

PROFESSIONS AND PROFESSIONAL ETHICS



CASE 11.1

*Far from Home*¹

On May 21, 1995, New York City police attending a ceremony in Washington, DC, got drunk in their hotel, took off their clothes, poured beer down an escalator rail, and then slid down the rail. Responding to complaints from hotel staff, guests, and the DC Metropolitan Police Department, the New York officers noted that they were far from their jurisdiction and that they were off duty.

Part of what is morally wrong with the behavior of the New York officers in Case 11.1 is their lack of professionalism. We expect police officers and other criminal justice experts to be professional on and off duty. This expectation recognizes certain rights and responsibilities that it does not recognize in nonprofessionals. The study of criminal justice ethics, therefore, needs to address two questions: (1) What is a profession? (2) What moral difference does it make that a job is a profession rather than a nonprofession? This chapter will address both questions.

Before proceeding, we should acknowledge the possible objection that not all jobs in criminal justice are professions. The variety of jobs within criminal justice run the gamut from obvious professions (lawyers and judges) to jobs that one would tend not to regard as a profession (clerks, congressional pages), with other sorts of jobs (court reporters, legislative aides) falling somewhere in between. In subsequent chapters we will divide the criminal field into three major areas: legislative, executive, and adjudicative. We will identify several jobs within each and say more about their professional qualities. We will see that as components of the overall system of criminal justice, every job in the field is morally significant in ways that make sense only if we consider it through the lens of professional ethics.

For the purposes of this chapter, we will focus on the example of policing, because police are the most public practitioners of criminal justice and there is much debate about whether policing is a profession. This debate exposes fruitfully

both sides of the argument, thus allowing us to explore several possibilities concerning the nature and moral implications of a profession.

Q 11.1

In Case 11.1, would it be fair to condemn the officers' actions as unprofessional when they were far from home and off duty?

➔ WHAT IS A PROFESSION?

The question of whether jobs in American criminal justice are professions is an old and persistent one. In one view, professional is the opposite of amateur, and the difference is whether one is paid. If so, then American police, for example, first became professional in 1845, when New York made policing a full-time job.² In this same view, attorneys in Virginia in 1645 could not be professionals because it was illegal for attorneys to collect fees.³ This definition is not helpful, however, because paying jobs are not always professions. We don't think of hamburger making or trash hauling as professions, for example, even though they are legitimate jobs. Thus, we need a different, more relevant definition of profession before we can determine whether criminal justice jobs satisfy that definition. To that end, we will consider the traditional definition of *profession* first and then offer an alternative definition that may fit contemporary criminal justice practice better.

Profession: A Traditional Definition

The idea of a profession comes from the Middle Ages, when law, the clergy, and academics were distinguished as professions from other jobs and careers.⁴ Each profession began with a public declaration—a *profession* of vows to assume the job as a way of life, not just a means of making money. All three required university study and commitment to high ideals.

Today, the common view is that at least three criteria are necessary to a profession: extensive training, “a significant intellectual component,” and offering an important service to society.⁵ Criminal justice jobs in general offer an important service to society, and many people in the field undergo extensive training over their careers, but many others often forgo the sort of higher education that we usually associate with “a significant intellectual component.”

For example, attempts to make policing more professional began in 1902 with the formation of the International Association of Chiefs of Police (IACP), under the presidency of Richard Sylvester, and developed dramatically under August Vollmer, police chief for Berkeley, California, from 1905 to 1932.⁶ Both regarded policing as a technically difficult and socially significant task that required sophisticated physical and mental talents. For Vollmer, this meant a minimum requirement of a bachelor's degree for all police officers.⁷ As we shall see, although

policing is as significant a task as Sylvester and Vollmer held, the bachelor's degree may be too strict a requirement for police to be professionals.

Other features that some scholars have proposed include credentialing, a professional organization of members that governs itself, and professional autonomy of the individual practitioners.⁸ Policing, for example, requires credentialing, but it does not govern itself, nor are the practitioners autonomous *in principle*. Nevertheless, police in the field must make quick decisions without consulting their superiors, so they may have a level of discretion that makes them autonomous *in practice*.

Q 11.2

In Case 11.1, do the officers have the excuse that there was no superior present to forbid them from acting unconventionally?

On these criteria, it is easy to see why lawyers, clergy, and professors are still considered to be professionals. Each of these meets all six of the criteria to some extent:

- Extensive training
- A significant intellectual component
- Offering an important service to society
- Credentialing
- Professional organization of members
- Autonomy of individual practitioners

It is also possible to see why, on these criteria, some people might not regard policing as a profession. In many agencies, a person can become a police officer right out of high school, without significant intellectual development, without being a member of a professional organization, and without professional autonomy. It seems intuitively obvious, however, that to be successful in policing today one has to be a professional. Thus, either our intuitions are wrong, or we must approach the definition of profession from a different angle.

Profession: An Alternative Definition



CASE 11.2

When in Rome . . .

Three police officers from an American city are on vacation in Amsterdam, where prostitution and smoking hemp and marijuana are legal. Two of the friends express an interest in trying these vices while they are there; one protests that it would compromise their integrity as police officers.

In deference to our intuitions, let's take a different approach to defining a profession, one that reflects such jobs as policing more fairly and accurately. First, there are four types of definition: analytic, stipulative, dictionary, and ostensive. The traditional approach to defining *profession* works primarily with one or more of the first three types, but we might find the fourth type the most useful in our case.

Q 11.3

Does the dissenting officer in Case 11.2 exemplify the public's expectation of police integrity?

An **analytic definition** replaces the word one wants to define with a word or phrase that means the same thing. For example, "A bachelor is an unmarried man." "Bachelor" and "unmarried man" mean the same thing, and the word *is* acts as an equal sign: "Bachelor = unmarried man." This definition might be useful, for example, when someone just learning the English language understands what *unmarried* and *man* mean, but has not yet learned the meaning of *bachelor*.

