



National Institute of Justice

R e s e a r c h R e p o r t

“Broken Windows” and Police Discretion

Foreword

The past two decades have seen growing awareness of the complexity of police work, an examination of the use of discretion in officers’ daily policing activities, and a better understanding of the critical role community leaders play in the vitality of neighborhoods.

Noted criminologist George L. Kelling has been involved in practical police work since the 1970s, working day-to-day with officers in numerous agencies in all parts of the country and serving as an adviser to communities, large and small, looking for better ways to integrate police work into the lives of their citizens.

In the context of the “broken windows” metaphor, proposed by James Q. Wilson and Dr. Kelling in 1982 in *The Atlantic Monthly*, this Research Report details how an officer’s sensitive role in order maintenance and crime prevention extends far beyond just arresting lawbreakers—how discretion exists at every level of the police organization. Historically, police have asserted authority in many ways, often having nothing to do with arrest. Dr. Kelling takes a special interest in the use of discretion to exercise the core police authority, enforcement of the law.

He wants to understand better why officers make arrests in some circumstances and not others, especially when they are dealing with the more mundane aspects of policing—such

as handling alcoholics and panhandlers and resolving disputes between neighbors. And he notes that police officers themselves are often unable to articulate the precise characteristics of an event that led them to act as they did. Kelling maintains that officers must and should exercise discretion in such situations. But giving police officers permission to use their professional judgment is not the same as endorsing random or arbitrary policing. In his view, policing that reflects a neighborhood’s values and sense of justice and that understands residents’ concerns is more likely to do justice than policing that strictly follows a rule book.

Police work is in transition within communities. The police are more frequently involved in creating and nurturing partnerships with community residents, businesses, faith-based organizations, schools, and neighborhood associations. Their role in the justice process requires even greater commitment to developing policy guidelines that set standards, shape the inevitable use of discretion, and support community involvement. We hope this Research Report will help inform the continuing debate over the proper exercise of police discretion in this new era of policing.

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Introduction

Police departments throughout the United States, as well as in Canada, England, and elsewhere in Europe, have begun to reemphasize the maintenance of public order as an essential aspect of police work. Police activities to restore public order in New York City and its subway system, for instance, have received extensive publicity and professional attention. So, too, has the “broken windows” metaphor as it has been closely linked to New York City.¹

The New York story, as well as others, raises serious questions. To what extent is order maintenance linked to the current decline of crime in the United States? Regardless of its efficacy, how proper is assertive police order maintenance? To what extent can police brutality be explained by “turning the police loose” with order maintenance tactics? Many civil libertarians and advocates for the homeless, for example, oppose order maintenance because they believe it infringes on the liberties of selected populations (the poor, minorities, the homeless, and youths) and opens the door to abusive police practices.² The debates about these issues have been vigorous and often rancorous.³

It is not the intent of this report to debate these issues or even dwell on them at any length. I have addressed them elsewhere and will do so again in the future.⁴ It is important, however, to note up front that order maintenance has the potential for abuse. Vagrancy and loitering laws, for example, have been used to deny minorities their rights and to abuse citizens, especially African-Americans. But my concern here is not limited to order maintenance activities; the concern here is how to manage properly what Egon Bittner calls *literal* police work.⁵

Past and current police administrators have attempted to shape police work through the development of command and control organizations, recruitment, training, supervision, rules and regulations, rewards and punishment, specialization, and routinized tactics like preventive patrol and rapid response to calls for service. Certainly, these efforts to control officers have powerfully influenced how American society is policed. Rationalized police organizations deploy well-equipped officers throughout their jurisdictions in an organized fashion that allows them to respond to calls for service quickly. The old image of policing on which the “Keystone Cops” were based belongs to another age. Nevertheless, putting officers on the streets in a timely and organized fashion and getting them to particular locations rapidly is quite different from shaping police behavior once officers are out in the community dealing with citizens’ problems, needs, and conflicts.

Police administrations’ limited ability to shape police street practice persists despite management’s preoccupation with control—an orientation that largely grew out of efforts to minimize the kinds of corruption, especially political corruption, that plagued late 19th and early 20th century American policing.⁶ Yet, as valid as its origins were, police administrators’ preoccupation with control, and the methods they adopted to maintain it, have had tragic, unanticipated consequences. Most obviously, this preoccupation has fostered a bitterly antimanagement culture in many police departments. In this culture officers are alienated from the citizens they serve, support a “stay out of trouble” (by doing nothing) mentality, and, while disapproving of abuse and corruption, nonetheless protect deviant officers in the name of occupational solidarity.⁷

James Q. Wilson noted some of the consequences of rules and regulations on officers’ beliefs in 1968:

But there are at least two limits to the value of negative policies [things officers may not do]. First, they leave untouched a large area of necessary discretion and, second, they are perceived as irrelevant and unhelpful restrictions—as rules that “tell us what we shouldn’t do” and thus “give the brass plenty of rope with which to hang us,” but that “don’t tell us what we should do.”⁸

These beliefs—that rules tell officers only what not to do, will be used to “hang” officers, and fail to tell police what they should do in a positive way—have arisen in part from police administrators’ inattention to the substantive content of day-to-day policing.

At least three explanations can be given for this inattention:

- Oversimplified, but robust, views of police work have dominated police conventional wisdom for most of this century. The idea of police as “crime fighters,” or merely “law enforcement officers,” was the cornerstone of an ideological view of police that dismissed, ignored, or was oblivious to actual police functioning.
- Many police chiefs who have been forthright about police work find that legislators, mayors, and other officials often do not want to hear that police officials, not to mention patrol officers, are involved in policy decisions about how problems should be managed.⁹ This is partially because the general public or public officials simply do not understand the complexity of many problems.
- Politicians and media representatives often are so caught up in the simple-minded slogans of “wars on crime,” the “thin blue line,” and so forth, that they are not prepared (whether intentionally or not) to hear about the real world of policing.

Some chiefs have demanded or implied that when confronted with difficult or ambiguous problems, line police should “do what has to be done and cover your ass.” While often not explicit, this message is nonetheless sent to officers because they are frequently put into complex and troublesome situations where citizen demands for action are high and departmental thinking about such situations is nonexistent. Although this defensive mentality does not characterize all police leadership, over time it has characterized enough leaders in enough departments so that line officers have come to support or tolerate a bitter antimanagement culture.¹⁰

Pushing harder and more stridently with current control mechanisms that exert little real control over substantive work will not lead the way out of this quandary. Such specious thinking has been in place since the 1950s (e.g., just a little more inservice training, a slightly tighter span of control, a few more general orders or rules, more militant internal affairs units, improved rewards and punishments, improved or more representative recruitment, greater militarization of recruit training). Instead, police officials need to focus on the substantive content of police work; find and delineate the means to conduct police work morally, legally, skillfully, and effectively; then structure and administer departments on the basis of this literal work and not a fictionalized view of police work. In other words, a clear definition and description of quality policing is needed around which appropriate organizations and administrations can be developed.

Concentrating on the substance of police work is nothing new; Herman Goldstein, Egon Bittner, the late Frank Remington, and others have advocated such a focus for decades. Today, the issue has acquired a new urgency.

Although this report raises the broader issues of discretion in all police work, it focuses primarily on the more mundane aspects of policing, such as resolving petty conflicts, assisting and protecting children, managing drunks and the emotionally

disturbed—those activities that fill patrol officers' occupational lives. In addition, 11 principles to be considered in developing and implementing police guidelines are explored:

- Recognizing the complexity of police work.
- Acknowledging police use of discretion.
- Recognizing and confirming how police work is conducted.
- Advancing values.
- Putting police knowledge forward.
- Undergoing development by practicing police officers and citizens.
- Undergoing clear and broad public promulgation.
- Prescribing what officers may not do.
- Emphasizing police adherence to a process.
- Establishing accountability.
- Receiving recognition as an ongoing process.

Moreover, this report takes a special interest in selective enforcement: helping officers articulate in professionally sound terms why they properly make arrests in some circumstances (in the case of public urination, for example) but not in others.

Notes

1. Wilson, James Q., and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly* (March 1982): 29–38; also see Kelling, George L., and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York: Free Press, 1996.
2. Generally, civil libertarian groups, such as the New York City Civil Liberties Union, make both arguments. Former San Jose Police Chief Joseph McNamara has been the most outspoken advocate of the points of view claiming that assertive police order maintenance tactics open the door to abusive police practices. McNamara argues that former New York City Police Commissioner

William Bratton has a "flippant" attitude toward abuses such as those perpetrated by police against Abner Louima (a Haitian immigrant) in New York City, and that James Q. Wilson and I "opened the door" to such abuses in the original "Broken Windows" article. (See McNamara, Joseph, "Brutality in the Name of Public Safety," *Los Angeles Times*, August 24, 1997, A1.)

3. At another level, the equation made in some quarters between police order maintenance activities ("broken windows") and "zero tolerance" for disorderly behavior raises issues that go beyond semantics. Without further comment, it is an equation that I have never made, find worrisome, and have argued against, considering the phrase "zero tolerance" not credible and smacking of zealotry.

4. Kelling and Coles, *Fixing Broken Windows*, Chapters 2, 4, and 5.

5. Bittner, Egon, *Aspects of Police Work*, Boston: Northeastern University Press, 1990: 4.

6. This does not imply that there were not other reasons for police managers' concerns for control. Military organizations predisposed police toward command and control issues, and the inherent decentralization that goes with patrolling requires that considerable effort be put into establishing control mechanisms.

7. For an interesting discussion of these issues, especially as a result of the Knapp Commission in New York City, see Anechiarico, Frank, and James B. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*, Chicago: University of Chicago Press, 1996.

8. Wilson, James Q., *Varieties of Police Behavior*, Cambridge, MA: Harvard University Press, 1968: 279.

9. Goldstein, Herman, "Categorizing and Structuring Discretion," *Policing a Free Society*, Cambridge, MA: Ballinger Publishing Company, 1977: 93–130.

