

Controlling Street-Level Police Discretion

By

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The Committee to Review Research on Police Policy and Practices' *Fairness and Effectiveness in Policing: The Evidence* provides a review of research on the causes of street-level police behavior, but the report offers little insight into how to control that discretion effectively. This is not due to deficiencies in the report but rather to limitations of the available research. This article discusses four problems with that research: underdeveloped theory, weak research designs, insufficient generalizability of findings, and inattention to the kinds of police discretion that really matter to policy makers, practitioners, and the public. The article gives special attention to the last problem and makes recommendations for improving the quality of research to better inform choices about how to control police street-level discretion.

Keywords: police; discretion; performance evaluation

Any comprehensive assessment of what police accomplish must account for the actions of personnel at the lowest rungs of the organizational ladder—the rank-and-file police officers and civilians in whom most of the organization's resources are invested. Police leaders and other public officials have long been obsessed with exercising a substantial degree of influence, if not control, over how policing is

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practiced at the street level. Currently, there is great concern about how to eliminate racial bias in police enforcement, how to get officers to engage in more and higher quality community policing and problem solving, and how to get officers to make arrests when the law demands it (drunk driving and domestic violence). But readers of the National Academies' volume on police practices who are looking for ways to control street-level police discretion more effectively will surely be disappointed because the report in general, and chapters 4 and 5 in particular, simply sheds little light on this issue (Committee to Review Research 2003). The authors of the report do not bear the responsibility for this. The fault lies with the body of research available for review, which provides scant insight into the consequences of different methods by which street-level police discretion (hereafter called "police discretion," with "street-level" inferred) might be purposively controlled. The purpose of this article is to outline the major deficiencies of the existing body of research, focusing especially on one, and to suggest ways in which these problems might be overcome.

An Overview of the Problems with Extant Research

Before discussing the challenges confronting us, we need to be clear about some terms, and we need to establish the limits of the domain under consideration. By *discretion*, I mean the leeway that officers enjoy in selecting from more than one choice in carrying out their work. I use *control* in the same way as the report. That is, I mean for it to cover a range of influence over discretion extending from little to absolute. As with the report, my comments will concentrate on the control of patrol officer discretion, where most of the available research is concentrated.

Readers of chapters 4 and 5 will be struck by how inconclusive most of the committee's findings are. By far the most common conclusion is that the committee cannot draw a conclusion, because one or more of the following pertains: there is not enough research on the topic, the available research is not sufficiently rigorous, or the results are too mixed to provide a conclusive pattern. In this section, I identify four reasons for these problems, but in the remainder of the article, I concentrate on the last of them, the irrelevance of many of the measures of discretion that have been used in police research. I argue that attention to this issue is the first order of business for those hoping to develop a body of research that answers the question, "How can we better control the discretion of the police?"

Theory takes a holiday

The philosopher George Santayana (1955) noted, "Theory helps us to bear our ignorance of fact." Theory not only "fills in the blanks" where evidence is lacking, but it also allows us to make sense of those many, often-conflicting bits of evidence that we do possess. Unfortunately, most extant research on police discretion is

underdeveloped theoretically or uses theories that are only tangentially useful to those who wish to know how better to control police discretion. Consider, for example, the question of how to avoid undesirable racial discrimination in the exercise of police authority, one of the most discussed police policy questions of our time. The committee's review of more than thirty studies on this topic led it to conclude that the mixed results about the impact of race were due to the contingent nature of effects. Research fails to take into account relevant features of the policy and social environments in which officers operate. I would add that for results to be meaningful for our purpose, the research needs to be framed in theories of *control* of police discretion (Punch 1983).

Such theories must acknowledge that many forces vie for control of officer discretion: not just the formal hierarchy of the police department but also other forces within and outside the organization. Police unions, civil rights organizations, and more recently, the federal justice system have figured prominently in the struggle over what to do about allegations of police racial discrimination, yet studies attempting to assess the influence of the citizen's race on police discretion do not take these important variables into account in explaining their results.