Some proposed definitions of *profession* attempt the precision of an analytic definition. For example, ethicist Richard DeGeorge's famous definition of profession has four criteria:

1. It performs a needed service for society.
2. It involves advanced education and specialized knowledge.
3. Its members decide who can enter the profession and how, and the circumstances under which members may be booted from the profession.
4. Its members are held to a higher standard than the general public.⁹

Apparently DeGeorge holds that "Profession = a career that performs a necessary social service, requires advanced education, is regulated by its members, and is held to a higher standard than mere jobs." But as we have noted, the requirement for advanced education may be too strict, and one could imagine other criteria that would be necessary to a profession—for example, a sense of a calling to the task. So DeGeorge's analytic definition is not adequate.

Q 11.4

If the two willing officers in Case 11.2 have college degrees, do they meet DeGeorge's criteria for professionals?

To see the limited usefulness of an analytic definition, consider a young child's request for a definition of an orange. Initially, she may believe that an orange is any edible sphere: tomatoes, peaches, apples. But in time she learns to tell the difference

between oranges and other similarly shaped fruit and vegetables. She probably does not learn this from an analytic definition. Such a definition might look like this:

An orange = “the fruit of any of several southeast Asian evergreen trees of the genus *Citrus*, widely cultivated in warm regions and having fragrant white flowers and round fruit with a yellowish or reddish rind and a sectioned, pulpy interior, especially *C. sinensis*, the sweet orange, and *C. aurantium*, the Seville or sour orange.”¹⁰

Even if the child listened to this whole definition, it would not help her learn what an orange is.

Defining a profession, especially as it pertains to criminal justice, is more like defining an orange than defining a bachelor. There may be an analytic definition that fits *profession*, but it would be of little use to those who simply want to know what a profession is.

To offer a **stipulative definition** is to define a word by consensus. In wood shop, the students and teacher may agree that *plane* refers to a tool for shaving wood. People in a geometry class or an aerodynamics class would find that particular definition of *plane* to be useless. It may be tempting to define *profession* in this way; we could simply agree that, for example, policing is a profession, without need for further demonstration. But this is too subjective. If policing is a profession, it is not just because we have taken a vote and decided it is so—no matter how we vote, there is a chance we might be wrong. We need more objective criteria for a profession, against which we can test the proposition that professions include policing.

Q 11.5

Does the dissenting officer’s view of integrity in Case 11.2 appear to rest on a stipulative definition?

Let’s return to the little girl and the orange to see the limited usefulness of a stipulative definition. If the girl asks her father, “Daddy, what’s an orange?” she will not settle for the answer, “Honey, in our house we have taken a vote and decided that *orange* means a particular kind of fruit with a particular texture and taste.” The child has no interest in creating a name for something; she wants to know what object exists that goes by that name.

A third type of definition is a **dictionary definition**. *The American Heritage Dictionary*, Second College Edition, has four entries for *profession* and two entries for *orange*. But we are not interested merely in how people use these words; like the little girl, we want to know what something is. A dictionary merely describes current usage of a term; it does not declare whether that usage corresponds to reality. Besides, how useful would it be to respond to the little girl’s inquiry by telling her to consult the dictionary?

A fourth and underrated type of definition is **ostensive definition**—definition by example. Eventually the little girl will be able to distinguish oranges from other edible spheres because she will have experienced enough oranges and non-oranges

to understand the difference. When and how this works are subjects for scholarly research but need not concern us here. The point is that the little girl did not arm herself with a formal definition of orange and then go looking for objects that fit the definition; she let the objects speak for themselves until she was able to distinguish oranges from non-oranges. Turning from medieval and DeGeorgian attempts to define profession, we might take the same tack as the little girl and look to examples of professionals for elements to include in our definition.

Q 11.6

In looking to define *profession*, can we find anything useful in the example of the officers in Case 11.2? If so, what?

Profession: An Ostensive Definition



CASE 11.3

Only a Buck

Jennifer Hall, a state senator, proposes that the state add a dollar surcharge to every traffic fine. She projects that within a year this would raise enough funds to pay for the college education of every police officer in the state who wished to get a bachelor's degree. The senator's fiery opponent, Senator Maggie Oates, counters that the police don't deserve such special treatment to the exclusion of other state employees and that a traffic fine surcharge sufficient to cover all employees would be too large.

The senate agrees to put the question on a referendum in the next statewide election.

Let's return to our examples of nonprofessions: burger making and trash hauling. These are legitimate and useful jobs, and we would hope that people who choose these jobs execute their tasks well. But they are not professions—not by medieval standards, not by DeGeorge's definition, and not in our intuition or experience. What qualities do these jobs have or lack that would distinguish them from professions as we have experienced them?

Q 11.7

Could Hall refute Oates's argument in Case 11.3 by pointing out that police officers are responsible for enforcing traffic laws?

Simply put, professionals have greater rights and responsibilities than non-professionals. The responsibilities inform and stem from public demand; the rights inform and stem from public acceptance. When the hamburger maker is on duty, the people most concerned with his performance are his customers, his manager, and his co-workers. Customers expect to receive their order correctly and in a timely manner; the manager and co-workers expect the burger maker to show up on time, do as he is told while he is on duty, and not leave until his shift is over. That's it! Once the hamburger maker is off duty, his job responsibilities end. People who do not patronize or work at the burger joint probably have no expectations of or interest in the burger maker's conduct while he is on duty.

When the trash hauler is on duty, the people most concerned with his performance are the customers. They expect him to remove all of the trash on schedule, not to leave a mess, and not to damage the trashcans. People who are neither customers of the trash hauler nor neighbors on his beat probably have no expectations of or interest in the trash hauler's conduct while he is on duty. And when he is off duty, he has no job responsibilities.