10. It is not unusual for police executives to blame unions for this antimanagement culture, but this is self-serving and deceptive because this thinking pervades many nonunionized departments and existed long before unions entered the police scene during the 1960s. See, for example, Kelling, George L., and Robert

Kliesmet, "Police Unions, Police Culture, the Friday Crab Club, and Police Abuse of Force," in *And Justice for All: Understanding and Controlling Police Abuse of Force*, ed. William A. Geller and Hans Toch, Washington, DC: Police Executive Research Forum, 1995: 187–204.

A Short History of Police Accountability

Police accountability is an issue that has been with democracies since modern police were created. Citizens should be concerned about controlling police: they have immense authority; they are armed and authorized to use force; and unlike the military, they are not sequestered on bases—they are spread throughout the community.

Modern American policing had its origins in England, where, in 1829, the questions of whether to create a police force and, if created, how to keep this force accountable were debated by political, social, and philosophical elites for more than a century. Everything about policing was “on the table” in this debate—the relationship of police to political authority, activities that would constitute the business of policing, organizational structure and administrative processes, and the means by which police would obtain their goals.

During the late 18th and early 19th centuries, the English stared across the channel at the French, or continental, model of policing, which relied upon secret police and paid informers. Likewise, the English already had developed a model of policing Ireland and their other colonies with armed mounted police operating in groups bivouacked to avoid contact with the native population.¹

The English decided neither of these models was acceptable. Early English policing emphasized uniformed, unarmed, highly recognizable officers who were diffused geographically throughout London and patrolled on foot. These officers not only were granted authority from the Crown but also had to earn the citizens’ trust. Investigations conducted by plainclothes police, at least initially, were rejected; victims pursued criminal

investigations through some form of stipendiary police. Unobtrusive policing by public investigators risked police meddling in political matters, and militarized policing risked further alienation of the general population. The primary business of police was to prevent crime through presence, persuasion, and reduced opportunities.

In the United States, cities adopted the English model of policing. Although not originally outfitted in uniforms—this was deemed European elitism—American police were similarly diffused throughout cities, like their English counterparts, to prevent crime. For American police, the issue of who would control the police—urban political bosses or descendants of the original Dutch and English settlers—was the dominant public concern. This struggle to control police forces was to shape American police in remarkable ways.

During the first stage of evolutionary development (roughly from the 1850s to the 1920s), police were largely under the control of urban political machines; during the second stage (roughly the 1930s to the 1970s), police, with the support of the progressives, evolved into virtually autonomous urban agencies. Herman Goldstein has described police as evolving into the least accountable branch of urban government during this era.²

To achieve this shift—from politically dominated and controlled to virtually autonomous forces—practically every aspect of American policing was reformed during the early decades of the 20th century. Leading police thinkers (like O.W. Wilson, Leonard Fuld, and Bruce Smith) were overwhelmingly preoccupied with issues of control—that is, both wresting control of police at all levels from political influences and

ensuring that only “professional” police influence police. Bruce Smith, for example, wrote in 1929: “Without exceptions, all proposals for improvement of organization and control have necessarily been aimed at the weakening or the elimination of political influences.”³

In the name of eliminating corrupt political influences from policing, these men attempted to change the nature of the business from crime prevention to reactive law enforcement. They restructured police organizations, revised administrative processes, developed new tactics, and redefined the relationship between police and citizens—each, more or less successfully—all with an eye toward gaining administrative control of police, whether field commanders, supervisors, or patrol officers.⁴

By the 1950s, theorists wrote about the conduct of police work—services line officers perform in the course of their daily work—as being semi-automatic (i.e., police responses to incidents could be, or should be, so controlled as to be analogous to typing, piano playing, or rote adherence to a script). O.W. Wilson wrote in 1956, for example:

Administration has been defined as the art of getting things done. Police objectives are achieved by policemen at the level of performance where the patrolman or detective deals face-to-face with the public—the complainants, suspects, and offenders—and the success of the department is judged by the performance of these officers.

Decisions that are advantageous to the department are most likely to be made by policemen who have been selected in a manner to assure superior ability, who understand the police objectives and are sympathetic to them, who are loyal to their department and capable of operating effectively, efficiently, and *semi-automatically* (i.e., with a minimum of conscious self-direction, as in performance by a skilled typist or pianist), and who have high morale (i.e., the condition described by

military leaders as the right heart). (Emphasis added.)⁵

Police work, in this view, as Egon Bittner once said, could be conducted by persons who have “the ‘manly virtues’ of honesty, loyalty, aggressiveness, and visceral courage.”⁶ The idea of officers thinking before they acted was to be discouraged. They were to follow rules loyally.

The perception of police work as simple and under administrative control was shattered, of course, by research conducted in the 1950s by the American Bar Foundation, which showed that police work is complex, that police use enormous discretion, that discretion is at the core of police functioning, and that police use criminal law to sort out myriad problems. The research suggested that the control mechanisms that pervaded police organizations—especially rules and regulations, oversight, and militaristic structure and training—were incompatible with the problems that confront police officers daily and the realities of how police services are delivered. Aside from several who were scholars, few police administrators realized how “out of touch” existing practices were with day-to-day police realities.

Paradoxically, a policing strategy that was overwhelmingly preoccupied with control, in the final analysis, failed to meet its most essential criteria. True, the strategy largely eliminated corrupt political influences in police departments. However, it left officers mostly to their own devices in conducting the bulk of their work.

This state of affairs has not gone unnoticed in either the legal or research community. The U.S. Supreme Court, for example, grew impatient with the unwillingness or inability of police executives to control criminal investigations—it was widely acknowledged since the 1930s Wickersham Commission that police procedure embraced the practice of torture—and through a series of decisions during the 1960s (the exclusionary rule, the requirement that offenders understand their right to an attorney, and so forth),

established guidelines that shaped the future conduct of criminal investigations.⁷ Egon Bittner, based on his own research of police handling of drunkenness and mental illness, has written both eloquently and indignantly about the mismatch between “official” and real police work:

The official definition of the police mandate is that of a law enforcement agency. . . . The internal organization and division of labor within departments reflect categories of crime control. Recognition for meritorious performance is given for feats of valor and ingenuity in crime fighting. But the day-to-day work of most officers has very little to do with all of this. These officers are engaged in what is now commonly called peacekeeping and order maintenance, activities in which arrests are extremely rare. Those arrests that do occur are for the most part peacekeeping expedients rather than measures of law enforcement of the sort employed against thieves, rapists, or perpetrators of other major crimes.

For the rich variety of services of every kind, involving all sorts of emergencies, abatements of nuisances, dispute settlements, and an almost infinite range of repairs on the flow of life in modern society, the police neither receive nor claim credit. Nor is there any recognition of the fact that many of these human and social problems are quite complex, serious, and important, and that dealing with them requires skill, prudence, judgment, and knowledge.⁸

Notes

1. Tobias, John J., “The British Colonial Police: An Alternative Police Style,” in *Pioneers in Policing*, ed. Philip John Stead, Montclair, NJ: Patterson Smith, 1977: 241–261.
2. Goldstein, Herman, “Categorizing and Structuring Discretion,” *Policing a Free Society*, Cambridge, MA: Ballinger Publishing Company, 1977: 93–130.
3. Smith, Bruce, “Municipal Police Administration,” *The Annals* 146 (November 1929): 27.
4. Kelling, George L., and Mark H. Moore, “The Evolving Strategy of Policing,” in *Perspectives on Policing*, No. 4, Cambridge, MA: U.S. Department of Justice and Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University, November 1988.
5. Wilson, O.W., “Basic Police Policies,” *The Police Chief* (November 1956): 28–29.
6. Bittner, Egon, *Aspects of Police Work*, Boston: Northeastern University Press, 1990: 6–7.
7. The Wickersham Commission was the first national survey of criminal justice and police practices.
8. Bittner, *Aspects of Police Work*.

The Urgency of Influencing Police Work

Increasingly, police are under renewed and constant pressure from neighborhood groups and city halls across the country—not to mention State legislatures and the U.S. Congress—to “do something now” about eliminating the excesses of the drug market, getting guns off the street, and regaining control over public places.¹ Attempting to meet such demands has inevitable strategic consequences for police departments and local government. The main consequence is that police strategy shifts from a reactive and inherently passive model to a preventive interventionist model that reopens policy issues about police handling of the homeless, drunks, drug dealers and users, the emotionally disturbed, and minor offenders that many believed had been addressed once and for all during the period following the 1960s. This strategic change takes police to the edge, or even over the edge, of

constitutional law—at least as it has been interpreted for the past 30 years.

Preventive Interventionist Policing

When a shooting occurs in New Haven, Connecticut, the Department of Police Services immediately sends a team of Yale Child Study Center clinicians and police officers to help children and families cope with the social and psychological consequences of violence.² (See “How New Haven Developed Guidelines.”) Likewise, when Community Patrol Officer Jack Fee, who is assigned to the Academy Homes in Boston, Massachusetts, discovers a hitherto unenforced housing law that allows the court to sentence a gang member with a history of violence, but no convictions, to a 1-year jail sentence for trespassing, this is preventive interventionist policing.

How New Haven Developed Guidelines

New Haven’s policy guidelines embody important principles described in this report. The guidelines focused on problems of disorder and were developed with officers and sergeants at the request of then Chief Nick Pastore.

The guidelines have been distributed as a training bulletin in the New Haven Department of Police Service. (See Appendix A, “Order Maintenance Training Bulletin 96-1.”) The bulletin was prepared as a city- and departmentwide document, rather than as a location-specific document. Consequently, it invites and outlines a problem-solving method to deal with location- or other problem-specific issues as they may occur in neighborhoods.

