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Peeling an Apple: Police Discretion from an Officer's Perspective in Terms of a Definition, Education, and the Process of Routinization

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PEELING AN APPLE: POLICE DISCRETION FROM AN OFFICER'S

PERSPECTIVE IN TERMS OF A DEFINITION, EDUCATION,

AND THE PROCESS OF ROUTINIZATION

A thesis submitted in partial fulfillment
of the requirements for the degree of
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By

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I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY
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ABSTRACT

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This study of police discretion contrasts realworld application to academia and has found that an understanding of police discretion is fundamentally different between the two. From focus group methodology with six special agents in the Federal Bureau of Investigation, a group dynamic emerged where five of the six participants associated police discretion with the peeling of an apple. The use of this analogy and metaphor in association to the discussion of police discretion uniquely frames the processes of professionalization and bureaucratization, thus alluding to Weber's theory of bureaucracy. It appears that professionalism within law enforcement structure(s) is flawed through a linkage to bureaucracy which only works to increase supervisory control. Participants of this study stress the importance of discretion, but suggest that professionalism creates an atmostphere that allows administration, through politics, to wrongly restrict essential discretionary abilities.

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PREFACE

Police discretion is not a concept I have long had an inclination to study. During my time studying biotechnology at Rochester Institute of Technology (RIT) in New York, I began to look for subfields. One area I began to look into was biotechnology as it is applied to law enforcement, i.e. forensics. One course, in particular, taken purely to find out my interest in the subject of criminal justice changed my entire academic career.

This course, and therefore the professor, required a three week individual project which was chosen for the students. The project I was given dealt with women and crime. I was assigned to an adjunct faculty member who was a collegue of this professor. This adjunct faculty member was a women's rights and rape victim advocate. This adjunct faculty member and I focused on domestic violence and, at the time, newly forming intimate partner abuse statutes. Being a women's rights advocate, the adjunct faculty member was able to put me in contact with domestic violence victims as well as police officers who specialized in domestic violence cases. My experiences talking to these victims and police officers was enlightening because I became aware that our legal system, at times, prohibits certain actions and allows violence to continue.

Not long after this course, I began to look into changing my academic focus from biotechnology to more social areas such as political science or criminal justice. Due to personal obligations coupled with few sociology or liberal arts courses offered at RIT, I found my way to Wright State University where I obtained my Bachelor's degree in Criminal Justice with a minor in Sociology. Soon after, I began an MA program in Applied Behavioral Science (criminal justice/social problems). Looking to the future, I hope to enjoy a lengthy career in law enforcement, pursue a doctoral degree in Sociology or Criminal Justice, and eventually teach at the university level.

After my switch to liberal arts and Sociology, I began to specialize in law enforcement and policing. It all began with a class on women and crime, but I could not seem to find enough classes in this area. Unless I would take a class with an adjunct professor, who was either a police officer or federal agent (or had been one), I could not gain an insight into the human, decision process associated with law enforcement and its personnel. This frustration led into a senior culmination project (BA) in this area as well as this study on police discretion.

It had occurred to me at some point that our society affords certain individuals great power over a vast

majority of people. Sometimes it may not seem as such because these people are given modest wages compared to other job types, but nonetheless it is amazing how few people in this country realize the rights they willingly forego through ignorance. More research revealed to me a new term, "discretion." I began to see how discretion is vital to the American justice system.

I kept reading over and over that discretion is essential, but then at the same time attaching the word 'police' was consequential. Police discretion, as opposed to judicial discretion and so on, was being limited through statutes. I began to see the same thing in the judicial system; it was just not as controversial. It seems the public is not now or historically forgiving of police misconduct or corruption. So why would people support discretion but normally want to limit police discretion? I was learning all about police discretion from my professors and books, but I wanted to learn from the perspective of those actually using this discretion. This is the basis for this study – furthering the understanding of police discretion where I see it as lacking.

In a nutshell, the title of this study is what it is all about. But there is one unique characteristic. In looking for an appropriate methodology, I found focus group

interviewing. This newly forming methodology is normally

used as part of mixed methods approaches, but for this

study it is the main methodology. So, this study is also

an examination into the focus group interview. Primarily,

the results of this study would not have been obtained

without the use of this specific methodology. As such, I

support and endorse focus group interviewing as a

legitimate method for social science research, just as

other researchers have done in the past decade or so.

    This is an applied study, and I have in mind academics

and practictioners (of procedural laws and legislation) as

the audience for this piece. It is my hope that any change

to a discretionary process of our criminal justice system

is critically analyzed well before making any changes,

whether they be legislatively driven or policy oriented.

This study is not designed to support increased police

discretion; the application of police discretion is highly

debatable. What this study does is frame police discretion

from the standpoint of the law enforcement participants of

the focus group(s) associated with this study in an

academic manner. Hopefully, the reader of this study will

gain an appreciation for the occupations within our

criminal justice system, specifically that of the law

enforcement official. It is my hope that the reader can

gain unique insight for future legislation, policies, and procedures surrounding police discretion and, of course, further academic research into this area.

This study is organized into five chapters. The first chapter is an introduction to discretion and our criminal justice system. The second is the literature review surrounding police discretion in particular. The third chapter outlines the methodology - the focus group interview. Also, a literature review of focus groups as a methodology can be found in Appendix E. Again, this is important as the results of this study would not have been obtained without this method. The fourth chapter shows the results which are in large part taken directly from the transcription of the primary focus group. Finally, the last chapter includes a discussion of the results as well as my conclusions.

I am pleased to say that my previous knowledge and opinion of this subject have improved as well as changed. Not only did I find out more about my career aspirations, but I have developed friendships and contacts while working on this thesis. Humbly, I see this piece as a welcome addition to the literature on police discretion. Thank you for taking the time to read my work, and enjoy.

- Andrew Beech

ACKNOWLEDGMENT

DEDICATION

To all public servants making our quality of life possible.

I. Introduction

Many argue that discretion is an integral part of the criminal justice system. In fact, discretion is found and used at all levels of the criminal justice system: police, prosecution, courts, and corrections. The main issue surrounding the use of police discretion is the individual officer's judgment involved. Other levels of the criminal justice system do not need to make judgment calls on the spot; there is a period of time to contemplate the issues involved. So, it must be understood that police discretion cannot be eliminated. Without police discretion, the criminal justice system would be overly burdened (Loue, 2001). For this study, police discretion is defined as the ability or willingness of an officer to make a decision or take an action on the basis of personal values, beliefs, or experiences rather than institutionally-instilled guidelines. This definition is collective and derives from the subsequent review of the literature.

The examination of police discretion often, either consciously or subconsciously, tends to rely heavily upon deterrence. In other words, the intent of most

discretionary research is to understand the effectiveness

that a police officer's discretion has on the deterrence of

criminality (Torr and Swisher, 1999). Theoretically,

discretionary guidelines and mandated policy are meant to

be an administrative tactic that works to eliminate a

police officer's discretion on the basis that this will

actually lead to a change in the officer's behavior while

working on the streets. Stated otherwise, mandates often

act as an attempt to avoid abuse of discretion as a

widespread problem and the misguided assumption that

discretion involves the personal values and experiences of

each individual (Loue, 2001).

    Accordingly, many researchers view police discretion

in a negative light (Goldstein, 1963; Sherman, 1984;

Wortley, 2003). Police discretion, in itself, is often

unable to deter an offender's attitude or behavior. Torr

and Swisher (1999) found that domestic violence offenders

with the greatest prior criminal history and the greatest

number of prior restraining orders were most likely to find

new victims rather than re-offend against the same victim.

In the same study, it was shown that many victims find that

arrest does not deter later domestic assault, and for this

reason the victim leaves the abuser. This makes a

compelling argument that no level of deterrence can be

assumed based simply on police discretion. This shows that

deterrence of criminality without rehabilitation of the

offender does not in and of itself justify decreased police

discretion (Torr and Swisher, 1999).

There are also other issues involved with police

discretion as a deterrent to criminality. Among such

issues is a concern with the limitations of the practical

application to aspects of policing which involve mandated

policy, like that of domestic violence. Domestic violence

offenses are most often viewed as spontaneous or arising in

the context of serious mental health or substance abuse,

particularly alcohol. For this reason, domestic violence

would be much more difficult to deter than illegal

activities that are economically driven. Domestic violence

tends to show a pattern of impulse, especially impulses

that respond to stress, self-esteem, or frustration and

anger. It is for this reason that many believe the

recurrence of violence cannot be controlled without the

satisfactory address of underlying issues, mainly the

mental attitude of the offender (Schmidt and Sherman,

1993). Reasons such as this support the argument that

mandated policies are ineffective, specifically mandatory

arrest policies in domestic violence or intimate partner

abuse cases.

In recent years, mandatory arrest policies have surfaced as the most debated form of mandated policy. Mandatory or pro-arrest policies require an officer to arrest a suspect if there is probable cause to believe that an assault or battery has occurred, regardless of the victim's consent or objection. This policy, if followed accordingly, should theoretically eliminate police discretion in intimate abuse cases (Leigh, 1996). In light of this, much research has been conducted involving police discretion/mandatory arrest policies and police discretion/domestic violence.

Research examining police discretion as it relates to mandated policies, like domestic violence, is often faced with much difficulty. First, such research usually focuses on the limitation of discretion. Second, many validity problems, such as implausible comparisons and associations, arise when police discretion and intimate partner abuse cases are studied collectively (Leigh, 1996). In opposition, the existence of mandatory arrest policies also show a willingness on the part of the criminal justice system to officially recognize that battering will not be tolerated; the responsibility to take action against the criminal no longer lies in the arms of the victim (Edwards, 1989).

This study is not concerned with the effectiveness of police discretion or whether police discretion should be implemented more or less through departmental guidelines or mandated policy, such as domestic violence statutes. Rather, this study is interested in adjusting the unavoidable misapplication of the word discretion. There is rarely agreement on how to define police discretion or how police discretion should be studied. In fact, like this assessment, the purpose of many studies in police discretion involves discussing deficiencies in available research on police discretion (e.g. Mastrofski, 2004).

In order to address some of the common deficiencies in the literature, this study addresses three considerable tasks. The first task is to pinpoint an accepted definition of police discretion as a function of a human and individual decision-making process. The second task is to examine the importance of police discretion to officers who actually use it. Specifically, a discussion of the proper use of discretion as a function of length of service is conducted. Lastly, continued education and training is looked at as a possible remedy to the misuse of discretion. In other words, the possibility that veteran officers can get caught in a routine that acts as an inhibitor to vital discretionary decisions is explained.

This research is qualitative in nature as the methodology primarily involves focus groups. This research is applied with a purpose of directing current policies and educational requirements for police officers, both rookie and veteran. Hopefully, through an in-depth look at how those actually using police discretion view it, policymakers and practitioners will be able to more effectively design guidelines capable of deterring criminality. It is unfortunate, but a continued misunderstanding of police discretion will only lead to more restriction, i.e. mandated policies. In actuality, police discretion can be positive where applied appropriately. It is this researcher's opinion that the examination of police discretion must revert to an inspection of fundamental discretionary understandings. This is essential in order to avoid problematic outcomes, such as mixing police discretion with mandatory arrest policies or domestic violence, that often arise in police discretion research.

II. LITERATURE REVIEW

Years of research have evaluated police discretionary measures, such as officer counseling or temporary separation of offenders. A common distinction between past and present police discretion is that there was more police discretion in the past; examples include separation, mediation, and counseling. The present view of police discretion seems to be that it should be limited; the most prominent example being that mandatory arrest policies are in wide use (Buzawa and Buzawa, 2003). In other words, society seems to view an individual officer's personal choice as improper in regards to application of criminal law. It is important to note that the societal response to this view is to provide officers with more training; although education is often cited as important, it is most times not considered mandatory for proper discretionary guidance.

de Lint (1998, p. 281) argues that it was not until the mid to late 1970s that law enforcement officers seized being viewed as an "agent" of the government with a need for much, if not complete, guidance in any decision making

regarding codified law. In other words, it was not until relatively recently that a police officer took on the role of a "chooser." de Lint (1998) also explains that higher education became an issue with many U.S. political entities of the time that were concerned with academy professionalism. A few examples of political entities include the 1967 President's Commission on Law Enforcement and Administration of Justice and the 1973 National Advisory Committee on Criminal Justice Standards and Goals (de Lint, 1998, p. 283). The point is that many powerful political groups started to recognize that an individual officer has tremendous power to choose whether or not to follow criminal law and basically act as an ignition for the emerging criminal justice system.

With the distinction between agents and choosers, de Lint (1998, p. 282) discusses the two solutions that arose in response to a move away from agency control towards individualized discretion. Put simply, the two solutions became two schools of thought: 1) those who believed a liberal arts university education would best support police discretion and 2) those who believed practical, on-the-job, and formalized training surrounding the proper use of decision-making or judgment would best support police discretion. As de Lint (1998, p. 284) suggests, many of

the political entities' push for more education was ignored due to the deep police culture, specifically strong police unionism. Therefore, practical and formalized training was adopted as the correct way to advance police discretion.

In his analysis, de Lint (1998) suggests that much caution should be taken when considering the police officer as a "chooser." When a police officer, according to de Lint (1998, p. 296), utilizes more police discretion, he or she has shifted his or her subjective opinions or understanding in terms of individualized choice over that of automated response. Although there are many advantages, this has the ability to destroy any line of accountability linking the state to the police officer, or put otherwise linking the agency to its agent:

> …the police officer chooser may be a dangerous
>
> sort of mystification…. Institutional and
>
> occupational constraints, and now the myriad of
>
> technical devices aiming to contour decision-
>
> making, have each been building their special
>
> agendas into the contouring of police officer
>
> action. (de Lint, 1998, p. 298)

Although accountability suffers, most agencies with this attitude rationalize police discretion as allowing for remote management and supervision (de Lint, 1998, p. 297).

In light of de Lint's (1998) research, it should be suggested that future consideration must be taken regarding both a university-oriented liberal arts education and a practical/formalized training. It is not clear what method best prepares an officer, but police discretion or "empowerment" creates more efficiency. Therefore, it is in the best interest of law enforcement to better prepare officers for discretionary duties. In this regard, it follows that it is in the best interest of law enforcement researchers to better understand what methods and techniques best prepare police officers to use discretion properly and effectively. This study attempts just that.

As mentioned above, mandatory arrest policies are a current attempt to curtail police discretion. One of the first attempts to tackle the issue of mandatory arrest as a limitation to discretion is the Minneapolis Domestic Violence Experiment, or MDVE (Muraskin, 2003). The MDVE was published in April 1984 by Lawrence Sherman and Richard Berk based on results of their 1981-82 study conducted in Minneapolis, Minnesota (Mills, 2003).

