase in serious diseases that can be transmitted by blood and other body fluids, the possible planned release of active biological weapons like anthrax or smallpox, and the fact that crime and accident scenes are inherently dangerous combine to make caution a necessary watchword among investigators and first responders. Routine criminal and accident investigations hold the potential for infection through minor cuts and abrasions resulting from contact with the broken glass and torn metal of a wrecked vehicle, the sharp edges of knives found at the scene of an assault or murder, and drug implements like razor blades and hypodermic needles secreted in vehicles, homes, and pockets. Such minor injuries, previously shrugged off by many police personnel, have become a focal point for warnings about the dangers of AIDS, hepatitis B, tuberculosis, and other diseases spread through contact with infected blood.

In 1988, in Sonoma County, California, Sheriff Dick Michaelson announced the first case of AIDS infection in an officer that was clearly caused by interaction with a suspect. A deputy in Michaelson’s department had contracted AIDS a few years earlier when he was pricked by a hypodermic needle during a pat-down search.

Infection can also occur from the use of breath alcohol instruments on infected persons, the handling of evidence of all types, seemingly innocuous implements like staples, the emergency delivery of babies in squad cars, and the attack (especially bites) by infected individuals who are being questioned or who are in custody. Understandably, officers are concerned about how to handle the threat of AIDS and other bloodborne diseases. However, as a publication of the New York City Police Department reminds its officers, “Police officers have a professional responsibility to render assistance to those who are in need of our services. We cannot refuse to help. Persons with infectious diseases must be treated with the care and dignity we show all citizens.”

Of equal concern is the threat of biological agents. Although crime scenes and sites known to harbor (or that are suspected of harboring) dangerous active biological agents require a response by teams equipped with special protective equipment, all law enforcement officers should take reasonable precautions against exposure to the wide variety of infectious agents.
known to exist at even routine crime scenes. Emergency management agencies generally recommend a number of precautions, shown in Table 8–2, to defend against exposure to infectious substances.

To better combat the threat of infectious diseases among public-safety employees and health-care professionals, the federal Bloodborne Pathogens Act of 1991 requires that police officers receive proper training in how to prevent contamination by bloodborne infectious agents. The act also requires that police officers undergo an annual refresher course on the topic.

Police departments will face an increasing number of legal challenges in the years to come in cases of infectious diseases like AIDS and in cases involving the release of biological agents. Predictable areas of concern include (1) the need to educate officers and other police employees about AIDS, anthrax, and other serious infectious diseases; (2) the responsibility of police departments to prevent the spread of AIDS and other infectious diseases in police lockups; and (3) the necessity of effective and nondiscriminatory enforcement activities and lifesaving measures by police officers in environments contaminated

---

**TABLE 8–2 Biological Incident Law Enforcement Concerns**

<table>
<thead>
<tr>
<th><strong>Suspicious material</strong></th>
<th>Responding officers should not handle or come into close physical contact with suspicious material. If it is necessary to handle the material to evaluate it, officers should wear surgical gloves and masks and wash their hands thoroughly with soap and water after handling.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human bites</strong></td>
<td>The biter usually receives the victim’s blood. Viral transmission through saliva is highly unlikely. If bitten by anyone, milk the wound to make it bleed, wash the area thoroughly, and seek medical attention.</td>
</tr>
<tr>
<td><strong>Spitting</strong></td>
<td>Viral transmission through saliva is highly unlikely.</td>
</tr>
<tr>
<td><strong>Urine/feces</strong></td>
<td>The virus has been isolated in only very low concentrations in urine and not at all in feces. No cases of AIDS or AIDS virus infection have been associated with either urine or feces.</td>
</tr>
<tr>
<td><strong>Cuts/puncture wounds</strong></td>
<td>Use caution in handling sharp objects and searching areas hidden from view. Needle-stick studies show risk of infection is very low.</td>
</tr>
<tr>
<td><strong>CPR/first aid</strong></td>
<td>To eliminate the already minimal risk associated with CPR, use masks/airways. Avoid blood-to-blood contact by keeping open wounds covered and wearing gloves when in contact with bleeding wounds.</td>
</tr>
<tr>
<td><strong>Body removal</strong></td>
<td>Observe crime-scene rules; do not touch anything. Those who must come in contact with blood or other body fluids should wear gloves.</td>
</tr>
<tr>
<td><strong>Casual contact</strong></td>
<td>No cases of AIDS or AIDS virus infection have been attributed to casual contact.</td>
</tr>
<tr>
<td>Any contact with blood or body fluids</td>
<td>Wear gloves if contact with blood or body fluids is considered likely. If contact occurs, wash thoroughly with soap and water; clean up spills with one part water to nine parts household bleach.</td>
</tr>
<tr>
<td>Contact with dried blood</td>
<td>No cases of infection have been traced to exposure to dried blood. The drying process itself appears to inactivate the virus. Despite low risk, however, caution dictates wearing gloves, a mask, and protective shoe coverings if exposure to dried blood particles is likely (for example, during a crime-scene investigation).</td>
</tr>
</tbody>
</table>

with active biological agents. With regard to nondiscriminatory activities, the National Institute of Justice has suggested that legal claims in support of an officer’s refusal to render assistance to people with AIDS would probably not be effective in court. The reason is twofold: The officer has a basic duty to render assistance to individuals in need of it, and the possibility of AIDS transmission by casual contact has been scientifically established as extremely remote. A final issue of growing concern involves activities by police officers infected with the AIDS virus. Few statistics are currently available on the number of officers with AIDS, but public reaction to those officers may be a developing problem that police managers will soon need to address.

**Stress and Fatigue among Police Officers**

In the week after Hurricane Katrina in 2005, two New Orleans police officers used their service weapons to take their own lives. One was Sergeant Paul Accardo, the department’s spokesperson. The other was patrolman Lawrence Celestine, an officer described by Deputy Police Chief W. J. Riley as “an outstanding cop.” Feelings of powerlessness, personal loss, and an inability to help those in need all seriously heightened the level of stress felt by officers in New Orleans following the hurricane. “The most stressing part is seeing the citizens we serve every day being treated like refugees,” said Riley. “There were cops walking through the crowd at the convention center and people were coming up to beg for food. Not being able to help is a difficult thing. People were calling our names because we knew them and to not be able to help, man, that’s stressful.”

Traumatic events, like hurricanes, terrorist attacks, and violent confrontations, are instantly stressful. But long-term stress, whose debilitating effects accumulate over years, may be the most insidious and least visible of all threats facing law enforcement personnel today. While some degree of stress can be a positive motivator, serious stress, over long periods of time, is generally regarded as destructive, even life threatening.