Q 11.8

Regarding Hall's argument in Case 11.3, would it be appropriate to add a dollar tax to periodic trash hauling bills in order to offer trash haulers in the state a free college education?

The demands on many criminal justice positions are greater in quantity and quality. Even when citizens do not need help, most assume that the criminal justice system is on call around the clock to make their community safer and to respond quickly if called. Citizens presume that police, for example, know and obey the local laws and norms; are ever vigilant for wrongdoers; are in many cases willing to risk their lives to protect the innocent; are able to communicate with and handle all sorts of people; will respect all citizens even when the citizens are being disrespectful; will construct a strong case for prosecution of suspects; and are members of the criminal justice field all the time, even when off duty.

Q 11.9

Given the public's expectations of police officers, isn't it in the public's interest to have a better educated police force, as Hall recommends in Case 11.3? If so, isn't this worth an extra dollar per traffic fine?

By the same token, many people in criminal justice have many more rights than hamburger makers or trash haulers. While on duty, the hamburger maker has

the right to take some breaks, to expect clear directions from management, to be treated with respect from co-workers and customers, and to have the company honor its contractual commitments and obey the labor laws. Trash haulers have similar rights. Police officers, for example, have these rights too. But in addition, they have the right under certain circumstances to enter and search homes; to chase, stop, frisk, arrest, and interrogate people; and to use deadly force to protect themselves and other innocent people.

Two scenarios capture these differences well. First, imagine that at separate times and in separate places, the hamburger maker, the trash hauler, and the police officer each gets into a public, drunken brawl while off duty. Imagine further that the local newspaper reports each brawl. Chances are that there will be no headline that says “Off-duty burger maker in drunken brawl” or “Off-duty trash hauler in drunken brawl,” because neither has betrayed the public’s trust in his conduct while on duty. But the headline that fails to note the officer’s professional status has failed to include a significant part of the story—the officer has betrayed the public’s trust even if he was on his own time.

A second, more poignant scenario is the public’s response to the death of an officer, especially in the line of duty. Local news media will make this death a top story. There will be a communitywide outpouring of grief and sympathy, and the funeral will be a major event attended by police from other agencies, local dignitaries, and many civilian onlookers. If the funeral procession should tie up traffic for a while, there will be few complaints. That such a loss is so profound suggests the importance of the police to the community. Nothing like this public grief accompanies the death of our hamburger maker or trash hauler.

Of course, nothing like this public grief accompanies the death of most judges or lawyers either, and they are more widely held to be professionals than police. Our point here is that one aspect of the *policing* profession is the public grief at the death of an officer; this aspect is not a necessary condition for all professions.

Q 11.10

As Oates’s argument in Case 11.3 implies, should the public show as much interest in the behavior and well-being of the burger maker and the trash hauler as it does in those of the police?

In addition to the different rights and responsibilities of nonprofessionals versus professionals, consider two other related characteristics that we don’t look for in jobs but we find readily among the professions. First, successful and happy professionals appear to be answering a call—being a lawyer, clergyman, professor, or police officer is not simply what they do, but who they are and where they belong. Professional education at its best allows prospective professionals to decide whether and why this is where they should cast their lot. On the other hand, mere jobs tend to be

means to some other end. One is not *called* to make hamburgers or haul trash, but in taking such a job one is better able to do what one prefers to do with the other parts of one's life. Second, in this same vein, money plays a different role in jobs than in professions. A major mark of success on a job is that one has earned the money one expected to earn: the job is a means, and money is the end. A major mark of success in a profession is that one has put one's talents to the best use possible in serving the client. Money makes it possible for the professional to answer the call: money is a means, and professional success is the end.

To be sure, people may be drawn to a profession because of pay, but they appear to be the exception and are apt to find their jobs unfulfilling. Also, hamburger makers, trash haulers, and people with other jobs may commit themselves to doing their professional best and find as much fulfillment in good work as they find in receiving a paycheck. But in the public's mind, there is nothing wrong with the burger maker or trash hauler saying that he is in it for the money, whereas there is something unsettling about the professional who claims money as his primary motive.

Our examples suggest that policing is more a profession than a job. Policing, as with any profession, carries greater responsibilities and rights than mere jobs do, and the most successful police appear to be answering a call to the vocation, with money being a means to answering that call. Some people will demand more proof that policing is a profession. Some of these people might cling dogmatically to the medieval or DeGeorgian definitions; others might be unhappy with an ostensive definition of profession, rather than an analytic, stipulative, or dictionary definition. But even the skeptic must admit that the moral demands on police officers are as high as or higher than on other recognized professions—including medicine, law, academics, and the clergy. Thus, for the purposes of a book on criminal justice ethics, it makes sense to act *as if* policing were a profession, even if not everyone will agree. This becomes clearer with a look at the moral implications of a profession, which the next section undertakes.

➔ PROFESSIONAL ETHICS



CASE 11.4

The Maternal Rookie

Mary Worthington, a police rookie in her late 30s, chases a male teenage suspect into an abandoned warehouse and down a hall to a dead end. When the boy reaches the end of the hall, he draws a handgun from his waistband and turns toward Worthington. She already has her gun drawn and sees immediately that the boy has a gun too. The law, department

policy, and Worthington's training would support her shooting the suspect. Instead, she holsters her gun and shouts, "Put that gun down, boy, before I slap you silly! Does your momma know that you play with guns?" Fortunately for Worthington, the boy complies, mutters that he is sorry, and starts to cry.

When Worthington reports this to her supervisor, he berates her for having acted recklessly. She responds that she has a son about the same age, that her maternal instincts kicked in when she thought about shooting the boy, and that everything turned out OK. Still, she agrees that things could have turned out badly and that she had the right to shoot. She promises to be less reckless if she ever faces similar circumstances.