The MDVE uses a sample size of 314 cases, and the results propose that arrest, compared to mediation or separation, is the most effective means of preventing batterers from repeating acts of violence. Specifically,

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Sherman and Berk conclude that arresting batterers reduces the rate of subsequent offenses against the same victim by half within a six month follow up period (Mills, 2003). This implies that police discretion should be reduced. But, to others, the results of the MDVE show a deterrent effect of only six months. After six months, mandatory arrest no longer deters batterers at rates larger than mediation or separation (Muraskin, 2003). This implies that police discretion should not be reduced. However, society today still considers arrest, or more specific to this study a reduction of police discretion, as the appropriate response to domestic violence even with the presence of unsupportive data.

In the wake of issues surrounding the Minneapolis Domestic Violence Experiment, the development of mandatory arrest policies has been considerably evaluated. The first distinction that must be made about mandatory arrest is the difference between mandatory arrest and preferred or presumptive arrest. Mandatory arrest policies direct action and limit discretion. Presumptive arrest policies often are guidelines handed down by a superior; this may be within a department or it may involve politics and legislation. Presumptive arrest policies are meant only to guide discretion (Buzawa and Buzawa, 2003).

Considering discretion guidance, Eitle (2005) focuses his research on presumptive arrest policies, specifically police organizational structures and their effects on the policies regarding domestic violence. From this standpoint, Eitle (2005, p. 573) recognizes that "there has been very little research that has examined police organizational variables and their association with arrest probabilities in domestic violence cases."

Eitle's (2005) study examines more than 57,000 domestic violence cases across 115 police departments. He concludes that the organization/structure of a police institution directly affects the implementation of arrest involving cases of domestic violence. In other words, a police institution *will* attempt to guide discretion. His results show that as the complexity of a police institution and structural control of line officers increased, the levels of arrest decreased. His results also show that departments with more written policies had officers who were more likely to make an arrest (Eitle, 2001, p. 590). Therefore, Eitle (2001) contends that there is still much discretion among officers in the decision to arrest even when mandatory policies are implemented.

It is interesting to note how Eitle (2001), as well as many law enforcement researchers, show police discretion as

linked to arrest. One possible reason for this is that arrest is most closely associated with the line patrol officer who actually performs arrest duties. Mastrofski (2004) performs academic research reviewing the available literature on the causes and controls of the line patrol officer, and therefore "street-level" police discretion. Much of his attention is a direct result of The Committee to Review Research on Police Policy and Practices and its various articles; one in particular, *Fairness and Effectiveness in Policing: The Evidence,* is emphasized. Mastrofski (2004, p. 115) contends that such reports provide little or no insight into how to control discretion effectively. His basic conclusion is that many researchers discuss the importance of controlling police discretion but ignore *how* to control police discretion effectively.

Primarily, Mastrofski (2004, p. 100) outlines four problem areas: 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. Mastrofski (2004) includes a unique theoretical perspective on police discretion. First and foremost, he defines discretion as strictly street-level police discretion. Second, he points out that available literature is often

obsessed with the effectiveness of police discretion.

Mastrofski (2004, p. 102) argues that research framed

around effectiveness is not valid; rather "research needs

to be framed in theories of *control* of police discretion."

In regards to the control of police discretion, one idea is

discussed in detail. This idea incorporates an

organizational element, phantom if you will, within the

police culture. Often referred to as the police

subculture, this idea can be defined as "the shared

internalized beliefs and norms that provide meaning and

guidance to individual members engaged in collective

action" (Scott, 1992, p. 315).

Mastrofski (2004) gives an interesting perspective on

the police subculture in terms of controlling police

discretion. Most importantly, he states that researchers

rarely theorize about the police subculture. In addition,

he indicates that this subculture is a "defense mechanism"

(Mastrofski, 2004, p. 104) for those individual patrol

officers who may be dealing with pressures within their

particular agency or department. Due to this fact,

Mastrofski (2004) contends that a lack of relevant

literature into how the police subculture controls or does

not control street-level police discretion is a major

weakness to the available research on police discretion.

Along this same line of reasoning, it seems that Mastrofski (2004) is not content with the current theories, even his own, regarding police discretion. His first frustration is a lack of studies with a strong research design. His second annoyance is with the generalizability of discretion or discretion control research. Quite factually, Mastrofski (2004) argues that policing is nearly impossible to conduct at all the different times and places needed in order to report universal findings. Not only is policing a twenty-four hour profession, but it is almost unlimited in its job description. On top of this, policing entails a plethora of different types of police forces. The first distinction is local, state, or national. But beyond this, one can undoubtedly report policing in terms of municipalities, small urban departments, sheriff's offices, rural, special agencies, and an infinite other ways. For these reasons, Mastrofski (2004) realizes that most studies regarding street-level police discretion are being performed in large municipal police forces.

Much in the same context as this study, Mastrofski (2004) addresses what he views as problem areas or weaknesses in the current research on police discretion. In response, he makes two suggestions. First, there is a need for more research in *how* and *why* discretion is

controlled rather than simply a measure of the

effectiveness of police discretion. Second, due to the

current poor generalizability of police discretion

research, there is a need for more variety and function in

research design. For example, large municipalities are

overused in research and there is a need to study how other

agency types perform in light of street-level discretion.

In addition to these two suggestions, Mastrofski

(2004) also addresses the frailty of current theory on

police discretion. This is apparent in his urging to

switch perspectives from effectiveness of discretion to

control of discretion, but he also contends that theory is

not grounded in public expectation:

> 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.
>
> (Mastrofski, 2004, p. 112)

From this, one can see that past research reviews police

discretion as a function of current codified laws and

departmental standards and ignores police discretion as a

function of the changing attitudes within and towards

policing. Increasingly, policing is characterized by

public interest. This is apparent because "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." (Mastrofski, 2004, p. 109). Ignoring reality –

the fact that policing is political and driven by a voting

public – could be very detrimental, especially since

today's society is becoming increasingly more mindful of

civic interest.

Accounting for civic and public interest, Smith,

Novak, Frank, and Lowenkamp (2005) believe that

understanding *why* officers engage in discretionary

activities and behaviors is more important than *how*

officers do this. The basis for their argument is that

police power is broad; authority varies from deprivation of

property, liberty, and even life. Moreover, officers have

this power at their will usually with little or no direct

supervision. In other words, Smith et al (2005, p. 326)

contend that it is important to know what officers do in

their on-duty downtime, how much on-duty downtime or

discretionary time they have, and what factors influence

their discretionary behavior during this downtime.

Therefore, Smith et al (2005, p. 326) focus their

research question on what explains officer discretion

outside of contact with citizens during on-duty downtime. The goal of their research is to examine how the independent variables of neighborhood characteristics and officer level in terms of length of service, education, and officer attitude affect the dependent variable of work routine of officers. Smith et al (2005, p. 334) "hypothesize that neighborhood-level factors would have differential impacts on the different groups of officers." Smith et al (2005, p. 339) find that neighborhood-level factors did not influence community police officers but do influence traditional beat officers. Officer demographics, which include the three officer level characteristics examined (length of service, education, and officer attitude), do not seem to impact either community police officers or more traditional beat officers.

The research of Smith et al (2005) clearly show that officers use their discretion in deciding *how* to carry out activities during the on-duty downtime, but it appears that *why* officers perform these certain tasks is dependent mainly on supervision and training but also on reward systems and informal social workgroups (Smith et al, 2005, p. 341). Smith et al (2005) emphasize the importance to research further into police decision-making outside of citizen interaction and encounters.

It seems that in order to understand police discretion, research must examine routinization of the police officer, specifically surrounding the police-citizen contact. In line with this, Liu and Cook (2005, p. 87) contend that there is a need for guidelines or changes to policy that will standardize the use of police discretion. They do not support the elimination of police discretion but rather the control of police discretion. Liu and Cook (2005, p. 83) recognize that there are a multitude of variables that could determine the use of police discretion. Some examples of variables which have been considerably studied include seriousness of the offense, department policy, the police officer's attitude, and so on. Liu and Cook (2005, p. 83) only analyze the four variables of gender, age, physical appearance, and attitude of the offender in an attempt to measure the tendency of an officer to issue a speeding violation.

Liu and Cook (2005, p. 83-84) start with multiple hypotheses because they believe that police discretion, specifically in speeding violations, is dependent on a combination of the variables listed above. According to Liu and Cook (2005), the gender of female, an older age, better appearance, and a positive attitude by an offender results in the least likelihood of the issuance of a

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speeding violation. Liu and Cook (2005, p. 86) conclude

that their study indicates that age and attitude of

offender are the only factors to significantly have an

effect on police discretion in speeding violation

scenarios. Specifically, mature offenders (aged 24-50

years), as opposed to youthful offenders (aged 17-23 years)

and older offenders (aged 51 years or more), and those

offenders with a negative attitude are more likely to

receive a severe punishment in speeding violation

situations.

Liu and Cook (2005, p. 87), in conclusion, indicate

that discretionary guidelines surrounding the attitude of

the offender are necessary in traffic situations.

Specifically, there is a need to control the police

officer's resentment for "well-to-do people who demonstrate

a bad attitude." Traffic violations are an everyday

occurrence, and in fact, they are arguably the most often

observed violation of any codified law. It must also be

understood that traffic violations are the area of law

enforcement that officers are usually given the most

discretion. For these reasons, Liu and Cook (2005) suggest

that more control during a citizen contact is needed.

Focusing on the police-citizen contact, Alpert,

Macdonald, and Dunham (2005) break new ground in the area

of police discretion research. Quite truthfully, they point out that research on police discretion typically analyzes police action after citizen contact. This usually includes the decision to stop, search, or arrest a suspect. Unfortunately, this approach, according to Alpert et al (2005, p. 408), ignores the "earliest stage" of police decision making – "an officer's formation of suspicion before identifying and stopping a citizen." Therefore, the focus of their research examines the effect of situational variables on types of police suspicion, and inherently the following decision to stop and question suspects.

Alpert et al (2005, p. 408) take into consideration previous studies indicating that police discretion is a function of a "combination of preexisting attitudes and the personality that a police officer develops through experiences on the job…." In light of their literature review, Alpert et al (2005, p. 420) use demographic characteristics such as race, level of education, and length of service as the independent variables and then designate suspicion as the dependent variable. The goal is to observe when officers are forming suspicion. "'Forming suspicion' occurred any time an officer became doubtful, distrustful or otherwise troubled or concerned about an individual." (Alpert et al, 2005, p. 418).

The results indicate that race does, in fact, influence the type of suspicion formed by an officer. On the other hand, race does not influence later actions taken by those police officers (Alpert et al, 2005, p. 425). Therefore, Alpert et al (2005, p. 426) suggest that their study indicates that officers are more likely to form suspicion based on the appearance, time or place, and so on for individuals who are members of a minority group. However, Alpert et al (2005) adamantly argue that this fact does not, in any way, influence the final decision to stop, question, or arrest a minority suspect. Therefore, the conclusions drawn suggest that police officers form suspicion based solely on race, but they do not take action without concrete articulable facts which can act as evidence to support their action. In the words of Alpert et al (2005, p. 427), "one can imagine officers that retain race-conscious views of criminality and act objectively and neutrally, stopping citizens and questioning them only for objective and tangible reasons."

Unfortunately, the research performed by Alpert et al (2005) does not draw any definitive conclusions. But their pioneer research does establish a strong foundation for future research in the area of police suspicion in terms of police discretion and decision making. As is visible in

the current literature, basic research design for police

discretion studies only includes actions after police-

citizen contacts. Alpert et al (2005) make a good point in

arguing that the decision-making process starts much

earlier, arguably at the point of suspicion formation.

Although not an examination of suspicion *formation*,

some research has attempted to examine the attitudes

associated with suspicion. According to Wortley (2003),

police attitudes towards discretion are often overlooked.

Wortley (2003) reviews a multitude of studies, most notably

that of Wilson's (1968) classic description of policing

styles, in order to construct scales for measuring

individual officer attitudes towards discretion. Wilson

(1968) argues that there are three basic types of law

enforcement: service, watchman, and legalistic. A service

style of policing emphasizes community policing, a watchman

style emphasizes maintenance of order over enforcement, and

a legalistic style emphasizes full enforcement and arrest.

Therefore, Wortley's (2003) scale can be thought of as a

continuum with the service and legalistic styles at each

end and the watchman style central.

Wortley (2003, p. 553) concludes that police officers

at the service end of his scale support discretion as an

appropriate response to social problems while police

officers at the legalistic end of his scale oppose

discretion. Therefore, Wortley (2003) concludes that a

same arrest decision by two different officers could and

has been made for very different reasons, including

multiple rationales. This indicates that there could be

multiple attitudes toward discretion and multiple police

styles that play a part in arrest/law enforcement decision

making.

Again, evaluating how and why individual officers use

discretion is very important. By reacting to current

literature, Mendias and Kehoe (2006, p. 74) attempt to

determine the variability of police officers' actions and

police officers' ideals which are assumed to guide those

actions. Mendias and Kehoe (2006, p. 71) point out that

associated officer characteristics such as an officer's

age, years of service, socioeconomic background, gender,

and so on have been studied in the past in an effort to

determine how and why officers use discretion in a certain

way. They also argue that the *only* factor which has

predicted officers' decisions has been level of experience

where less experienced officers tend to make arrests more

often than more experienced officers. Mendias and Kehoe

(2006, p. 72) also claim that research has not, as of yet,

provided a reliable relationship between police officer

attitudes and police officer actions.

In conclusion, Mendias and Kehoe (2006, p. 86) find no

evidence for "trait-like operational styles." They do

argue that procedure seems to act as a common ideal among

officers. Not only do Mendias and Kehoe (2006, p. 86) make

this assertion, but they also show a clear indication that

"adherence to procedure was clearly not a mere mechanical

compliance with some recipe that led inevitably to the same

action." Therefore, Mendias and Kehoe (2006, p. 87)

contend that there are multiple competing roles and ideals

that play a part in an officer's discretionary judgment.

In other words, police discretion is a product of multiple

human characteristics and environmental influences.

In closing, all law enforcement officials should ask

themselves the extent to which discretion is utilized

within their agency or department. It would be naïve to

argue that discretion is not a common tool in law

enforcement. As has been mentioned previously, discretion

can be limited or guided by mandated policy in serious or

highly violent situations such as domestic violence. But

researchers would be greatly amiss to conclude that

discretion is limited in the majority of law enforcement

tasks and duties. For example, consider the common traffic

violation where an officer can use his or her discretion when giving a warning, verbal or written, or citing the violator.

We, as a society and a community, need to understand that police discretion is prevalent and that rarely, if ever, are standardized departmental or agency regulations, policies, and procedures in place for the officer to follow. For this reason, researchers needs to stop investigating how to limit discretion in cases of abuse or corruption and start exploring how to better understand and implement discretion properly and effectively. This study is designed to accomplish just that. Through focus group methodology, this study attempts to identify a basic understanding of police discretion from the perspective of the law enforcement officials who use discretion every day.