Efforts to exert control can take different forms. For example, some police chiefs may stress the disciplinary consequences of racial discrimination (Mastrofski, Reisig, and McCluskey 2002), while others may emphasize strategies of officer recruitment and training, and others still may structure patrol work (through permanent beat assignments) so that officers foster better relations with neighborhoods, regardless of racial composition. Or, for example, one might hypothesize that the presence of active neighborhood-level organizations that frequently engage the police at the street level would have stronger effects on race-related police practices than would the top-down approach that comes from centralized civilian review boards. The former is largely preventive and the police-citizen interactions are more frequent, varied, and diffuse (i.e., they work through establishing positive relationships), while the latter is corrective and relies upon formal processes to focus in a legalistic way on specific cases, the ultimate mechanisms of control being deterrence, incapacitation, and rehabilitation to prevent racist police practices.

To make sense of the variety of discretion-control mechanisms, we need to enrich our conceptualization of them. The current state of theoretical discussion in studies of police behavior has not advanced much beyond clustering sources of influence into a few categories, such as situational features, officer characteristics, organizational characteristics, and environmental characteristics (Sherman 1980; Riksheim and Chermak 1993). The frequently repeated finding that situational considerations dominate the choices that patrol officers make (Committee to Review Research 2003, 4-9) hardly constitutes a useful insight for policy purposes. It also undoubtedly holds for the choices made by lawyers, health care professionals, educators, social workers, and clergy. Patrol officers are expected to exercise discretion precisely because coping with "situational exigencies" is the *raison d'être* of the police (Bittner 1970). Barring the replacement of patrol officers with programmed "robocops," the overwhelming influence of situational factors will

continue. Shifts or variations in patterns of influence on police discretion (e.g., comparing a change over time from race effects to no-race effects in a jurisdiction) should be the object of explanation sought by researchers, rather than just measuring the relative strength of situational influences versus those associated with officer and organization characteristics.

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Building useful theories of discretion control can draw on a wide range of disciplines and from the literature on police reform itself, some of which sets forth prescriptions on how best to control the police. The process might begin by considering *who* attempts to influence police discretion and then inventorying the mechanisms of influence available. A useful way to frame the field of players comes from Cyert and March (1963, 27-32), who see organizational goal setting and control as worked out through negotiation among competing groups, at least some of whom establish a “dominant coalition.” The advantage of this approach is that it does not assume that there is a singular, hierarchically determined leadership that sets goals but that there may be many groups of players within the organization—drawn from middle managers, supervisors, and labor—who seek accommodation of their interests and who may enlist or themselves be influenced by outside players seeking influence over policing. And it allows for the possibility of “organized anarchy,” where the distribution of power is in flux or no dominant coalition emerges, creating ambiguity for street-level decision makers, a condition quite common to public organizations such as the police (Cohen, March, and Olsen 1976; Scott 1992, 297). Comprehending the players and the degree of consensus or anarchy relevant to a given type of police discretion is the first step toward creating a realistic framework for modeling the effectiveness of systems intended to control it.

Control systems in police organizations seek to channel efforts toward the accomplishment of goals and interests. Formal organizations establish structures (centralization, hierarchy, rules), incentives and sanctions, supervision, and so on to coordinate and control the activities of the organization’s members. This rational approach attempts to manipulate people’s behavior by distributing consequences that matter to members of the organization, such as career advancement, recogni-

tion, material reward, and status. But no organization is completely successful in this regard, and indeed, police organizations find control of this sort highly problematic because the organizations are limited in their capacity to manipulate what employees really care about, and the systems of control themselves are cumbersome, elaborate, conflicting, and often (as a consequence) only loosely connected to the day-to-day world of the decision makers whose activities they are intended to direct (Crank and Langworthy 1992; Scott 1992, 315; Mastrofski and Ritti 1992). Understandably, once police rookies hit the street, the veterans tell them to “forget what you learned in the academy” and “throw away the rule book” (Rubinstein 1973; Van Maanen 1974). The resulting organizational environment is sometimes called a “punitive bureaucracy,” one more effective at extinguishing undesired behavior patterns than promoting desired ones. This proposition has some support in the small body of research reviewed by the committee that shows that formal rules and guidelines and strong disciplinary practices appear to reduce the frequency with which police resort to lethal force or corrupt practices (Committee to Review Research 2003, 157-58, 272-73, 285).