Of course, the value of guidelines depends on the skill of management in linking them to ongoing police practice and administrative and supervisory procedures. Moreover, the examples of guidelines included in this report are clearly not as good as they could be—none were developed as part of a special “project” to develop guidelines. Likewise, the 11 points articulated elsewhere in this report are no doubt preliminary and inadequate. The art of developing guidelines has yet to be defined and will emerge only over time. Yet, guidelines are essential to the development of police accountability and professionalism.

Although it might not appear so, preventive policing that interrupts cycles of violence through problem solving is much more invasive of community life than the reform—or 911—model that has dominated policing in the United States since the 1950s. This inherent assertiveness can lead to serious misunderstandings of what constitutes community or problem-oriented policing.

For many people, thanks in part to how it has been presented by many police leaders, community policing is viewed as “soft” policing comparable to community relations or, worse yet, social work. When asked to describe his efforts in Academy Homes, Officer Jack Fee—known throughout the Boston Police Department as a “tough” cop—shrugged and said, half apologetically, “I suppose I’m doing social work.” This perspective, that preventive policing is soft policing, has created numerous obstacles for departments attempting to get police rank and file to embrace community policing.

“Crime fighting” is inherently passive and reactive policing: patrol in a powerful car, receive a 911 call, turn on flashing lights and siren, speed to the incident, tend to it as quickly as possible, and return to service. For the most part, this method of policing is in response to citizen-initiated calls to deal with incidents.³

Community policing is inherently proactive: scan for problems; diagnose them; try to prevent them from occurring again; if they recur, try to limit the damage and restore the victim/family/community’s functioning.⁴ This is implicit in New Haven’s approach—tend to the incident, of course, but follow up with action that limits the damage and helps children and families restore themselves to adequate functioning. Even police handling of murder should go beyond criminal investigation.

This failure to understand the inherent assertiveness of community or problem-oriented policing, and equating it with soft policing, has greater consequences than just alienating line police officers. The equation of “community” and “soft” leads to public confusion when tough

police action is required to deal with severe crime or disorder problems. New York City provides the best current example.

Critics have attacked New York Police Department (NYPD) community policing efforts since former Commissioner William Bratton implemented assertive and enterprising (do not read combative here) policing to deal with disorder and crime.⁵ Indeed, a major *Los Angeles Times* article in 1995 argued that the NYPD was remilitarizing and transforming itself into what the Los Angeles Police Department (LAPD) was, while the LAPD was attempting to demilitarize itself and become the “officer-friendlies that the NYPD once symbolized.”⁶ The ease with which the article made this argument points to the danger of using military metaphors, as was done by NYPD officials, to describe policing.

The *Los Angeles Times* reporter wrote: “In Los Angeles, officers are trying to shed the very image that the NYPD covets [military]. Cops are getting out of cars, walking beats, putting on shorts and riding bicycles, all to be closer to the public.”⁷ The reporter, who chose to focus on the military metaphors used to describe the NYPD anticrime problem-solving methods, ignored the fact that the NYPD cops were in reality doing all of these things—probably at a rate faster than any other police department in the country.

The reporter’s view of community policing as soft is evident throughout the story. For example: “Los Angeles police are being encouraged to spend more time talking to residents and merchants about what troubles their lives, to emphasize community contacts over arrests, to consider the underlying community pressures that give rise to crime rather than focusing exclusively on criminal behavior itself.”⁸ Most advocates of community policing could say, or have said, similar words. It does not follow, however, that if police officers talk to citizens and come to understand “what troubles their lives” this is the end of their responsibility; they are still police.

This debate about New York City, if anything, has become even more heated in recent years. Mayor Rudolph Giuliani and current Police Commissioner Howard Safir are favorite targets of those who view assertive policing as “turning the police loose.” To be sure, incidents like *Louima* and *Diallo* warrant public concern; however, the idea that such events, as tragic as they were, are inevitable consequences of restoring order ignores both the benefits of the current police strategy and the reality that such incidents are not limited to recent history.⁹ Outrageous brutality and tragic accidents occurred during the post-Knapp era, when “staying out of trouble” became the NYPD’s dominant ethos as well.¹⁰

The fact that police add options to their repertoire of methods, try to limit damage, and restore functioning does not mean that conventional assertive law enforcement is disallowed as a legitimate police tactic. For example, understanding the dynamics of New York City’s “squeegee men”—unwanted car window washers who intimidate drivers into giving them money—and talking to them did nothing to deter their behavior. Careful and judicious use of law enforcement did: policing that included citations, warrant service, arrest, and jailing ultimately were required to solve the problem.¹¹

The growing practice of police using civil law to achieve criminal law objectives shows just how enterprising community and problem-solving policing can be. These tactical innovations, civil remedies such as Boston Police Department Officer Jack Fee applied, include efforts to deal with domestic violence, drug trafficking, racial harassment, disorderly behavior, and weapons possession. Civil remedies include injunctions, restitution, forfeiture, and civil fines that can be used either alone or in tandem with criminal law, as in the case of use of property forfeitures to deal with drug dealing. Civil initiatives not only add to the police inventory of authority to deal with problems but also, as Mary M. Cheh has noted: “[C]ivil remedies offer speedy solutions that are unencumbered by the rigorous constitu-

tional protections associated with criminal trials, such as proof beyond a reasonable doubt, trial by jury, and appointment of counsel.”¹² This is hardly soft policing. In fact, civil initiatives raise important strategic, legal, and constitutional issues about use of police authority.¹³

The misrepresentation of community policing as soft plays into the hands of those who are opposed to change in policing methods. Those who want to get back to “tough” law enforcement—police riding around in cars, responding to 911 calls, and occasionally conducting order maintenance “sweeps” (another terrible metaphor to describe what police do)—trivialize what has happened in New York City. Moreover, when successful assertive policing is misconstrued as combative or militarized policing, it becomes fodder for those who want to “turn the police loose.”

Citizens, politicians, and vested interest groups have always pressured police to cut legal and constitutional corners—that is, “to do what has to be done.” Whether the corner cutting is illegal searches, manhandling suspects, or “testilying,” the consequence is always the same: a police culture that is alienated from democratic values and the public and that tolerates police abuse of citizens and police corruption.¹⁴

Reopened Issues for Policing

During the 1960s, policing in the United States was profoundly affected by converging social, political, and professional and occupational forces. These forces included the triumph of progressivism as a model for local government and the installation of preventive patrol and rapid response as conceived by O.W. Wilson and other police reformers as the model of effective, efficient, and honest policing. At the same time, the rights revolution had a major impact on society’s response to mental illness, drunkenness, vagrancy, and disorderly behavior. These social forces also created the “criminal justice system” with the police as its front end and a criminal

justice educational establishment that promulgated the ideas inherent in the “system.”¹⁵

The 1960s shaped a surprisingly congruent police strategy that, while not adhered to universally, nonetheless constituted the official strategy of progressive midcentury American police. Policing became synonymous with law enforcement in which police should be out—or should get out—of the business of dealing with emotionally disturbed individuals, youths, and the problems of drunkenness, disorderly behavior, and minor offenses.

In this respect, an unwitting alliance was struck between police and civil libertarians. For many civil libertarians, the police always implicitly threaten the use of authoritative power. In this libertarian view, juvenile crime, mental illness, drunkenness, and disorder should be the sole province of social workers and advocates. If anybody should intervene, it certainly should not be the police. For police, relief from these responsibilities seemingly bailed them out of inherently ambiguous and sticky areas that had gotten them into trouble in the past. Police recognized the social control opportunities that policing disorder and drunkenness provided, yet they were inherently “messy” businesses both literally and metaphorically: literally because drunks are often unkempt, dirty, and unpleasant to manage; metaphorically because considerable societal ambiguity exists about how to deal with such problems.

Narrowing the focus to serious crime simplified life considerably for police. “Crime fighting” was easy to portray to the public and provided an occupational vision around which officers could rally. The demand for order that grew in cities during the 1980s and early 1990s, however, thrust police back into the middle of the social, legal, moral, and constitutional issues they had tried to avoid. The publication of “Broken Windows” first popularized the link between disorder and fear and hypothesized the links among disorder, fear, crime, and urban decay

that gave voice and legitimacy to citizen demands that order be restored.¹⁶ Later work by Wesley Skogan confirmed these linkages and provided even greater momentum to the move to restore order.¹⁷

By the early and mid-1990s, highly publicized programs to restore order by New York City’s Transit Police Department in that city’s subway system and the NYPD in public spaces generally, in San Francisco’s “Operation Matrix,” and in other cities once again put the police in the middle of the growing public debate about how to handle disorder.¹⁸ Policy and strategy issues once thought resolved again became issues for police. What was the proper balance between individual rights and community interests?

Questions arose both within and outside police ranks about the proper police role in handling juveniles, drunks, the homeless, and disorderly citizens:

- Is “zero tolerance” an apt phrase to describe police order maintenance? What does it mean?
- Do police have a role to play in crime prevention by working with youths as other than law enforcement officers?
- Given the lack of resources, what is the proper police role in dealing with drunks and the emotionally disturbed?
- What are the bases of authority for police to handle disorderly persons?
- Are new sources of authority for dealing with problems available, and how are they best developed and deployed?
- What new forms of training are required to prepare police for working with troubled youths and adults?
- What do community collaboration, cooperation, and accountability really mean in an operational sense?

- How are police kept from protecting narrow, parochial interests—such as keeping “strangers” out of neighborhoods and communities?
- How do police refrain from doing what citizens should do for themselves or from usurping the roles of private or other governmental agencies?