III. Method

One form of group interviewing, the focus group, has the capability of providing a group dynamic not present in other types of social science research. This qualitative research method allows the researcher to gain valuable insights not obtainable with traditional survey methodology. One important fact unique to the focus group is the presence of a moderator or facilitator who acts as the primary data collection instrument. For this reason, the moderator is often viewed as the key to any successful focus group; interestingly, the researcher has the ability to act as this moderator.

The contemporary focus group interview is becoming an increasingly used and important type of group research. Today, social scientists are using focus groups for many different tasks, including program evaluation, marketing, public policy, the health sciences, advertising, and communications. There is a long history to the focus group interview. In fact, focus groups predate World War II. Mostly commonly, the focus group is associated with social and market research and is stated to have caught interest

during the 1930s when the U.S. War Department used them widely when studying soldier morale (Stewart, Shamdasani, and Rook, 2007, p. 37). Normally, focus groups are associated with the sociologist Paul Lazarsfeld. This is particularly true where marketing, in opposition to academia, is concerned (Morgan, 1997; Morrison, 1998).

The definition of the focus group varies. Most commonly, it is categorized as an interview; many even refer to this type of research methodology as the "focus group interview" or "differentiated group depth interview" (Stewart et al, 2007, p. 37). With this in mind, focus groups should be thought of as a qualitative research design but one surrounded by much debate. Although focus groups are capable of generating quantitative data, one of the advantages of focus group research design is the fact that they can generate insightful data not otherwise obtainable through quantitative methods because the data obtained are expressed through the participant's own words and contexts. Furthermore, data can be explained or justified unlike various survey research (Stewart et al, 2007, p. 39).

The variability and misunderstanding of focus groups add to the confusion of a definition. Morgan (1997, p. 5) points out that there are many schools of thought

surrounding group interviewing. In fact, he distinguishes between focus groups and group interviews where the focus group is one type of group interview among many. Morgan (1997, p. 6) exposes the focus group as "a research technique that collects data through group interaction on a topic determined by the researcher." He further explains that "it is the researcher's interest that provides the focus, whereas the data themselves come from the group interaction." (Morgan, 1997, p. 6). Other researchers draw similar distinctions. Willis (2005) differentiates between the focus group and the cognitive interview. A cognitive interview is most often used to evaluate survey instruments and their capability of information transfer. A focus group, on the other hand, does not assess the functionality of an instrument but rather of people; it examines how people think about various topics (Willis, 2005, p. 3).

Therefore, a cognitive interview involves specific survey questions whereas the focus group involves general topics. In brief, the focus group is better suited to identify and discuss major themes than to assess slight differences of a subject. Focus groups could be thought to be most useful in studies that wish to inspect the mindset or thinking of the participants rather than certain phenomena surrounding the participants. Focus groups

promote this inspection by allowing the unique "group dynamic" found in focus groups which permits a "social interaction of ideas" (Willis, 2005, p. 234).

This shows that focus groups have a particular advantage in exploratory research. When not a lot is known about the research topic or it tends to generate varied results or conclusions, the focus group can act as a way to gain valuable information that can pave the way for further research. For this reason, quantitative data from larger samples are often obtained as a result of focus group research (Stewart et al, 2007, p. 41).

As can be seen, the contemporary focus group tends to be viewed differently by various social scientists. Although there is some debate surrounding the theory of focus groups, the practice and procedure of focus groups are commonly accepted. Social science has recognized the focus group as a legitimate form of research methodology. In fact, many scholars (Stewart et al, 2007; Litosseliti, 2003; Krueger and Casey, 2000) argue that focus groups have major advantages over other types of research design. At the same time, focus groups are not for all research and do have inherent limitations. For a more detailed literature review of the focus group as a social science methodology, refer to Appendix E.

Data Collection

Data collection during a focus group primarily involves observation. The focus group interview also utilizes a questioning script. This is a list of predetermined questions that acts as a guide during the focus group. The moderator or facilitator of the focus group ultimately decides how to ask the questions during the focus group because each focus group will develop uniquely.

The first form of recorded observation for this study was a brief pre-questionnaire used to obtain demographic information. This questionnaire can be found in appendix A. The second form of recorded observation was in the form of field notes taken during the focus group interview. These are semi-structured because the use of the prior constructed questioning script helped to guide discussion. The third and most important form of recorded observation was audio recording. The focus groups that were audio recorded were transcribed soon after each focus group by the researcher. The consent form given to participants, prior to the distribution of the pre-questionnaire and the start of the focus group, can be found in appendix B. This consent form was signed by both the participant and the moderator for each focus group.

Researcher's Role: The focus group interview was the methodology of this study, and the researcher, Andrew Beech, acted as the moderator in three focus groups associated with this study – a preliminary focus group, a pilot focus group, and the actual research focus group.

Setting: The preliminary focus group was conducted on the Dayton campus of Wright State University. The pilot focus group was conducted at a sheriff's office in Northwestern Ohio. The actual research focus group was conducted at an Ohio field office of the Federal Bureau of Investigation.

Actors: The preliminary focus group consisted of five colleagues with no law enforcement experience. This focus group was conducted to test the focus group questioning script as well as question ordering. The pilot focus group was conducted with four Northwestern Ohio sheriff's deputies. This study was conducted as a prelude to the actual research focus group in order to gain insight into questioning or wording errors from a law enforcement officer's standpoint. No demographic information was obtained for the pilot focus group. The actual research focus group was conducted with six special agents in the Federal Bureau of Investigation. Demographic information was obtained for the final focus group.

Events: This study examined how police officers understand police discretion as relating to their duties. It then attempted to determine how police officers acquire a correct or proper ability to use discretion. Therefore, everyday experiences and events of the law enforcement officers were discussed. In addition, a general attitude about policing was discussed, particularly towards the notion of discretion. Of course, a discussion and analysis of serious events and issues of debate surrounding law enforcement took place. This did not apply to the preliminary focus group because it was less structured and for revision purposes. This did apply to the pilot focus group and the actual research focus group.

Processes: Each officer within the pilot focus group and the actual research focus group was given ample consideration and opportunity to respond with their opinion to any question or issue provoked during their focus group. With some mediatory exceptions, the emphasis was placed on gaining an understanding of law enforcement officers' perspectives on police discretion and therefore there was little censorship or control. The questioning script for the pilot focus group with Northwestern Ohio sheriff's deputies can be found in appendix C. The questioning

script for the actual research focus group with special agents in the FBI can be found in appendix D.

Sample Selection

All participants individually consented to participate in this study. There was correspondence with one special agent who acted as a recruiter for this study. There are several reasons special agents in the Federal Bureau of Investigation were used as the primary focus group for this study. Foremost, the FBI usually requires previous law enforcement experience as well as higher education to become a special agent. Incidentally, this was the case for the participants of this study. Additionally, special agents were sought after due to the overwhelming publicity and acknowledgment of this agency compared to other more common departments and agencies, such as local police.

Due to the nature of the research purpose of this study, special agents in the FBI are particularly fitting as participants. All participants have relevant job experience as well as previous education which is important when responding to the questions of this study. But it should be noted that using special agents in the FBI as participants is strikingly different than the majority of police discretion research which focuses on the line patrol officer at the local level.

This study, to some degree, assumed during recruitment that the FBI participants had previous job experience at the local or state level prior to becoming a special agent. Bear in mind that using special agents could have influenced the results of this study. Using local police agencies may yield quite dissimilar results. Even so, the group dynamic of the focus group with the FBI agents, and thus the uniqueness of the discussion and conclusions, makes the participants appropriate in terms of this study.

Research Questions

At the heart of the proposed study are two main purposes. Both purposes represent an attempt to view police discretion from the law enforcement officer's perspective. Therefore, the perspective of the public and the perspective of the administrator are not of central concern. The first main purpose is to examine how police officers understand police discretion in relationship to their duties. In other words, there is a preliminary effort to elicit an accepted definition of police discretion from the perspective of an officer that should be generalizable to any official in a law enforcement capacity.

How police officers understand police discretion is examined in various ways. There is determination of what

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areas of law enforcement responsibilities need improvement or clarification. Of course, this is in reference to areas of police discretion that are commonly misinterpreted or misunderstood by the reasonable officer in normal circumstances. Additionally, how officers manage the ability to make personal decisions while in the line of duty is investigated. Put another way, how officers view their decision-making process when conducting daily job-related activities is investigated.

Finally (in reference to the first main purpose of understanding discretion from the police officer's perspective), this study distinguishes what would actually define an abuse of police discretion or the use of police discretion in a corrupt manner. This is differentiated by analyzing how police discretion changes over time. Change over time is strictly defined in terms of length of service. Explained differently, this study distinguishes how routinization, or "falling into a routine," of an officer (in terms of the evolution of police discretion or the decision-making process during a defined length of service) factors into the role of a police officer.

The second main purpose is to examine how police officers acquire a correct or proper ability to use discretion. There must be an accepted decision-making

process. Officers must understand how they are to generally handle certain matters while on duty. How is it that officers come to know what is accepted and what is not accepted discretionarily? Because a police officer must gain an understanding of discretion at some point during his or her maturity, both as a person and as a law enforcement officer, the first step is establishing how and in what ways police officers view education and/or training regarding discretion.

In particular, there is an emphasis on the discussion of continued education and/or training after a university-oriented education or an academy based training. In this respect, determining how officers acquire a correct or proper ability to use discretion evaluates how officers view departmental or agency guidelines specifically regarding their ability to make personal decisions or judgments while on duty. This, of course, can lead to a discussion for suggestions as to what ways departmental or agency guidelines could better reflect police discretion in terms that a reasonable police officer could understand and follow.

Basically (in reference to the second main purpose of determining how police officers acquire a correct or proper ability to use discretion), there is an examination of what

the opinion of an officer actually is regarding continued discretionary education and/or training. The examination is an attempt to understand, from the police officer's perspective, what role continued education has on an officer's discretion and what role continued training has on an officer's discretion. In summary, this research investigates how continued education and training persuade an officer's decision-making process. In other words, how do continued education and training persuade the ability to properly use police discretion?

Ethical Considerations

Analyzing and writing up the results of data most certainly involve ethical considerations, but for this study in particular it is the actual data collection process – the focus group – that should be considered in detail. First and foremost, the rights of the participants were/are a primary obligation of the researcher. This involves personal beliefs, values, opinions, or anything else that the participants may have held above providing conversational data during the focus group interview. This focus group research was conspicuous and interfering; the life experiences of the participants were discussed openly and observed directly. Sensitive information may have been revealed that could have offended or otherwise upset a

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participant. More importantly, the participant's position and prospective department or agency was vulnerable.

Due to all of the previous reasons, many measures and considerations were incorporated into the research process in order to protect the rights of participants. First, the research problem and research purpose was communicated and explained both verbally and in writing prior to the focus group session. This included a description of how data was to be collected and used; it was specifically stated that an audio recording will be taken of the focus group. Confidentiality was articulated by ensuring to the participants that no names or other personal affiliations were to be used when reporting the results of the study. Prior to beginning the focus group, written permission to proceed was obtained; this most importantly included permission to take an audio recording and the guarantee that all participants were free to refuse or reduce participation at any time for any reason. It was also explained that the written report of the study would be made available to all participants.

IV. Results

As previously stated, there are two main goals attempted in this research. The first examines how police officers understand police discretion as it relates to the fulfillment of their duties. This includes a basic understanding and definition of discretion from an officer's perspective. It also includes an examination of the process of routinization, or "falling into a routine," from the perspective of an officer. The second goal examines how police officers acquire a correct or proper ability to use discretion. This primarily involves how officers view education, both university-based education as well as continued, on-the-job training, as influencing police discretion when relating to the first main purpose.

In order to examine police discretion from the perspective of a law enforcement officer, there must first be a baseline. Prior to conducting any focus groups, a review of the literature revealed a collective definition of police discretion from an academic standpoint. There are ten criminal justice related journals from which this collective definition was created: The ANNALS of the

American Academy of Political and Social Science, Canadian
Journal of Criminology, Crime & Delinquency, Criminal
Justice and Behavior, Criminal Justice Review, Criminology,
International Journal of Police Science and Management, Law
and Contemporary Problems, Policing and Society, and Public
Administration Review. The collective definition from this
review is as follows:

> The ability or willingness of a law enforcement
> official to make a decision or take an action on
> the basis of personal values, beliefs, or
> experiences rather than institutionally-instilled
> guidelines.

With this definition, it is now possible to discuss the
core of this study. Essentially, this study is asking,
Does an understanding of police discretion differ between
academia and individuals in a law enforcement capacity?
This question, according to the two main purposes described
above, is being addressed in three ways. First, how do law
enforcement officials understand police discretion?
Second, how does formal university-based education as well
as continued or on-the-job training influence police
discretion? Thirdly, can and/or do law enforcement
officials "fall into a routine"? Moreover, does this

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process of routinization influence police discretion from the perspective of a law enforcement official?

Prelude

Although the pilot focus group with four Northwestern Ohio sheriff's deputies was transcribed and analyzed, the following results and discussion are primarily tailored to address the actual research focus group with six special agents in the FBI. As well, all quotes found within the results section are solely taken from the actual research focus group with FBI participants. It is specifically indicated when referring to the pilot focus group with sheriff's deputy participants. As a last note, names used within this section are fictitious.

The demographics for the FBI focus group were obtained from a group questionnaire given prior to the focus group session. See Table 1 below. The questionnaire in raw form can be found in Appendix A. All participants of the FBI focus group are male. Of the 6 participants, 5 have been peace officer certified at either the local or state level prior to becoming a special agent at the federal level. All participants have some form of university-based education. Of the 6 participants, 5 have the rank of special agent in the FBI and 1 has the rank of supervisory special agent in the FBI. The average years of experience

in law enforcement is approximately 9.7; only one

participant, the supervisory special agent, does not

remember the exact years in policing. This participant

does indicate that it has been over 20 years.

Table 1. FBI focus group demographics

	age	years in policing	prior certification	current rank	highest education	race
1	26	2	No	special agent	Masters	Caucasian
2	31	6	Yes	special agent	Bachelors	Caucasian
3	38	11	Yes	special agent	Masters	Asian
4	32	6	Yes	special agent	Bachelors	Caucasian
5	36	13	Yes	special agent	Masters	Caucasian
6	48	20+	Yes	supervisory special agent	Juris Doctor	Caucasian

Analysis I

What comes to mind when you hear the word

"discretion"?

Without attaching the term 'police' to the word

discretion, participants in the FBI focus group agree that

discretion is a term referring to "how you resolve an issue

or address a conflict…[through] weighing multiple choices

and figuring out a best case scenario."

How do you understand police discretion?

Unanimously, participants agree that discretion is the

same from a law enforcement standpoint. Philip says,

> Discretion is the same regardless of whether
> you're in police work or if you're a stockbroker…
> you know what the options are in front of you and
> what the best case scenario is that's presented
> to you at the time.