To promote desired behaviors, it has become increasingly popular in police management texts and among reformers to advocate exerting control through legitimacy rather than the raw power to manipulate consequences for the officers. This is sometimes called “transformational leadership,” because the officer’s compliance derives from a personal transformation rather than from a *quid pro quo* transaction of compliance in exchange for something of value (Bass 1985). Police managers are encouraged to persuade officers to embrace certain goals and values not because doing so will produce desirable personal consequences, or failing to do so will produce negative ones, but because doing so is simply right and proper or the best way. This is, for example, the assumption of reformers who argue that community policing can be implemented effectively only when officers embrace it as a “philosophy” (Sparrow, Moore, and Kennedy 1990; Trojanowicz and Bucqueroux 1990). This approach and proposals about specific ways for leaders to accomplish it (see, e.g., Peters and Waterman 1982, chap. 9; Sparrow, Moore, and Kennedy 1990, chap. 5) date back at least as far as Selznick (1957), but there is remarkably little empirical research that tests whether and when it is effective in police organizations.

Another organizational element to consider is the police culture, “the shared internalized beliefs and norms that provide meaning and guidance to individual members engaged in collective action” (Scott 1992, 315). The police subculture figures largely in discussions of policing, but as the committee indicates (Committee to Review Research 2003, 130-33), it is seldom treated by researchers in a theoretically interesting way. It is widely regarded as only a defense mechanism of street-level officers coping with pressures from management and environmental threats (e.g., a hostile public)—a monolithic obstacle to management’s ability to govern the organization and society’s capacity to hold the organization accountable. Interestingly, overwhelming “the police culture” is often the target of bureaucratic approaches to create consequences for the officers, while the transformational leadership approach seeks to shift this culture from hostility to

receptiveness (if not enthusiastic embrace) of management's values and goals. But the culture is not assessed as an independent influence on the exercise of discretion. Alternatively, if one begins with the assumption that a police organization culture is an independent *variable* over time and place, not a constant, then rich theoretical possibilities emerge from considering the impact of variation in an organizational culture's strength and complexity—and the impact of various management strategies for control of discretion in different cultural environments. An example of this approach is offered by Klockars et al. (2000), who developed a method to measure the orientation of officers to tolerate abuse of authority and corruption among their colleagues. One might presume that the effects of management interventions to reduce abusive police practices would vary considerably between an organization with a strong cultural predisposition not to tolerate those practices compared with one that was far more tolerant.

The task of empirically sorting out the effects of different modes of discretion control will be challenging for police researchers. Despite claims of organizational revolutions, sea changes, and paradigm shifts, police departments do not produce pure discretion-control systems, and it is certainly a rarity for radical change to occur in a short time period. This means that researchers must deal mostly with hybrid control systems, where one layer of reform is laid atop the structures of other, older reforms. And some control interventions themselves are complex, containing a variety of components. And sometimes even these components conflict, such as when they demand a high degree of individual manager accountability for producing results and for collaboration and teamwork (Willis, Mastrofski, and Weisburd 2003). This makes it important to know how the different components of a control intervention worked (or did not work) together to produce a given result. Compstat in New York City is a good example of this problem. This management accountability program was implemented simultaneously with a so-called broken-windows or zero-tolerance approach to policing neighborhoods, and it is hard to tease out how much each contributed to the increase in the enforcement of minor offenses in the city (Eck and Maguire 2000, 231).

Efforts within the organization to exert control over police discretion do not occur in isolation from larger environmental influences, a point carefully stressed by chapter 5 of the committee's report. A popular conceptualization of environmental influences is that they have their greatest effect on police discretion working through organizational features, such as the goals and desires of the police chief, which in turn affect the policies and structures of the organization and ultimately patterns its officers' practices (Wilson 1968). The report points out a variety of environmental entry points of influence: neighborhood characteristics, city characteristics, the actions of local political officials, appellate court rulings, and so on. However, to advance beyond the mere listing of hypothesized effects of these categories of environmental influence, we need at least two kinds of theoretical developments. First, we need theories that specify the environmental conditions when internal organizational control systems will be more and less successful in shaping officer discretion. For example, is it in fact the case that critical events (e.g., scandals or riots) make it possible to implement formal policies that shape

discretion in desired ways, as some have argued for use of lethal force and corruption (Sherman 1978, 1983)? If so, what sort of control systems are most effective, and how long do they retain their effectiveness following the critical event? Second, we need greater specification of the processes through which environmental forces are presumed to shape officer discretion—whether they operate through organization mechanisms or independently. For example, how does a new appellate court ruling about what is permissible in police stop-and-search work its way, if at all, into the daily practices of patrol officers? Some influence may be exerted through department efforts (guidelines and training), and some may come through officers' exposure to the way that members of the local criminal "courtroom workgroup" respond (Eisenstein and Jacob 1977).