Stress is a natural component of police work. The American Institute of Stress, based in Yonkers, New York, ranks policing among the top ten stress-producing jobs in the country. The Bureau of Justice Statistics points out that “exposure to violence, suffering, and death is inherent to the profession of the law enforcement officer. There are other sources of stress as well. Officers who deal with offenders on a daily basis may perceive the public’s opinion of police performance to be unfavorable; they often are required to work mandatory, rotating shifts; and they may not have enough time to spend with their families. Police officers also face unusual, often highly disturbing, situations, such as dealing with a child homicide victim or the survivors of vehicle crashes.”

Some stressors in police work are particularly destructive. One is frustration brought on by the inability to be effective, regardless of the amount of personal effort expended. Arrests may not lead to convictions. Evidence available to the officer may not be allowed in court. Imposed sentences may seem inadequate to the arresting officer. The feelings of powerlessness that come from seeing repeat offenders back on the streets and from witnessing numerous injustices to innocent victims may greatly stress police officers and cause them to question the purpose of their professional lives. These feelings of frustration and powerlessness may also lead to desperate attempts to find relief. As one researcher observes, “The suicide rate of police officers is more than twice that of the general population.”

Another source of stress—that of living with constant danger—is incomprehensible to most of us, even to the family members of many officers. As one officer says, “I kick in a door and I’ve gotta talk some guy into putting a gun down. . . . And I go home, and my wife’s upset because the lawn isn’t cut and the kids have been bad. Now, to her that’s a real problem.” Yet the support of family and friends is crucial for handling stress.

Stress is not unique to the police profession, but because of the “macho” attitude that is traditionally associated with police work, police officers deny their stress more often than those in other occupations do. Some individuals are more susceptible to the negative effects of stress than others. The Type A personality, first identified almost 40 years ago, is most likely to perceive life in terms of pressure and performance. Type B people are more laid back.
and less likely to suffer from the negative effects of stress. Police ranks, drawn as they are from the general population, are filled with both stress-sensitive and stress-resistant personalities.

**STRESS REDUCTION** It is natural to want to reduce stress. Humor helps, even if it’s somewhat cynical. Health-care professionals, for example, are noted for their ability to joke while caring for patients who are seriously ill or even dying. At times, police officers use humor similarly to defuse their reactions to dark or threatening situations. Keeping an emotional distance from stressful events is another way of coping with them, although such distance is not always easy to maintain. Police officers who have had to deal with serious cases of child abuse often report that they experience emotional turmoil as a consequence.

Exercise, meditation, abdominal breathing, biofeedback, self-hypnosis, guided imaging, induced relaxation, subliminal conditioning, music, prayer, and diet have all been cited as useful techniques for stress reduction. Devices to measure stress levels are available in the form of handheld heart rate monitors, blood pressure devices, “biodots” (which change color according to the amount of blood flow in the extremities), and psychological inventories.

A new approach to managing stress among police officers holds that the amount of stress that officers experience is directly related to their reactions to potentially stressful situations. Officers who can filter out extraneous stimuli and who can distinguish between truly threatening situations and those that are benign are much less likely to report job-related stressors than those lacking these abilities. Because stress-filtering abilities are often closely linked to innate personality characteristics, some researchers suggest careful psychological screening of police applicants to better identify those who have a natural ability to cope with situations that others might perceive as stressful.

Police officers’ family members often report feelings of stress that are directly related to the officers’ work. As a result, some departments have developed innovative programs to allay family stress. The Collier County (Florida) Spousal Academy, for example, is a family support program that offers training to spouses and other domestic partners of deputies and recruits who are enrolled in the department’s training academy. The ten-hour program deals directly with issues that are likely to produce stress and informs participants of department and community resources that are available to help them. Peer-support programs for spouses and life partners and for the adolescent children of officers are also beginning to operate nationwide. Library Extra 8–5 at MyCrimeKit.com provides a comprehensive overview of issues related to police officer stress.

**OFFICER FATIGUE** Like stress, fatigue can affect a police officer’s performance. As criminologist Bryan Vila points out, “Tired, urban street cops are a national icon. Weary from overtime assignments, shift work, night school, endless hours spent waiting to testify, and the emotional and physical demands of the job, not to mention trying to patch together a family and social life during irregular islands of off-duty time, they fend off fatigue with coffee and hard-bitten humor.” Vila found levels of police officer fatigue to be six times as high as those of shift workers in industrial and mining jobs. As Vila notes, few departments set work-hour standards, and fatigue associated with the pattern and length of work hours may be expected to contribute to police accidents, injuries, and misconduct.

To address the problem, Vila recommends that police departments “review the policies, procedures, and practices that affect shift scheduling and rotation, overtime moonlighting, the number of consecutive work hours allowed, and the way in which the department deals with overly tired employees.” Vila also suggests controlling the working hours of police officers, “just as we control the working hours of many other occupational groups.”
POLICE USE OF FORCE

Police use of force is defined as the use of physical restraint by a police officer when dealing with a member of the public. Law enforcement officers are authorized to use the amount of force that is reasonable and necessary given the circumstances. Most officers are trained in the use of force and typically encounter numerous situations during their careers when the use of force is appropriate—for example, when making some arrests, restraining unruly combatants, or controlling a disruptive demonstration. Force may involve hitting; holding or restraining; pushing; choking; threatening with a flashlight, baton, or chemical or pepper spray; restraining with a police dog; or threatening with a gun. Some definitions of police use of force include handcuffing.

The National Institute of Justice estimates that more than 43.5 million people nationwide have face-to-face contact with the police over a typical 12-month period (nearly 18 million as a result of traffic stops) and that approximately 1.6%, or about 700,000, of these people become subject to the use of force or the threat of force. When handcuffing is included in the definition of force, the number of people subjected to force increases to 1.2 million, or slightly more than 2.5% of those having contact with the police. Other studies show that police use weaponless tactics in approximately 80% of use-of-force incidents and that about 88% of all use-of-force incidents involve merely grabbing or holding the suspect. Studies show that police use force in fewer than 20% of adult custodial arrests. Even in instances where force is used, the police primarily use weaponless tactics (Figure 8–3). Female officers have been found to be less likely to use physical force and firearms, and more likely to use chemical weapons (mostly pepper spray), than their male counterparts. A more complex issue is the use of excessive force. The International Association of Chiefs of Police defines excessive force as “the application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject.” When excessive force is employed, the activities of the police often come under public scrutiny and receive attention from the media and from legislators. Police officers’ use of excessive force can also result in lawsuits by members of the public who feel that they have been treated unfairly. Whether the use of excessive force is aberrant behavior on the part of an individual officer or is a practice of an entire law enforcement agency, both the law and public opinion generally condemn it.
Kenneth Adams, an associate dean at the University of Central Florida and an expert in the use of force by police, notes that there is an important difference between the terms *excessive force*, such as shoving or pushing when simply grabbing a suspect would be adequate, and *excessive use of force*, which refers to the phenomenon of force being used unacceptably, often on a department-wide basis. The term, says Adams, “deals with relative comparisons among police agencies, and there are no established criteria for judgment.” Use of excessive force and the excessive use of force may be distinguished from the illegal use of force, which refers to situations in which the use of force by police violates a law or statute.76

In a study reported in 2001, Geoffrey Alpert and Roger Dunham found that the “force factor”—the level of force used by the police relative to the suspect’s level of resistance—is a key element to consider in attempting to reduce injuries to both the police and suspects.77 The force factor is calculated by measuring both the suspect’s level of resistance and the officer’s level of force on an equivalent scale and by then subtracting the level of resistance from the level of police force used. Results from the study indicate that, on average, the level of force that officers use is closely related to the type of training that their departments emphasize.

