

**Comprehensive Law Enforcement Review:
Procedural Justice and Legitimacy
SUMMARY**

This chapter describes the prevailing ideas in the research literature concerning procedural justice, fair and impartial policing, implicit bias, and racial reconciliation and how these affect legitimacy. This chapter also captures what experts have written about the need to reconcile deep divisions between law enforcement and the community, while noting unresolved issues and percolating tensions can challenge agency legitimacy. It further describes the use of collaborative reform and consent decrees to move law enforcement practice forward. Overall, this chapter covers what the latest research and practice suggests law enforcement agencies can integrate into their organizational culture, so that all actions are filtered through the lens of procedural justice.

Chapter highlight #1: Observations in the literature about the relationship between law enforcement and the public

- We live in an era of increasingly professionalized and informed law enforcement, yet public confidence and support have not kept pace. There's a sense of urgency to improve policing efficacy, but this coexists with the struggle to gain and keep people's trust.
- Law enforcement must learn how to promote and achieve legitimacy in innovative and holistic ways, by transforming police culture to enhance legitimacy, reflecting it as a core value and reinforcing it through actions.
- Decades of research, practice and policies support the premise that people are more likely to obey the law when they believe that those who are enforcing it have the right – the legitimate authority – to tell them what to do. Respect for authority is a stronger motivator than fear of formal punishment.

Chapter highlight #2: Assertions that research and practice say informs observations about police-community relations

- At the heart of ethical policing are the core values of procedural justice: (1) fairness and consistency in rule application, (2) impartiality and unbiased decision making, (3) providing voice and representation, and (4) demonstrating transparency and openness.
- Police officers must experience the same level of justice in their own interactions in their agencies in order to understand how to treat their communities with fairness.
- A key component of procedural justice, which is therefore vital to achieving legitimacy, is the practice of fair and impartial policing. This, in turn, has implications for racial reconciliation, and also supports law enforcement efforts to operate within the parameters of constitutional law. Fair and impartial policing is built on understanding and acknowledging human biases.¹
- Though subconscious prejudice can complicate the execution of professional police work, bias can be reduced through training at all levels of the department.

- For officers to use their intellect, language, powers of persuasion, empathy, and humanity can often achieve a more positive outcome than exercising force². This is not to say that in certain situations force is not necessary, but to assert that cognitive decision making is just as important in being seen as legitimate.
- An important element of police legitimacy is racial reconciliation, which requires proactive outreach to create opportunities for collaboration. This is important not only for the healing process, but to increase legitimacy and enhance public safety.

Chapter highlight #3: Key concepts from the literature defined

Procedural justice (PJ): Based on four central principles: "treating people with dignity and respect, giving citizens 'voice' during encounters, being neutral and transparent in decision making, and conveying trustworthy motives."³

Internal PJ: Refers to activities within an agency, and the relationships officers have with their colleagues. Officers who feel respected by their supervisors and peers are more likely to accept departmental policies, understand decisions, and comply with them voluntarily.

External PJ: Focuses on the way police and other legal authorities interact with the public, and how the characteristics of those interactions shape the public's views of the police, increasing their willingness to obey the law, lowering crime rates, and even enhancing officer safety.

Legitimacy: The very foundation of police authority. People believe that a legitimate authority is entitled to have its rules and decisions accepted, followed, and obeyed. But this legitimacy is attributed to those whom the public believes are acting in procedurally just ways.

Racial reconciliation: Interchangeable term with "reconciling deep divisions." This is a concept that is much larger than law enforcement with many paths to reach it. The focus is the relationship between the police and communities of color or other groups, as it is affected by perceptions the community and the police have of each other.

Chapter highlight #4: Integrating concepts into practice – what researchers see as promising approaches currently the field

Internal procedural justice

This process begins with a "top down" implementation of internal procedural justice. Organizational culture created through employee interaction with management can be linked to police officers' interaction with citizens. When an agency creates an environment that promotes internal procedural justice, it encourages its officers to demonstrate external procedural justice.

- Establish employee "buy-in" with clear articulation of organizational core values, the transparent creation and fair application of an organization's policies, protocols and

decision-making processes. Agencies should involve employees in each aspect of this process.⁴ For example, law enforcement employees should participate in performance management, promotional and discipline procedures. Other methods for building relationships include individual development plans and mentorship programs.

- Training should focus more on the concepts and elements behind procedural justice and legitimacy rather than the use of the new terminology. Training should be reinforced and reiterated through consistent examples that highlight real-time benefits (such as greater community cooperation and police discretion) gained from adherence to procedural justice standards.

External procedural justice

The way in which community members develop an opinion about a specific interaction with an officer is based primarily upon two things: the outcome of the encounter and the process of the encounter. To be seen as a legitimate authority in the eyes of the public, interactions are not only measured by *what* officers do, but also by the *way* they do it.

- Each interaction, while it often occurs between only two people, ultimately reflects upon the agency as a whole. Every interaction a police officer has with a community member should be seen as an opportunity to make a positive difference.