These issues, many of which were once regarded as resolved in many police circles, demand careful and thoughtful consideration. The reinvention of policing profoundly challenges contemporary police leaders, policymakers, scholars, and academics to consider new methods of active political and community control of police discretion and the development of new police guidelines.¹⁹

Police, Law, and the Constitution

A lieutenant in a moderately large police department recently described the activities of a special antiviolenence unit he headed that concentrated on confiscating guns from youths. The lieutenant was bright, capable, and intimately familiar with Lawrence Sherman’s research on gun confiscation in Kansas City and the New York City efforts to reduce gun carrying.²⁰ In the middle of the conversation about gun confiscation, the lieutenant acknowledged somewhat ruefully, “We’re really pushing the Fourth Amendment here.” I asked him, “What special policy guidelines did the department provide to officers to ensure that they acted appropriately, at least by departmental standards?” My question was prompted by my work in New York City with the Transit (subway), Metro North (Grand Central Terminal), and Long Island Railroad (Penn Station) police departments. I had helped the departments develop policies and tactics to deal with disorderly behavior that had taken them to the edge of the law as well. Indeed, Robert Kiley, chairman of the Metropolitan Transportation Authority, and I understood very well that we would be going to court as soon as those policies and tactics were implemented.²¹ From the beginning of our activities,

we prepared for the legal, constitutional, and moral battles that would be forthcoming when we challenged existing practices and traditions.

The lieutenant’s response, however, confirmed that although the department’s gun strategy deliberately brought it to the verge of illegality, neither the department nor the unit had developed, or had considered developing, an explicit policy statement about its antigun tactics that would communicate its policies to the public and guide and control either the unit’s—or its officers’—field practices. In all likelihood, the department’s rules and regulations specified that officers would always operate legally and contained the routine homage to the Fourth Amendment and the law regarding search and seizure. Moreover, it is impossible to write a policy statement that covers every issue that officers would confront, and it would be unwise to try. The former concern, the impossibility of writing an effective policy statement, reflects a widely shared belief in policing—and certainly not a capricious belief—that practical circumstances are so complicated that every exigency cannot be covered in a policy statement. Regarding the latter concern—that it would be unwise to try—this reflects what is often viewed as true in policing: some things the police do that take them to the edge of the law have the potential to be so controversial that they are best left unmentioned and up to the discretion of officers.

My concern about the lieutenant’s statement was also driven by my observations of patrol practices during the early 1980s in four police departments that were known to confiscate large numbers of guns. The great majority of guns were confiscated through “traffic enforcement” at all four sites. In the large midwestern city where I spent the most time observing, police (routinely in two-person patrol cars) would stop cars of “interest,” almost invariably legitimately, on the basis of some traffic violation or faulty equipment. A car of interest always contained one or more male youths. All of the youths were African-American, but nearly everyone in this area of the city was African-American except for some police.

In conversations with officers, I learned that they did not stop cars carrying women because a woman could not be searched unless a female police officer was present. More often than not, no female officer was on site, meaning one had to be called in from elsewhere in the city—a process that consumed too much time. Likewise, the officers did not stop cars driven by males over the age of 30 because “even if they were carrying, they probably wouldn’t hurt anyone except in self-defense,” according to one officer.

Once a car was stopped, typically, one officer approached the vehicle and asked the driver to step out. The other officer stood either in back of the car or on the passenger side. As the driver stepped out of the car, the officer asked for a driver’s license and for the man to step to the rear of the car to be sure that they were out of traffic. The officer then indicated the basis for the stop—generally something like “you were over the center line” or “your left tail light is out.” After some exchange, the officer would ask: “You wouldn’t mind if my partner checked your trunk, would you?” Again, almost invariably, the driver acquiesced. And so it progressed—the next request was to check inside the car. (If passengers were in the car, they were asked to get out and join the officer and driver at the back of the car.) Depending on the circumstances, the driver and passengers would be “patted down.”

What I observed, of course, was a street game, the rules of which almost everyone understood. The traffic offense was legitimate and worthy of a ticket. Each party was negotiating: the citizen to get out of a ticket and the officer to search the car. The request to search the trunk was the opening gambit in the negotiation, and if the driver refused, the officer, depending upon his or her assessment of suspicious behavior, personal safety, or some other justification, could have insisted on a search. A refusal, however, probably clinched the ticket. It cannot be overemphasized, however, how politely and respectfully officers in this city managed these interactions. It was

clear from their behavior, as well as from their communications with me, that the officers wanted to avoid conflict.

In observing such transactions, one could not help but be impressed by the skill, courtesy, and reasonableness of most of the officers. They were dealing with a serious problem, gun carrying, and behaved in an exemplary fashion. Nevertheless, it is unclear just how voluntary most of the searches I had observed really were. These were really pretext stops. In essence, the police established a quid pro quo: you let me search your car, and I let you out of a ticket. Moreover, I observed officers who interpreted a refusal to allow their search as a threat to their safety that justified a search. While such transactions or subsequent interpretations may not have occurred in Indianapolis or Kansas City during the research there, I am reasonably certain that the lieutenant mentioned above was referring to practices not dissimilar to those I had observed in the early 1980s when he discussed “pushing the Fourth Amendment.”²²

The point here is not to judge whether the officers I observed were justified in what they were doing—clearly, their performance was in line with common practice in the department. My concerns, unrelated as they are to squeamishness about pushing the law, have to do with the failure of police departments to develop clear policy statements regarding some of the serious and complex issues they encounter. (See “Democracy, Policing, and Discretion.”)

Defining quality police work, recognizing it, and managing it are internal police matters and should be pursued to improve policing.²³ That good policymaking reduces litigation is an added benefit of competence.

The current demands placed on police and the strategic consequences of responding to them in new and innovative ways underscore the inherent complexity of good police work and the pervasive role discretion plays in policing. The issues described above—the inherent assertiveness

of the new models of policing, the individual rights versus community interests issue, and the legal and constitutional issues that are raised by new police tactics—provide further evidence of just how complex policing is.

While the complexity of police work and the discretion required in policing may be widely acknowledged, the impact of this awareness on police practice and administration is not clearly distinguishable. Arguably, attempts to control and shape police behavior are still largely mired

Democracy, Policing, and Discretion

Although police discretion cannot be structured by simply proscribing certain actions or issuing policy statements, departments that fail to develop clear policy guidelines about complex issues face several serious concerns:

- Cutting moral, legal, and constitutional corners, regardless of the high-minded purposes for doing so, creates and perpetuates the morally ambiguous nature of police work in its literal sense—that which line police officers do.^a One of the primary consequences of such moral ambiguity is an isolated police culture and its “blue curtain.”
- Regardless of the skill and grace of officers in “doing what has to be done,” cutting corners sends improper messages to citizens about how problems should be solved. Both those involved with officers in the quid pro quo and those who demand that police “do what has to be done”—whether citizens or politicians—are given a terrible and dangerous message about policing a democratic society.
- When failing to wrestle with the complex moral and legal issues of social policies, departments risk litigation, the outcome of which can seriously jeopardize current and future departmental efforts to deal with serious problems. The U.S. Supreme Court’s inquiry into criminal investigation was the result of poor police practices and, more important in this context, management’s failure to rein in and control detectives. In fact, police departments and cities throughout the United States are currently under serious legal assault from organizations such as the New York and American Civil Liberties Unions and other libertarian and advocacy groups.^b
- Most problems can be solved, or at least managed, once they are properly understood and a range of alternative solutions has been explored. Perhaps the best example is graffiti in New York City’s subway system. Once thought insoluble, the problem yielded to creative and thorough work. This does not mean it was completely eradicated—New York’s graffiti artists are a dedicated lot—but it is a problem that, with vigilant maintenance of subway cars, can be managed and kept to a minimum.

Notes

a. Bittner, Egon, *Aspects of Police Work*, Boston: Northeastern University Press, 1990: 4. Also see Kelling, George L., “How to Run a Police Department,” *City Journal* 5 (4) (Autumn 1995): 34–45.

b. Kelling, George L., and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York: Free Press, 1996: 38–69.

in the organizational and control apparatus that characterized the far simpler, mid-20th century view of policing: command and control, quasi-military training, factorylike models of supervision, and extensive rules and regulations. These control mechanisms, which are irrelevant to street policing, are based on the Taylor model that has dominated organizational thinking for most of the 20th century.²⁴

During my work with the New York City Transit Police Department, in subsequent work with other police departments, and in reviews of departmental rules and regulations, general orders, and other policy materials, I was struck by the departments' virtual silence about actual police work. A review of numerous departmental written materials showed that the majority dealt with internal administrative issues. A significantly smaller number addressed "hot" issues: use of force, hot pursuit, lineup, and arrest procedures.²⁵

Frank Vandall, Professor of Law at Emory University, made a similar observation about training materials in 1976: "An examination of contemporary police training materials reveals that they fail to deal with the concept of discretion in law enforcement. They use such vague phrases as 'proper action,' 'necessary action,' and 'cool thinking' to gloss over the common discretionary problems involved in dealing with discretionary situations."²⁶

To give another example, I was asked recently to review an eastern State's recruit training materials considered by many to represent state-of-the-art training for community policing. One of the first sections I checked was "Traffic Stops." After an introduction that included pieties stating that the purpose of traffic stops was not to give tickets but, rather, to educate citizens about traffic safety, the section outlined, in great detail, how to make a traffic stop. Properly, the section communicated considerable concern about officer safety. (Indeed, it dwelled on the subject to such an extent that I could not help but infer that the purpose of traffic stops was to keep officers safe.) But that is all there was. Not one word—and I checked other

sections that dealt with similar issues—was given to advise students about how they should use their discretion to give or not to give tickets. Yet, the only discretionary police acts that the majority of citizens will experience or observe will involve traffic violations.

My own personal experience with a traffic stop is instructive here. On the New Hampshire Expressway, I was stopped going 72 miles per hour when the limit was still 55. When the officer approached me, he made the typical request for my license and registration but asked me as well: "Was there any reason why you were going 72 miles per hour?" It was a question. There was nothing sarcastic, confrontational, or entrapping about it. I said: "No, I was just smelling the barn and eager to get home. I have no excuse." He replied: "I just can't give you 17 miles over the limit—7, sure. Maybe 10. But not 17." I understood and told him so. He wrote the ticket for 64, which was 9 over the limit. I didn't like getting the ticket, but I had no sense of injustice or anger. His opening question, which I heard as a sincere request for information about whether I had some justification for speeding, acknowledged his discretionary authority and acknowledged, as well, that I might have had a good reason, and he was prepared to consider it. The respect with which the officer treated me engendered my respect for him.

