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## Unconstitutional Policing: The Ethical Challenges in Dealing with Noble Cause Corruption

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Allegations of corruption, in any form of public service, mean different things to different audiences. For example, political and judicial bribes are clear proofs of corruption, in the sense that they show an abuse of authority and a breach of the public's trust. In policing, officers selling drugs or pocketing protection money are considered egregious examples of police corruption. However, in policing, there exists a middle ground, a gray area that is costlier and just as scandalous—"noble cause corruption."



When uncovered as a pattern or practice, the police crimes defined as noble cause corruption can result in constitutional rights litigation that can financially cripple agencies. In promoting police integrity, the U.S. Department of Justice repeatedly emphasizes the duty of law enforcement agents to respect the value and dignity of every person, including criminal citizens.<sup>1</sup> The Department of Justice has recently emphasized this message, and has entered into consent decrees with cities stemming from allegations of patterns of police abuse of authority.

Rogue officers are tempted to engage in noble cause corruption in situations where they perceive no administrative accountability and

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situations where they perceive no administrative accountability and decide to push the constitutional envelope, even though police must know and respect the constitutional laws upon which their very authority is derived. Departmental leaders must address noble cause corruption by defining what it is, what fosters it, and how to eliminate it.

### **What Is Noble Cause Corruption?**

Noble cause corruption in policing is defined as "corruption committed in the name of good ends, corruption that happens when police officers care too much about their work. It is corruption committed in order to get the bad guys off the streets...the corruption of police power, when officers do bad things because they believe that the outcomes will be good."<sup>2</sup> Examples of noble cause corruption are, planting or fabricating evidence, lying on reports or in court, and generally abusing police authority to make a charge stick.

The policing profession attracts, among others, a certain type of individual: authoritative and responsible, one with leadership skills, who acts on behalf of others, with a high disregard for his or her own well being. Some academics suggest police applicants have a preconception of the profession-the noble cause-that makes them stand out as promising prospects. This preconceived notion is a profound moral commitment to make the world safer.<sup>3</sup>

Police corruption, traditionally, has been defined as the following:

- "a misuse of authority by a police officer for personal gain,"<sup>4</sup>
- "accepting money or money's worth to provide a service they are duty bound to provide,"<sup>5</sup> or
- "physical, psychological or legal abuse used by police."<sup>6</sup>

A recent survey demonstrated that officers felt corruption for personal gain was a much more serious charge than engaging in corrupt behavior that appears "to benefit society at large."<sup>7</sup> This sub cultural value system rationalizes constitutional rights violations.

Officers do not normally define "a bending of the rules for a greater good" as misconduct or as corruption; rather, they rationalize that such behavior is part of the job description, in a utilitarian sense, to get the criminals off the streets, regardless of the means.<sup>8</sup>

When this passion for a safer society goes unchecked, it often leads to police crime and civil rights violation. This passion-laudable in itself-can cause good officers to overzealously execute their duties, ignore the basic constitutional guidelines their profession legally demands, and expose their agency to legal liability.

Officers rationalize this misconduct because cynicism has built up, the department lacks morale and leadership, and the individual lacks faith in the criminal justice system. In their attempts to make charges stick, officers may resort to "massaging" facts in order to get a felony warrant. For example, a department's sub cultural values may dictate always arresting "the driver" in a possession of stolen motor vehicle case, with anything less considered poor police work.

This example shows how overzealous officers rationalize: Several teens are driving around in a stolen motor vehicle, and the officers stop them. The young men jump out and run away, the officers chase them, and arrest only two passengers. Unfortunately, for the officers, neither of them was driving the vehicle. The officers file a report identifying one of the teens as driving and the other as possessing contraband found on the floorboard. The officers chalk up felony arrests and call it a productive night.

As written, supervisors would have no reason to question the officers' veracity and, indeed, would applaud the arrests. Ostensibly, this appears

veracity and, indeed, would applaud the arrests. Ostensibly, this appears to be good police work: a recovered stolen auto, drug dealers or users off the street, and society better off for it. However, the lies in the police report, and subsequent perjured testimony in court, are both felonies and, as such, are crimes unique to the police. When uncovered, these lies will taint previous-and valid-legal arrests made by the same officers or any assisting officers involved in the foot chase and apprehension.