Although we might praise Worthington for her courage in Case 11.4, we might not consider her behavior virtuous. The virtuous professional habitually knows the good and does the good. The criminal justice professional is accountable to the community and to her colleagues for demonstrating this virtue; the professional demonstrates this virtue to herself through her integrity. Her accountability and integrity come from her promise to uphold the U.S. Constitution, and thereby to protect and sustain the community and its citizens.

In habitually knowing and doing the good, the virtuous professional integrates into her life the cardinal virtues of courage, justice, temperance, and prudence, along with other virtues necessary to good professional practice, some of which we discuss below as professional obligations. We've acknowledged Worthington's courage in Case 11.4, but she did not act prudently, and some could argue that she made intemperate use of her gun.

Q 11.11

In Case 11.4, did Worthington act with integrity?

The virtuous professional knows that good moral decision making depends on a proper balance of concern for consequences, rules, and duties. Worthington acted solely on the basis of consequences in Case 11.4, ignoring rules and duty.

The virtuous professional recognizes the special importance that Americans in their moral discourse put on law, rights, and justice, and she recognizes the often incorrect presumption that definitions of these values reflect the U.S. Constitution.

The virtuous professional is aware of religion's importance in American ethics and in the professional's interaction with the community and with colleagues. Thus, the virtuous professional is sensitive to, if not conversant with, Christian, Jewish, and Muslim reliance on scripture, tradition, reason, and experience for making moral decisions as adherents to their God.

Q 11.12

In Case 11.4, did Worthington balance all concerns properly?

The virtuous professional has responsibilities and rights that go well beyond those of a mere job. A brief discussion of the moral implications of this premise will add to our understanding of the ethics of criminal justice. This discussion is in two parts: an account of the professional's relationships and a list of basic professional obligations that reflect and inform these relationships.

Professional Relationships



CASE 11.5

The Neighborhood Cop Who Discouraged Pressing Charges

George's house has a basement that is accessible only through an outside door. One evening George hears a commotion in the basement and rushes out to find that a number of juveniles have broken the lock on the door and are rummaging through the junk in the basement. Upon seeing George, all but one of them escape and flee down the street, but George is able to shut the door and capture the straggler. While George holds the door shut, he shouts to his girlfriend, who is in the house, to call the police. Officer Smith arrives in his patrol car soon after the call.

When George explains the situation, Smith tells him to let go of the basement door. A boy of about 13 breaks from the entrance, and Smith grabs him immediately. Smith and the boy obviously know each other, as Smith asks the boy, "What are you up to this time, Joe?" When Joe does not answer, Smith asks George what he wants to do next.

George presumes he should press charges, but Smith discourages this. He explains that the juvenile justice system wouldn't do much to ensure justice and that pressing charges might only inflame the locals—kids and parents alike. What's more, he notes, the boy's father will deal with the boy more harshly than the justice system would. Smith then asks what George hopes to accomplish by pressing charges. Caught off guard by the question and still keyed up over the incident, George blurts out that he would like to achieve two things: discouraging the boy and his cronies from ever doing this again (at least to George) and getting his broken lock replaced. Smith promises to take care of these two concerns quickly, puts the boy in the back seat of his cruiser, and drives off.

Within the hour, Smith returns with a new lock for George's basement door. He also notes the displeasure with which the boy's father greeted the boy when Smith took him home. Smith then gives George his contact information and asks whether George is content with

how Smith has handled the matter. George admits to being impressed with what he takes to be a wise resolution to the case. Satisfied, Smith drives off.

Years later, George would offer this example to a group of sergeants as evidence of good community policing. George is surprised, therefore, when the first response from the group is, “How far along was Smith in his shift that night?”

Case 11.5 invites at least two questions. The professional has responsibilities, but to whom? The professional has rights, but with regard to whom? One answer to both questions lies in the relationships that the professional has with clients, colleagues, the profession, and herself/himself.

*Clients*¹¹

The first and most important professional relationship is with the client. This relationship invites two questions: Who is the client? What is the proper allocation of responsibility for decision making in the professional–client relationship?

The primary client of the police officer, for example, is the community, both collectively and individually. Collectively, the community expects the officer to keep it safe and secure. Individually, the people in the community challenge the police officer with different personalities in different circumstances—lawbreakers; victims; and citizens needing nonlegal help, such as directions, getting a cat out of a tree, or emergency medical assistance.

Arguably, the community is the primary client for most areas of criminal justice, but not necessarily all areas. An attorney’s client, for example, is the individual whom the attorney represents. In criminal cases, this client’s interest may directly oppose the community’s expressed interest. For example, suppose a defense attorney believes that his client—a defendant on a murder charge—is guilty but that the attorney can get his client freed on a legal technicality. It is in the community’s interest that the client be sent to prison if he is guilty, and it is in the client’s interest that he be released, even if he is guilty. In this case, it appears that the attorney should act in favor of the client against the interests of the community.

Q 11.13

In Case 11.5, is Joe a client of Smith’s as much as George is?

The professional must also consider third parties whom her actions might affect. A typical example for police is whether to shoot at a suspect and risk hurting bystanders. Another example is whether to engage in an auto pursuit of a dangerous suspect on a public thoroughfare.

Q 11.14

In Case 11.5, might Smith be endangering the neighborhood by not charging Joe?

The client also has moral responsibilities to the professional. In its interaction with police, the community must, for example, respect officers, unless they act in ways not deserving of respect; not hinder the officer's work; help the officer when asked; remain vigilant for suspected wrongdoers; and use the 911 system responsibly.

The other question in the professional–client relationship concerns allocation of responsibility. This is a central issue in Case 11.5, between George and Officer Smith. In serving the client, the professional must make and act on decisions. Who is primarily responsible for making those decisions? Three general models for allocation of responsibility for decision making are the paternal model, the agent model, and the contract model.

The **paternal model** makes the professional responsible for the decision. The client pays the professional to use her expertise to make decisions. If the decision is bad, the onus falls solely on the professional. On this model, for example, Officer Smith in Case 11.5 should have decided whether or not to arrest Joe, and Smith should not have asked George whether or not to press charges. If the arrest were bad, Smith, not George, would bear full responsibility for it.