Although participants agree that discretion is the same across occupations, they also agree that discretion is directed according to the duties associated with a certain occupation. Whereas a stockbroker should follow the rules and guidelines set up to organize and run the stock market, the law enforcement officer should follow the guidelines and rules of codified law set up to organize and run a community or society. Thomas puts it this way:

> In law enforcement, we have to work within those
> [codified laws] and can't go beyond that. And
> that's, that's…your guidelines are the law that
> we follow and that's what we use as the
> [discretionary] guideline.

So, from the perspective of Philip and Thomas, police discretion is like a puzzle. It is using the already established law in such a way that best resolves an issue or addresses a conflict. If this is done accordingly, a best case scenario should emerge as the solution.

This is strikingly different from the collective definition of police discretion found within the literature. The academic definition of police discretion seems to hold a negative connotation to police discretion, whereas participants see it as a necessary condition in order to conduct their duties. Again, the collective, academic definition is the "ability or willingness" to make decisions "on the basis of personal values, beliefs, or experiences rather than institutionally-instilled guidelines." Not only do the participants of this study assert that institutionally-instilled guidelines are part of the discretionary process, they also assert that socially established codified law is the mechanism by which decisions are made. Discretion is not the ability to make a decision against policies or law, but it is the ability to use current policies and laws effectively so as to come up with the best solution.

The understanding of police discretion among the FBI participants also differs from the collective definition established from the literature in that the ability and the willingness of an officer are considered one and the same in academia. The participants of this study show multiple times that willingness to make a decision on the basis of personal beliefs is separate from an ability. This is also

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true for all participants of the pilot focus group with sheriff's deputies. Participants of the FBI focus group and the pilot focus group assert that officers often wish to handle situations in a certain way, but procedural law, established disciplinary procedures, and the supervisory chain of command make deviation from policy impossible without risk of punishment, including loss of job. James says, "I mean, you either abide by the law or the policy or, you know, you don't." As well, James recognizes the continuing restriction of discretion found in current laws, policies, and guidelines:

> You know, some laws have changed too in domestic
> violence where before the laws changed and you
> had some discretion on how to deal with that
> domestic violence situation. They changed the
> law and basically had taken the discretion away
> from law enforcement to say, you know, here's
> what you gotta do.

Once again, participants indicate that discretion means working within laws and policies rather than around them as the academic literature seems to associate with misuse of discretion.

How do police officers acquire a correct or proper ability to use discretion?

Thomas first responds to this question saying, "that's taught at the training academy." Unanimously, participants in this study agree that an ability to use police discretion is a direct result of first the police academy and second continued, on-the-job training. In direct conflict to what is found in the literature on police discretion, the participants of this study do not agree that police discretion is influenced by a university-based education. This is true for the FBI focus group as well as the pilot focus group with sheriff's deputies (Again, all FBI participants of this study have some, if not multiple, forms of higher education. See Table 1).

Secondarily, police discretion is influenced by job experiences. Another participant, Matthew, explains,

> I mean, once you get out [of the police academy]
> it's the experience of being on the street….I
> think the main thing is the foundation is
> definitely there from the academy but it's the
> experience that you gain on the street in working
> with the more experienced agents where you
> really, that's where the real meat and potatoes
> is.

This also is contradictory to the academic literature. Professionalism and police discretion are often associated with a university-based education among the literature. It asserts that officers with more university-based education will be more professional and use discretion more wisely. The participants in this study agree that this is not the case. Rather, discretion is only influenced through training and job experiences.

How does formal university-based education influence police discretion?

Although the majority of the conversation among the panel of participants explains the influence of training and job experiences, participants do account for a university-based or higher education as it relates to law enforcement. Participants indicate three ways that a university can help a law enforcement officer:
First, it enhances critical thinking. Philip says,

The idea of being able to think critically…is

what I think academia really helps to instill

upon people.

Second, it increases the ability to understand and deal with diversity among a population. Thomas explains,

It gives you a good foundation in interacting

with different people in school. In college, you

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get a variety…from different areas and different

ethnicities so it helps you. I think it makes

you a little bit more well rounded [so that]

you're able to interact with people….

And third, it enhances the knowledge-base of an officer.

Because law enforcement requires a thorough understanding

of the law, knowledge of definitions and legal language is

important. James puts it this way:

[The university is] just another tool, you know,

in the tool belt that you got, you know, that you

can look back on and pull from if you have

learned something that has something to do with

the situation….

So, although participants agree that a university-based

education can help with the everyday duties of law

enforcement, there is no indication by any participant of

either the FBI focus group or the pilot focus group with

sheriff's deputies that higher education influences police

discretion specifically.

Among the participants, police discretion is

associated with the ability to use policies and guidelines

in such a way that determines a best outcome. Because

policies and guidelines (i.e. legislation) are constantly

changing, it would be impossible for a university-based

education, sometimes completed years prior, to influence a law enforcement officer's ability to use discretion. It is the police academy and continued, on-the-job training that keeps officers up to date on legislation changes, and it is the job experience that allows officers to apply the law and policies in a proficient and appropriate manner. In contradiction to the academic literature, a university-based education is not indicated by the participants of this study as having any influence on police discretion.

How would you describe your ability to make personal choices while on duty?

Another participant, John, responds first by saying, "Like we've said over and over, we're bound by laws, rules, regulations, policies, procedures, guidelines, whatever you want to call 'em." This theme again emerges as the primary answer. The participants of the FBI focus group see discretion as using policy in light of a situation, not as a personal choice that an officer sees necessary to address the situation. James elaborates by alluding to a public misconception about law enforcement:

We don't have the discretion just to overlook
something or not do something, like maybe
somebody might have that perception that we have

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that ability to do that. I don't think that's

the case…

Drawing upon James's above response, Thomas clarifies:

I mean, yeah, the misconception that the people

have is that we have whatever discretion that we

have and we can do whatever we want. But we just

can't. We are bound by the law. We can't just

go and say 'hey, we're going to listen to this

guy's phone' or pull his mail or something. I

mean, people think, you know, that just because

we're us, we're the FBI, we can do whatever we

want. We can't do that. We have to stay within

the guidelines of the law and if we don't, we're

just like any other citizen, we can be arrested.

We're bound by those same laws as everyone else.

So again, the theme emerges of putting police discretion in

the same category as discretion used in any other type of

occupation. Whereas the literature contends that police

discretion is a unique entity, the participants of this

study seem to see discretion as important and required for

any type of designation. Participants indicate in this

study that law enforcement is only different in that there

is great public scrutiny as well as misunderstanding of

police procedure. It is this public misunderstanding that

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is analogized (See subsequent section, Analysis II: The Peeled Apple Analogy) by participants in such a way that more profoundly explains police discretion as it relates to an officer compared to the understanding that a citizen or academic might have.

> Think about this statement: There are appropriate ways to act in every situation. Do you agree or disagree with that and why?

Participants initially agree that the appropriate way to act can differ from person to person. This is the first time that the participants of this study indicate a discretionary process similar to that found in the academic literature. But interestingly, the participants put a spin on this claim of differentially appropriate action among officers. The supervisory special agent, Peter, sums it up best by saying,

> I think there's an appropriate outcome that everybody wants to reach, you know, but different people get to it differently. Just the dynamics of each situation are different. What your perception of the situation is is [sic.] different, not only from the law enforcement perspective but the person you're approaching. So, you know, we might both [comparing personal

actions to another officer's] get him in cuffs

and that's the appropriate thing to do, but we

might go about it differently.

The response above is explaining that appropriate action among officers is relative by indicating that policies and procedures only outline what action should be taken in certain situations. Although the action is indicated, the procedure is not described in detail; it is the police academy, continued training, and job experiences that develop each officer's way to handle situations. But as the above excerpt shows, the participants of this study agree that the end result, or "outcome", of any situation should be according to the prescribed procedural law.

Analysis II: The Peeled Apple Analogy

The focus group as a methodology is unique because participants can draw upon one another's responses, forming the previously explained "group dynamic." One interesting finding emerges during the FBI focus group. During and in response to the previous two questions, a participant compares police discretion to the peeling of an apple. For approximately fifteen minutes – a significant portion of the focus group - this analogy is used by 5 of the 6 participants as part of the discussion. For this reason, it is important to highlight this part of the focus group.

The purpose of this analogy seems to be an attempt to explain the previously identified public misconception. This analogy uniquely outlines police discretion. James begins the use of this analogy by stating,

> …I think if you set an apple down in front of everyone here and said peel that apple, all of us, they're gonna, we're gonna peel that apple different [sic.], but when it's done the apple's gonna be peeled…and everybody's way that they peel that apple's gonna be appropriate when it's all said and done.

For the first time during the focus group, participants directly claim that the decision-making process does differ between law enforcement officials. But fascinatingly, this assertion is made through an analogy: police discretion is like peeling an apple. The apple in this analogy refers to a situation that a law enforcement official may encounter. Peeling the apple refers to the way that the law enforcement official handles the situation. John continues with this analogy to explain situations where multiple officers are involved:

> …if you get us in here and you set one apple down and say 'all right, what's the best way to peel that', I think that…you have a situation there

where you gotta put your heads together and you

gotta come up with the best way possible.

Here, John infers that discretion is cooperative. In

response, James continues with the peeled apple analogy to

elaborate on the cooperative characteristic of discretion:

So, you know, if [name of participant] says 'hey

don't do it this way [because] I cut my finger

six times. You know, don't peel this way

[rather] peel that way…because I've done it in

the past, you know.' that sounds good. That's

appropriate to me. That sounds good to me. It's

gonna get the appropriate end result…

James again shows, through the peeled apple analogy, that

police discretion is influenced by job experience. The

above passage clearly shows that officers work together and

rely on personal, past experiences as well as the past

experiences of other officers when making decisions in the

line of duty.

The above excerpt could also allude to the

paramilitary chain of command found in law enforcement

structure. Perhaps officers are more willing to perform a

duty in the manner their superior deems "appropriate."

This aspect also influences police discretion. Philip's

follow up shows this more clearly:

...my bosses at some point in time, I mean, have

told me that this would be, this is the way to go

about doing whatever task it is that I'm trying

to complete. I may not agree that it's the most

appropriate way or I may not agree that it's the

most effective way…but at some point in time you

have to say 'okay, the boss told me to do it this

way and this is the way I'm going to do it.'

It seems that Philip is claiming that discretion does not

exist where a superior prefers a certain response.

However, Matthew responds showing that it is the experience

of the superior officer that is being used as a guide:

...a lot of times you try to hope to and rely on

the fact that your bosses have experience in the

situation that you're in and they're telling you

that for a purpose.

After Matthew's reply, Philip chimes back with agreement,

showing that he also believes experience is the guide:

Yeah, me having [low number] years in and having

a boss that's got [high number] years in, you

know that that [sic.] person has been in that

situation before and they're telling you that for

a reason because they've been down that road

before and they feel like this is the best way,

the best, you know, means of peeling that apple.

Sometimes you just have to kind of trust [the

superior] and chalk it up to lack of experience.

Relying on training and the experience of superior

officers is the theme that emerges most often as the

primary influence on police discretion. Following up, the

officer with the rank of supervisory special agent in the

FBI, Peter, gives the alternate viewpoint:

I can give you examples…as the supervisor….I give

them, you know, hey this is the way I think you

should do it…and they come back and they didn't

do it the way I wanted 'em to. But they did it a

better way. It's like peeling the apple. Go

ahead, do it that way. That was appropriate to

them. It would've been appropriate for me to do

it my way given my way of thinking but when they

come up with a better idea, it's appropriate for

them so they peel it their way.

Peter is explaining that decision making is individual and

circumstantial. He goes on to explain that appropriateness

of a choice is also circumstantial:

So, did I tell them to do something

inappropriate? Yeah, given their circumstances

and their experience and their knowledge to date,

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you could say that [my advice] was inappropriate

because their way was better….if you're looking

at the outcome, given my way or his way of

peeling would've gotten us to the outcome that we

both would've wanted, a peeled apple.

Peter in this excerpt is clarifying that the agents below

him are capable of making their own decisions, i.e. using

police discretion, regardless of his counsel and/or

recommendations.

It is important to note that Peter says "outcome."

This theme is common within the peeled apple analogy. All

participants suggest that the outcome of a circumstance is

more important than the events taking place up to the

outcome. Throughout, it is suggested by participants that

the choices made or the discretion used by a law

enforcement official are easily judged and criticized by

others, both people in a law enforcement capacity and

others who are not. The last participant to use the peeled

apple analogy, Philip, says it this way,

And then you have people on the outside [not in

law enforcement] who've never peeled an apple

before or you have people that have peeled an

apple a certain way and think that's the right

way to do it. We [law enforcement officials]

come up with that saying this is the way we think

the apple needs to be peeled based on all of our

training and experience and everybody putting our

heads together. So we peel the apple that way

and you could have three people standing on the

outside going 'that's not the right way to peel

that apple, what are they doing?'

Philip explains that criticism of law enforcement is

common. Even when officers obtain the desired outcome, how

the officers follow the procedure is scrutinized anyway.

Philip feels that officers correctly draw upon training and

experience when using their discretion. This enables

officers to interpret the associated procedural policy/law

correctly in order to arrive at the "appropriate outcome."

Again, all participants explain that appropriateness

is circumstantial and thus dependent solely on following

the "laws, rules, regulations, policies, procedures,

guidelines, whatever you want to call 'em." As long as

these guidelines are adhered to while obtaining a desired

outcome, participants agree that law enforcement officials

are properly using police discretion. Through an analogy

comparing police discretion to the peeling of an apple,

participants show that it is the institutionally-instilled

guidelines (not the personal values, beliefs, or

experiences) that are used when determining the best course of action in order to arrive at the appropriate outcome. This suggests once again that the *ability* of officers to use discretion is limited, even though public scrutiny repeatedly surrounds the *willingness* of officers.

Participants see willingness to use discretion as inhibited by their ability. As Philip said in the above passage, there are "people standing on the outside going 'that's not the right way to peel that apple, what are they doing?'" From the discussion generated within the peeled apple analogy, it seems that Philip is trying to say that the public, or those "outside" of law enforcement, are scrutinizing the willingness of an officer to handle a situation a certain way, or "peel" a certain way. This is not a proper measure because, as the participants agree, *willingness* to use discretion does not matter. The *ability* has already been prescribed by policies, procedures, laws, and so on, so that officers must reach the same outcome. Any way to peel an apple is appropriate so long as you peel in such a way that will arrive at a peeled apple. Perhaps those "outside" should scrutinize discretionary *ability* rather than assume police discretion is something that officers always have at their disposal.

Analysis III

> Think about this statement: Falling into a routine.
> I want you to think about that statement and tell me
> what you think that means.

John answers first by saying, "You know, you do the same things over and over again, and you're almost on auto pilot, really." But it is Philip who describes the process of routinization most effectively:

> I get up every morning, I get up, and the first
> thing I do is let the dogs out and go make a pot
> of coffee. That's my routine. And I do it every
> single morning, and there is no deviation from it
> whatsoever and it's almost mindless….Sometimes, I
> don't even remember how I got from A to Z. I
> don't even remember walking down the stairs but,
> you know, it's force of habit.