Weak internal validity

The report makes clear that most of the research on the causes of police behavior is based on correlational studies of variations in police practice from one encounter, officer, department, or neighborhood to another. The randomized experiments summarized in the report examine the effects *of* the police, not the effects of anything *on* the police. In most of these cases, causal inference is problematic. For example, in studies that show that college-educated officers perform better than those without a college education, we are unable to distinguish the contributions of the actual educational experience in college from the selection effects of getting into college and completing it. This is not just an academic issue, because if there is little "value added" for the quality of police work by a college education, then a tremendous amount of effort is being expended on something that gives poor return for the investment. Without a doubt, the quality of evidence on this and most other issues of discretion control would be enhanced by studies with stronger designs for making causal inferences. While ethics and limited resources preclude many cases from the random assignment required by an experimental design, quasi-experiments and more carefully constructed statistical controls in correlational studies would do a lot to strengthen our confidence in the results of studies assessing the effects of various ways to control police discretion.

Limited external validity

Some very good studies have been conducted that assess the impact of controls on police discretion, but they appear like little islands scattered across a vast, uncharted archipelago of police agencies. And we police researchers, with too much regularity, insist on returning to the same islands time and again to assess the state of police discretion. It is as if we had visited Hawaii and, from our visit, declared that we know the nature of the whole South Pacific. In technical terms, the extant research has a generalizability problem.

One aspect of the generalizability problem is that we do not have a large and diverse storehouse of comparable studies conducted at different times and places

so that we can say with confidence just how universal certain findings are. For example, the three largest multijurisdiction, systematic field observations of police patrol (Reiss 1971; Caldwell 1978; Mastrofski et al. 1998) included only twenty-nine different jurisdictions over the period 1966 to 1996, and only one department appeared in more than one study, making it difficult to make meaningful comparisons over time. Even among these studies, which use similar data-collection methods, the sampling plans and data-collection instruments are sufficiently divergent to make comparative secondary research across studies challenging. The Spouse Abuse Replication Project (SARP) was an effort to rectify the generalizability problem following the groundbreaking findings of the Minneapolis domestic violence study (Sherman 1992). SARP brought together research teams in different

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cities, requiring that all maintain certain design and measurement features in common so that cross-site comparisons and secondary research would be possible (Maxwell, Garner, and Fagan 2001). The same practice should be followed in research on the control of police discretion. Funding agencies should promote multisite research that introduces theoretically meaningful variation across sites and that insists upon design and data-collection features that ensure comparability of findings.

The extant research on police discretion is biased in a number of ways regarding the types of agencies that are included. The vast majority of studies focus on relatively large municipal police forces, leaving mostly unexplored small urban departments, sheriff's departments, rural agencies, special police agencies, and large but geographically dispersed state police agencies. There are reasons to expect some different patterns in the exercise of police discretion from the usually studied agencies, thus undoubtedly restricting the possibility of new insights about what influences police discretion under what circumstances. And perhaps most telling, except for the occasional research compelled by legal process, research on police discretion tends to occur at the more progressive agencies that have less discomfort in exposing themselves to scrutiny by outsiders (Fyfe 2002). Departments in crisis and those that perpetually experience problems in the control of police discretion would seem, understandably, less willing to participate in such studies. This may overstate the severity of the problem, however. Of course, it is sometimes the

case that departments in crisis are most susceptible to requests to be studied because their leaders, particularly if recently brought in to “clean up the mess,” have less to lose and a lot to gain by learning what is happening.

Those who fund studies are often more interested in featuring results in departments thought to lead the field rather than those that are or might be in trouble. Always studying the best or most progressive departments deprives policy makers of useful information on struggling departments where there are much better prospects for improvement, since they are presumably further from the “ceiling.”

This is not an easy challenge to overcome, but researchers might strive harder to work in agencies that are experiencing problems with police discretion. Agencies that fund police research and evaluation might do more to offer incentives for agencies experiencing discretion-control problems to obtain quality external evaluations. In some cases, courts and reform political leaders may require or welcome objective research, and in other cases, departments may agree to participate if the agency’s identity remains masked in published reports. Some advocate a central government mandate for the collection of sensitive information about how police exercise discretion (Fyfe 2002). And finally, another approach is to avoid stiff departmental resistance by attempting to build professional pressure among police organizations to participate voluntarily in standardized reporting of certain aspects of police discretion, such as use of force.