The **agent model** makes the client responsible for the decision. The professional's job is to lay out the options for the client and to give the client the best advice possible, but only the client can make the final decision. If it is a bad decision, the onus falls solely on the client. In Case 11.5, Smith may have this model in mind when he asks George to decide whether or not to press charges, advises him that pressing charges is a bad idea, and convinces him to settle for a new lock.

The **contract model** makes the decision a joint responsibility of the professional and the client, assuming the client is physically and mentally able to participate in making the decision. There is no easy formula for dividing this responsibility between the parties, but generally there should be agreement up front about each party's role. This agreement may be codified, a matter of common sense, or made on the spot. In Case 11.5, Smith appeals to George's common sense by noting the futility of pressing charges. But if George has no prior relevant experience, it may be unfair of Smith to put so much responsibility on George.

Of these three models, the contract model is best whenever applicable, because it correctly recognizes each side as a full participant in the contract and it satisfies the Aristotelian principle of finding the mean between the extremes of overburdening one party or the other. In policing, this model may apply less frequently than in other professions, because the suspect or criminal is a client too. In this adversarial relationship, the professional must make most of the decisions regardless of the client's wishes, so the paternal model becomes the most useful of the three models.

Colleagues

A second relationship for the professional is with colleagues. Colleagues include superiors, peers, subordinates, support staff, and other related agencies and organizations. Superiors include people both in and out of the direct chain of command. Peers include partners and others of comparable rank. Subordinates may be in or out of the chain of command. Support staff—including administrative assistants, dispatchers, and maintenance people—are usually lower in the organizational hierarchy than the professional who receives the support. Other related agencies and organizations include local, state, and federal criminal justice agencies; unions; vendors; and municipal authorities such as a city office of human resources.

*The Profession*¹²

A third relationship is with the profession at large. Professions with autonomous associations, such as the American Bar Association or the American Medical Association, have at least three sorts of responsibilities. First is to develop and implement regulations for entrance into the profession, proper behavior within the profession, and means of dealing with professional violations. This often includes accreditation by a body of one's peers. Second is continued education and research to keep the profession up-to-date and to foster steady improvement. Third is public relations.

Some areas of criminal justice practice have no national association. For example, there is no nationwide professional association for police officers comparable to the American Bar Association for lawyers or the American Medical Association for doctors. Still, police must contribute to the profession. In terms of self-governance, this may include police departments seeking accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA). In terms of education and research, there are many opportunities for offering or taking in-service training, specialty certification, and personal enrichment. Since the police officer has dedicated his life to the profession, he ought to take judicious advantage of these opportunities for improvement. In terms of public relations, just about every public act of a police officer either adds to or detracts from the image of law enforcement, which the New York police officers in Case 11.1 seem to have forgotten. The virtuous police officer will be mindful of the PR value of everything he does.

Q 11.15

In Case 11.5, did Smith's response reflect well on the profession of policing?

Oneself

A fourth relationship is with oneself. The professional's primary commitment is to her client, but she also has personal interests worth her consideration. These include physical and mental well-being, healthy relationships with family and

friends, and religious and political beliefs. Some of the most difficult tasks facing the professional involve a clash of personal and professional interests, as Case 11.6 demonstrates.

Professional Obligations: The Basics



CASE 11.6

Florida Hurricanes

In a large Florida city, the police and sheriff's departments require all of their sworn personnel to be on duty during hurricanes. Today a hurricane has hit the city dead-on, and Officer Simms has arrived for duty, leaving her husband and children at home in the next town. Listening to her police radio, she hears that an emergency response team is on the way to her neighborhood after a tornado reportedly tore through it. She tries to call her supervisor to ask for permission to go home, but she is unable to reach him, so she leaves her post to be with her family.

Within the week, she is fired for dereliction of duty because she left her post without permission.

Case 11.6 offers a powerful example of the clash between professional and personal responsibilities. For the most part, rights and responsibilities in professional relationships are reciprocal and complementary. For example, if the professional has a *responsibility* of confidentiality to the client, then the client has a *right* to confidentiality from the professional. If the client has a *duty* to be honest with the professional, then the professional has a *right* to have the client be honest. Two general categories of professional responsibilities are obedience and trustworthiness.

Q 11.16

In Case 11.6, did Simms's retreat violate the local citizens' rights to police protection?

Obedience

Any professional must obey the community's laws, the profession's rules, and superiors' orders, unless the professional has moral reasons for being disobedient. In policing, for example, the list of authorities to obey or heed is extensive. At least 10 come to mind.

- The *U.S. Constitution*. Every police officer promises to uphold the Constitution, the supreme law of the United States. But rarely may the officer interpret the Constitution as he wishes. Instead, the courts mediate his connection to the Constitution through decisions concerning legally acceptable and unacceptable police practice. As we saw in Part III, this poses a moral problem for the officer who believes that a judicial decision is unconstitutional. The virtuous officer will weigh the consequences of disobeying the court order, taking into account the community's safety and security, and come to the most moderate conclusion possible.
- The body of *criminal and civil laws*. As enforcers of law, police have a special duty to obey them. Moral problems arise for the police officer when the law appears to be a bad one or it seems useful or necessary to break one law in order to enforce a more important one.
- An agency's *code of conduct* or code of ethics. As we noted in Chapter 4, this may include a vision statement, a mission statement, statements of principles and standards, and specific rules. Generally, principles and standards are too abstract for determining compliance directly, but they act as the justification for the rules, which should be specific enough to determine compliance. For example, a basic principle is that one should perform one's duties. But this principle does not specify what those duties are. In deference to this principle, law enforcement has a standard that police have a duty to protect and serve the community, but the standard gives no specific guidelines for that protection or service. Under this standard, one rule might be that service to the public includes responding to a call for help within five minutes. Another rule might be for the officer always to state his badge number when a citizen requests it. It will be easy to determine whether these rules have been obeyed. Police and the community benefit from a clear understanding and acceptance of the department's vision and mission, as long as the police officers live up to those ideals. Otherwise, the vision and mission statements become empty sentiments, leaving the community cynical about the police department's sense of purpose.
- The department's *general and special orders*. As a rule, police are bound to obey these orders unless they are unlawful or superseded by more recent orders or by exigent circumstances. Suppose a department prohibits using squad cars to transport civilians who are not suspects or under arrest. Now suppose a patrol officer sees a young boy looking frantically for his dog and helps find the dog. If the boy and the dog are far from home and the trip home is dangerous because it involves crossing the interstate, wouldn't the officer be doing a good thing by driving them home? Also, the fact that an order does not spell out every possible instance of disobedience does not let the cop off the hook. For example, in Case 4.2, "Towing the Boat," the officer should have known that unauthorized use of a squad car includes using the car to tow a boat, even though no rule said this specifically.