John and Philip clearly show that the participants have identified a process of routinization. But can or do law enforcement officials fall into a routine while on duty? Philip answers, "Not even lunch is routine for us. I mean, sometimes I don't even know if we're gonna get lunch." Matthew goes on to explain routinization among officers:

> I think that's one thing about law enforcement
> that's very unique as opposed to…a tire builder

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[who] falls into a routine. He slings tires

everyday. That's what he does….But the one thing

that's interesting about law enforcement is the

fact that no day is ever the same. When I get up

in the morning, I know that my day is not going

to be anywhere close to the way it was yesterday.

The responses thus far have shown that the participants

believe routinization exists, but there is a tendency to

deny that law enforcement officers fall into a routine.

Thomas becomes more bold. He first suggests there are

times when officers fall into routine. He says, "you still

have that routine work that you do from investigation, you

know, police work." John follows this up with, "Yeah, half

the job lends itself to routine 'cause we have strict rules

that we have to follow. But the other half is really

dynamic…." And finally, Philip adds to this explaining,

I mean, we are presented with investigations on

almost a daily basis and we have to prioritize

our investigations. It's the prioritization of

our caseload and time that becomes routine. How

we handle situations, though, is different….And

no investigation is ever the same. I mean, we've

worked probably multiple bank robberies and every

time there's…always gonna be something different.

And so it finally emerges. The participants identify

routinization within law enforcement, but it is not the

type of routinization found within the academic literature.

The literature argues that how officers tend to handle a

type of situation becomes habitual over time. Participants

here explain that it is the "prioritization" of *what* and

when ("caseload and time"), rather than *how* a task is

handled, that becomes routine. So, it could be said that

police discretion involves a large level of prioritization.

> Do you associate positive or negative aspects with the
>
> statement, "falling into a routine?"

It is Philip who answers this question most

effectively. He states,

> …when you're falling into a routine of properly
>
> following policies and procedures and guidelines,
>
> that's a good thing, but if you approach every
>
> situation in the same way then that would have a
>
> negative connotation to it because you can't do
>
> that. Especially in law enforcement, you can't
>
> approach every situation the same….I think it can
>
> have both positive and negative connotations….

Again the theme emerges where participants allude to

established procedures or guidelines. Here, Philip

explains that properly following guidelines as routine is

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good but that approaching every situation similarly is bad. Remember, participants explain in the peeled apple analogy that it is reaching the appropriate outcome, a peeled apple, according to established policy that is most important. Participants explain that *how* one reaches the appropriate outcome, the peeling process, must and will differ among officers. From this, it seems that police discretion and the action of officers are influenced by routinization – the routinization of prioritization.

It needs to be noted before concluding that FBI agents have a unique perspective as opposed to other types of law enforcement. Not only are they afforded more jurisdiction and power, job description(s) may vary remarkably. But as was noted in the methods section, the FBI participants of this study, although unique, are appropriate for the research purpose of this study and arguably can provide insight from a more profound level. In addition, it should be noted here that the results shown above are only describing the FBI panel's dialogue. There is much research discussing the different philosophies of insider versus outsider research, where outsiders like (some) academics have no relevant experience. This study is not dismissing academia but simply reporting results. Insider and outsider research both have distinctive advantages.

Final Analysis

This study looks at police discretion from an officer's perspective in terms of 1) a definition, 2) education, and 3) the process of routinization, or "falling into a routine." The emphasis is that this analysis has originated from conversation with people who have been in a law enforcement capacity. This study has revealed that police discretion does, in fact, differ between an academic standpoint and the standpoint of a law enforcement official. Law enforcement officials view discretion as limited by guidelines, where discretion is the ability of an officer to apply established procedures. This is decisively different from literature that asserts police discretion is the willingness as well as the ability to make personal choices while in the line of duty.

This study has also revealed that police discretion is primarily influenced by continued or on-the-job training. This is where it seems officers acquire a correct or proper ability to use and understand discretion. Also, reliance on personal job experience and the experience of other officers, specifically veteran officers, has a significant influence on police discretion. A university-based education does seem to influence some aspects of policing, but higher education does not influence police discretion.

This is also quite different from assertions made within the academic literature.

Lastly, this study has revealed a process of routinization. Officers do suggest that there are times that their actions become routine. This fact is similar to what can be found among the literature. But there is a unique finding; the process of routinization comes out in this analysis as different than what the literature would argue. Whereas the literature suggests that police officers fall into a routine during daily duties, this analysis does not support as such.

Rather, it seems that the prioritization of management and the prioritization of time are highly routinized, and arguably a requirement. Prioritization as routine in law enforcement seems to be a useful tool that allows officers to handle the large responsibility that falls at the hands of our public servants. Yes, the process of routinization does appear to influence police discretion. Unlike the academic literature, though, it seems that routinization as this study has found is complimentary to police discretion. Perhaps a police officer's effectiveness in the line of duty is dependent upon using discretion so as to properly routinize his time as was successful for him in the past.

V. Discussion

The peeled apple analogy reveals much about the implications made among the focus group panel of FBI special agents. Foremost, this analogy differentiates between a process of peeling an apple and an outcome of a peeled apple. White (1972) also sees this separation of process and outcome. Her explanation (1972, p. 63) lies in the assertion that professionalism is tied to control aspects:

> professional controls are imposed to counteract
> police commitment to unacceptable job-related
> behaviors with the hopes of establishing a set of
> acceptable role perceptions and behaviors that
> the officers will internalize.

White's (1972, p. 66) argument separates a command orientation where officers' actions are "controlled by norm, policy, and orders issuing from a central command" from a discretion orientation where officer's actions are "controlled by norm and policy issuing from an internalized code." She argues that those of a command orientation focus on process while those of a discretion orientation

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focus on outcome.   The FBI focus group panel of this study

stresses the outcome, a peeled apple, as most important.

Thus, the panel resembles a discretion orientation.

Stressing discretion orientation deemphasizes a

central command as most appropriate in terms of discretion

and a decision-making process.   Nearly all the literature

on professionalism and/or professionalization implies that

it is a higher education, such as university or college

degrees, that promote professionalism within law

enforcement (e.g. Lipsky, 1980).   There is almost an

unwritten rule that associates a proper and efficient

police force with a broad education.   The FBI focus group

of this study did not reveal as such.

Sociologically, this trend to promote

professionalization through higher education appears to

have Weberian roots (See Weber's works *The Theory of Social*

and Economic Organization and *The Types of Legitimate*

Domination).   Weber's theory of bureaucracy, and thus his

process of bureaucratization, can be applied to police

discretion in that bureaucracy promotes the rationalization

of authority.   Weber differentiates three types of

authority – traditional, rational, and charismatic – with

the claim that the authority of a traditional society

becomes rationalized as society progresses.   Although the

term progress is not directly optimistic here, progress is optimized by this process of bureaucratization. A key to this theory is that traditional ownership rights of an individual are replaced by management and administration over time. This is the crux of Weber's argument that democracy is slowly being replaced by bureaucracy, and thus individual freedoms are being lost (Nisbet, 1966).

From the standpoint of the administration, this is exactly the result of professionalization. Through the heightened requirement to attain a broadened education from colleges and universities, the organization that is a policing agency of some sort gains the ability to control its agents. Professionalism becomes promotion, and those who have a university education can become promoted faster. This is the control mechanism used by the administration of a policing agency, but with this control also means the purposeful reduction of a discretion process or more specifically a transition from White's (1972) discretion orientation among officers to a command orientation.

Nisbet (1966, p. 42) attempts to explain "what revolutionary change meant to philosophers and social scientists of the nineteenth century" by way of three terms: individualization, abstraction, and generalization. All three terms are tied, in theory, to Weber's theory of

bureaucracy. Individualization refers to the phenomenal

and historical shift in rationale from a group-oriented

decision process to an individual-oriented decision

process. For example, society is no longer referred to as

a collective but rather as something made up of many

individuals like voters, citizens, homeowners, workers,

lawyers, and so on.

Next, abstraction refers to the process by which

morals and values become distorted by science and politics,

so that the once enamored view of the world becomes

ethereal. In other words, a romanticist type of view

shifted to a realist type of view. Generalization is more

complicated. As individualization and abstraction are

occurring *to* individuals, generalization is occurring

within individuals. So, although the people of the modern

world see it as having separate features, they see each

other as a collective. In other words, allegiances once

historically lay in family, decades ago the allegiances lay

in patriotism, and now allegiance is moving toward an

international flavor. This can be thought of in terms of

the process of globalization ever present in today's world.

If Nisbet's (1966) three terms are an attempt to

explain change, how does this apply to the shift in law

enforcement during the past decades to become more

"professional?" From individualization comes the need for more command positions and positions of authority, like sergeant, lieutenant, 2nd lieutenant, detective, and so on. From abstraction comes the need for more procedural, codified legislation so that officers need not heavily rely on morals and values while on duty. Finally, from generalization comes the need to instill among officers a sense of pride and common ideal so that allegiance lies with the department, agency, or "the force" over corruption by friends, family, or illegal characters. These three processes easily show the evolution of a control aspect within the theoretical purpose of professionalization.

Tying Nisbet's (1966) three terms to White's (1972) separation of orientations, it becomes evident that professionalization has become an attempt by administration to restrict role internalization of officers through centralization, thus restricting discretion. This would mean that from the standpoint of the administration a focus on process is most appropriate. But from the standpoint of the administrated, a focus on outcome is more vital. This ongoing cycle of conflict creates an atmosphere that does not allow the free flow of information between supervisor and supervisee because each has competing role outlooks.

Perrow (1986, p. 33) comments on this lack of communication within organizations with a discussion on hierarchy. He associates "timidity and caution on the part of subordinates who fear criticism from superiors" with the breakdown of communication among hierarchies, which he also refers to as bureaucracies. Perrow (1986) later refers to bounded (limited) rationality as a promoter of bureaucracy. He says,

> Organizations would function better if human
>
> rationality were less bounded. But bounded
>
> rationality makes possible bureaucratic control
>
> as well as domination in general. (p. 123)

So, Perrow (1986) clearly suggests that organizations willingly forego functionality to an ability to control. He goes on,

> Because we are not superhuman, with full
>
> understanding of processes or complete
>
> information and precise ordering of our goals,
>
> the organization can shape our premises, and
>
> ideologies can legitimize domination in society
>
> in general. If our rationality were full, no one
>
> could put anything over on us or shape our
>
> premises. (p. 123)

From this, it is discernable that the individual seeks a
"fuller rationality" in an attempt to gain deeper insight
of which the greater organization is lacking. This would
explain the supervisory/command emphasis on process as
lessened individuality and the supervisee/discretion
emphasis on outcome as appropriateness. At the heart of
the individual still lies human nature, regardless of the
control efforts present within the collective bureaucracy.

Perrow's (1986) contribution creates a whole new
dilemma. How does the supervisee (i.e. the line officer)
get around liability of action while still giving
individual focus on the outcome over process, which is in
contradiction to supervisory directives? The peeled apple
analogy present in the FBI focus group of this study
uniquely provides a basis for an answer to this question.
By asking why a peeled apple analogy emerges as a group
dynamic within a focus group on police discretion, the
answer becomes obvious. Direct relay of information must
somehow be restricted in order to avoid compromise of one's
position or previous actions, and thus vagueness becomes a
tool to get around liability.

Scheffler (1979, pp. 72, 73) considerably adds to the
understanding of vagueness. He says, "Indeed, the very
definitions of vagueness typically offered depend on one or

another variant of a distinction between meaning and fact which cannot be upheld." Although he does not delve into the applicable circumstances surrounding meaning and fact, the focus of the above statement as applied to this study hinges on that distinguishing meaning and fact "cannot be upheld." This, in itself, is the tool that allows an officer to circumscribe liability, as previously suggested. Interestingly, Scheffler (1979) also distinguishes between generality and vagueness as well as ambiguity/vagueness and metaphor.

In terms of this study, the peeled apple analogy seems to give the panel of law enforcement officers the tool, or ability, through metaphor to mesh generality and vagueness which in turn reduces specificity. This means no implications or culpability can be assigned to any particular person or thing when a member of the panel gives input about a subject of which the administration inhibits or restricts, i.e. bureaucratic control. For this study, that subject is police discretion. Interestingly, the use of vagueness and metaphor may be a common theme of law enforcement personnel universally. This tool, used by the supervisee, works as a loophole to circumnavigate the supervisory and/or administration control efforts.

Lipsky (1980) more practically applies the everyday

trials of which the supervisee encounters. He

differentiates the administration from the "street-level

bureaucrat." "Street-level" refers to the individual

"bureaucrat" who is part of the larger bureaucracy; the

"street-level bureaucrat" of any organization is unique

according to Lipsky (1980) in that they are most often

afforded the greatest discretionary ability. The catch

lies in liability surrounding power and its uses. The

street-level bureaucrat is responsible for direct contact

with the "clients." In the case of law enforcement

officers as street-level bureaucrats, the "clients" would

be any citizen-contact. However, the client or citizen can

communicate grievances with the administration. This means

the street-level bureaucrat, in some ways, is directed by

public opinion or response. And so, Lipsky (1980, p. 58)

identifies the origins of bureaucratic control:

> Street-level bureaucrats are characteristically
>
> constrained in the resources they can employ in
>
> obtaining client compliance. These constraints
>
> consist of professional and bureaucratic
>
> standards of fairness and due process that to
>
> some degree place limits on what can or cannot be
>
> done to or with clients….Modern bureaucracies

which are too heavy-handed lose their legitimacy

if their offenses are publicized.

Lipsky (1980, p. 100) also identifies the means by which the street-level bureaucrat handles clients. He asserts that "street-level practice often reduces the demand for services through rationing." Interestingly, Lipsky (1980, p. 100) uses the term "routinization" to explain the purpose of rationing. Services provided by the street-level bureaucrat are rationed through routinization. First, routinization of processes "protects workers from client demands for responsiveness." Second, "routines provide a legitimate excuse for not dealing flexibly…." It is also explained that clients realize this process:

The familiar complaints…[by clients] are

reminders that clients recognize the extent to

which bureaucratic unresponsiveness penalizes

them. (p. 100)

Remember, this study identified a process of routinization not in decision-making but in the prioritization of case-load and time. Lipsky (1980) finds the same by suggesting "demands" with the addition that routinization is a safeguard for officers who are liable to the administration that ultimately must answer to the client.

Once more, the examination of bureaucracy leads to a

discussion of power and who holds the power. In the

context of this study, elitists who have power within the

greater bureaucracy are constantly in a struggle. This

struggle is exacerbated by the promotion process earlier

identified as a control mechanism used by administrations

in an attempt to maintain a process of professionalization.