Excessive force can also be symptomatic of problem police officers. Problem police officers are those who exhibit problem behavior, as indicated by high rates of citizen complaints, frequent involvement in use-of-force incidents, and other evidence.78 The Christopher Commission, which studied the structure and operation of the Los Angeles Police Department in the wake of the Rodney King beating, found a number of “repeat offenders” on the LAPD force.79 According to the commission, approximately 1,800 LAPD officers were alleged to have used excessive force or improper tactics between 1986 and 1990. Of these officers, more than 1,400 had only one or two allegations against them. Another 183 officers had four or more allegations, 44 had six or more, 16 had eight or more, and one had 16 such allegations. The commission also found that, generally speaking, the 44 officers with six complaints or more had received positive performance evaluations that failed to record “sustained” complaints or to discuss their significance.

Recent studies have found that problem police officers do not differ significantly in race or ethnicity from nonproblem officers, although they tend to be male and have disciplinary records that are more serious than those of other officers. Some departments are developing early-warning systems to allow police managers to identify potentially problematic officers and to reduce problem behavior. Learn more about police use of force, as well as force used against the police, from Library Extras 8–6 and 8–7 at MyCrimeKit.com.

### Deadly Force

Generally speaking, **deadly force** is likely to cause death or significant bodily harm. The FBI defines deadly force as “the intentional use of a firearm or other instrument resulting in a high probability of death.”80 According to a report released by the Bureau of Justice Statistics in 2001, the number of justifiable homicides by police averages “nearly 400 felons each year.”81

The use of deadly force by law enforcement officers, especially when it is not considered justifiable, is one area of potential civil liability that has received considerable attention in recent years. Historically, the fleeing-felon rule applied to most U.S. jurisdictions. It held that officers could use deadly force to prevent the escape of a suspected felon, even when that person represented no immediate threat to the officer or to the public.

The 1985 U.S. Supreme Court case of *Tennessee v. Garner*82 specified the conditions under which deadly force could be used in the apprehension of suspected felons. Edward Garner, a 15-year-old suspected burglar, was shot to death by Memphis police after he refused their order to halt and attempted to climb over a chain-link fence. In an action initiated by Garner’s father, who claimed that his son’s constitutional rights had been violated, the Court held that the use of deadly force by the police to prevent the escape of a fleeing felon could be justified only where the suspect could reasonably be thought to represent a significant threat of serious injury or death to the public or to the officer and where deadly force is necessary.
The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.


to effect the arrest. In reaching its decision, the Court declared that “[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.”

In the 1989 case of Graham v. Connor,83 the Supreme Court established the standard of “objective reasonableness.” The Court said that whether deadly force has been used appropriately should be judged from the perspective of a reasonable officer on the scene and not with the benefit of “20/20 hindsight.” The justices wrote, “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”

In 1995, following investigations into the actions of federal agents at the deadly siege of the Branch Davidian compound at Waco, Texas, and the tragic deaths associated with a 1992 FBI assault on antigovernment separatists in Ruby Ridge, Idaho (a case that is discussed later in the chapter), the federal government announced that it was adopting an “imminent danger” standard for the use of deadly force by federal agents. The imminent danger standard restricts the use of deadly force to those situations in which the lives of agents or others are in danger. When the new standard was announced, federal agencies were criticized for taking so long to adopt it. The federal deadly force policy, as adopted by the FBI, contains the following elements84:

- **Defense of life.** Agents may use deadly force only when necessary—that is, only when they have probable cause to believe that the subject poses an imminent danger of death or serious physical injury to the agent or to others.

- **Fleeing subject.** Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe that the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death and that the subject’s escape would pose an imminent danger of death or serious physical injury to the agent or to others.

- **Verbal warnings.** If feasible, and if doing so would not increase the danger to the agent or to others, a verbal warning to submit to the authority of the agent should be given prior to the use of deadly force.

- **Warning shots.** Agents may not fire warning shots.

- **Vehicles.** Agents may not fire weapons solely to disable moving vehicles. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when the agent has probable cause to believe that the subject poses an imminent danger of death or serious physical injury to the agent or to others and when the use of deadly force does not create a danger to the public that outweighs the likely benefits of its use.

Studies of killings by the police have often focused on claims of discrimination—that is, that minority suspects are more likely to be shot than whites. But research has not provided solid support for such claims. While individuals shot by police are more likely to be minorities, an early study by James Fyfe found that police officers will generally respond with deadly force when mortally threatened and that minorities are considerably more likely to use weapons in assaults on officers than are whites.85 Complicating the picture further, Fyfe’s study showed that minority officers are involved in the shootings of suspects more often than other officers, a finding that may be due to the assignment of minority officers to inner-city and ghetto areas. However, a later study by Fyfe, which analyzed police shootings in Memphis, Tennessee, found that black property offenders were twice as likely as whites to be shot by police.86

Although relatively few police officers ever fire their weapons at suspects during the course of their careers, those who do may become embroiled in social, legal, and personal complications. It is estimated that in an average year, 600 suspects are killed by public police in America, while another 1,200 are shot and wounded, and 1,800 are shot at and missed.87 The personal side of police shootings is well summarized in the title of an article that appeared in Police Magazine. The article, “I’ve Killed That Man Ten Thousand Times,” demonstrates how police officers who have to use their weapons may be haunted by years of depression
and despair. Not long ago, according to author Anne Cohen, all departments did to help an officer who had shot someone was to “give him enough bullets to reload his gun.” The stress and trauma that police officers suffer from having shot someone are only now being realized, and many departments have yet to develop mechanisms for adequately dealing with them.

Police officers have particular difficulty dealing with instances of “suicide by cop,” in which individuals bent on dying engage in behavior that causes responding officers to resort to deadly force. On March 10, 2005, for example, John T. Gczynski, Jr., a father of two preteen boys, died in a hail of 26 police bullets fired by officers who had surrounded his vehicle in a Boca Raton, Florida, condominium parking lot. Gczynski, a Florida Power and Light Company employee, had been separated from his wife months earlier and appeared to have been despondent over financial problems and the breakup of his marriage. The night before his death, Gczynski met his wife at a bowling alley and handed her a packet containing a suicide note, a typed obituary, and a eulogy to be read at his funeral. After he left, Gczynski’s wife called police, and officers used the help of a cell phone company to locate Gczynski. As deputies surrounded his 2003 Ford Explorer, he attempted to start the vehicle. One of the officers yelled “Freeze” and then “Let me see your hands.” It was at that point, deputies said, that Gczynski pointed a gun at them and they fired.