Irrelevance of measures of police practice

Throughout chapters 4 and 5 of the report, the committee bemoans the lack of good measures of police practice. Much of the committee’s concern addresses the tendency of researchers to focus on a very limited range of police discretion—arrest and other forms of enforcement and coercion—while ignoring the many other things that police do (assist, persuade, advise, mediate, mobilize people and organizations, analyze problems, gather and disseminate information; Maguire 2003). This is a legitimate criticism of the extant research, but even if researchers were to study vigorously all of these aspects of police practice, the resulting body of knowledge would be woefully inadequate for our purposes unless those attributes of police practice described features that are worth controlling. For example, the fairly substantial body of research that attempts to illuminate what causes police to make an arrest tells us absolutely nothing about what causes the police to make arrests that we want them to make. To use my own research as an example, colleagues and I have shown that in one department, officers who embraced community policing values were less inclined to arrest suspects than were officers who were less positive about community policing, other things being equal (Mastrofski, Worden, and Snipes 1995). While this certainly tells us something about the impact of community policing on officers’ law enforcement tendencies, it does nothing to help the chief of this department decide whether this pattern is a good thing. Unless one takes the mindless position that more (or fewer) arrests are always preferred, one finds that our research, and the literature generally, does not tell us what causes police to make arrests that we want them to make and what causes

them to make arrests that we do not want them to make. The same can be said of the practice of field interrogations and other police-initiated stops of citizens, searches, interrogations, and a wide range of physically and verbally coercive methods, all of which are legitimate and useful under some circumstances but not others. And, of course, the same holds for the variety of other seldom-studied practices, such as mediation, that police perform with a high degree of personal discretion.

All this is to say that our measures of police discretion are, by and large, free of standards that would allow us to judge the quality of those choices. Without incorporating such standards into our study of police discretion, we can say little that is helpful to the police, public officials, and the public itself in assessing what is and is not effective in controlling what matters most in the exercise of police discretion. The remainder of this article will elaborate the challenges of defining and measuring those aspects of police discretion that we wish to control and will make some suggestions about how to meet these challenges.

Measuring What Matters in Controlling Police Discretion

A few years ago, the National Institute of Justice and the Office of Community Oriented Policing Services convened a series of meetings of distinguished researchers and scholars, police leaders, and others to revitalize thinking on how to measure police performance. A volume, *Measuring What Matters*, was produced with fifteen essays that offered some interesting observations and provocative proposals about what should be measured and how (Langworthy 1999). Measuring the police capacity to control crime, fear of crime, and stem disorder consumed most of the volume's pages, and the book also gave considerable attention to what police constituencies expected. With one exception, no attention was paid to measuring police discretion and its control. This is a remarkable omission because the public appears to care a great deal about controlling police discretion. Tom Tyler and colleagues have shown in a series of important studies that the public cares a great deal about the processes of policing—at least as much, if not more, than the outcomes those processes produce (e.g., Tyler 2001; Tyler and Huo 2002). That is to say, they care *how* the police exercise their discretion. Police organizations rarely experience crises for failing to control crime; it is failure to control police discretion that most often places the jobs of top leadership in jeopardy (especially abuse of force, corruption, and neglectful service provision). The following section of the article is the beginning of an attempt to fill that lacuna.

Strictly academic research can be satisfied with answering, “What do police do, and what explains variations in what they do?” However, research on control of the police requires answers to a different set of questions: “What do we *want* police to do, and what accounts for variation in how well they do it?” Whereas the first set of questions requires only astute observation (Bittner 1970), the latter set also

requires conscious engagement with norms about what police should be accomplishing.