The gaps in police training and guideline development that are so typical, however, retard the development of police knowledge, impede the development of genuine professionalism, diminish the quality of police services, invite the use of personal whim as the basis for discretionary judgments, and unnecessarily expose police officers and departments to liability suits. Such circumstances are not unique to American policing. Joanna Shapland and Jon Vagg identify similar circumstances in England:

[S]enior officers did not regard area beat work as a specialism within uniformed work or even as a particularly skilled task, in the way that they saw IRV [immediate response vehicles] and public

order work. Special training, meetings on good practice, and manuals of relevant skills were conspicuously absent—in contrast to the position in many other areas of police work. ABOs [area beat officers] were thrown on their own resources and were often supervised by sergeants who had joined the force at the time when patrols in panda cars [small cars used by patrol officers] were being introduced. These sergeants had now to learn what area beat policing was about at the same time as their constables were finding out how to do it. The result was ironic. The police themselves had precious little to draw on as a model other than television images of Dixon of Dock Green [a previously popular English television show about police].²⁷

The issue here is the state of the art of guidelines, policies, rules and regulations, and training materials and not necessarily how police actually work. I continue to walk, ride in patrol cars, and ride bicycles with officers. The skill, sensitivity, and capability of many police officers—such as I have described above and have experienced throughout my career in police research—is striking. (I have seen terrible policing as well.)

Two points stand out. First, police are almost uniformly unable to articulate what they do, why they do it, and how they do it. Most, when queried, resort to the jargon of the field: "common sense," "proper action," and so forth. Second, virtually all of their order maintenance, peace-keeping, and conflict resolution activities are unofficial. Except for personal notes officers take down, no records are kept of these activities. It is only a slight exaggeration to say that the only way that the activities can become official is if someone files a complaint against the officer.²⁸

There are signs of hope. In some cities, police managers go beyond paying mere lip service to complexity and discretion and find alternative models of training, supervision, and control that reflect the realities of how police work is carried out. The San Diego Police Department's policy statement on undocumented persons, for example,

provides sophisticated guidelines about a very complex issue confronting police departments in cities near national borders—the extent to which local police should look for violations of national immigration laws. (See Appendix B, "San Diego Police Department Policy Statement.") This problem could easily have been left to officer "discretion," that is, to ignore it administratively and let officers "work it out" in the field. Instead, the department thought through its values, mission, and functions and elaborated a policy that put public safety and harmony above aggressive attempts to ferret out undocumented aliens.

What Is the Future of Guidelines Development?

The shifts in policing now under way cannot occur unless police departments are reorganized to manage literal police work. This is why many community policing programs often fail to meet their stated goals. For most police departments, organizational and administrative "business as usual" is still the rule. Most police departments have developed few materials about the day-to-day problems that confront and, at times, plague patrol officers.

Moreover, a body of police management literature is being developed that reflects more realistically the way police work is carried out.²⁹ Issues such as the role accountability of midlevel managers, supervision in a highly decentralized organization, and leadership have been brought to the center of police attention. One such experiment that has received enormous publicity is the interactive control mechanism called COMPSTAT that William Bratton borrowed from the private sector and adapted for NYPD midlevel managers (precinct commanders).³⁰

The method, first described by Robert Simon of the Harvard Business School, combines management, supervisory, and peer control into a highly visible process that rivets the midlevel manager's attention on precinct problems.³¹ As exciting and promising as this innovation is,

however, it is still unclear whether such methods will be adapted to line police or how departments can develop guidelines to shape line officers' discretion—the most widespread and invisible discretion in criminal justice.

Despite the complexity of police work, generic sets of guidelines about the substantive problems with which police deal—for example, disorderly behavior in a downtown area—can be developed. Such guidelines can serve as the basis for police training, supervision, and practice; identify competent police work and provide the basis for officer accountability; help to articulate a genuinely professional police point of view; and, yes, even be used to defend police actions in litigation.

Notes

1. For a discussion of “doing something, now,” see Bittner, Egon, *The Functions of Police in Modern Society*, Cambridge, MA: Oelgeschlager, Gunn and Hain, 1980.
2. Marans, Steven, and Jean Adnopo, *The Police-Mental Health Partnership: A Community-Based Response to Urban Violence*, New Haven, CT: Yale University Press, 1995.
3. For the best summary of this research, see Mary Ann Wycoff, “The Role of Municipal Police Research as a Prelude for Changing It,” Mimeograph, Washington, DC: Police Foundation, 1982.
4. Goldstein, Herman, *Problem-Oriented Policing*, Philadelphia, PA: Temple University Press, 1990.
5. Many have questioned whether Bratton was really an advocate of community policing. See Kelling, George L., and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York: Free Press, 1996. Also see Bratton,

William W., and Peter Knobler, *Turnaround: How America's Top Cop Reversed the Crime Epidemic*, New York: Random House, 1998.

6. Newton, Jim, “Police: New York Police Claim Their New Militarism Has Led to the City's Startling Drop in Crime,” *Los Angeles Times*, December 24, 1995, A1.
7. Ibid.
8. Ibid.
9. The *Louima* incident involved the torture of a Haitian immigrant by New York City police officers—a truly ugly episode. In the *Diallo* incident, 4 officers fired 41 shots and killed an unarmed African man.
10. The Knapp Commission was a 1972 investigation of corruption in the New York City Police Department that many believe led to a departmental preoccupation with police corruption and abuse.
11. Kelling and Coles, *Fixing Broken Windows*, 141–143.
12. Cheh, Mary M., “Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction,” *The Hastings Law Journal* 42 (July 1991): 1325–1413.
13. For a discussion of civil initiatives, see Cheh, “Constitutional Limits.”
14. “Testilying” refers to systematic police lying during court testimony.
15. See Kelling and Coles, *Fixing Broken Windows*, especially Chapter 3.
16. Wilson, James Q., and George L. Kelling, “Broken Windows: The Police and Neighborhood Safety,” *The Atlantic Monthly* (March 1982): 29–38.

17. Skogan, Wesley, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods*, New York: The Free Press, 1990.

18. “Operation Matrix” was a joint police/social work effort to reduce disorder and deal with homelessness, especially in parks.

19. Livingston, Debra, “Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing,” *Columbia Law Review* 97 (3) (April 1997): 551–672.

20. Sherman, Lawrence W., James W. Shaw, and Dennis P. Rogan, *The Kansas City Gun Experiment*, Research in Brief, Washington, DC: U.S. Department of Justice, National Institute of Justice, January 1995, NCJ 150855.

21. For a detailed discussion of the legal issues and how they were resolved, see Kelling and Coles, *Fixing Broken Windows*, 38–69.

22. For a brief description of the gun confiscation program in Kansas City and an anecdote from Indianapolis, see Sherman, Shaw, and Rogan, *The Kansas City Gun Experiment*, 5–6.

23. Goldstein, Herman, “Confronting the Complexity of Police Functioning,” in *Discretion in Criminal Justice: The Tension Between Individualization and Uniformity*, ed. Lloyd E. Ohlin and Frank J. Remington, Albany, NY: State University of New York Press, 1993: 53; and Goldstein, Herman, “Police Policy Formulation: A Proposal for Improving Police Performance,” *Michigan Law Review* 65 (April 1967): 1123.

24. Kelling, George L., and William J. Bratton, “Implementing Community Policing: The Administrative Problem,” in *Perspectives on Policing*, No. 17, Cambridge, MA: U.S. Department of Justice and Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University, July 1993.

25. Kelling and Coles, *Fixing Broken Windows*, 182–185.

26. Vandall, Frank, *Police Training for Tough Calls: Discretionary Situations* (limited edition), Atlanta, GA: Emory University, Center for Research in Social Change, 1976.

27. Shapland, Joanna, and Jon Vagg, *Policing By the Public*, London: Routledge, 1988.

28. Kelling, George L., “How to Run a Police Department,” *City Journal* 5 (4) (Autumn 1995): 35–44.

29. See, for example, Sparrow, Malcolm K., Mark H. Moore, and David M. Kennedy, *Beyond 911: A New Era for Policing*, New York: Basic Books, 1990.

30. Bratton and Knobler, *Turnaround*.

31. Simon, Robert, *The Mental Health Practitioner and the Law: A Comprehensive Handbook*, ed. Lawrence E. Lifson and Robert I. Simon, Cambridge, MA: Harvard University Press, 1998.

The Discovery of Discretion and Its Meaning

In 1965, Frank Remington wrote, “The police should play a major role in fashioning and implementing a proper law enforcement policy for their community.”¹ Remington drew an analogy between the Federal Trade Commission, an administrative agency with the responsibility to develop enforcement policy, and local police departments, which have a similar responsibility. This was a radical departure from past thinking about policing. Legislatures and city councils made laws, and the police responsibility was to enforce them impartially. A generation of police had been reared on the idea that law enforcement was what they did: individuals broke the law, the police arrested them. The police job was just that simple.

Implicit in Remington’s proposal was an alternative view of the police as a de facto administrative agency of city government whose work was characterized by repeated use of discretionary judgment. This discretion existed not only at executive levels but also at every level of the police organization, especially with the practicing police officer. Remington’s views were based on research he directed during the late 1950s, specifically the American Bar Foundation (ABF) Survey of Criminal Justice.

Until the 1950s and 1960s, surveys of police and criminal justice agencies relied on official reports and statistics.² Generally conducted on a city level by local elites aided by professional consultants like Bruce Smith, police surveys studied the extent to which local police departments followed the reform model of policing, especially their adherence to its organizational and administrative principles. What police did—their literal work—remained out of public view.