- The *community's norms* that affect the police officer as a professional and as a citizen. In the proverbial case of the free cup of coffee, if the community supports merchants giving officers free coffee and there is no law or department policy against it, then why not allow it?
- *Tradition*. People often express this by saying “We’ve always done it that way” or “If it ain’t broke, don’t fix it.” Sometimes the tradition is a bad one, and it may take courage to put a stop to it. A persistent issue is professional courtesy—police officers expecting to get out of a speeding ticket simply by showing their badges. Tradition alone does not make this morally right.
- *Experience*. Some aspects of the profession cannot be taught, although the rookie may benefit from a veteran’s war stories. Beyond the formal training a professional receives, experience is often the best teacher. Departments may recognize this through Field Training Officer programs or by pairing a veteran with a rookie on patrol.
- *Intuition*, or “gut feeling.” The experienced officer does not need to keep consulting laws, rule books, or training manuals to do his job well. Even the rookie has a moral conscience, unless he is sociopathic, and probably does the good instinctively. A virtuous police officer is sensitive to wrongdoing and may rely on this for moral direction.
- *Reason*. This is the fundamental tool for sound moral decision making and a primary focus of this book. Obedience here is to the laws of logic, tempered by intuition and experience.
- *Religious beliefs*. Police operate under a principle of separation of church and state. Nevertheless, the virtuous police officer will acknowledge her religious beliefs, if any, and the religious beliefs of her community, and be appropriately deliberate in working those into her moral decision making as a professional.

Trustworthiness

In addition to obedience, the professional has a fiduciary responsibility to the profession, the agency, the client, and the community. The professional acts on behalf of the clients in ways they cannot act themselves. For example, when a police officer arrests a suspect, it is not for the officer’s sake but for the sake of the people on whose behalf the officer has the power to act, thus contributing to their safety and security.

In recognizing the professional as a fiduciary, we trust him to know the good and to do the good—to have integrity and to be accountable. In addition to all of the moral values and characteristics noted so far, we can, with ethicist Michael Bayles, identify at least seven specific obligations of professional trustworthiness.¹³

First is *competence*. It is not controversial to claim that a professional must be competent—but how competent? Is the professional duty-bound to be excellent at the profession, or is merely adequate good enough? Does the client have a right to expect “A” work from the professional, or should the client be satisfied with “C” work?

Q 11.17

In Case 11.4, did Worthington act competently when she verbally challenged the teenage assailant rather than using her gun on him?

Second is *diligence*. The professional should make a good effort and take care in fulfilling her agreement with the client. This is not the situation in Case 11.6 with the mom who went AWOL.

A third obligation of trustworthiness is *honesty*. Two questions arise: What is honesty? Is it always a virtue? Generally, to be honest is to say what one believes. Note that one could be honest and still tell a falsehood. One could also be dishonest and tell the truth. In the first case, imagine that Cpl. Juan is beginning his shift as Cpl. Olson is ending hers. Cpl. Juan has forgotten his flashlight, so he asks to borrow Olson's. She agrees and tells him to get it from her locker, which she has left unlocked. She then heads for home. On the way home, she sees the flashlight lying on the floor of her car, but before she can call Juan, he has checked her locker and found no flashlight. Did Olson lie to Juan? That would be an unfair accusation, even though Olson made a mistake. Now imagine that when Olson agreed to let Juan use her flashlight, she believed the light was in her car, but she unkindly decided to tell Juan it was in her locker. When she gets into the car, the light is not there and she remembers that she left the light in her locker after all. By this time, Juan has retrieved the light from Olson's locker and headed out for patrol. As far as he is concerned, Olson told him the truth, but we know that she lied, even though the trick was on her.

Many say that honesty is a virtue or that "honesty is the best policy,"¹⁴ but is it always? A virtue is the mean between the extremes of deficiency and excess. In police work, might there be times where a lie is more virtuous than the truth? Undercover or sting operations are a normal and acceptable part of police work, in which the operation itself is dishonest and maintaining the dishonesty may be necessary to protect the operative and to achieve success. A harmless case of dishonesty involves an officer's lying to lure a retiring comrade to a surprise party. Neither of these cases appears to stray far from the mean, given the circumstances.

These cases don't require moral scrutiny, but compare these to more controversial sorts of cases. For example, in Case 9.3, "Improbable Cause," lying might be the only way for the officer to make a case against an obvious offender, but the lie would violate lawful procedures. In these cases, would the end justify the means? In Case 6.1, "The Hit and Run Son," the father flirts with dishonesty in order to protect his son from harsher penalties that the son faced if they were completely honest. The father's protectiveness is understandable, but as a police chief he has duties that his son's predicament does not override. These appear to be cases of deficient honesty at best.