Rebecca Stincelli, author of the book *Suicide by Cop: Victims from Both Sides of the Badge,* says an incident like that involving Gczynski can be devastating for police officers. “In the past, people have used rope, a gun, gas, jumped off a building. A police officer is just another method,” said Stincelli. “They say it’s nothing personal. [But] they are wrong. It’s very personal” for the officers involved. The FBI says that “suicide-by-cop incidents are painful and damaging experiences for the surviving families, the communities, and all law enforcement professionals.”

A study of fatal shootings by Los Angeles police officers found that an astonishingly large number—more than 10%—could be classified as “suicide by cop.” Recently, researchers have identified three main “suicide by cop” categories: direct confrontations, in which suicidal subjects instigate attacks on police officers for the purpose of dying; disturbed interventions, in which potentially suicidal subjects take advantage of police intervention in their suicide attempt in order to die; and criminal interventions, in which criminal suspects prefer death to capture and arrest.

## Less-Lethal Weapons

Less-lethal weapons offer what may be a problem-specific solution to potential incidents of “suicide by cop,” as well as a generic solution to at least some charges of use of excessive force. Less-lethal weapons are designed to disable, capture, or immobilize a suspect rather than kill him or her. Efforts to provide law enforcement officers with less-lethal weapons like stun guns, Tasers (aka conducted energy devices), rubber bullets, beanbag projectiles, and pepper spray began in 1987. More exotic types of less-lethal weapons, however, are on the horizon. They include snare nets fired from shotguns, disabling sticky foam that can be sprayed from a distance, microwave beams that heat the tissue of people exposed to them until they desist in their illegal or threatening behavior or lose consciousness, and high-tech guns that fire bolts of electromagnetic energy at a target, causing painful sensory overload and violent muscle spasms. The National Institute of Justice says, “The goal is to give line officers effective and safe alternatives to lethal force.”

As their name implies, however, less-lethal weapons are not always safe. On October 21, 2004, for example, 21-year-old Emerson College student Victoria Snelgrove died hours after being hit in the eye with a plastic pepper-spray-filled projectile that police officers fired at a rowdy crowd celebrating the Red Sox victory over the New York Yankees in the final game of the American League Championship Series in 2004. Witnesses said that officers fired the projectile into the crowd after a reveler near Fenway Park threw a bottle at a mounted Boston police officer.
RACIAL PROFILING AND BIASED POLICING

Racial profiling first received national attention in the late 1990s. Racial profiling can be defined as any police action initiated on the basis of the race, ethnicity, or national origin of a suspect, rather than on the behavior of that individual or on information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity.99

The alleged use by police of racial profiling may take a number of forms. Minority accounts of disparate treatment at the hands of police officers include being stopped for being “in the wrong car” (for example, a police stop of an African American youth driving an expensive late-model BMW); being stopped and questioned for being in the wrong neighborhood (that is, police stops of members of minority groups driving through traditionally white residential neighborhoods); and perceived harassment at the hands of police officers for petty traffic violations like underinflated tires, failure to signal properly before switching lanes, vehicle equipment failures, driving less than 10 miles per hour above the speed limit, or having an illegible license plate.100

Profiling was originally intended to help catch drug couriers attempting to enter the country. The U.S. Customs Service and the Drug Enforcement Administration developed a number of “personal indicators” that seemed, from the agency’s day-to-day enforcement experiences, to be associated with increased likelihood of law violation. Among the indicators were these: speaking Spanish; entering the United States on flights originating in particular Central and South American countries; being an 18- to 32-year-old male; having purchased tickets with cash; and having a short planned stay (often of only a day or two) in the United States. Federal agents frequently used these criteria in deciding which airline passengers to search and which bags to inspect.

Racial profiling has been derisively referred to as “driving while black” or “driving while brown,” although it may also apply to situations other than those involving traffic violations. Racial profiling came to the attention of the public when police in New Jersey and Maryland were accused of unfair treatment of black motorists and admitted that race was a factor in traffic stops. Additional information about racial profiling studies focused on practices in New Jersey can be found in the expanded book at MyCrimeKit.com.

In 2003, in response to widespread public outcry over racial profiling, the U.S. Department of Justice banned its practice in all federal law enforcement agencies, except in cases that involve the possible identification of terrorist suspects.101 According to the DOJ, “the guidance provides that in making routine law enforcement decisions—such as deciding which motorists to stop for traffic infractions—consideration of the driver’s race or ethnicity is absolutely forbidden.”102

Those who defend the use of racial profiling by the police argue that it is not a bigoted practice when based on facts (such as when a police department decides to increase patrols in a housing area occupied primarily by minorities because of exceptionally high crime rates there) or when significant criminal potential exists among even a few members of a group. An example of the latter is the widespread public suspicions that focused on Arabs and Arab Americans following the terrorist attacks of September 11, 2001. As soon as it was publicly announced that the hijackers had been of Middle Eastern origin, some flight crews demanded that Arab-looking passengers be removed from their airplanes before takeoff, and passengers refused to fly with people who looked like Arabs.103

None of this is to say, of course, that race or ethnicity somehow inherently causes crime (or that it somehow causes poverty or increases the risk of victimization). If anything, race and ethnicity may simply display a significant correlation with certain types of crime, as they do with certain kinds of victimization. Hence, although the real causes of criminality may be socialization into criminal subcultures, economically deprived neighborhoods, a lack of salable job skills, and intergenerational poverty, and not race per se, to some law enforcement officers race provides one more indicator of the likelihood of criminality. David Cole, a professor at Georgetown University’s Law Center, for example, notes that in the minds of many police officials, “racial and ethnic disparities reflect not discrimination [or bigotry] but higher rates of offenses among minorities.”104 “Nationwide,” says Cole, “blacks
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Name: Robert M. Young, Jr.

Position: Special Agent/Criminal Investigator

City: Lexington, Kentucky

College Attended: Rider University

Year Hired: 1998

“I pursued a career in criminal justice because I am not the type of person who enjoys working a nine-to-five office job. I like having a career where each day presents its own unique challenges. For instance, there are days when I may be in court testifying, days investigating an arson or explosive incident, or days in the field participating in an undercover operation. I believe it is this ever-changing work environment that attracts such a diverse and unique group of individuals to careers in law enforcement. . . .

“I believe the greatest challenge I have encountered in my job is the difficulty in trying to adequately balance the demands of the job with the demands of my personal life. . . .