Survey of Criminal Justice Agencies

In 1953, Supreme Court Justice Robert H. Jackson, believing criminal justice to be in a state of crisis, called for a major national study of criminal justice agencies by the American Bar Association (ABA). At first administered by the ABA and funded by the Ford Foundation, the survey also became the first project of the ABF, the ABA’s newly created research arm. As first conceived, the study was designed to apply methodologies used in previous local surveys: official data would be analyzed to learn the extent to which agencies adhered to prescribed standards.

Not atypically, expert consultants devised the original project and secured its funding. O.W. Wilson, the dominant police theorist of the 20th century, for example, compiled the checklist that was to be the foundation for the study. Other experts helped devise similar plans for examining other criminal justice agencies.³ Herman Goldstein, who was a staff member of the original survey, described the early plans:

If the ABF survey had followed its original plan for that portion of its inquiry relating to the police, it would not have added much to the sparse knowledge then available. Like the police field itself, the plan was heavily influenced by the prevailing perception of what was important in policing—the technical and administrative aspects of running a police agency. The detailed agenda for inquiry identified 15 different categories of information that were to be systematically acquired, with all but two categories relating to the organization, administration, staffing, and equipping of a police agency. The product would have been an inventory of the degree to which the police

agencies conformed with the then-prevalent standards for managing a police agency.⁴

Under the leadership of Remington and Lloyd Ohlin (Emeritus Touroff-Glueck Professor of Criminal Justice at Harvard Law School), however, the survey went in a different direction. In some respects, the new direction was an outgrowth of a serendipitous mix of the University of Wisconsin Law School’s “law in action” tradition as embodied by Remington and the Chicago School of Sociology’s tradition of field observation as represented by Ohlin, a Ph.D. from the University of Chicago.

Ohlin notes that Remington, the first staff director of the study, “decided from the outset that the ABF survey would be different from earlier studies, much less concerned with official summary statistics and more concerned with the analysis of the criminal justice system in daily operation.”⁵ In other words, the survey would study law as it operated rather than law as it was found in the books and, as a consequence, would rely heavily on observational data of low-level decisionmaking. Field staff filled out the checklists devised by the experts to be true to the original proposal, but only for that purpose.⁶ Remington and Ohlin’s decision to reshape the survey transformed it into one of the most important social/legal research studies of the 20th century.

Initially, three sites were selected for the study: Kansas, Michigan, and Wisconsin. Additional sites were to be added later. After the survey began in 1956, however, researchers, confronted by the enormity of the study and the data set, decided to limit their study to the original three sites.

Study Findings

The study focused on the line personnel in criminal justice agencies—police, prosecutors, judges, and corrections officers—conducting their routine work. Conventional thinking was turned on its head:

- Discretion was found to be used at all levels of criminal justice organizations. The idea that police, for example, made arrest decisions simply on the basis of whether or not a law had been violated—as a generation of police leaders had led the public to believe—was simply an inaccurate portrayal of how police worked.
- Low-level decisionmaking by line personnel in light of practical and real-life considerations was found to be a significant contributor to the crime control and problem-solving capacity of criminal justice agencies. This was true not only for police but for prosecutorial and other decisionmaking personnel as well.
- Criminal law was used to solve many social problems, not just serious crimes.
- Behaviors designated as unlawful in criminal codes, such as assault, were found to be extraordinarily diverse in nature and included everything from private debt settlement and spousal abuse to attacking strangers.
- The policies of each criminal justice agency were found to have an impact on other criminal justice agencies.⁷

Given the pervasive use of discretion in daily police work, the most obvious question the survey raised was why legal scholars, criminal justice academics, and practitioners had failed to note it in the past—why were these findings such a surprise.⁸ The answer, of course, testified to the power of reform ideology and its imagery. As Samuel Walker notes:

The intriguing question, of course, is how 40 crime commissions, which involved the best minds of their day—Felix Frankfurter and Roscoe Pound, among others—could fail to see such a crucial feature of the administration of justice. The answer is that phenomena which are self-evident to one generation are not necessarily evident to others. This highlights the role of paradigms in scientific research. Paradigms describe observed phenomena, define problems, and guide research.

Phenomena that fall outside the prevailing paradigm either are not noticed at all or are dismissed as unimportant and not worthy of investigation. So it was with discretion for early crime commissions.⁹

Reflecting on these findings, Kenneth Culp Davis, emphasizing the central role of police in the justice process, estimated that about half of the discretionary decisions made by criminal justice agencies were made by police.¹⁰ He added: "The police are among the most important policymakers of our entire society. And they make far more discretionary determinations in individual cases than any other class of administrators; I know of no close second."¹¹

Throughout the 1960s and 1970s, scholars, fascinated by how low-level, low-visibility discretion was used by patrol officers, studied police functioning. Not surprisingly, study after study confirmed the ABF findings: police work is complicated, a small portion of police time is spent on criminal matters, and police use discretion throughout their work.¹²

Consequently, some scholars and policymakers began to study how to control or shape discretion. At this point, their thoughts began to diverge. Some researchers focused on the abuses of authority that were reported in the survey's findings. A few advocated eliminating police discretion altogether, at least in the decision to arrest. Joseph Goldstein stated this point of view most strongly:

The ultimate answer is that the police should not be delegated discretion not to invoke the criminal law. . . . [T]he police should operate in an atmosphere which exhorts and commands them to invoke impartially all criminal laws within the bounds of *full enforcement*. . . . Responsibility for the enactment, amendment, and repeal of the criminal laws will not, then, be abandoned to the whim of each police officer or department, but retained where it belongs in a democracy—with elected representatives.¹³

Eliminating police discretion completely, even in the decision not to arrest, has always been a minority view. Goldstein's view has been most intensely debated as it pertains to domestic violence—a problem largely invisible to the public prior to the ABF report. Prosecutorial discretion in the handling of domestic violence was also highlighted by early ABF reports.¹⁴ Since then, discussion, debate, and policy regarding police and prosecutorial handling of domestic violence have changed directions several times. A review of research on the impact of criminal justice responses to domestic violence testifies, more than anything, to the complexity of the problem and the need for preventive problem-solving approaches.¹⁵

Notes

1. Remington, Frank J. "Police in a Democratic Society," *Journal of Criminal Law, Criminology and Police Science* (1965): 361.

2. Leonard, V.A., *Survey of the Seattle Police Department*, Seattle, WA, 1945.

3. Personal interview with Herman Goldstein, Madison, WI, September 2, 1994.

4. Goldstein, Herman, "Confronting the Complexity of Police Functioning," in *Discretion in Criminal Justice: The Tension Between Individualization and Uniformity*, ed. Lloyd E. Ohlin and Frank J. Remington, Albany, NY: State University of New York Press, 1993: 28.

5. Ohlin, Lloyd E., "Surveying Discretion by Criminal Justice Decision Makers," in *Discretion in Criminal Justice: The Tension Between Individualization and Uniformity*, ed. Lloyd E. Ohlin and Frank J. Remington, Albany, NY: State University of New York Press, 1993: 6.

6. Personal conversations with Herman Goldstein.

7. The findings were first used in Kelling, George L., "Toward New Images of Policing:

Herman Goldstein's Problem-Oriented Policing," *Law & Social Inquiry* 17 (3) (Summer 1992): 545.

8. The final reports were published in five books, all edited by Frank Remington and published by Little, Brown and Company (Boston, MA): Lefave, Wayne, *Arrest: The Decision to Take a Suspect Into Custody* (1965); Newman, Donald J., *Conviction: The Determination of Guilt or Innocence without Trial* (1966); Tiffany, Lawrence P., Donald M. McIntyre, Jr., and Daniel Rotenberg, *Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment* (1967); Dawson, Robert O., *Sentencing: The Decision as to the Type, Length and Conditions of Sentence* (1969); and Miller, Frank W., *Prosecution: The Decision to Charge a Suspect with a Crime* (1970).

9. Walker, Samuel, *Taming the System: The Control of Discretion in Criminal Justice, 1950–1990*, New York: Oxford University Press, 1992: 7–8.

10. Davis, Kenneth Culp, *Discretionary Justice: A Preliminary Inquiry*, Baton Rouge, LA: Louisiana State University Press, 1969: 166.

11. *Ibid.*, 222.

12. Wycoff, Mary Ann, *The Role of Municipal Police Research as a Prelude to Changing It*, Washington, DC: Police Foundation, 1982.

13. Goldstein, Joseph, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice," *Yale Law Journal* 69 (4) (1960): 587.

14. Miller, Frank, *Prosecution: The Decision to Charge a Suspect with a Crime*, ed. Frank J. Remington, Boston: Little, Brown and Company, 1970.

15. For a summary of the thinking in the area of domestic violence and an example of an individual author's evolution in thinking, see Parnas, Raymond I., "Criminal Justice Responses to Domestic Violence Issues," in *Discretion in Criminal Justice: The Tension Between Individualization and Uniformity*, ed. Lloyd E. Ohlin and Frank J. Remington, Albany, NY: State University of New York Press, 1993: 175–210.

The Police Guidelines Movement

Other scholars have seen police discretion in terms that have differed from those of Joseph Goldstein. Frank Remington, Herman Goldstein, and James Q. Wilson, among others, were aware of the possibilities of abuse but understood both the inevitability of discretion and the inherent opportunities for problem solving it offered police and other criminal justice agencies. Wilson, for example, wrote in 1968: “The patrolman, in the discharge of his most important duties, exercises discretion necessarily, owing in part to his role in the management of conflict and in part to his role in the suppression of crime.”¹ The issue was to eliminate unnecessary discretion and enhance and shape necessary discretion.