### **The Rationalization Defense**

Shortcuts taken in police procedures and investigations in everyday misdemeanor arrests are a large part of noble cause corruption. Rationalizations, such as the "citizen is so drunk he won't remember what happened," may lead to officers' skipping the field sobriety tests or the breath tests, while reporting that they were performed. Before performing a breath alcohol test, officers must read specific constitutional rights to the citizen informing him or her of his or her right to refuse the test and informing the citizen that this refusal, alone, may result in a suspended driver's license. Testimony affirming that specific police procedures were followed, when they were not, is a police crime, especially when confronted with probable cause issues in pretrial motions.

Additionally, the "contempt of cop" or "it's my word against his" attitude opens the door for further shortcuts and constitutional violations. An officer may perform a valid traffic stop, but if the citizen is belligerent or disrespectful, chances are that person is going to jail. In this same vein, officers may issue "sewer tickets"-that is, write a ticket but instead of giving it to the citizen throw it in the sewer-causing a failure to appear in court, a warrant to be issued, and several future problems for the citizen.

Intentionally tainting a police photograph array for identification is another form of noble cause corruption. For example, when a community suffers a rash of armed robberies, detectives often have an idea who might be the perpetrator. Detectives provide a recent booking photograph of this person for patrol officers to carry as they attempt to locate the suspect. When the next robbery occurs, the patrol officer shows the single photograph of the suspect to the victims, who state they believe that the photo appears to be the assailant. A warrant is obtained based on this eyewitness identification, and an arrest made.

This could be good police work, except that the identification photograph array was not properly presented. The victim's independent recollection of the assailant's description is forever tainted by the officer's actions. This identification process is never documented in writing. But during the witness's testimony at trial, explaining this process at the scene opens the door for defense attorneys to argue due-process violations and obstruction of justice, and seek dismissal of all charges, and free a dangerous felon. This breach of trust, though meant in good faith to protect society, actually endangers the community and jeopardizes the public's perceptions of its police agency, when all charges are dismissed and the accused then retains legal counsel and sues the agency.

Whatever the officer's motivation to cut corners-whether citizen disrespect for authority, improving arrest numbers, or simple laziness-it is a crime, and, when discovered, it tarnishes the image of the agency and the profession.

These are just a few examples of the breaches of trust officers commit in their efforts to protect and serve, and make a society safer. The trust they breach, though, is based solely on the good faith of the citizenry policed.

### **Systemic Arrogance Contributes to Corruption**

Arrogance has no place in policing, and agencies that have a culture of arrogance will only foster allegations of organizational tolerance for noble cause corruption and betrayal of the public service philosophy. When officers and administrators believe that the ends justify their means, such as illegal searches, "articulation" in report writing, illegal arrests and "testilying," they corrupt their own system.<sup>9</sup>

Noble cause corruption is rooted in this sense of arrogance, in which officers will rationalize constitutional violations for their own perceived greater good: a safer community. Middle managers, then, engage in a supervisory logic of good faith based on the belief that subordinates always tell the truth and follow the law as their training dictates.<sup>10</sup>

When internal red flags surface—such as multiple citizen complaints for one officer, or subordinates who ask not to have to work with that officer for no specified reason—supervisors must look deeper into the reasons for this sudden turn of events. It may be personal in nature, but it is the duty of the supervisor to make reasonable inquiries into the cause.

Sometimes, supervisors may even refuse to acknowledge subordinate misconduct when reported.<sup>11</sup> Frequently, top police administrators become aware of police misconduct only when the media has reported such patterns and practices. The immediate but reactive promise of transparency, training reforms, and internal investigations by this time is too late— the damage has been done, the lawsuits filed, and the agency's image tarnished. Law enforcement executives must establish early warning systems and ensure proper internal accountability measures are in place to avoid developing illegal patterns and practices.

### **Supervisory Cowardice Contributes to Corruption**

Along with arrogance, police supervisory cowardice reinforces organizational tolerance of noble cause corruption. Cowardice in this sense is the inability of supervisors to make the difficult administrative decisions that relate to subordinate misconduct.<sup>12</sup> Police administrators must struggle with misconduct cases and weigh the pros and cons of the appropriate disciplinary actions. Chiefs must openly investigate allegations of scandal or politically motivated police actions and disregard their own occupational survival in this role.