There are two ways to justify norms: (1) because the practice is believed to have inherent value and (2) because the practice is believed instrumental to accomplishing something that has value. An example of the first is the claim that police search-and-seizure practices should conform to constitutional requirements for the protection of civil liberties; in a democracy such as ours, there is inherent value in a police who follow the Constitution. An example of the second is the claim that the more drug dealers who are stopped and searched in areas plagued by street-level drug markets, the greater the disruption of those markets, which ultimately should make the area less attractive to drug dealers, thus decreasing drug crime and improving the quality of life. Obviously, a style of stop-and-search less fettered by legal standards can be more disruptive, but then officers, their superiors, or high-up policy makers must decide how to reconcile the tension between two conflicting values. In recent research, a colleague and I found that in one police department, officers chose to conduct searches that violated the suspect's constitutional rights in three of every ten searches, and that searches to find drugs were the most likely to violate constitutional standards (Gould and Mastrofski forthcoming). Our research was not designed to measure the extent to which these improper searches reduced crime, but we were able to provide a rough indication of the cost to citizens' constitutionally protected liberties. This, at least, provides policy makers with some measure of the civil liberties cost paid to acquire at least the prospect of some (unknown) increment of crime control.

One can readily envision a set of values about some aspects of police authority that might be carefully measured. Suppose that a department placed a high value on its officers' following the law closely in making arrests for felonies and misdemeanors, the classic "legalistic" department (Wilson 1968). That is, the department wants officers in these cases to make an arrest whenever, but only if, the evidentiary requirement of probable cause is satisfied—what is sometimes called a "full enforcement" policy. Under these conditions, the officer can produce three outcomes: an arrest that is justified by the evidence, an arrest that is not justified by the evidence, and a failure to arrest when the evidence justifies it. Field observations of police suggest that under normal operating conditions, police do not come anywhere near full enforcement, even with felonies and serious misdemeanors (e.g., drunk driving) and even when there is a willing complainant present, asking the police to make an arrest (Mastrofski et al. 2000). Rather, they tend to err on the side of underenforcement (Black 1980, 91; Brown 1981; Reiss 1971, 134).

Despite many studies of police arrest, researchers know relatively little about the extent of enforcement "error," its patterns, and the things that influence those patterns. Measuring and explaining both the extent and the nature of the errors of overenforcement and underenforcement in a given sample of police encounters with suspects would be far more useful than simply measuring whether an arrest was made. Indeed, it is selectivity in leniency that doubtlessly most troubles those who charge the police with racial profiling or with neglect of a neighborhood (DiIulio 1993, 3; Kennedy 1997). When such selectivity is hierarchically orches-

trated, such as the zero-tolerance policy that seeks maximum enforcement of all laws in certain neighborhoods while others experience far more selective enforcement, antagonistic police-community relations also tend to ensue on a selective basis (Scheingold 1999, 186).

One can also envision an evaluation of police arrests that took into account instrumental expectations, such as reducing the likelihood of future offending. After discussing evidence that violent domestic abusers are affected differently by arrest, depending upon such things as employment status, Sherman (1992, 186) suggested that the most effective domestic violence reduction strategy might be

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returning to officers the discretion to make or not to make these arrests and offering them guidelines based on the latest scientific evidence to make those choices. Assuming that the evidence was sufficiently sound and the results sufficiently compelling to justify such a policy, a conscientious police chief would certainly wish to monitor the extent to which officers were complying with guidelines about the factors to be taken into account—or at least to determine which factors were most influential, so as to monitor for potential abuse of discretion. A system of measuring police discretion that took these factors into account would enable researchers to provide police management with a much better understanding of the extent to which street-level domestic violence enforcement practices were conforming to department expectations, and embedded in the proper evaluation design framework, the impact of training, supervision, and other control efforts could also be assessed.

Of course, legal standards for taking enforcement actions are among the most elaborated, and that is also where empirical research on the consequence of the police action is also most developed. Can we measure the merits of police action in other, less legally structured discretionary domains? The answer, I think, is clearly yes. Let us consider a couple of the more challenging aspects of discretion.

Suppose that a department takes to heart the finding by Tyler and Huo (2002) that when police treat the public with respect and give them a sense that they are

trying to act fairly (by, for example, seeking information before acting, giving citizens the opportunity to tell their sides of the story, and explaining to citizens what the officer is doing and why), citizens accord the police greater legitimacy. Inasmuch as legitimacy is a critical prerequisite of effective democratic governance, such a finding indicates that there are profound implications for how police do whatever they do (arrest, search, use force, mediate disputes, or render other assistance). The law does not demand that officers act with a certain style or demeanor, but the community policing movement may have increased among the public the expectation that police will do whatever they do in a fair and respectful manner. Measuring what matters then would require a means to monitor this crucial aspect of police discretion. Most of the research that undergirds this perspective focuses on general descriptions of judgments made by the public rather than on specific police actions or failures to act. For example, surveys ask citizens to judge whether the officer treated them politely, whether the citizen understood why he or she made decisions, and whether he or she was basically honest (Tyler and Huo 2002, 152). Focusing instead on the actions taken by the officers would clearly be more useful to police since they are in direct control of their own actions and not the judgments others make about them. Fortunately, a model for such measures is available in a research report based upon expensive, systematic field observation (McCluskey 2003, 122), but researchers might also obtain this information by debriefing members of the public or officers about their encounters with each other.