“There is no greater reward for a law enforcement officer than that of seeing the look of appreciation on the face of a crime victim after the defendant has been convicted and sentenced for the crime that was investigated.”

TYPICAL POSITIONS

Special agent, explosives expert, criminal investigator, firearms specialist, bomb scene investigator, liquor law violations investigator, fingerprint identification specialist, intelligence research specialist, and forensic chemist. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has primary investigative jurisdiction among federal agencies for the investigation of international arms trafficking, illegal arms movement, and the illegal use of explosives.

EMPLOYMENT REQUIREMENTS

GS-5 ATF special agent applicants must meet the same employment requirements as most other federal agents, including (1) successful completion of the Treasury Enforcement Agent Examination, (2) a field interview, (3) a full field background investigation leading to successful certification for a top-secret clearance, and (4) a bachelor’s degree from an accredited college or university or three years of general experience, one of which must be equivalent to at least the GS-4 level.

OTHER REQUIREMENTS

Other general requirements for employment as a federal officer apply. An applicant must (1) be a U.S. citizen, (2) be between 21 and 37 years old, (3) be in good physical health, (4) hold a current, valid U.S. driver’s license, (5) pass a polygraph examination, and (6) have eyesight of no less than 20/100 uncorrected, and corrected vision of at least 20/30 in one eye and 20/20 in the other. New agents undergo eight weeks of specialized training at the Federal Law Enforcement Training Center in Glynco, Georgia.

SALARY

A bachelor’s degree qualifies applicants for appointment at the GS-5 level, although appointments may be made at the GS-7 level for college graduates who are able to demonstrate superior academic achievement (that is, class standing in the upper third of their graduating class; a cumulative undergraduate grade point average of 2.95 or better; or membership in a national honor society recognized by the Association of College Honor Societies). GS-9 appointments require a master’s degree, two full academic years of progressively higher-level graduate education, or one year of specialized experience equivalent to the next lower grade in the federal service. Depending on geographic area of assignment, this salary can be raised from 16% to 30% above the established base level.

BENEFITS

Benefits include (1) 13 days of sick leave annually, (2) two and a half to five weeks of paid vacation and ten paid federal holidays each year, (3) federal health and life insurance, and (4) a comprehensive retirement program.

DIRECT INQUIRIES TO:

Bureau of Alcohol, Tobacco, Firearms and Explosives Personnel Division
Room 4100
650 Massachusetts Ave., N.W.
Washington, DC 20226
Phone: 202-927-5690
Website: http://atf.treas.gov


Source: Bureau of Alcohol, Tobacco, Firearms and Explosives.
led esteemed sociologist Amitai Etzioni to declare in 2001 that racial profiling is not necessarily racist. Moreover, warned Etzioni, an end to racial profiling “would penalize those African-American communities with high incidences of violent crime” because they would lose the levels of policing that they need to remain relatively secure.

Regardless of arguments offered in support of racial profiling as an enforcement tool, the practice has been widely condemned as being contrary to basic ethical principles, and national public opinion polls conducted by the Gallup Organization show that more than 80% of respondents are morally opposed to the practice of racial profiling by the police. From a more pragmatic viewpoint, however, racial profiling is unacceptable because it weakens the public’s confidence in the police, thereby decreasing police–citizen trust and cooperation. Learn more about racial profiling and police management via Library Extra 8–8 at MyCrimeKit.com.
Racially Biased Policing

In 2001, the Police Executive Research Forum (PERF) released a detailed report entitled *Racially Biased Policing: A Principled Response*. PERF researchers surveyed more than 1,000 police executives, analyzed material from more than 250 law enforcement agencies, and sought input from law enforcement agency personnel, community activists, and civil rights leaders about racial bias in policing. Researchers concluded that “the vast majority of law enforcement officers—of all ranks, nationwide—are dedicated men and women committed to serving all citizens with fairness and dignity.” Most police officers, said the report, share an intolerance for racially biased policing. The report’s authors noted that some police behaviors may be misinterpreted as biased when, in fact, the officer is just doing his or her job. “The good officer continually scans the environment for anomalies to normalcy—for conditions, people and behavior that are unusual for that environment,” they said. “In learning and practicing their craft, officers quickly develop a sense for what is normal and expected, and conversely, for what is not.” Hence for officers of any race to take special notice of unknown young white males who unexpectedly appear in a traditionally African American neighborhood, for example, might be nothing other than routine police procedure. Such an observation, however, is not in itself sufficient for an investigatory stop but might be used in conjunction with other trustworthy and relevant information already in the officer’s possession—such as the officer’s prior knowledge that young white men have been visiting a particular apartment complex in the neighborhood to purchase drugs—to justify such a stop.

The PERF report makes many specific recommendations to help police departments be free of bias. One recommendation, for example, says that “supervisors should monitor activity reports for evidence of improper practices and patterns. They should conduct spot-checks and regular sampling of in-car videotapes, radio transmissions, and in-car computer and central communications records to determine if both formal and informal communications are professional and free from racial bias and other disrespect.” Read the entire PERF report at Library Extra 8–9 at MyCrimeKit.com.

**Was the LAPD’s Community Mapping Project a Form of Religious Profiling?**

In 2007, the Los Angeles Police Department (LAPD) announced that it would terminate plans to have its counterterrorism unit identify isolated social enclaves within the city. Weeks earlier, Deputy Chief Michael P. Downing, who heads the department’s counterterrorism bureau, issued a press release detailing how the LAPD intended to work with the University of Southern California’s Center for Risk and Economic Analysis of Terrorism Events to determine which areas of the city were socially isolated and susceptible to “violent, ideologically based extremism.”

The plan was originally touted as a mapping project “intended to study the language, culture, history, socioeconomic conditions, and country of origin of various communities and neighborhoods” and as an effort to “help groups integrate into broader society by offering access to government and social services.”

Although the plan did not specifically target Muslim neighborhoods, Islamic leaders felt that it was a thinly disguised form of racial and religious profiling aimed squarely at their communities. Islamic leaders protested the plan, saying that any mapping based on faith and ethnicity is inappropriate for police departments, which should be concerned instead with mapping crime. “Police should not be in the business of analyzing political views, and religious views,” said Hussam Ayloush, a member of the Los Angeles chapter of the Council on American-Islamic Relations.

It is estimated that about half a million Muslims live in California’s Los Angeles, Riverside, and Orange counties.

**YOU DECIDE**

1. Is Hussam Ayloush right in saying that police departments should concern themselves with crime mapping and not with other forms of mapping in the cities they serve? Why or why not?
2. Was the LAPD’s proposed community mapping project really a form of religious and ethnic profiling? If so, should such profiling be permitted? Why or why not?

An elderly woman shows her displeasure with TSA security requirements. Some people fear that the use of profiling techniques could unfairly discriminate against members of certain racial and ethnic groups. Others suggest that the careful use of profiling can provide an important advantage in an age of scarce resources. With which perspective do you agree?