Favoritism, nepotism, political concerns, or image preservation must not prevent the chief from thoroughly investigating and disciplining officers for policy violations. Impossible conflicts of interest arise in policing every day, and professional police administrators must adhere to a predetermined set of guidelines and decision-making processes to best serve their community and their agencies. Allegations of departmental cover-ups are immediately followed with calls for external investigations, removal of the chief, and massive reform.

A supervisory philosophy of discipline based on due process, fairness, and equity, combined with intelligent, informed, and comprehensive decision making, is best for the department, employees, and community. It is difficult to challenge this philosophy in a court of law by plaintiff's lawyers arguing a lack of professional integrity. Such a supervisory philosophy demonstrates the moral commitment employees look for in their leaders as well as establishes the high standard of professionalism expected in police service. It also demonstrates to the citizenry that even though officers make mistakes in executing their duties, these mistakes are acknowledged and are appropriately addressed. Policing the police reinforces the public's trust in an agency.

### **Measuring Productivity**

Traditional policing is often seen as a numbers game that places undue pressure on officers to produce high numbers of arrest and citations. This pressure may lead to situations where officers feel they must engage in acts of noble cause corruption in order to produce the arrests and clearance rates that are the tools politicians use to measure police productivity. Historically, too much emphasis has traditionally been placed on such statistics, and not enough focus has been placed on the professional aspects of service-oriented policing.

Community policing has made significant strides in the profession's ability to serve the citizenry, but it does not provide the numbers politicians need for support and reelection. Citizen surveys, however, do

provide the data that police agencies can use to evaluate their effectiveness and ought to be given as much consideration as arrest rates.

As police chiefs are pressured to produce crime-reducing numbers and provide the public with a feeling of safety, the constant pressure to maintain a positive departmental image challenges a chief's own professional ethics.

Can police chiefs manage their departments' public image without sacrificing their own professional ethics? A chief who opts to cover up allegations of misconduct, or fails to adequately investigate such allegations in order to preserve the department's image, corrupts himself or herself and the department as well, and jeopardizes the community's perceptions of that chief's professional integrity.

Self-preservation may cloud a chief's decision-making processes. The chiefs who lead by example, who engage in difficult decision-making, and who habitually do what is in the best interest of the communities they serve will gain the respect of their subordinates and colleagues, as well as their citizenry.

### **Transparency and Accountability**

Police transparency and accountability require administrators to establish internal procedures so that allegations of misconduct and cover-up will not occur. This transparency preserves the department's public image. Failing to implement a thorough and professional internal investigative system of accountability becomes very costly in litigation. Police administrators must be fair, but vigilant, in their efforts to combat noble cause corruption in order to defend their agencies against allegations of organizational tolerance for misconduct in court.

### **Shared Values**

The key to professional policing and avoiding allegations of corruption is adhering to the profession's values. Research suggests training that continually emphasizes an agency's mission statement and articulates the chief executive's values results in a professional socialization process that rookies, officers, and middle managers can rely on throughout their careers.<sup>13</sup> Departmental values shape professional norms and lay the foundation for the discretionary judgments necessary for effective policing. Officers, as well as police supervisors, often lose their perspectives on constitutional policing when these values are not reinforced.

Values such as listening, communicating, impartiality, accountability at every level, humility, and honesty all make up the profile of a professional police administrator. The challenge for police chiefs today is to exhibit these values day in and day out, in every decision-making process, in order to demonstrate a habit of commitment to professionalism and to maintain their subordinates' trust.

### **Training to Reduce Noble Cause Corruption**

How does police ethics training translate into reducing civil and criminal litigation? Noble cause corruption, when uncovered, can give rise to allegations of organizational tolerance or the civil cause of action for deliberate indifference.<sup>14</sup> Plaintiffs' attorneys will suggest that police chiefs had a duty to know or should have known about the patterns or practices of noble cause corruption within their ranks. Failing to adequately train, supervise, and/or discipline offending officers results in large jury awards and settlements. Clearly, the complexities of policing society are numerous, and it is impossible to draft comprehensive rules that apply to every discretionary police situation. However, police, through experience, vigilant training, supervision, individual accountability, and discipline, can root out the weeds of noble cause corruption and at the same time not destroy an individual officer's freedom to exercise individual police discretion.<sup>15</sup>

The law constantly balances interests, and policing is no different. Such

The law constantly balances interests, and policing is no different. Such a balancing incorporates protecting the rights of law-abiding citizens on one hand, and respecting the constitutional rights of alleged criminal citizens on the other. Without strictly adhering to policing's constitutional guidelines, departments fail to protect and serve all citizens-even the criminal citizens- and lay the foundations for noble cause corruption to fester.

