Chapter 2
What is Police Misconduct

By its very nature, policing in general is a complex and unique occupation (Macdonald, Manz, Alpert, & Dunham, 2003). In the U.S. the characteristics of public accountability, openness to evaluation and responsiveness to citizen demands (Bayley, 1998) contribute to the inimitable nature of policing in that police officers, in interpreting and applying static and dynamic rules, are legally permitted to act in ways, such as using deadly force, that would be criminal if committed by a civilian (Macdonald et al., 2003). Specifically, while the use of excessive force violates the Fourth Amendment (Graham v. Connor, 1989) excessiveness is determined not only by the totality of the circumstances facing the police officer (Flournoy v. City of Chicago, 2016) but must be judged from the perspective of a reasonable police officer on the scene rather than a 20/20 vision of hindsight (Graham v. Connor, 1989). Thus, arguably excessiveness is profession-specific in that any force even deadly force is reasonable and legal if given the circumstances present a reasonable police officer (not a reasonable person) would have used the same degree of force. Furthermore, by working in isolation from public observation, police officers are provided with ample opportunities to misuse their authority (Dunningham & Norris, 1998; Escholz & Vaughn, 2001; Moran, 2005) in what some have argued is an occupation conducive to misconduct (Hunter, 1999; Ivkovic, 2004).

Police misconduct, though unusual because most police daily interactions are with law abiding citizens (Alpert & Dunham, 2004; Bayley & Garofolo, 1989; Fyfe, 1988), is like any other behavior that deviates from the norms of a society, is as varied and diverse as the norms themselves. This is apparent in the ease with which some forms of police behavior can readily be labeled as misconduct but it also underlies the difficulty in articulating a cogent definition of the term. One well accepted definition proffered by Roebuck & Barker (1974) defines police misconduct as behavior that is deviant, dishonest, improper, unethical or criminal. Similar broad definitions have been suggested by Klenig (1996) and by Skogan & Meares (2004). While these definitions specify "police misconduct" as the term being defined, arguably they can be attributed to malpractice in almost any profession and they do not capture the unparalleled authority that police officers possess, particularly the "or else" power

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B.A. Maule, *Police Misconduct in Brooklyn*, SpringerBriefs in Criminology,
https://doi.org/10.1007/978-3-319-66814-7_2

that underlies every command from police officer to civilian. Moreover, underlying the difficulty in defining what constitutes misconduct is the unique nature of policing itself (King, 2009; Manning, 2009) in that a police officer's ability to use coercive, even deadly force if it considered reasonable, distinguishes policing from all other professions (Bitner, 1970). Adding to the difficulty is policing's low visibility to public observation (Goldstein, 1960; Haarr & Morash, 1999) which not only provides multiple opportunities for deviance and malpractice (Klockars, Klockars, Ivkovich, & Haberfeld, 2003) but contributes significant disparity in definition as police officials and officers tend to define behavior that constitutes misconduct narrowly while the public defines it broadly (Adams, 1996; Lersch & Mieczkowski, 2000).

The U.S. Supreme Court provides a more nuanced definition of police misconduct as the "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state" (Lugar v. Edmondson Oil Co., Inc., 1982). Specifically, the police officer uses his or her authority to engage in job-specific malpractice (Kane, 2002). While more acceptable, at its core this definition seems to suggests that police misconduct is an affirmative "misuse of power." However, in recognizing that police misconduct can also include acquiescence or non-action, such as the disregard of a legal obligation, researchers have used behaviors as diverse as corruption (Sherman, 1978); wrongful death (Kappeler & Vaughn, 1997); use of excessive force (Thurm, 1992); police sexual violence (Escholz & Vaughn, 2001); acceptance of free meals (Alpert & Dunham, 1997) and sleeping while on duty (Barker & Carter, 1994) among others to examine it.

This diversity in behavior constituting police misconduct has led to contrasting research results with some finding that police misconduct is rare (Chappell & Piquero, 2004) and others the opposite (Ivkovic, 2004; Worden & Catlin, 2002). More importantly, the disparity is also evident in the number of public complaints filed against police officers compared to the number of those complaints substantiated by the agency charged with investigating the complaints. For example, in New York City there were 52,049 formal complaints of police misconduct filed with the City's Civilian Complaints Review Board ("CCRB") for the period 2006–2010. Of the 52,049 formal complaints filed, 36,743 investigations were conducted resulting in most complaints being unsubstantiated because of a lack of corroborating evidence with only 1513 of the complaints being substantiated by the CCRB for a 3% substantiation rate.

By comparison for the period 2011–2015 there were more than 30,000 complaints of police misconduct filed with Chicago's Independent Police Review Authority ("IPRA") Independent Police Review Authority (IPRA) where there was a "low sustained rate" of 2% (DOJ, 2017). Such low substantiation rates by the agency charged with investigating and documenting police misconduct while on appearance present a complex picture of frivolity and again the difference between public perception and official verification, they may also be indicative of the more profound problem of questionable procedures and practices of documenting police misconduct. For instance, according to DOJ Chicago has a low substantiation rate

because of a plethora of problems including a significant failure to "investigate the majority of cases it is required by law to investigate" (DOJ, 2017) compounded with systemic incompetence at best, or worse a culture of reticent deference to the police officer's account of the event that led to the misconduct alleged. In one of the many accounts of the failure Chicago's IPRA to substantiate egregious misconduct detailed in DOJ's investigative report is that of a police officer who shot an unarmed suspect in the back at close range but reported that the man had pointed an object of him which he believed to be a gun. Although police video retrieved less than 24 h after the incident showed that the man was running away from the officer when shot, not only was the officer's version of the event accepted, but no mention of the existence of the police video was documented in the official report (DOJ, 2017).

While such egregious accounts of police misconduct have not been documented in New York post the Louima sodomy, allegations of a cozy relationship between the CCRB and the NYPD have been made by several organizations such as the Coalition to End Broken Windows that the rate of substantiation is low because. Of interest is the claim that resulted from the James Blake taken down which was substantiated within 30 days of its occurrence as opposed to in most cases, and arguably in a low profiled case it would have taken a few months. Remarkably in Northern Ireland where police have greater public support than police in the US (Ariel, Farrar, & Sutherland, 2014) the rate of substantiation is 22% (PONI, 2017) compared to Chicago's 2% and New York City's 3%.

Nevertheless, whether official substantiation rates are accurate measures of the incidences of police misconduct in New York City, as a result of more civil rights conscious citizens, an increasingly litigious society, controversial actions such as the NYPD's Stop, Question and Possibly Frisk program, or some of each, the number of lawsuits alleging police misconduct against NYPD officers and the civil liability that results, increased significantly during the period 2006–2010 compared to the preceding 5 year. period 2001–2005.

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http://www.springer.com/978-3-319-66813-0

Police Misconduct in Brooklyn
Documenting, Understanding and Preventing
Maule, B.A.
2017, VII, 59 p., Softcover
ISBN: 978-3-319-66813-0