C. Wright Mills (1959) is among the first to discuss

political elites. Mills (1959, p. 3) defines the "power

elite" as "men in positions to make decisions having major

consequences." Many other researchers have studied

political elites. In fact, Zuckerman (1977) has provided a

condensed version of the expansive research on this concept

(see also Nisbet, 1966). Zuckerman (1977, p. 342) says

about a political elite,

> …it is theoretically useful and empirically
>
> correct to presume a political stratification of
>
> society: most are not involved in political
>
> life. It makes sense, therefore, to develop
>
> hypotheses using the variable characteristics of
>
> the political activists, those who compete for
>
> the control of authoritative decisions.

It is painfully obvious here that the subject of

political elite is fluid over time and within/throughout

organizations. Lipsky's (1980) street-level bureaucrat

competes with the greater bureaucracy for power. Perrow's

(1986) discussion of hierarchy epitomizes this struggle.

And White's (1972) differentiation of command and

discretion orientations among members within a bureaucracy

provides the basis for the power struggle in that

centralization reduces discretion and in that supervisory

control is made easy through the endorsement of this idea

of "professionalism."

Conclusion

Foremost, this study surrounds police discretion and

its importance from an applied standpoint. Police

discretion, as suggested by the findings of this study,

does differ between academia and law enforcement. Academia

contends that professionalism is essential to police

discretion whereas law enforcement officials of this study

disagree wholly. Academia suggests that routinization of a

decision-making process over time is harmful, and the law

enforcement officials of this study only suggest

routinization of case management and time management. What

is more, the officials of this study promote routinization

as beneficial to the proper use of police discretion.

Remarkably, no member of the focus group panel

suggests directly negative associations to discretion.

Every member of the focus group panel shows considerable regard to the notion of discretion and the fact that discretion is of great importance during the responsibilities associated with law enforcement. The reason for this seems to be that law enforcement officials are only indirectly supervised during the majority of their interaction with the "clients" who are citizens. That is, police officers have control (e.g. the power of state) over clients whereas other occupations do not. This is a type of legitimate authority. In other occupations, there is almost always some sort of direct supervision, and of course there is no legitimate authority. This fundamental difference is at the heart of liability. This notion of liability is important because law enforcement officials must be ever aware of their actions to avoid liability.

The differences in supervision between law enforcement and other occupations may be the key to the purpose of the peeled apple analogy. Supervision becomes the basis for professionalism, and professionalization allows a supervisory administration to control its agents through promotion as well as other measures. This creates what should be called *the liability predicament of the law enforcement official*. See Figure 1 below.

Figure 1. The liability predicament

Figure 1. The liability predicament
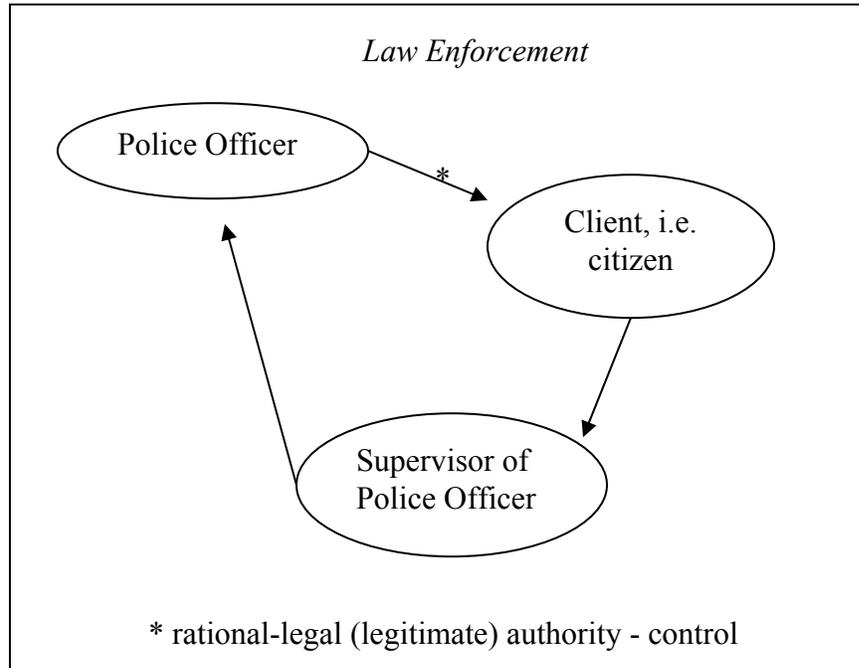
The liability predicament refers to the fact that the line patrol officer or field officer has control over the clients or citizens, but at the same time the client, through politics, has control over the supervisor of the line patrol officer. See Appendix F for a comparison of the liability predicament of law enforcement to that of other occupational types. This unique situation for law enforcement, in fact, creates a situation where the line patrol officer must heed and sometimes modify the way in which their interactions and communications take place. Remember the control mechanisms at the disposal of the administration through the process of professionalization. As this study has shown, using vagueness to dodge liability

and metaphor to explain meaning where supervisory administration restricts direct relay of information seem commonplace among law enforcement officials.

Perhaps the most important finding of this study hinges on the link between professionalism and bureaucracy. Professionalism is currently a sought after characteristic within law enforcement. But as has been shown, heightened professionalism allows supervisory control which only works to increase bureaucratization. Just as Weber associated increased bureaucracy with decreased freedom, this study has associated increased professionalism with decreased discretion. It is a fundamental mistake to assume that professionalism within law enforcement is a good quality.

The error can be found in the application of professionalism. Professionalism with no connotations attached simply refers to the conduct or qualities that characterize a certain occupation or career and its employees. Somehow, being professional has become an ethical, moral, legal, and audited concept. This is desirable for most occupational types because increased ethical, moral, and legal considerations with an emphasis on auditing progress only gives clients a sense that the product is appropriate and of value.

Unfortunately, a law enforcement structure that attempts professionalism faces the liability predicament. This occupational type is already concerned with ethical, moral, and legal considerations, and in fact this occupation is given power by the state to uphold our societal norms. As well, an audit process is established via procedural law by the constitution and the judicial system. Attempting to make a law enforcement structure more "professional" can only work to increase the inherent bureaucratic structure already in place through the quasi-military chain of command present within police structure.

Therefore, the definitions of professionalism and professionalization in terms of law enforcement are founded in incorrect ideologies in that professionalism is a form of control through recommended university, academic education and a promotion process that is at the disposal of a supervisory administration. In other words, professionalism of law enforcement increases bureaucracy. Inherently, bureaucratization within law enforcement *will* attempt to reduce discretion, whether or not the use is appropriate. Thus, professionalism does not increase an officer's ability to enforce the law; rather, it reduces discretion which works to inhibit the officer's ability.

Therefore, professionalism and bureaucracy within law enforcement structure(s) are linked; this should be termed *the professional policing error*. See Figure 2 below. It is an error because discretion is inbuilt and essential within the American criminal justice system. Discretion is important within all areas of the criminal justice system: policing, prosecution, courts, and correction. And the literature will admit as much. See Appendix G for a comparison of the professional policing error of law enforcement to that of other occupational types.

Figure 2. The professional policing error

Law Enforcement

Professionalism***** → Increased Bureaucracy → Increased Administrative Control → Reduced Discretionary Ability

Promotion process using higher education as the standard

Forces the creation of ways to circumnavigate control of administration, i.e. vagueness

* The liability predicament of the law enforcement official, constitutional law, standardized procedures, and judicial review are already present within a law enforcement structure. Professionalization cannot be obtained through increased professionalism.

The ongoing theme through statute to reduce the discretion of our law enforcement officers is at least controversial but at most wrong. The liability predicament only forces the line patrol officer to use vagueness as a

tool to surpass bureaucratic control. And beyond vagueness lies corruption. Just as our society condemns corruption of our police, so too should we condemn the use of vagueness. This can solely be accomplished through the decreased bureaucratic control of the line patrol officer who is in need of some if not all discretionary abilities.

It is rare to witness officers using vagueness because again it is used outside of and against the supervisory administration. For this reason, capturing this viewpoint uniquely through the group dynamic associated with focus group methodology is exceptional. Without this perspective, the true goal of professionalism within law enforcement would be veiled. Professionalization of law enforcement is flawed because it only works to reduce individual, human features and to increase bureaucratic, autonomic control features.

In all regards, it appears that a power struggle is responsible for the use of vagueness and metaphor among the panel of FBI special agents during the focus group of this study. It may be fantastic, but the power struggle is between the command structure and line structure of all law enforcement departments, agencies, and so on. There will always be the liability predicament for the line structure. This fact means that the command structure (interestingly

the top personnel are usually elected politically) will always attempt to charm a public by urging university education under the guise of professionalism. Those who are promoted to the command structure will most likely be required to have a higher university or college degree. In order to keep a position of command, the promoted officer must be on board with the reduction of discretion as society has currently deemed as appropriate.

Although this study has revealed many important structural attributes associated with law enforcement, it should be noted here that there are many inherent limitations. Foremost, the usual demographics of a law enforcement department or agency are primarily white, male officers. This study is the same with the exception of one Asian male. There is much to be said about the influence of race, sex/gender, financial/social status, and so on in terms of law enforcement. This study has not addressed these differences. Future studies would benefit from the inclusion of a more diverse focus group panel, such as one with multiple races and women.

As well, this study is limited by age. There is a higher age (as well as educational) requirement associated with federal agencies. Local and state agencies can and often employ any person 18 years of age or older.

Attitudes toward discretion undoubtedly change as one gets older, gains more experiences, and receives more education. As this study attempted to review police discretion in terms of length of service, it is important that future studies take into consideration that the majority of law enforcement agencies and departments have less stringent age and education requirements for employment than the FBI.

There are also inherent limitations associated with the methodology of this study, the focus group. See Appendix E for a general discussion of the disadvantages and advantages of the focus group as a social science methodology. In terms of this study in particular, there may be a limitation in terms of participant domination. As has been noted, one of the participants of the FBI focus group was a supervisory special agent. This fact, in itself, may have influenced the other participants during the focus group. Taking into consideration the nature of this study and the discussion/conclusion, this dynamic could have had a significant influence on the results. In fact, the peeled apple analogy may not have emerged without the presence of a superior. Future studies would do good to be aware of the structural differences (i.e. chain of command) present prior to establishing any focus group.

Finally, it must be mentioned that the research design includes a noteworthy limitation. This study was based on discovering and understanding police discretion from the perspective of a law enforcement official and contrasting that to what is found in academia. The results have shown that law enforcement officials do not view higher education such as academic, university-oriented education as beneficial to a proper understanding or use of police discretion. Keep in mind this study is only an examination of six law enforcement officials. The results may represent *a* truth, but this is only *one* truth; other law enforcement officials may have different perspectives. How and why this is can be valuable for future research.

As well, there has been little attempt in this study which justifies purely academic research. The nature of the research design, unfortunately, does not allow as such; in fact, it can seem at times to condemn academic research. This will, without doubt, not sit well with many law enforcement researchers who have contributed to the body of literature available on this topic. With this in mind, future research would profit by being mindful of the distinction between insider and outsider research during the design stages, specifically with use of focus groups.

Although there are many limitations in this study (only a few of the more prominent are mentioned above), there have also been valuable insights. Theoretically, there are two distinctive insights that have arisen from this study. The first is *the liability predicament of the law enforcement official* where line officers must be wary of their power over and daily interaction with citizens because these same citizens have power over their supervisor(s), who ultimately must answer to the greater public (i.e. citizens) who theoretically exercise the most power in this democratic society – "a government of the people, by the people, for the people…." This forces these officers to design ways (vagueness, analogy, metaphor) to preserve their individual discretion and decision-making abilities due to the administrative control efforts.

The second insight is *the professional policing error* where professionalism in and professionalization of the occupation of law enforcement is incorrectly accomplished in that the origin seems to lie more in bureaucratic control efforts than in genuine interest to endorse an augmented and improved police force for the citizens of this country. Unfortunately, professionalism is considered positive within most occupations and as such has become a positive attribute within law enforcement. This is because

professionalism is generically associated with expertise, proficiency, training, aptitude and so on. For law enforcement, these characteristics are a job requirement, not something to strive for through "professionalization." As has been shown, professionalism within law enforcement is fundamentally different than professionalism within other occupational types due to the professional policing error. Therefore, purposefully separating professionalism (not expertise, proficiency, or training) from law enforcement could perhaps fill the void between the line structure and command structure that is perpetuated by the process of bureaucratization.

Preceding Focus Group Questionnaire

Please answer the questions below to the best of your ability. Thank you.

1. Approximately how long have you been peace officer certified?

2. What was your age when you first became a peace officer/police officer?

3. What is your current age (in years)?

4. Prior to this agency, how many law enforcement departments/agencies have you been a member since becoming peace officer certified and how long at each? Use the back of this sheet if necessary.

5. Approximately how long have you been employed by this department/agency?

6. What is your current rank at this department/agency?

7. If you have had a rank higher than your current rank, what was it?

8. Please indicate approximately how often you actively seek to participate in any form of formalized training or academic education **not** required by the department/agency.

9. Please check your highest level of education?

     [ ] GED   [ ] High School Diploma   [ ] Some College   [ ] Associates Degree

     [ ] Bachelors Degree   [ ] Masters Degree   [ ] Ph.D. or above

10. Please check the gender that identifies you.   [ ] Male   [ ] Female

11. Please check the race that identifies you.

     [ ] African American   [ ] Caucasian/White   [ ] Asian   [ ] Hispanic

     [ ] Mixed or Other (please indicate how you identify yourself _____)

Thank you for filling out this questionnaire. Your input is valuable and sincerely appreciated.

Consent for Participation in Research

Andrew Beech, MA in Applied Behavioral Science, in the Department of Sociology/Anthropology at Wright State University is conducting a research study to help understand police discretion. I am being asked to participate in this study because I am a law enforcement representative who uses police discretion on a regular basis in my official capacity.

Title: Police Discretion from an Officer's Perspective

Agreement
to Participate: This signed consent is to certify my willingness to complete a brief questionnaire and participate in a focus group interview.

Purpose
of Study: The purpose of this research study is to better understand police discretion in a way that will allow policy makers and practitioners to more effectively design discretionary guidelines capable of deterring criminality. This includes ways to improve current departmental or agency guidelines on discretion.

Procedures: I will respond to a brief questionnaire about personal information. This includes demographic information such as age, sex, race, length of service, rank, and/or other relevant background information. I should not put any identifying marks on this questionnaire. Following, I will be asked to be a member of a focus group interview. A focus group is an interview made up of 7 to 10 people. The people involved will also be law enforcement representatives. It should take about 1 to 1.5 hours to complete both the questionnaire and the focus group. At any time during this procedure, I can terminate my participation in this study. Additionally, the focus group will be audio recorded in its entirety. These audio recordings will be kept until the researcher has completed the analysis and reporting of this study at which time the recordings will be destroyed.

Benefits
and Risks: Some of the questions may produce unpleasant feelings. Sensitive information may be revealed that could offend or otherwise upset a participant. Also, I will know some or all of the participants in an official capacity. In this way, the participants' position and prospective department or agency is vulnerable. Of course, I will be able to stop at any time if I feel too uncomfortable. There will be no direct benefit to me from participating in this study. The information that I provide may help provide guidelines for future policy regarding police discretion.