Most studies of street-level discretion have examined what officers do once they have been mobilized to engage in a face-to-face encounter with the public. An entire class of police discretion that has only recently been given much attention by researchers is how, when, and where officers choose to mobilize. Most of this effort has focused on racial profiling, but the domain is much broader than that. Let us focus again on one of the strategies that the committee identified as having strong evidence of effectiveness: hot-spots policing (Committee to Review Research 2003, 249). This involves concentrating police surveillance and enforcement efforts at a particular location that is “hot” with undesirable activity (e.g., drug dealing).

Two models exist for hot-spots policing: low discretion and high discretion. The low-discretion model assigns to the supervisory hierarchy the designation of which hot spots require the officers’ attention, and it holds them accountable for directed patrol or enforcement efforts in that area. In some instances, the level of discretion afforded the rank and file may still be substantial, with management specifying only that officers log a prescribed amount of time in the hot spot without specifying what they must do there (Sherman and Weisburd 1995, 634). But some management policies are more restrictive, specifying in addition the sort of tactics to be undertaken in the hot spot (Willis, Mastrofski, and Weisburd 2003, 103). Attempts to limit officer discretion in these ways have met with considerable rank-and-file resistance (Buerger, personal communication, 2003; Willis, Mastrofski, and Weisburd 2003). Under the special circumstances of the scrutiny afforded by the use of field observers at the hot spots, researchers have reported a high degree of

conformance to experimental protocols for directed patrol of hot spots (Sherman and Weisburd 1995, 638), but the protocols specified only time present and not officer tactics while present. That compliance would be so high without the added scrutiny seems doubtful, especially when large portions of the rank and file object to it. In addition, when a department makes directed patrol a high priority, even some middle managers subvert the system by instructing patrol officers to record all enforcement activities as the consequence of directed patrol, regardless of the situation (Willis, Mastrofski, and Weisburd 2003, 28), thereby communicating a degree of cynicism about directed patrol from the department hierarchy itself. Thus, even in low-discretion programs, implementation compliance is problematic and far from certain.

The high-discretion approach to hot-spots policing approximates problem-oriented policing. Here, officers are given discretion to identify hot spots on their beats, to study the situation, to devise the most effective solution, and to implement it as they think best (Committee to Review Research 2003, 243). The low-discretion model of hot-spots policing is easier to evaluate since management provides more constraints that serve as standards against which to judge an officer's activities (self-reported, based on department records, or independently observed). It is also possible, however, to measure the extent and nature of the high-discretion problem-solving effort. Colleagues and I have measured the quantity of problem-solving effort (in terms of time expended) using systematic field observation (DeJong, Mastrofski, and Parks 2001). The greater challenge is to determine the quality of these efforts. One might attempt to make summary judgments about the thoroughness, thoughtfulness, scientific rigor, and so on that characterize a given problem-solving effort (Braga and Weisburd 2002), but one also might wish to break this down further to determine how much problem-solving time was devoted to identifying the problem, analyzing it, planning an intervention strategy, conducting the strategy, and evaluating it (assuming that one uses the SARA [Scanning, Analysis, Response, and Assessment] model as a standard). As problems become more unusual or obstreperous, managers might well desire officers to spend more time on the early stages of problem analysis and planning. Given the enormous resources given to promoting problem-oriented policing in the last decade, it is disappointing that so little has been done to develop systematic measurement of this new form of discretion.