During the mid-1960s, about the same time the American Bar Foundation’s *Survey of Criminal Justice* reports were first published, President Lyndon Johnson created the Commission on Law Enforcement and Administration of Justice, his answer to Barry Goldwater’s challenges about crime during the 1964 presidential race. The Commission was set up to study crime and society’s response to it. Its findings, as presented in its report entitled *The Challenge of Crime in a Free Society*, have shaped criminal justice thinking during the past 35 years.

How the findings in the ABF’s *Survey on Criminal Justice* and the Commission’s *Challenge of Crime in a Free Society* support and contradict each other is not at all clear. The history of this era in criminal justice has not yet been written.² Clearly the commission captured popular and professional thinking and eclipsed the ABF’s work—popularly, professionally, and sadly, it should be noted, academically.

One reason why the ABF’s survey did not receive the recognition it deserved was because it

examined an enormous amount of data and first began presenting survey data in 1965, approximately 9 years after the initial work began (1956) and almost simultaneously with the work and publications of the President’s Commission (1967). (The five volumes of the survey were published between 1965 and 1970.)

The ABF’s survey and the President’s Commission came to be linked in a number of ways. Lloyd Ohlin, one of the survey leaders, became an associate director of the Commission’s staff. Both Frank Remington and Herman Goldstein, also survey leaders, consulted with Commission staff and its director James Vorenberg. Ideas first raised in the survey found their way into the Commission’s report, especially the use of discretion and the idea of a criminal justice system. Yet, in the case of police, the President’s Commission kept itself anchored in the reform tradition. The report emphasis is response time, administrative improvements, and police as the front end of the criminal justice system. It focuses police, as well as other criminal justice agencies, on case processing—an orientation that atomizes and obscures complicated neighborhood and community problems.

On balance, system improvement won the day in the Commission’s report. Relations with the community had to be improved and better personnel had to be recruited, yet the basic policing paradigm went largely unchallenged: police business was to ride around in cars and respond to calls for service. Police in the 1960s, who were insular and suspicious of outsiders, especially the liberal academics who staffed the Commission, nonetheless found their hand had been strengthened. Police were now part of a criminal justice “system,” and their business was clearly defined as arresting and processing

offenders. The full impact of the ABF’s survey became apparent in the late 1980s and early 1990s, when community and problem-oriented policing would refocus attention on the true complexity of policing.

Nonetheless, minor themes in the Commission’s report pointed to the impact of the ABF efforts in its call for guidelines for controlling police discretion:

Police departments should develop and enunciate policies that give police personnel specific guidance for the common situations requiring exercise of police discretion. Policies should cover such matters, among others, as the issuance of orders to citizens regarding their movements or activities, the handling of minor disputes, the safeguarding of the rights of free speech and free assembly, the selection and use of investigative methods, and the decision whether or not to arrest in specific situations involving specific crimes.³

The truly remarkable outcome of the President’s Commission can be found in its companion report, *Task Force Report: The Police*. Chapter 2, which was authored by Frank Remington and Herman Goldstein, remains the definitive source on police policymaking and structuring discretion.⁴ The section entitled “The Need to Recognize the Police as an Administrative Agency with Important Policymaking Responsibility” clearly is not only out of the “reform box” but also so far ahead of the field that its full impact is yet to be felt.⁵ Remington and Goldstein wrote:

There are two alternative ways in which police can respond to the difficult problems currently confronting them:

(1) The first is to continue, as has been true in the past, with police making important decisions, but doing so by a process which can fairly be described as “unarticulated improvisation.” This is a comfortable approach, requiring neither the police nor the community to face squarely the difficult social issues

which are involved, at least until a crisis—like the current “social revolution”—necessitates drastic change.

(2) The second alternative is to recognize the importance of the administrative policymaking function of police and to take appropriate steps to make this a process which is systematic, intelligent, articulate, and responsive to external controls appropriate in a democratic society; a process which anticipates social problems and adapts to meet them before a crisis situation arises.

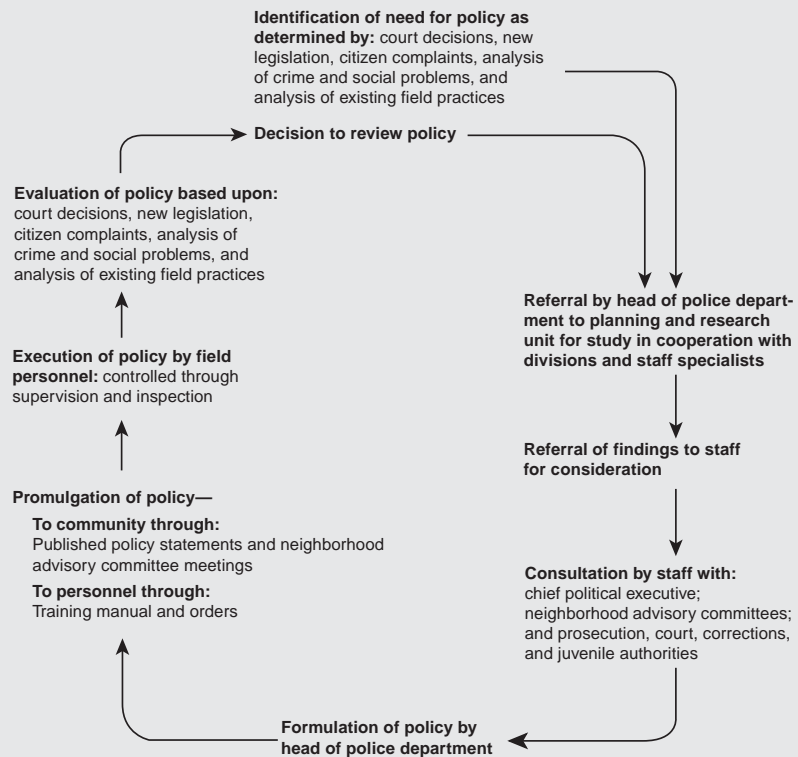
Of the two, the latter is not only preferable; it is essential if major progress in policing is to be made, particularly in the large, congested urban areas.⁶

Included in Remington and Goldstein’s formulation is a diagrammatic representation of the policymaking process. (See “Formulation and Execution of Police Policy.”)⁷

For the most part, outsiders to policing were the first to pick up on Remington and Goldstein’s line of thought and advocate the development of strong guidelines similar to those used by administrative agencies. These advocates included scholars, reformers, lawyers, a few renegade police chiefs, and others who believed that beyond the guidance that courts, legislatures, prosecutors, and local officials could provide to shape officer discretion, police themselves had to develop their own professional guidelines. Guidelines, as distinguished from administrative rules in the minds of those advocating formal and public policymaking, would assist police in controlling crime, increase police responsiveness and accountability, allow for police input into policymaking and legal deliberations, and, as Warren LaFave suggests, encourage courts to respect police professional judgment.⁸

Convinced that the development of guidelines was central to improving police performance and accountability, the Police Foundation—created by the Ford Foundation in 1970 with a \$30 million endowment—funded two early

Formulation and Execution of Police Policy



Adapted from: President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice*, Washington, DC: U.S. Government Printing Office, 1967: 105.

major efforts to develop guidelines. One was a program in rulemaking at Arizona State University Law School under the direction of then faculty member Gerald Caplan. The second was an effort in the Boston Police Department (BPD) under the direction of Sheldon Krantz who, at that time, directed the Center for Criminal Justice at Boston University.

Caplan's Arizona State project helped 10 police departments develop model policies that would "channel" police discretion through "carefully researched and articulated rules—rules formulated in categories meaningful to a policeman, rather than law textbook groupings not related to the situations likely to be encountered on the next tour of duty."⁹ Krantz's efforts in the BPD were more focused, concentrating initially on three areas of criminal investigation—search warrants, motor vehicle searches, and searches incidental to arrest—and involved the use of task forces composed of line as well as administrative staff. Later the efforts expanded to include additional investigative areas as well as drug enforcement issues.

Herman Goldstein was prescient when he wrote in 1967:

The overall picture, however, reflects a reluctance on the part of police administrators to establish policies to fill the existing void. This reluctance is in sharp contrast to the strong tradition within police agencies for promulgating a variety of standard operating procedures to govern the internal management of the police force.¹⁰

Academics, scholars, and lawyers might want police to develop guidelines, but the insularity of police and their reluctance during the 1950s, 1960s, and much of the 1970s to allow any outsider to get involved in the business of policing doomed efforts such as the Caplan and Krantz projects.

Although the development of guidelines was a promising means of strengthening police

practice, police would have little to do with such efforts. In retrospect, Caplan remarked: "The timing was just not right. We could get a few police staff members to get involved in each department we worked with, but the resistance to outsiders in police departments was so strong that we really couldn't get much done."¹¹

With no reports and few products—model rules were developed but, for the most part, shelved—the project, like team policing in many cities, simply faded away. Likewise, although Krantz found he could generate enthusiasm in task force members, he could not generate any enthusiasm for guidelines in either the BPD or other departments. In retrospect, Krantz believes that a focus on routine police work, rather than the issues studied, would have been a more profitable approach. Even at that level, however, the field just was not ready.¹²

To be sure, a few chiefs of police understood the need for guidelines and worked to develop them, but they were far from the norm, especially during the 1960s and 1970s. Working with Caplan, Chief Jerry Wilson in Washington, D.C., developed guidelines for eyewitness identification procedures during the late 1960s to ensure police practices that were both effective and legal.¹³

Likewise, Commissioner Patrick V. Murphy, in 1971, initiated guidelines in New York City to mold police use of force, especially deadly force. Two of the most innovative chiefs of this era were Robert M. Igleburger of Dayton, Ohio, and Frank Dyson in Dallas, Texas. While Caplan and Krantz focused on model rules and regulations that could be adopted by individual police departments, Igleburger and his administrative assistant Frank A. Schubert, now associate professor of criminal justice at Northeastern University, developed guidelines that were location and problem specific.¹⁴ Funds for this effort were provided by the Police Foundation in 1972.