**Henry Ray Abrams/AP Wide World Photos**

### POLICE CIVIL LIABILITY

In 1996, 51-year-old Richard Kelley filed suit in federal court against the Massachusetts State Police and the Weymouth (Massachusetts) Police Department. The suit resulted from an incident during which, Kelley alleged, state troopers and Weymouth police officers treated him as a drunk rather than recognizing that he had just suffered a stroke while driving. According to Kelley, following a minor traffic accident caused by the stroke, officers pulled him from his car, handcuffed him, dragged him along the ground, and ignored his pleas for help—forcing him to stay at a state police barracks for seven hours before taking him for medical treatment. Drunk-driving charges against Kelley were dropped after medical tests failed to reveal the presence of any intoxicating substances in his body.

Civil liability suits brought against law enforcement personnel are of two types: state and federal. Suits brought in state courts have generally been the more common form of civil litigation involving police officers. In recent years, however, an increasing number of suits have been brought in federal courts on the claim that the civil rights of the plaintiff, as guaranteed by federal law, were denied.

### Common Sources of Civil Suits

Police officers may become involved in a variety of situations that could result in civil suits against the officers, their superiors, and their departments. Major sources of police civil liability are listed in Table 8–3. Charles Swanson, an expert in police procedure, says that the most common sources of lawsuits against the police are “assault, battery, false imprisonment, and malicious prosecution.”

Of all complaints brought against the police, assault charges are the best known, being, as they are, subject to high media visibility. Less visible, but not uncommon, are civil suits charging the police with false arrest or false imprisonment. In the 1986 case of *Malley v. Briggs*, the U.S. Supreme Court held that a police officer who effects an arrest or conducts a search on the basis of an improperly issued warrant may be liable for monetary damages when a reasonably well-trained officer, under the same circumstances, “would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant.”

### TABLE 8–3 Major Sources of Police Civil Liability

<table>
<thead>
<tr>
<th>Failure to protect property in police custody</th>
<th>Negligence in the care of suspects in police custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to render proper emergency medical assistance</td>
<td>Failure to prevent a foreseeable crime</td>
</tr>
<tr>
<td>Lack of due regard for the safety of others</td>
<td>False imprisonment</td>
</tr>
<tr>
<td>False arrest</td>
<td>Unnecessary assault or battery</td>
</tr>
<tr>
<td>Inappropriate use of deadly force</td>
<td>Violations of constitutional rights</td>
</tr>
<tr>
<td>Malicious prosecution</td>
<td>Racial profiling</td>
</tr>
<tr>
<td></td>
<td>Patterns of unfair and inequitable treatment</td>
</tr>
</tbody>
</table>
Investigating Crime in a Multicultural Setting

In the mid-1990s, the Washington, D.C.–based National Crime Prevention Council (NCPC) published an important guide for American law enforcement officers who work with multicultural groups. The principles it contains can be applied equally to most foreign-born individuals living in the United States and are especially important to patrol officers and criminal investigators.

The NCPC guide points out that it is important for well-intentioned newcomers to this country to learn that the law enforcement system in the United States is not a national police force but a series of local, state, and federal agencies that take seriously their obligation to “serve and protect” law-abiding residents. Newcomers need to know that police officers can teach them how to protect themselves and their families from crime. Many immigrants, especially political refugees, come from countries in which the criminal justice system is based on tyranny, repression, and fear.

The NCPC suggests that law enforcement officers and other members of the criminal justice system can help ease this transition by working not only to communicate with immigrants but also to understand them and the complexities of their native cultures. The mere absence of conflict in a neighborhood does not mean that residents of different cultures have found harmony and a cooperative working relationship, says the NCPC. True multicultural integration occurs when various cultures reach a comfortable day-to-day interaction marked by respect, interest, and caring.

Communities in which immigrants and law enforcement have established close positive ties benefit considerably, according to the NCPC. Immigrants gain greater access to police and other services, such as youth programs, victims’ assistance, parenting classes, medical assistance programs, business networking, and neighborhood groups. Crime decreases in communities where law enforcement officers help immigrants learn to protect themselves against crime.

For police officers working in communities in which “language is a serious barrier between cultures,” the NCPC suggests the following pointers for communicating more effectively:

- Be patient when speaking with someone who does not clearly understand your language. Speak slowly and distinctly. Be willing to repeat words or phrases if necessary. Remember that shouting never helps a nonnative speaker understand better.
- Be careful with your choice of words, selecting those that are clear, straightforward, and simple to understand. Avoid colloquialisms and slang.
- Allow extra time for investigation when the people involved have not mastered English.
- Be sure that anyone who serves as an interpreter is fully qualified and has had experience. Interpreting under pressure is a difficult task; lack of training can lead to mistakes.
- Be candid about your ability to speak or understand a language. Trying to “fake it” just leads to confusion, misunderstanding, and misspent time.
- Never assume that someone is less intelligent just because he or she doesn’t speak English well.


Significantly, the Court ruled that an officer “cannot excuse his own default by pointing to the greater incompetence of the magistrate.”115 That is, the officer, rather than the judge who issued the warrant, is ultimately responsible for establishing the basis for pursuing the arrest or search.

When an officer makes an arrest without just cause or simply impedes an individual’s right to leave the scene without good reason, he or she may also be liable for the charge of false arrest. Officers who “throw their weight around” are especially subject to this type of suit, grounded as it is on the abuse of police authority. Because generally employers may be sued for the negligent or malicious actions of their employees, many police departments are being named as codefendants in lawsuits today.

Civil suits are also brought against officers whose actions are deemed negligent. High-speed vehicle pursuits are especially dangerous because of the potential for injury to innocent bystanders. In the case of Biscoe v. Arlington County (1984),116 for example, Alvin Biscoe was awarded $5 million after he lost both legs as a consequence of a high-speed chase while he was waiting to cross the street. Biscoe, an innocent bystander, was struck by a police car that went out of control. The officer driving the car had violated department policies prohibiting high-speed chases, and the court found that he had not been properly trained.
Departments may protect themselves to some degree through training combined with regulations limiting the authority of their personnel. One year after the *Biscoe* case was decided, for example, a Louisiana police officer, who had an accident while driving 75 mph in a 40-mph zone, was found to be negligent and was held liable for damages. However, the department was not held liable because it had a policy limiting emergency driving to no more than 20 mph over the posted speed limit and because officers were trained in that policy. In 2007, in the case of *Scott v. Harris*, the Supreme Court created a new rule shielding police officers involved in vehicle chases from liability if the motorist’s actions during the chase threatened bystanders.