Confidentiality: Any information about me obtained from this study will be kept strictly confidential and I will not be identified in any report or publication. All information will only be accessible by the researcher and his faculty advisor and will be kept in a locked cabinet under the researcher's control.

My initials, _____, indicate that I have read this page and will continue to the next page.

Whom to Contact: If I have questions about this research study, I can contact the researcher, Andrew Beech, at 937-775-2667 or by email at beech.3@wright.edu. If I have general questions about giving consent or my rights as a research participant in this research study, I can call the Wright State University Institutional Review Board at:

> Office of Research and Sponsored Programs
> 201J University Hall
> Wright State University
> Dayton, Ohio 45435
> (937) 775-2425
> Fax: (937) 775-3781

Voluntary Consent: I am free to refuse to participate in this study or to withdraw at any time. My decision to participate or to not participate is completely voluntary and will not be held against me for any reason now or in the future. I understand that this focus group will be audio recorded, and by signing below I am giving permission to be audio recorded. My initials on the previous page and my signature below mean that I have freely agreed to participate in this investigational study.

Signature/Date:

_____

Printed Name of Participant   Date

_____

Signature of Participant   Date

_____

Signature of Researcher, Primary Investigator,   Date
Witness, or Focus Group Moderator

Pilot Study Questions

How do police officers understand police discretion as relating to their duties?

How do officers view their personal decision-making process when conducting daily job-related activities?

What defines an abuse of police discretion or the use of police discretion in a corrupt manner?

How do police officers acquire a correct or proper ability to use discretion?

How do police officers view the importance of continued education and/or training after a university-oriented education or an academy based training?

What other than education and/or training influences police discretion and how?

Focus Group Questions (FBI)

What comes to mind when you hear the word "discretion"?

How do you understand police discretion?

How do police officers acquire a correct or proper ability to use discretion?

>How does formal university-based education influence police discretion?

>How does academy-based or continued training influence police discretion?

How would you describe your ability to make personal choices while on duty?

Would you agree or disagree that there are appropriate ways to act in every situation? Why?

Think about the statement "falling into a routine."

>What positive and negative aspects would you associate with this statement?

>Provide an example, if possible, of a time when you responded to a job-related situation in a routine manner. Where did you become familiar with this type of response?

In what ways is your ability to make personal decisions or choices about job related events or activities influenced by this idea of "falling into a routine".

Appendix E

The Focus Group Interview

The following discussion attempts to shed light on the mechanics of the focus group interview. First, there is a contrast of the major advantages and disadvantages associated with the focus group. Second, the commonly accepted procedure of the focus group is discussed. This includes planning, generating an interview guide, recruiting, and the role of the moderator. Third and last, the focus group in practice is examined, including conducting the focus group, analyzing the data, and future implications.

Advantages and Disadvantages

Advantages

"The freedom of participants to construct their own meanings is one of the strengths and advantages of this [focus group research] form of research over survey research." (Morrison, 1998, p. 179). This statement shows that the focus group can generate data much more quickly than individual interviews or survey collection; preparation and assemblage of a focus group can also be much shorter than other methodologies. This is not to

mention the cost associated with focus groups is often less
(Stewart et al, 2007, p. 42). In addition, focus groups
are unique in their functionality; they can be a primary,
supplemental, or multi-methodological source of data
collection. Focus groups can be used at any stage of
research, from preliminary to exploratory to
assessment/evaluation (Litosseliti, 2003, p. 17). This is
to speak to the flexibility of focus groups; they have
extensive capabilities with a variety of individuals and
settings.

Group Dynamic: One of the most important advantages
of the focus group is the associated group dynamic.
Stewart et al (2007, p. 43) explains that this "synergistic
effect of the group setting may result in the production of
data or ideas that might not have been uncovered in
individual interviews." Unlike other forms of research,
participants can qualify or clarify responses. Also, the
researcher has the ability to make connections with more
profound levels of meaning. This includes the ability to
easily understand the responses of participants. If there
is a question, the moderator can ask for clarification
(Stewart et al, 2007, p. 42). In conclusion, focus groups
provide an ability to access group meanings, group
processes, and group norms. Groups tend to draw upon

themselves to reach a "collective judgement [sic.]" where participants guide one another unintentionally and add significance to an otherwise cut and dry question (Bloor, Frankland, Thomas, and Robson, 2001, p. 4).

Disadvantages

"Although focus groups are a valuable research tool and offer a number of advantages, they are not a panacea for all research needs…." (Stewart et al, 2007, p. 43). First and foremost, the small number of participants in focus groups can "significantly limit generalization to a larger population." (Stewart et al, 2007, p. 43). It is also important to note that individuals willing to participate in focus groups may be quite different from the population of interest. In addition, members of a focus group are not dependent on one another and contribute at different levels; one person may be dominant or more opinionated. It falls at the hands of the moderator to lessen restriction of generalizability (Stewart et al, 2007, p. 43).

Litosseliti (2003, p. 21) also states that "…limitations can be addressed through careful planning and skillful moderating of the groups." This statement is based on two important generalizability limitations: 1) limited number of participants, and 2) difficultly in

obtaining a representative sample. Both of these

limitations can be avoided or at least lessened by the

researcher and moderator. She also tends to focus on the

difficultly in distinguishing between an individual view

and a group view; it is commonly accepted that individual

behavior is subject to group influence (Litosseliti, 2003).

Morrison (1998, p. 182) adds to this point by describing

"attitude polarization." This is the idea that focus

groups tend to generate similar responses more often than

other groups because members are recruited based on some

type of status similarity.

<div align="center">Focus Group Procedure</div>

As mentioned previously, the focus group should be

differentiated from the group interview. While both

procedures include a sequence of predetermined questions,

focus group procedure has a fundamental difference. This

difference is found in the intent of a focus group.

Whereas the intention of a group interview attempts solely

to obtain the group's answers to specified questions, the

intention of the focus group attempts to stimulate a

discussion among the members of the group. The main

purpose of the focus group and the following analysis of

data should seek to understand the meanings associated with

group answers. Therefore, the moderator should not seek

<div align="center">98</div>

answers to questions but rather should seek group interaction prompted by questioning (Bloor et al, 2001, pp. 42-43).

Planning the Focus Group

The planning stage of focus groups is unique to individual research (Morgan and Scannell, 1998). The first and possibly most important step in the planning process is to define the purpose and outcomes of the project, but this is universal in all research. Developing a timeline is often a wise step to take. Determining the participants or population of interest is also important early on in the research (Morgan and Scannell, 1998, p. 10). These are just some of the possible planning steps among a multitude. Although there are many ways to break down planning, scholars (Morgan and Scannell, 1998; Stewart et al, 2007; Litosseliti, 2003; Bloor et al, 2001) agree that the preparation of a focus group is mostly dependent upon generating, pre-testing, and revising the interview questions. This includes the focus group questions, any pre-questionnaires, as well as consent forms and debrief forms.

According to Litosseliti (2003, p. 28) and Stewart et al (2007, pp. 60-61), being clear from the beginning about the research purpose, the topic or issue that will be

discussed during the focus group, and the anticipated

outcomes is of utmost importance because it allows the

researcher to build the interview questions/guide

effectively. Litosseliti (2003) advices, like many other

focus group researchers, that piloting or pre-testing the

focus group is the key to the planning process. Pilot

testing allows the researcher/moderator to test his or her

key themes for understandability; the researcher can alter

the wording or timing of questions based on piloted

results. Piloting a focus group can also reduce the

associated unpredictability; the researcher has an

opportunity to practice handling unexpected occurrences

such as dominating or timid participants. Piloting also

gives the moderator/researcher an opportunity to test the

practical aspects such as seat positioning and so on

(Litosseliti, 2003, pp. 30-31).

The Interview Guide

    As has been discussed, developing an effective list of

questions or interview guide is essential to any focus

group. If there is one point that should be made about the

interview guide, or "questioning route", it is that the

list of questions to be addressed should be feasible in the

predetermined time limit of the focus group. This limit

can range anywhere from one-half hour to three hours in

length, but typically a focus group falls within a one to two hour time frame (Krueger and Casey, 2000, p. 40). Krueger and Casey (2000) explain this point clearly:

> Typically, a focused interview will include about a dozen questions for a two-hour group. If you asked these questions in an individual interview, the respondent could probably tell you everything he or she could think of related to the questions in just a few minutes. But when these questions are asked in a group environment, the discussion can last for several hours. Part of the reason is in the nature of the questions and the cognitive processes of humans. (pp. 39-40)

In conclusion, the researcher needs to pay particular attention to the amount of questions he or she wishes to address during the focus group.

As well as the amount, the structure of questions in the interview guide can be just as important to a successful focus group. Stewart et al (2007, p. 61) specify two general principles to follow when formulating questions: 1) order questions from the more general to the more specific, and 2) order questions by the relative importance to the research agenda. While Stewart et al (2007) give more weight to how the researcher orders

questions, other researchers (Litosseliti, 2003; Krueger and Casey, 2000) give more weight to the structure of the questions. Krueger and Casey (2000) list the qualities of good focus group questions. They first suggest structuring questions so that they sound conversational and have words that the participants would use and understand. Questions should also be easy to say, clear, short, open-ended, and one-dimensional. In addition, any instructions when asking a participant to do something should be prepared previously and well thought out (Krueger and Casey, 2000, pp. 40-42). Litosseliti (2003, p. 67) summarizes interview guide structuring by stating "In general, simple, factual, general, unstructured and important questions come before complex, controversial, specific, cued and less significant ones." Of course, avoidance of leading questions is always important.

Selecting and Recruiting Participants

Choosing participants is an important part of the focus group procedure. This step occurs after the planning stage but can often be part of the end of the planning stage. When making the decision about who should be invited to be a part of the focus group, the researcher must consider the initial purpose of the study. Normally, a study attempts to gain information about something

specific. If you want participants to describe their

feelings explicitly, the selection process must be preceded

by screening for people who have certain things in common

(Krueger and Casey, 2000, p. 70). For example, if the

purpose of the study involved a phenomenon unique to law

enforcement officers, selection of participants must begin

with narrowing the sample to only include individuals with

law enforcement experience.

Although focus group design is often criticized for

the use of a purposive sampling method, this is necessary

because the goal of the focus group is to gain a deeper

understanding of a phenomenon by hearing from participants

in depth. This grasp for in depth discussion requires

selecting participants who are similar in nature because

there is a need for compatibility. Focus groups with

similar participants spend less time explaining their point

of view or rationale to the group, and this means more time

for discussing the important issues the study is attempting

to uncover (Morgan, 1998, p. 59). Along the same lines,

Litoselliti (2003, p. 32) notes particular importance in

selecting participants with similar knowledge or

familiarity with the given topic.

Recruiting is important because focus groups have very

small sample sizes. When too few people show up to a focus

group, the results are normally considered valueless. As
in any social research, the sampling process is important.
Unlike most social research, though, focus groups need not
worry about systematic random sampling. This is because
focus groups are not designed to generalize in the same
manner that large-scale quantitative methods generalize;
whereas large-scale quantitative methods ensure
generalizability through random sampling and large sample
sizes, focus groups attempt to ensure generalizability
during the selection process by making the focus group
participants representative of the larger population. For
this reason, convenience sampling is regularly used in
focus group research (Stewart et al, 2007, p. 54).

Role of the Moderator

Seidman (2006) specifically emphasizes the role of an
interviewer. As the moderator of the focus group is
essentially an interviewer, Seidman's (2006, p. 78) advice
should be well taken: "Technique isn't everything, but it
is a lot." The stress on this statement is an attempt to
put an end to the belief that interviewing is an art.
While Seidman (2006) does concede that some interviewers
have a knack for communication, he does not believe that an
interviewer is either good at interviewing or not. Seidman
(2006, pp. 78-92) argues that interviewing requires skills

and techniques that researchers must learn: "listen more, talk less", "follow up on what the participant says", "follow up, but don't interrupt", "ask participants to reconstruct, not to remember", "keep participants focused and ask for concrete details", "limit your own interaction", "follow your hunches", and "tolerate silence" to name only some. His words are important for any interviewer, and this certainly includes the focus group moderator.

Specific to a moderator, as opposed to an interviewer, is a need for leadership qualities (Stewart et al, 2007, Greenbaum, 2000). The focus group moderator is, by default, the leader of the group. The social influence he or she creates can motivate participants to provide good data or can provide direction which causes biased data to be obtained. In addition, individual traits such as effective personality, cohesiveness, and communication are necessary leadership qualities. Beyond these superficial leadership qualities, there is a more important leadership characteristic specific to focus group moderation: the ability to switch roles (Greenbaum, 2000, pp. 23-28; Krueger, 1997, pp. 45-48). Most moderators will adopt a preferred style, but it is still important at times to take on a different character or function. Switching roles

allows the moderator to handle various situations, unique

to focus groups, which may arise. While this may be the

case, it is also vital for the moderator to build existing

strengths (Krueger, 1997, p. 45).

Moderators must also have an ability to react quickly

and effectively. Most of the time, they are dealing with

strangers which means little influential power. Thus, it

is imperative for a moderator to adopt strategies that use

persuasion in a way that encourages group participation and

maintains interest (Greenbaum, 2000, p. 31). Greenbaum

(2000, pp. 29-40) asserts that certain personal

characteristics are key to a good moderator: 1) self

confidence, 2) good memory, 3) ability to develop quick

rapport, 4) ability to remain objective at all costs, 5)

communication and organization skills, and 6) appreciation

for confidentiality. Moderators must also recognize the

power of "pausing" to elicit or prompt additional points of

view and "probing" to request additional information where

answers are unclear (Krueger and Casey, 2000, p. 110).

Focus Group in Practice

A typical focus group will start with clerical issues

such as waiting on certain participants to arrive,

completing a pre-group questionnaire, signing a consent

form specifically where audio recording will be used, and

so on. Once the discussion begins, it can be thought of as being broken into five distinct parts: the welcome, the overview of the topic, the ground rules, the actual questioning (moderation), and the debriefing (Krueger and Casey, 2000, p. 107). Of course, these parts of the focus group are dependent on the moderator and his or her role.

Conducting the Focus Group

Once the researcher has carefully developed and piloted the questioning guide, actually conducting the focus group becomes an easy task. Piloting allows the researcher to have a general understanding of how the discussion may go, and as Krueger and Casey (2000, pp. 108-109) point out, anticipating the flow of discussion is a must when conducting any successful focus group. Stewart et al (2007, pp 90-97) also discuss areas the moderator should have anticipated, if not predetermined: physical arrangement, a directive or nondirective interviewing approach, his or her intimacy level, and time management. Stewart et al (2007, p. 98-100) also indicate problems with participants that are crucial to expect: the presence of legitimate or "self-appointed" experts, friends, and hostile group members. On a last note, understanding the use of nonverbal responses is also key to a successful focus group. Recognizing the body language of group

members can allow the moderator to directly intervene or switch gears before any problems can occur (Greenbaum, 2000, pp.148, 151-153).