Collaboration with community

Decision-making tinged by bias, both implicit and explicit, and issues of trust and confidence flows from both law enforcement agencies and communities. Communities also have a responsibility to work with agencies to break down barriers. Due to deeply rooted historical mistrust, initiating the breakdown of barriers can be most effective when government and law enforcement agencies take the lead. Still, communities must play an active role to achieve the end goal of legitimacy.

- Agency leaders and executives should work to achieve legitimacy by establishing new norms. This can be done through activities such as learning the science behind bias, hiring and promoting a workforce that is nondiscriminatory, and promoting training on understanding bias. These norms can also be established through proactive community partnerships with traditional and non-traditional marginalized groups.
- Joint community and law enforcement dialogues, truth telling, and training in procedural justice and bias are occurring nationally. Some agencies are even using training, dialogues, and workshops to take steps towards racial reconciliation.
- Training in the community can also be beneficial, bringing law enforcement and the public together to address the bias that exists on both sides and to "demystify the police for the public and for the police to develop empathy for the public."⁵
- Consider the critical importance of hiring officers who are reflective of the communities they serve, have a high level of procedural justice competency, and had positive interactions with people of various cultures and backgrounds.⁶ The goal should be systematic and comprehensive diversification throughout each segment of the department.

Consent Decrees & Collaborative Reform

Over the past 20 years, over two dozen state and local governmental units and their police agencies have opted to enter into a consent decree or Memorandum of Understanding rather than face costly litigation against the federal government concerning violating citizens' constitutional rights. The agency agrees to specific reforms to address the issues that led to the potential allegations of violations.

- Consent decrees can be an opportunity to "map out a vision for the future," preemptively act with point plans or establish a cooperative relationship in pursuit of reform with external entities.⁷

The COPS Office developed the Collaborative Reform Initiative for Technical Assistance (CRITA) in 2011 as an independent means to enhance organizational transformation through an analysis of policies, practices, training, tactics, and accountability methods around a specific issue, such as excessive use of force, officer involved shootings, or racial profiling. The CRITA program serves as a road map for reform, developing long term strategies for issues, and then issuing findings and recommendations consistent with best practices in policing.

- These are a "safety valve for progressive leaders seeking change, who either don't have the political will, the resources, or the organizational capacity to implement the change."

Chapter summary closing:

Partnerships for the co-production of public safety are emerging as the prevailing business model, with agencies who have embraced the literature sharing the responsibility for the creation of safe and sustainable communities with many other organizations and individuals. The literature in this area predicts that an expansion from a crime control model to a broader focus on community safety will likely heighten the importance of procedural justice principles to achieve legitimacy. With an eye toward institutionalizing procedural justice and enhancing police legitimacy, practitioners who support this approach believe that financially reasonable and standardized training on procedural justice and impartial policing across the country starting in the academy and going up the ranks, becomes crucial.

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In addition, interviews were conducted with: Will Johnson (Chief of Police, Arlington, TX), Tim Richardson (Senior Legislative Liaison, Fraternal Order of Police), Michael Davis (Chief of Police, Northeastern University), Hassan Aden (Chief of Police, Greenville, NC), Charles Husted (Lieutenant, Sacramento, CA), Scott Schubert (Commander, Pittsburgh, PA), Mustafa Haamid (Lieutenant, Washington, DC), Christy Lopez (Deputy Chief, Civil Rights Division, U.S. Department of Justice), and Samuel Walker (Professor, University of Nebraska, Omaha)

NOTES

¹ Fridell, Lorie. 2013. "This is Not Your Grandparents' Prejudice: The Implications of the Modern Science of Bias for Police Training." *Translational Criminology*. Fairfax, VA: George Mason University.

² Kunard, Laura, Leo Daniels, and Richard "Skip" Miller. Forthcoming. *Defining Procedural Justice*. [Note: this title is not cemented] Washington, D.C.: The Office of Community Oriented Policing Services.

³ Mazerolle, Lorraine, Sarah Bennett, Jacqueline Davis, Elise Sargeant, and Matthew Manning. 2013. *Legitimacy in Policing: A Systematic Review*. The Campbell Collection Library of Systematic Reviews, vol 9. Oslo, Norway: The Campbell Collaboration.

⁴ Will Johnson (chief of police, Arlington, TX), in discussion with Ajima Olaghere (research assistant, COPS Office, Washington, DC), October 2014.

⁵ Laura Kunard (director of the center for public safety and justice at the University of Illinois Chicago), in discussion with Ajima Olaghere (research assistant, COPS Office, Washington, DC), October 2014.

⁶ Fridell, Lorie. 2008. "Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association". In *Racial Divide: Racial and Ethnic Bias in the Criminal Justice System*. Ed. Lynch, Michael J., E. Britt Patterson, and Kristina K. Childs, Monsey, NY: Criminal Justice Press: 39-59.

⁷ Will Johnson (chief of police, Arlington, TX), in discussion with Ajima Olaghere (research assistant, COPS Office, Washington, DC), October 2014.