According to the FBI, “a traffic accident constitutes the most common terminating event in an urban pursuit.” Hence, some cities are actively replacing high-speed vehicle pursuits with surveillance technologies employing unmanned aerial vehicles (UAVs). Although helicopters have long been used in this capacity, the advent of UAV technology promises to make the tracking of fleeing suspects much quicker and far safer for all involved.

Law enforcement supervisors may be the object of lawsuits by virtue of the fact that they are responsible for the actions of their officers. If it can be shown that supervisors were negligent in hiring (as when someone with a history of alcoholism, mental problems, sexual deviance, or drug abuse is employed) or if supervisors failed in their responsibility to properly train officers before arming and deploying them, they may be found liable for damages.

In the 1989 case of the *City of Canton, Ohio v. Harris*, the U.S. Supreme Court ruled that a “failure to train” can become the basis for legal liability on the part of a municipality where the “failure to train amounts to deliberate indifference to the rights of persons with whom the police come in contact.” In that case, Geraldine Harris was arrested and taken to the Canton, Ohio, police station. While at the station, she slumped to the floor several times. Officers left her on the floor and did not call for medical assistance. Upon release, Harris’s family took her to a local hospital, where she was found to be suffering from several emotional ailments. Harris was hospitalized for a week and received follow-up outpatient treatment for the next year.

In the 1997 case of *Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, however, the Supreme Court ruled that to establish liability, plaintiffs must show that “the municipal action in question was not simply negligent, but was taken with ‘deliberate indifference’ as to its known or obvious consequences.” In *Brown*, a deputy named Burns was hired by the sheriff of Bryan County, Oklahoma. Burns later used excessive force in arresting a woman, and the woman sued the county for damages, claiming that Deputy

A police car destroyed during a high-speed chase. Research shows that most of the suspects chased by police are not violent criminals, and high-speed chases are especially dangerous because of their potential to injure innocent bystanders. When injuries do occur, a chase might provide a lawful basis for a civil suit against officers and their departments. How might a department protect itself from these kinds of suits?

© Tom Carter/Index Stock/age fotostock
Burns had been hired despite his criminal record. In fact, some years earlier, Burns had pleaded guilty to various driving infractions and other misdemeanors, including assault and battery—a charge resulting from a college fight. At trial, a spokesperson for the sheriff’s department admitted to receiving Burns’s driving and criminal records but said he had not reviewed either in detail before the department decided to hire Burns. Nonetheless, the Supreme Court held that deliberate indifference on the part of the county had not been established because the plaintiff had not demonstrated that “Burns’s background made his use of excessive force in making an arrest a plainly obvious consequence of the hiring decision.” According to this decision, a municipality (in this case, a county) may not be held liable solely because it employs a person with an arrest record.

**Federal Lawsuits**

Civil suits alleging police misconduct that are filed in federal courts are often called 1983 lawsuits because they are based on Section 1983 of Title 42 of the U.S. Code—an act passed by Congress in 1871 to ensure the civil rights of men and women of all races. That act requires due process of law before any person can be deprived of life, liberty, or property and specifically provides redress for the denial of these constitutional rights by officials acting under color of state law. It reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.122

A 1983 suit may be brought, for example, against officers who shoot suspects under questionable circumstances, thereby denying them their right to life without due process. Similarly, an officer who makes an arrest based on accusations that he or she knows to be untrue may be subject to a 1983 lawsuit.

Another type of liability action, this one directed specifically at federal officials or enforcement agents, is called a Bivens action. The case of Bivens v. Six Unknown Federal Agents (1971)123 established a path for legal action against agents enforcing federal laws, which is similar to that found in a 1983 suit. Bivens actions may be addressed against individuals but not against the United States or its agencies.124 Federal officers have generally been granted a court-created qualified immunity and have been protected from suits where they were found to have acted in the belief that their action was consistent with federal law.125

In the past, the doctrine of sovereign immunity barred legal actions against state and local governments. Sovereign immunity was a legal theory that held that a governing body could not be sued because it made the law and therefore could not be bound by it. Immunity is a much more complex issue today. Some states have officially abandoned any pretext of immunity through legislative action. New York State, for example, has declared that public agencies are equally as liable as private agencies for violations of constitutional rights. Other states, like California, have enacted statutory provisions that define and limit governmental liability.126 A number of state immunity statutes have been struck down by court decision. In general, states are moving in the direction of setting dollar limits on liability and adopting federal immunity principles to protect individual officers, including “good faith” and “reasonable belief” rules.

At the federal level, the concept of sovereign immunity is embodied in the Federal Tort Claims Act (FTCA),127 which grants broad immunity to federal government agencies engaged in discretionary activities. When a federal employee is sued for a wrongfull or negligent act, the Federal Employees Liability Reform and Tort Compensation Act of 1988, commonly known as the Westfall Act, empowers the attorney general to certify that the employee was acting within the scope of his or her office or employment at the time of the incident. Upon certification, the employee is dismissed from the action, and the United States is substituted as defendant. The case then falls under the governance of the FTCA.

---

The twenty-first century police candidate must be carefully chosen and then trained and mentored to fill the role of modern policing. Only then will policing become a true profession; and only then will police be able to deliver on their mission to protect and serve the citizenry.

—Gene Stephens126

---

**Bivens action**

A civil suit, based on the case of Bivens v. Six Unknown Federal Agents, brought against federal government officials for denying the constitutional rights of others.
The U.S. Supreme Court has supported a type of qualified immunity for individual officers (as opposed to the agencies for which they work). This immunity “shields law enforcement officers from constitutional lawsuits if reasonable officers believe their actions to be lawful in light of clearly established law and the information the officers possess.” The Supreme Court has also described qualified immunity as a defense “which shields public officials from actions for damages unless their conduct was unreasonable in light of clearly established law.”

According to the Court, “[T]he qualified immunity doctrine’s central objective is to protect public officials from undue interference with their duties and from potentially disabling threats of liability.”

In the context of a warrantless arrest, the Court said in *Hunter v. Bryant* (1991), “even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity.”

The doctrine of qualified immunity, as it exists today, rests largely on the 2001 U.S. Supreme Court decision of *Saucier v. Katz*, in which the Court established a two-pronged test for assessing constitutional violations by government agents. First, the court hearing the case must decide whether the facts, taken in the light most favorable to the party asserting the injury, show that the defendant’s conduct violated a constitutional right. Second, the court must then decide whether that right was clearly established. For a right to be clearly established, the Court ruled, “it would be clear to a reasonable [defendant] that his conduct was unlawful in the situation he confronted.” In summary, qualified immunity protects law enforcement agents from being sued for damages unless they violate clearly established law which a reasonable official in the agent’s position would have known. The *Saucier* decision has recently faced substantial legal challenges, leading the Court to rule in 2009 that “the rigid *Saucier* procedure” has serious shortcomings. The Court noted that “*stare decisis* does not prevent this Court from determining whether the *Saucier* procedure should be modified or abandoned.” The 2009 ruling, *Pearson et al. v. Callahan*, is available online via Library Extra 8–10 at MyCrimeKit.com.