On the other side of the mean is *excessive* honesty, or inappropriate candor. Whereas honesty is a matter of saying what one believes when asked to speak,

candor, a fourth obligation of trustworthiness, is saying everything one believes about the subject. It would be inappropriately candid to tell a stranger that you think his hat looks stupid, even if that's the truth. It would be inappropriately candid for a police officer testifying in court to offer an elaborate answer to a question for which the right response is "a simple yes or no." In other words, candor whose purpose is to be cruel or candor that subverts a moral purpose is morally wrong. Professionals and clients should expect candor from each other, but is this expectation always justified? The professional may feel that a full account would hurt the client. As noted previously, in policing, unlike in other professions, the client is often an adversary—a suspect or a convict. Sometimes the most practical way to deal with this client is to avoid candor and perhaps to lie, thus relying on the paternal model rather than the contract model of decision making.

A fifth obligation is *loyalty*. In the public image of policing, this may be the most ubiquitous obligation. Stories abound about the "thin blue line" and the whistleblower who crosses that line. Often the professional has competing loyalties. Loyalty to the client may interfere with loyalty to a colleague or, as in Case 11.6, to one's family. In policing, the professional promises loyalty to the Constitution and to the community she serves; all other loyalties are subordinate. Failure to understand this or failure to act on this understanding is a symptom of and may be a cause of police corruption.

Q 11.18

Does Simms's act in Case 11.6 constitute corruption?

A sixth obligation is *discretion*. For the professional, this has two meanings: keeping a client's confidence, and the ability to make professional choices on one's own without having to run every decision by a superior. In policing, absence of discretion in the latter sense would pose two dangers. Police work would be much less efficient, and police would be susceptible to legalism—the belief that one should follow the rules at all costs. With the freedom of discretion comes the strong responsibility to use it well—to consider and balance consequences, rules, or duties in fulfilling the task.

Q 11.19

Did Officer Smith in Case 11.5 use his discretion wisely?

A seventh obligation is two-sided: *beneficence/nonmaleficence*. At the very least, the professional should try not to harm the client; otherwise, the professional is guilty

of maleficence—wrongdoing. But the professional can intend to avoid harm without trying to do good for the client. Suppose that Officer Smith in Case 11.5 was interested only in avoiding having to write an arrest report so late in his shift. At the same time, imagine that he did not want to leave a dissatisfied citizen, because that might come back to haunt him. It is fair to say that he acted toward George with nonmaleficence, but not necessarily with beneficence—a desire to do some good for George. On the other hand, the marriage counseling police officer in Case 10.1 clearly meant to do some good for the troubled couple—the officer was acting beneficently. Note that the duty to be beneficent is both collective and individual. Although the marriage counseling officer acted as an individual, his department might also have been committed collectively to community policing through school outreach programs or police athletic leagues, for example. Of course, both the department and the individual need to balance opportunities to do good for some people against duties to others that may be more pressing. The maternal rookie in Case 11.4 appears to have been acting beneficently, but her duty probably was to be more careful about her own safety and about following protocol in a situation in which someone has a gun on her.

Professional Ethics as a Balancing Act

For the virtuous criminal justice professional, life is a series of balancing acts. She should try always to strike a balance between professional life and personal life in fulfillment of her responsibilities and exercise of her rights; among consequences, rules, and duties in her moral decision making; among the legal, political, and religious interests of community members and colleagues; and among the competing notions of law, justice, and rights as they allegedly stem from the U.S. Constitution.

Moral discourse often refers to our “moral compass,” noting that for the virtuous person this compass points to true north and orients her accordingly. A better metaphor might be the *moral gyroscope*. A compass merely points us in a certain direction and leaves us to decide whether to go that way. A gyroscope is an internal device that when properly calibrated keeps the device in balance. The virtuous criminal justice professional should think of her moral conscience as a moral gyroscope, which she should keep in good working order.

SUMMARY

This chapter has discussed the nature of a profession and the moral implications of this designation for criminal justice professionals. These implications include several moral obligations of trustworthiness, knowing and being faithful to all professional relationships, and knowing and properly availing oneself of the various authorities under which the professional operates.

The virtuous professional habitually knows and does the good. In doing the good, he fulfills his responsibilities and exercises his rights so that he and the community are the better for it.

Next, we will examine each of several criminal justice professions more closely, focusing on moral problems that are either unique or of special significance.

ANSWERS TO CASE STUDY QUESTIONS

Q11.1. In Case 11.1, would it be fair to condemn the officers' actions as unprofessional when they were far from home and off duty?

Yes. First, the act is clearly not professional. Second, professionals wear the moral mantle of their profession all the time—even when they are off duty. Third, the distance from one's jurisdiction is not relevant to the morality of the misdeed.

Q11.2. In Case 11.1, do the officers have the excuse that there was no superior present to forbid them from acting unconventionally?

No. The absence of a superior did not give the officers the right to act unconventionally. Consider how many times there is no superior immediately available to an officer who is on duty. This does not relieve the officer of fulfilling his duty anyway.

Q11.3. Does the dissenting officer in Case 11.2 exemplify the public's expectation of police integrity?

Yes. Integrity requires moderation, and indulgence in the vices would be immoderate even if they were legal.

Q11.4. If the two willing officers in Case 11.2 have college degrees, do they meet DeGeorge's criteria for professionals?

No. The college degrees of the two willing officers are not enough to make them professionals. For DeGeorge, a college degree is a necessary but not sufficient condition for professionalism.

Q11.5. Does the dissenting officer's view of integrity in Case 11.2 appear to rest on a stipulative definition?

No. The dissenting officer appears to operate from a definition of integrity that goes beyond mere stipulation. His definition appears to lean toward the analytic—an identification of integrity with having all of the cardinal virtues: courage, justice, temperance, and prudence, the latter two of which the willing officers appear to lack.

Q11.6. In looking to define *profession*, can we find anything useful in the example of the officers in Case 11.2? If so, what?