A departmental values system reinforced daily through both word and deed will provide the ethical work environment a chief needs to fend off charges of noble cause corruption and the litigation associated with it.

Police chiefs must commit to annual ethics training to define noble cause corruption, reduce the potential for police criminality, and avoid the costly lawsuits and citizen distrust that are all directly related to this subtle police abuse of authority. Regular ethics and liability training provides the tools necessary to reinforce democratic policing philosophies and to properly defend against lawsuits alleging constitutional rights violations and deliberate indifference. A comprehensive ethics-training curriculum that addresses the nuances of noble cause corruption in policing is mandatory in police administration today.

The duty to train begins at the top and a mission statement committed to constitutional policing sends a message to sworn personnel, and the public, that corrupt police acts will not be tolerated. Identifying risks and minimizing the costs of litigation have become part of professional policing.<sup>16</sup> ■

<sup>1</sup> U.S. Department of Justice, Principles For Promoting Police Integrity, Examples of Promising Police Practice (Washington, D.C.: U.S. Department of Justice, 2001).

<sup>2</sup> John P. Crank and Michael A. Caldero, Police Ethics, The Corruption of Noble Cause (Cincinnati: Anderson Publishing Company, 2000).

<sup>3</sup> Ibid.

<sup>4</sup> H. Goldstein, Policing a Free Society (Cambridge, Massachusetts: Ballinger, 1977).

<sup>5</sup> V. E. Kappeler, R. D. Sluder, and G. P. Alpert, Forces of Deviance, Understanding the Dark Side of Policing (Prospect Heights, Illinois: Waveland Press, 1994).

<sup>6</sup> D. L. Carter, "Police Brutality: A Model for Definition, Perspective, and Control," in A.S. Blumberg & E. Neiderhoffer (Eds.), The Ambivalent Force (New York: Holt, Rinehart and Winston, 1985).

<sup>7</sup> Ivkovic, Sanja, Kutnjak, "Police (Mis)Behavior: A Cross-Cultural Study of Corruption Seriousness," Policing: An International Journal of Police Strategies & Management, 28 (2005) 3: 546-566.

<sup>8</sup> Joycelyn M. Pollock, Ethics in Crime and Justice (West/Wadsworth, 2004).

<sup>9</sup> Kleinig, John, "Rethinking Noble Cause Corruption," International Journal of Police Science & Management. 4 (2002).

<sup>10</sup> John P. Crank, and Dr. Michael A. Caldero, Police Ethics: The Corruption of Noble Cause (Cincinnati: Anderson Publishing Company, 2000).

<sup>11</sup> Kevin M. Gilmartin and J. Harris, "Law Enforcement Ethics: The Continuum of Compromise," The Police Chief 65 (January, 1998) 1: 25-28.

<sup>12</sup> John Kleinig, "Rethinking Noble Cause Corruption," International Journal of Police Science & Management 4 (2002).

<sup>13</sup> A.M. Jacocks, Jr., and M.D. Bowman, "Developing and Sustaining a Culture of Integrity," The Police Chief 73 (April, 2006) 4: 16-22.

<sup>14</sup> T.J. Martinelli and Joycelyn M. Pollock, "Law Enforcement Ethics, Lawsuits, and Liability: Defusing Deliberate Indifference," The Police Chief 67 (October, 2000) 10: 52-57

<sup>15</sup> John Kleinig, "Rethinking Noble Cause Corruption," International Journal of Police Science & Management 4 (2002).

<sup>16</sup> Carol A. Archbold, "Managing the Bottom Line: Risk Management in Policing," International Journal of Police Strategies & Management, 28 (2005): 30-48.

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