Criminal charges can also be brought against officers who appear to overstep legal boundaries or who act in violation of set standards. In 2001, for example, in the case of *Idaho v. Horiuchi*, the Ninth U.S. Circuit Court of Appeals ruled that federal law enforcement officers are not immune from state prosecution where their actions violate state law “either through malice or excessive zeal.” The case involved FBI sharpshooter Lon Horiuchi, who was charged with negligent manslaughter by prosecutors in Boundary County, Idaho, following the 1992 incident at Ruby Ridge. Learn more about the Ruby Ridge incident at Library Extra 8–11 at MyCrimeKit.com.

Today, most police departments at both state and federal levels carry liability insurance to protect themselves against the severe financial damage that can result from the loss of a large civil suit. Some officers also acquire private policies that provide coverage in the event they are named as individuals in a civil suit. Both types of insurance policies generally cover legal fees up to a certain amount, regardless of the outcome of the case. Police departments that face civil prosecution because of the actions of an officer may find that legal and financial liability extends to supervisors, city managers, and the community itself. Where insurance coverage does not exist or is inadequate, city coffers may be nearly drained to meet the damages awarded.

One study of a large sample of police chiefs throughout Texas found that most believed that lawsuits or the threat of civil litigation against the police makes it harder for individual officers to do their jobs. Most of the chiefs espoused the idea that adequate training, better screening of applicants, close supervision of officers, and “treating people fairly” all reduced the likelihood of lawsuits.
The police personality is created through informal pressures on officers by a powerful police subculture that communicates values that support law enforcement interests. This chapter described the police personality as, among other things, authoritarian, conservative, honorable, loyal, cynical, dogmatic, hostile, prejudiced, secret, and suspicious.

Various types of police corruption were described in this chapter, including “grass eating” and “meat eating.” The latter includes the most serious forms of corruption, such as an officer’s actively seeking illegal moneymaking opportunities through the exercise of his or her law enforcement duties. Ethics training was mentioned as part of a “reframing” strategy that emphasizes integrity in an effort to target police corruption. Also discussed was a recent U.S. Department of Justice report that focused on enhancing policing integrity and that cited a police department’s culture of integrity as more important in shaping the ethics of police officers than hiring the “right” people.

The dangers of police work are many and varied. They consist of violent victimization, disease, exposure to biological or chemical toxins, stressful encounters with suspects and victims, and on-the-job fatigue. Stress-management programs, combined with department policies designed to reduce exposure to dangerous situations and agency practices that support officers’ needs, can all help combat the dangers and difficulties that police officers face in their day-to-day work.

Law enforcement officers are authorized to use the amount of force that is reasonable and necessary in a particular situation. Many officers have encounters where the use of force is appropriate. Nonetheless, studies show that the police use force in fewer than 20% of adult custodial arrests. Even in instances where force is used, police officers primarily use weaponless tactics. Excessive force is the application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject.

Racial profiling, or racially biased policing, is any police action initiated on the basis of the race, ethnicity, or national origin of a suspect rather than on the behavior of that individual or on information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity. Racial profiling is a bigoted practice unworthy of the law enforcement professional. It has been widely condemned as contrary to basic ethical principles. Further, it weakens the public’s confidence in the police, thereby decreasing police–citizen trust and cooperation. This chapter pointed out, however, that racial or ethnic indicators associated with particular suspects or suspect groups may have a place in legitimate law enforcement strategies if they accurately relate to suspects who are being sought for criminal law violations.

Civil liability issues are very important in policing. They arise because officers and their agencies sometimes inappropriately use power to curtail the civil and due process rights of criminal suspects. Both police departments and individual police officers can be targeted by civil lawsuits. Federal suits based on claims that officers acted with disregard for an individual’s right to due process are called 1983 lawsuits because they are based on Section 1983 of Title 42 of the U.S. Code. Another type of civil suit that can be brought specifically against federal agents is a Bivens action. Although the doctrine of sovereign immunity barred legal action against state and local governments in the past, recent court cases and legislative activity have restricted the opportunity for law enforcement agencies and their officers to exercise claims of immunity.

1983 lawsuit, 291
biological weapon, 276
Bivens action, 291
civil liability, 288
deadly force, 281
excessive force, 280
internal affairs, 273
Knapp Commission, 270
less-lethal weapon, 283
police corruption, 269
police use of force, 280
police working personality, 266
problem police officer, 281
racial profiling, 284
questions for review

1. What is the police working personality? What are its central features? How does it develop? How does it relate to police subculture?

2. What are the different types of police corruption? What themes run through the findings of the Knapp Commission and the Wickersham Commission? What innovative steps might police departments take to reduce or eliminate corruption among their officers?

3. What are the dangers of police work? What can be done to reduce those dangers?

4. In what kinds of situations are police officers most likely to use force? When has too much force been used?

5. What is racial profiling? What is racially biased policing? Why have they become significant issues in policing today?

6. What are some of the civil liability issues associated with policing? What are some of the common sources of civil suits against the police? How can civil liability be reduced?

questions for reflection

1. Do you think that this chapter has accurately described the police personality? Why or why not? Can you identify any additional characteristics of the police personality? Are there any listed here that you do not think are accurate?

2. What strategies can you think of for helping build police integrity? How might those strategies differ from one agency to another or from the local to the state or federal level?

3. What is it about racial profiling that most people find unacceptable? Are there any situations in which law enforcement’s use of racial features or ethnic characteristics may be appropriate in targeting suspected criminals? If so, what would those situations be?

Discuss your answers to these questions and other issues on the CJ Today e-mail discussion list (join the list at MyCrimeKit.com).
Go to MyCrimeKit.com to explore the following study tools and resources specific to this chapter:

- Chapter Quiz and More Practice: dozens of multiple-choice and true-false questions
- Flashcards: 14 flashcards to test your knowledge of the chapter’s key terms
- Web Quest: activity about National Criminal Justice Reference Service (NCJRS) website
- Assignments: real-world essay questions about current issues, e-homework, opinion-based essay questions, and chapter projects for research and analysis
- Expanded Book: more information on lawsuit against New Jersey state troopers engaged in racial profiling

Go to Chapter 8 of Criminal Justice Interactive to use the following resources and study tools:

- Learning Modules: Ethics and Corruption, Types of Force, Police Liability, and Community Policing
- Myths and Issues Videos:
  - Myth versus Reality: Police Often Have to Confront Dangerous Situations with Deadly Force
  - Simulation: Use of Force. Learn to gauge the appropriate use of force, and learn about the escalation and de-escalation of force.

Issue 1: Profiling
Issue 2: Police Ethics and Corruption

Endnotes for this chapter can be found online at MyCrimeKit.com