Case 11.2 is useful in defining profession, because the case clearly offers an example of one officer who thinks as a professional and two who do not. The officer who thinks as a professional recognizes the higher standard to which police are held: Even when they are on vacation and in another country, they should act morally. The other two officers do not have the proper regard for the moral expectations of them as police officers.

Q11.7. Could Hall refute Oates's argument in Case 11.3 by pointing out that police officers are responsible for enforcing traffic laws?

In Case 11.3, Hall would have a good argument against Oates if Hall noted that police officers enforce traffic laws. There is a direct connection between those who

enforce traffic laws and revenue from the tickets involved in such enforcement. There is no direct connection between revenue from tickets involved in law enforcement and state employees who have nothing to do with traffic enforcement. This observation would weaken Oates's analogy between police officers and other state employees who have nothing to do with enforcing traffic laws.

Q11.8. Regarding Hall's argument in Case 11.3, would it be appropriate to add a dollar tax to periodic trash hauling bills in order to offer trash haulers in the state a free college education?

No. Given Hall's argument in Case 11.3, it is tempting to argue that if adding a dollar surcharge to traffic fines is appropriate for helping police officers pay for higher education, then adding a dollar tax to trash hauling bills is appropriate for helping trash haulers pay for higher education. But the analogy is weakened by the different services offered by the two groups and by the education required to offer those services. Thus, on this analogy alone, the argument for the tax on trash hauling bills would not hold up.

Q11.9. Given the public's expectations of police officers, isn't it in the public's interest to have a better educated police force, as Hall recommends in Case 11.3? If so, isn't this worth an extra dollar per traffic fine?

Given the public's expectations of police officers, it is in the public's interest to have a better educated police force, as Hall recommends in Case 11.3. Thus, an extra dollar per traffic fine is worthwhile as long as it will contribute successfully to police education.

Q11.10. As Oates's argument in Case 11.3 implies, should the public show as much interest in the behavior and well-being of the burger maker and the trash hauler as it does in those of the police?

Oates implies that the public should show as much interest in the behavior and well-being of the burger maker and the trash hauler as of the police. But this premise fails to distinguish between a job and a profession, which is crucial to Hall's argument.

Q11.11. In Case 11.4, did Worthington act with integrity?

No. To act with integrity is to act with courage, justice, temperance, and prudence. It is fair to say that Worthington's act in Case 11.4 was foolhardy, rather than courageous and imprudent. One might also argue that she made intemperate use of her police powers.

Q11.12. In Case 11.4, did Worthington balance all concerns properly?

No. Worthington did not give her own concerns enough weight compared with her concern for the suspect.

Q11.13. In Case 11.5, is Joe a client of Smith's as much as George is?

Yes, because Joe is also a member of the community that Smith is sworn to protect. However, this doesn't mean that Smith must allow Joe to decide whether or not charges should be pressed. That decision belongs to Smith and George.

Q11.14. In Case 11.5, might Smith be endangering the neighborhood by not charging Joe?

Yes. Smith may be endangering the neighborhood by not charging Joe, because (1) Joe may have broken into other houses and planned to break into more and (2) Joe and his friends may take Smith's failure to arrest Joe as a precedent that will only encourage them to commit more burglaries.

Q11.15. In Case 11.5, did Smith's response reflect well on the profession of policing?

It depends. Smith's response reflects well on the profession of policing if Smith's motive was to maintain a safe and secure neighborhood. If, on the other hand, Smith's motive was to avoid writing an arrest report, then his response reflected poorly on the profession. The point is that we cannot answer on the basis of consequences alone.

Q11.16. In Case 11.6, did Simms's retreat violate the local citizens' rights to police protection?

Yes. The public has the right to expect protection from the police and to expect that police will obey lawful orders. Thus, Simms's retreat violated the citizens' rights to police protection.

Q11.17. In Case 11.4, did Worthington act competently when she verbally challenged the teenage assailant rather than using her gun on him?

No. She failed to follow proper procedure, but luckily everything turned out all right.

Q11.18. Does Simms's act in Case 11.6 constitute corruption?

No. A corrupt act involves choosing evil over good. Simms's act in Case 11.6 involves choosing between two conflicting duties—professional and familial. Although Simms made a wrong choice from the professional point of view, it is difficult to condemn her choice as corrupt. Perhaps her act was intemperate and unjust, but not every act against virtue is an act of corruption.

Q11.19. Did Officer Smith in Case 11.5 use his discretion wisely?

As suggested previously, if Smith's motive was to benefit the community, then he appears to have used his discretion wisely. If, on the other hand, his motive was to get out of filing a report, then he did not use his discretion wisely, because it was contrary to the purpose of such discretion.

NOTES

1. Steve Vogel, "Live From D.C., It's NYPD Blue," *Washington Post*, 19 May 1995, p. 1A.
2. Retrieved 20 June 2005 from realpolice.net/police_history.htm.
3. David Pake, "The Legal Profession and Its Ethical Responsibilities: A History," in *Ethics and the Legal Profession*, ed. Michael Davis and Frederick A. Elliston (Buffalo, NY: Prometheus, 1986), pp. 29–49.

4. Stephen Barker, "What Is a Profession?" *Professional Ethics* 1.1 and 2 (1992), pp. 73–99.
5. Michael Bayles, *Professional Ethics*, 2nd ed. (Belmont, CA: Wadsworth, 1995), p. 8.
6. Realpolice.net/police_history.htm.
7. Ibid.
8. Bayles, *Professional Ethics*, p. 8.
9. Richard DeGeorge, *Business Ethics* (New York: Macmillan, 1990), pp. 382–3.
10. Retrieved 20 June 2005 from www.answers.com.
11. Bayles, *Professional Ethics*, Ch. 4.
12. Ibid., Ch. 7.
13. Bayles, *Professional Ethics*, pp. 79–99.
14. Miguel de Cervantes, *Don Quixote*, Ch. 2.