One cannot overemphasize the importance of doing more to measure the discretion exercised by street-level police officers in deciding when and where to mobilize to do something. A colleague and I found that contrary to the received wisdom (but consistent with a fair amount of empirical research that has been ignored), American police patrol is not overwhelmingly driven by 911 and the calls-for-service apparatus (Mastrofski and Parks 2003). Police officers spend most of their work time free to decide when and where to mobilize and what to do. In two medium-sized urban police departments in the late 1990s, we found that patrol officers typically spent three-fourths of their time engaged in activities that neither a dispatcher nor superior officer instructed them to do. And of that time spent on officer-selected activities, only 15 to 16 percent was spent on face-to-face encoun-

ters with the public. General patrol, administrative activities, and personal breaks accounted for the majority of the officer's self-directed time. If many departments take the committee's findings seriously and attempt to move toward more focused strategies of police intervention, they will need to develop much more sophisticated measures of how, where, and when officers are mobilizing at their own discretion—regardless of the scope of discretion they give officers in selecting targets and modes of intervention. If police leaders begin to reorganize their patrol operations around hot-spots-focused strategies, it will be especially important to monitor systematically precisely where officers spend their time doing what to or with whom. Given the pinpoint requirements of hot-spots policing, a block may make all the difference in the effectiveness of the intervention.

If community policing efforts have accomplished anything, they have shown that it is possible to establish a useful give-and-take between police and community that is designed to identify and solve problems.

Thus far, I have argued that it is both paramount and possible to measure aspects of police discretion that really matter to those who want to control it. But the parties wishing to control police discretion are many, and their values and priorities are undoubtedly varied. Consider reactions to the Louima and Diallo use-of-force cases in New York City. At least three distinct perspectives emerged on what matters: police management, police officers and collective bargaining representatives, and spokespersons of minority racial and ethnic groups who felt their group members were at special risk for police abuse of coercive authority. Each group brings a different view of how much discretion the officers should have and how to define well-executed discretion.

How can one proceed to measure what matters when the perspectives differ so strikingly? Answering this question is of course a political enterprise, but it is possible for scientists to both help and benefit by participating. First, police researchers can help to facilitate a dialogue among representatives of the various groups—for the purpose of seeking clarification of differences and establishing what common ground, if any exists. Conducted without care, such sessions can degenerate into mere “gripe sessions,” where each group articulates its frustrations with the others, such as the community relations session recounted by Wilson (1983, 108) where a

disgruntled citizen asked a beleaguered sergeant, “Why you cats always kicking cats’ asses?” Yet if community policing efforts have accomplished anything, they have shown that it is possible to establish a useful give-and-take between police and community that is designed to identify and solve problems, even when the police and communities come together initially without mutual warmth and trust (DuBois and Hartnett 2002; Forman 2003; Lurigio and Skogan 1998). Second, the product of that dialogue can provide a clear topography of differences and common ground in what should be measured in police discretion. And, obviously, researchers can play a central role in designing specific measures and methods that can speak to the full range of perspectives bearing on the control of police discretion. Providing a more diverse and comprehensive set of measures will do more to inform the political and policy dialogue about whether and how to control officer discretion.

Conclusion

Readers of *Fairness and Effectiveness in Policing: The Evidence* will readily observe that the report has a lot to say about the importance of controlling police discretion and little to say about how to do it effectively or wisely. We should not fault the messenger for the message; the committee did the best it could with a body of research that, by and large, has paid relatively little attention to the issue and that has many serious deficiencies, for the purpose of both advancing knowledge and making policy about the control of police discretion. I have outlined problems with the existing literature and suggested some ways to overcome them. The highest priority is developing measures of police discretion that matter to those who exercise it, oversee it, and experience it. But developing theories of discretion control, strengthening research designs to make stronger causal inferences, and expanding the generalizability of findings are also important and certainly familiar challenges to the research community. It is possible to make substantial progress in these areas. Researchers should accept responsibility for attending to this agenda, but realistically, making advances will be significantly expedited if those with the funds to shape the direction of policing research establish the control of street-level police discretion as a very significant priority. For too long, the usual funding sources have been concerned mostly with determining what prevents or reduces crime or related outcomes, such as fear of crime. In the 1990s, the Office of Justice Programs found it sufficiently important to commission a literature review to assess what works and what does not in preventing crime (Sherman et al. 1997). Perhaps before this decade is out, the Office of Justice Programs may find it worthwhile to commission one or more studies to learn how to control police discretion. Any candid police chief will agree that it is at least as challenging to get the “troops” to implement the strategy as it is to select the right strategy. For democratic policing, accountability means little without the capacity to control officer discretion. This could hardly be a more compelling priority than

now, a time when American police are being pressured to move onto the new terrain of promoting homeland security and respond to the threat of terrorism.

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