Analyzing and Reporting the Data

Litoselliti (2003) and Stewart et al (2007) recognize the analysis of focus group data as the most difficult stage. Primarily, analysis means transcription and coding. Because focus group research is a qualitative discussion, data must be transferred even though it can be meticulous and time consuming. Even so, good transcription of the focus group allows a more intimate understanding of the content, flow, and dynamics of the discussion. This means that transcription should include all elements of conversation; words are the most obvious, but conversation also includes laughter, sounds, and any other details the researcher is capable of obtaining (Litoselliti, 2003, p. 85-86).

After transcription and coding, there needs to be some form of content analysis. Just because focus groups are considered qualitative research, do not assume that content analysis is automatically qualitative also. Focus group results also have a need for validation. As all research, the type of analysis depends on the research purpose (Stewart et al, 2007, p. 125). Bloor et al (2001, p. 63)

assert that content analysis includes three stages: indexing, data storage and retrieval, and interpretation. Indexing is identifying similar themes in the transcription and assigning code. Data storage and interpretation are self explanatory, but it is important to note that modern focus group research frequently utilizes computer-assisted content analysis. Most commercial software companies such as SPSS or StatPac offer such programs; these programs are designed using the key-word-in-context (KWIC) technique (Stewart et al, 2007, p. 126).

The Future of Focus Groups

Focus groups are currently being used most often alongside survey research as a way to test or validate a hypothesis. Unfortunately, this means twice the research, resources, and effort. Therefore, researchers are looking for ways to make focus group research less strenuous. For this reason, virtual focus groups are increasingly being utilized. Technology has allowed the advent of internet communications, both audio and video. Internet access for the general population is widespread; consider the use of email, blogs, chatrooms, and so on (Bloor et al, 2001, pp.75-86; Stewart et al, 2007, pp. 104-105).

Conducting online focus groups can be very advantageous. First, the convenience of the internet means
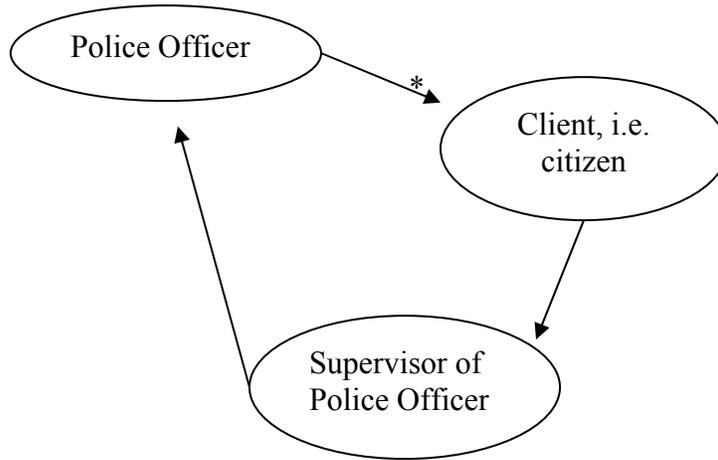
participants can easily be recruited and assembled. Second, online communities are well established and primed for sampling which means low cost for the researcher. Third, populations that are difficult to access can be found on the internet; this also relates to the fact that virtual focus groups encourage willing disclosure of more sensitive topics. Last, data is already transcribed when using virtual focus groups (Bloor et al, 2001, pp.75-86; Stewart et al, 2007, pp. 104-105).

There are also some criticisms of virtual focus groups, though. Some weaknesses include an inherent population bias of internet users although this is increasingly diminishing due to the heightened use of the internet today. Another weakness is that rapport is often difficult to establish with the academic community using virtual focus groups. Last, virtual focus groups remove the essential non-verbal cues that add to the dynamics of focus group research. At any rate, virtual focus groups are becoming the future of this type of research (Bloor et al, 2001, pp.75-86; Stewart et al, 2007, pp. 104-105).

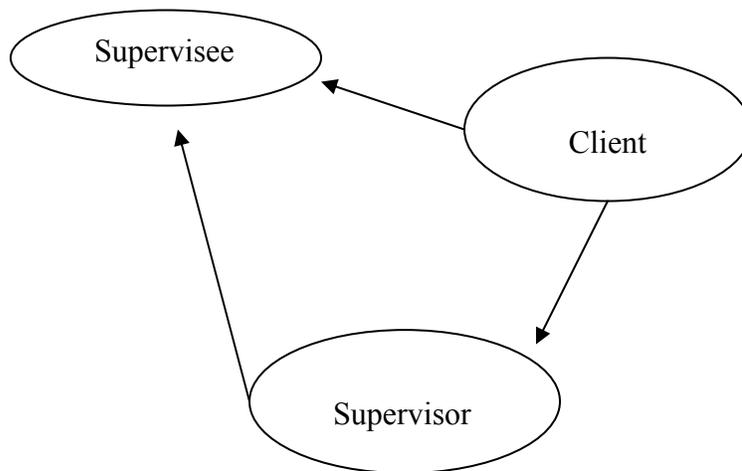## The Liability Predicament of the Law Enforcement Official

Law Enforcement

```
  ┌──────────────┐
  │Police Officer│ ──────*──→  ┌──────────────┐
  └──────────────┘             │ Client, i.e. │
         ↑                     │   citizen    │
         │                     └──────────────┘
         │                            │
         │                            ↓
       ┌──────────────┐
       │ Supervisor of│
       │Police Officer│
       └──────────────┘
```

———

* rational-legal (legitimate) authority - control

———

Non-Law Enforcement Occupations

```
  ┌──────────────┐
  │  Supervisee  │ ←──────  ┌──────────────┐
  └──────────────┘          │    Client    │
         ↑                  └──────────────┘
         │                         │
         │                         ↓
       ┌──────────────┐
       │  Supervisor  │
       └──────────────┘
```

An arrow ———→ represents control

The Professional Policing Error

Professionalism – the conduct or qualities that characterize a certain occupation or career and its employees.

Professionalization:
- ethics
- morality
- legality
- audit process

Professionalism in law enforcement ignores the liability predicament of the law enforcement official.
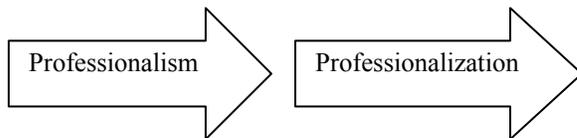
This predicament as well as the very nature of the American criminal justice system already encompasses for law enforcement the four characteristics associated with professionalization.

Attempting these characteristics is pointless for the law enforcement structure.
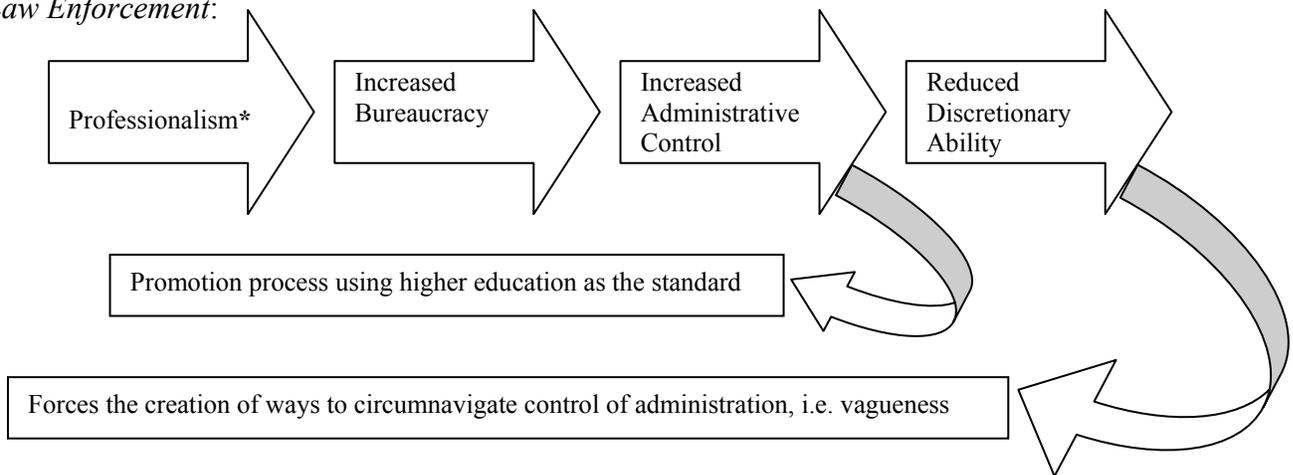
Attempting professionalism in a law enforcement structure will increase bureaucratization (Weber's theory of bureaucracy), thus increasing the level of control among the command function. This inevitably leads to the reduction of discretion for the line function.

Non- Law Enforcement Occupations:

Professionalism → Professionalization

Law Enforcement:

Professionalism* → Increased Bureaucracy → Increased Administrative Control → Reduced Discretionary Ability

Promotion process using higher education as the standard

Forces the creation of ways to circumnavigate control of administration, i.e. vagueness

* The liability predicament of the law enforcement official, constitutional law, standardized procedures, and judicial review are already present within a law enforcement structure. Professionalization cannot be obtained through increased professionalism.

References

Alpert, G. P., Macdonald, J. M., and Dunham, R. G. (2005). Police Suspicion and Discretionary Decision Making During Citizen Stops. *Criminology*, 43, 2, 407-434.

Bloor, M., Frankland, J., Thomas, M., and Robson, K. (2001). *Focus Groups in Social Research*. California: Sage Publications, Inc.

Buzawa, E. S. and Buzawa, C. G. (2003). *Domestic Violence: The Criminal Justice Response, Third Edition.* London: Sage Publications, Inc.

Creswell, J. W. (2003). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, Second Edition*. Thousand Oaks, CA: Sage Publications, Inc.

de Lint, W. (1998). Regulating autonomy: Police discretion as a problem for training. *Canadian Journal of Criminology*, 40, 3, 277-304.

Edwards, S.M. (1989). *Policing 'Domestic' Violence: Women, the Law and the State*. London: Sage Publications, Inc.

Eitle, D. (2005). The Influence of Mandatory Arrest
    Policies, Police Organizational Characteristics, and
    Situational Variables on the Probability of Arrest in
    Domestic Violence Cases. *Crime & Delinquency*, 51, 4,
    573-597.

Goldstein, H. (1963). Police Discretion: The Ideal Versus
    the Real. *Public Administration Review*, 23, 3, 140-
    148.

Greenbaum, T. L. (2000). *Moderating Focus Groups: A
    Practical Guide for Group Facilitation*. California:
    Sage Publications, Inc.

Krueger, R. A. (1997). *Moderating Focus Groups: Focus
    Group Kit4.* California: Sage Publications, Inc.

Krueger, R. A. and Casey, M. A. (2000). *Focus Groups: A
    Practical Guide for Applied Research, Third Edition*.
    California: Sage Publications, Inc.

Leigh, J. (1996). *Arresting Domestic Violence: Does It
    Work?* London: Sage Publications, Inc.

Lipsky, M. (1980). *Street-Level Bureaucracy*. New York:
    Russell Sage Foundation

Litosseliti, L. (2003). *Using Focus Groups in Research*.
    London: Continuum.

Liu, P. W. and Cook, T. A. (2005). Speeding Violation

Dispositions in Relation to Police Officers'

Perception of the Offenders. *Policing & Society*, 15,

1, 83-88.

Loue, S. (2001). *Intimate Partner Violence: Societal,*

Medical, Legal, and Individual Responses. New York:

Kluwer Academic/Plenum Publishers

Mastrofski, S. D. (2004). Controlling Street-Level Police

Discretion. *The ANNALS of the American Academy of*

Political and Social Science, 593, 1, 100-118.

Mendias, C. and Kehoe, E. J. (2006). Engagement of

Policing Ideals and Their Relationship to the Exercise

of Discretionary Powers. *Criminal Justice and*

Behavior, 33, 1, 70-92.

Mills, C. W. (1959). *The Power Elite*. New York: Oxford

University Press

Mills, L. G. (2003). *Insult to Injury: Rethinking Our*

Responses to Intimate Abuse. New Jersey: Princeton

University Press.

Morgan, D. L. (1997). *Focus Groups as Qualitative*

Research. California: Sage Publications, Inc.

Morgan, D. L. and Scannell, A. U. (1998). *Planning*

Focus Groups: Focus Group Kit2. California: Sage

Publications, Inc.

Morrison, D. E. (1998). *The Search for a Method: Focus*

Groups and the Development of Mass Communication

Research. United Kingdom: University of Luton Press.

Muraskin, R. (2003). *It's A Crime: Women and Justice,*

Third Edition. New Jersey: Pearson Education, Inc.

Nisbet, R. (1966). *The Sociological Tradition*. New York:

Basic Books, Inc.

Perrow, C. (1986). *Complex Organizations: A Critical*

Essay. New York: Random House, Inc.

Scheffler, I. (1979). *Beyond the Letter: A Philosophical*

Inquiry into Ambiguity, Vagueness and Metaphor in

Language. London: Routledge & Kegan Paul

Schmidt, J. D. and Sherman, L. W. (1993). *Does Arrest*

Deter Domestic Violence? London: Sage Publications,

Inc.

Scott, W. R. (1992). *Organizations: Rational, Natural, and*

Open Systems. New Jersey: Prentice Hall.

Seidman, I. (2006). *Interviewing as Qualitative Research:*

A Guide for Researchers in Education and the Social

Sciences, Third Edition. New York: Teachers College

Press.

Sherman, L. W. (1984). Experiments in Police Discretion:

Scientific Boon or Dangerous Knowledge? *Law and*

Contemporary Problems, 47, 4, 61-81.

Smith, B. W., Novak, K. J., Frank, J., and Lowenkamp, C. (2005). Explaining Police Officer Discretionary Activity. *Criminal Justice Review*, 30, 3, 325-346.

Stewart, D. W., Shamdasani, P. N., and Rook, D. W. (2007). *Focus Groups: Theory and Practice, Second Edition*. California: Sage Publications, Inc.

Torr, J. D. and Swisher, K. L. (1999). *Violence Against Women: Current Controversies*. San Diego: Greenhaven Press, Inc.

White, S. O. (1972). A Perspective on Police Professionalization. *Law and Society Review*, 7, 1, 61-86.

Willis, G. B. (2005). *Cognitive Interviewing: A Tool for Improving Questionnaire Design*. California: Sage Publications, Inc.

Wilson, J.Q. (1968). *Varieties of police behavior*. Cambridge, MA: Harvard University Press.

Wortley, R. K. (2003). Measuring Police Attitudes Toward Discretion. *Criminal Justice and Behavior*, 30, 5, 538-558.

Zuckerman, A. (1977). The Concept "Political Elite": Lessons from Mosca and Pareto. *The Journal of Politics*, 39, 2, 324-344.

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