Akin to Krantz's work, line police officers who had to deal with specific problems were integrated into the decisionmaking process. Going

beyond earlier efforts, however, Igleburger and Schubert included in each task force citizens who were affected by the problems. For example, during the early 1970s, Dayton experienced friction between students and residents in a working class neighborhood adjacent to the University of Dayton. Not atypically, students who wanted to live off campus sought inexpensive rooms and apartments in the neighborhoods surrounding the campus. The conflict arose between working parents who wanted the neighborhood to quiet down by 10 p.m. or 10:30 p.m., especially on weeknights, and students who, after a day of classes and studying, wanted to engage in other activities until the early morning hours. The result, of course, was repeated calls to the Dayton police. Disturbance violations of one form or another, especially noise violations, were the most common complaints.

As part of the police/public policymaking project, Schubert, along with neighborhood officers, polled residents and students, met repeatedly with both, and learned more about the neighborhood and its problems. Once the police understood neighborhood standards about noise and other issues that could cause conflict between students and other residents, they developed guidelines that police would use to enforce those standards. The standards and guidelines were then printed and widely distributed to all the concerned parties. (See “Dayton, Ohio, Issues Guidelines Related to Student and Nonstudent Residents.”)

As Schubert makes clear, issuance of the guidelines was not a once-and-for-all determination. Each year the process was repeated to update policies and to ensure that new students, residents, and police understood and endorsed police policies regarding enforcement of bans on noise and other forms of disturbance.¹⁵

Just as the time was not right for model rule-making during the 1970s, the time was not right for public policymaking in Dayton either. When Igleburger retired as chief of the Dayton Police Department in 1973, the program faded away.

When I consulted with a blue-ribbon citizen group commissioned to examine the tragic death of an innocent citizen that occurred during a botched special unit operation during the late 1980s, no traces of police/public policymaking could be found. Reports on the police/public policymaking project were never published or disseminated, although Igleburger and Schubert published one brief article in 1972 on shaping discretion through police/public partnerships.¹⁶ Generally speaking, academics, foundations, and others lost interest in guidelines as well, although publication of a few articles about controlling police discretion continued into the 1980s, mostly in law journals. A few departments developed guidelines, but this was not the general rule.

The idea of model policies, rules, and regulations was somewhat revived by development of the accreditation movement in policing during the 1980s. However, the process had relatively little impact on how line officers should use or have used their discretion. Research interest shifted to experiments in police tactics, largely as a result of the early work of the Police Foundation in Kansas City, Missouri, Cincinnati, Ohio, and Newark, New Jersey. “Big” issues, such as preventive patrol and response time, or “sexy” issues, such as use of force and domestic abuse, largely dominated the attention of police researchers.

During the late 1970s and 1980s, as the Police Foundation’s financial resources dwindled, the National Institute of Justice (NIJ) assumed leadership in guiding research, but shaping discretion was not the commanding issue that it had once been. Saying this should not diminish the value of much Police Foundation and NIJ-funded research: it contributed enormously to the understanding of police work and reconsideration of the reform strategy. Nonetheless, a crucial movement in policing—developing guidelines to shape police discretion—lost its impetus because the field simply was not yet ready for it during the 1970s. Police business was still police business.

Dayton, Ohio, Issues Guidelines Related to Student and Nonstudent Residents

The police general order read as follows:

The Department of Police has as one of its primary responsibilities the development and maintenance of peaceable relations between citizens. Police officers are expected to act in an appropriate and effective manner so as to maintain a standard of public order which is generally acceptable to the lifestyles of both the student and non-student residents of the area in the vicinity of the University.

It should be recognized that divergent lifestyles frequently generate conflict which is not conducive to the well-being of either students or non-students, and that compromises must be made by all concerned. Other communities have attempted to deal with this campus-community situation by general suppression through use of police power. The record seems to indicate that this response has not resolved the problems but, rather, increased the polarization of the parties.

I believe that we should seek to develop a police response to the problems which will permit an evolutionary and improving relationship based on respect and a concern by all for the mutual welfare of the community. Such a police posture can only be justified, however, if the situation shows improvement.

The following problems were identified by student and non-student residents meeting with police personnel as being matters of legitimate police concern.

Fires. *The residents have indicated that they believe fires should not be permitted in the streets as they constitute a serious threat to life and property. Residents expect police crews to act appropriately to prevent the lighting of fires and to put out existing fires.*

Loud Noise After Midnight. *The residents have indicated that it is reasonable to expect that loud noises should cease after midnight. Both students and non-students believe this compromise to be*

fair and acceptable. I expect police crews to act so as to protect the rights of persons to peace and quiet in their residences after midnight.

Traffic Blockages. *The residents recognize that large numbers of students in attendance at parties may require the temporary use of the streets. It is important, however, that vehicles be permitted to pass through these crowds so that residents can gain access to their property and so emergency vehicles can pass. Police crews are expected to ensure vehicles are not being blocked unless barricades have been erected in accordance with our block party procedures.*

It should be emphasized that the burden for complying with the standards discussed in this memo should be on the residents, both student and non-student. The problem is unlikely to be resolved by police force; however, in the event we need to respond to situations such as those discussed above, we will act to implement the identified standard as the situation requires.

We are committed to persuasion as the primary method of dealing with these problems because it is constructive, and not destructive as is the confrontational approach. Conflict management personnel are to be called up to assist whenever it is felt they can be of aid to the crew.

The Second District Sergeants and beat crews are encouraged to confer with residents, Project South (telephone number), and the University Student Government so as to make use of their services in dealing with problems in a “non-police” fashion to the greatest extent possible.

The officers are to feel free to consult with the Conflict Management Director, their superiors, or myself if they have any questions about this policy. It is the responsibility of the Supervisors to assure all officers have read and understand this order and respond accordingly.

Director of Police

Notes

1. Wilson, James Q., *Varieties of Police Behavior*, Cambridge, MA: Harvard University Press, 1968: 278.
2. Kelling, George L., "Toward New Images of Policing: Herman Goldstein's Problem-Oriented Policing," *Law & Social Inquiry* 17 (3) (Summer 1992): 539–559; and Kelling, George L., and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York: Free Press, 1996.
3. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice*, Washington, DC: U.S. Government Printing Office, 1967: 104; guidelines were also strongly endorsed by the report of the American Bar Association's Committee on the Urban Police Function (American Bar Association, "The Urban Police Function," Approved Draft, Institute of Judicial Administration, New York, 1973) and the report of the Kerner Commission, the National Advisory Commission on Civil Disorder created to study urban rioting (Kerner Commission, *Report of the National Commission on Civil Disorder*, New York: Bantam Books, 1968).
4. Remington, Frank, and Herman Goldstein, "Law Enforcement Policy: The Police Role," *Task Force Report: The Police*, Washington, DC: U.S. Government Printing Office, 1967: 13–41.
5. Wilson, *Varieties of Police Behavior*, 285. In the final chapter, "Conclusions and Policy Implications," which anticipates the problems inherent in developing police discretionary guidelines, Wilson writes: "Politics, in the broad sense of community involvement in policymaking, will be used to achieve what administrative rationalization cannot."
6. Remington and Goldstein, *Task Force Report: The Police*, 18.
7. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, 105.
8. See LaFave, Warren, "Police Rule Making and the Fourth Amendment," in *Discretion in Criminal Justice: The Tension Between Individualization and Uniformity*, ed. Lloyd E. Ohlin and Frank J. Remington, Albany, NY: State University of New York Press, 1993: 211–277; and Caplan, Gerald M., "The Case for Rule-making by Law Enforcement Agencies," *Law and Contemporary Problems* 36 (4) (1971): 500–514.
9. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, 502.
10. Goldstein, Herman, "Police Policy Formulation: A Proposal for Improving Police Performance," *Michigan Law Review* 65 (April 1967): 1123–1146.
11. Personal telephone conversation with Gerald Caplan, January 1994.
12. Personal interview with Sheldon Krantz, Washington, DC, July, 13, 1996; there were other attempts at administrative rulemaking, including a collaboration between Texas officials and the International Association of Chiefs of Police. See Ferris, Saadi, "Administrative Rule-making: Police Discretion," *Police Chief* (June 1974): 70–71.
13. Wilson, Jerry V., and Geoffrey M. Alprin, "Controlling Police Conduct: Alternatives to the Exclusionary Rule," *Law and Contemporary Problems* 36 (4) (1971): 488–499.
14. This section paraphrases a discussion in Kelling and Coles, *Fixing Broken Windows*, 191–192.
15. Personal interview with Frank A. Schubert, Boston, January 24, 1994.
16. Igleburger, Robert M., and Frank A. Schubert, "Policy Making for the Police," *American Bar Association Journal* 58 (March 1972): 307–310.

Development of Police Guidelines

My interest in complexity, discretion, and policymaking was restimulated by my experiences working with New York City's Transit Police Department during the late 1980s and early 1990s.¹ Confronted with growing numbers of homeless people living in the subway system—a mishmash of interrelated problems if there ever was one—police managers proposed obviously contrived "cleaning operations" that were to be "supported" by line officers. Maintenance personnel with high-power hoses were to go into the subways where there were concentrations of homeless people to "clean" the subways. Police, in support of these cleaning operations, would eject the homeless. Dean Esserman, then legal counsel for the transit police and now chief of the Stamford, Connecticut, Police Department, dubbed the proposed operation "commando cleaning." At my urging, David Gunn, then President of the New York City Transit Authority, and Robert Kiley, then Chairman of the Board of the Metropolitan Transportation Authority, rejected the plan for what it was—a sham.

Instead, David Gunn created a police study group, which I advised. It consisted of line officers, supervisors, and managers of the transit police as well as civilian employees of the New York City Transit Authority. The study group, using a variation of Herman Goldstein's problem-solving methodology to address the issue, conducted patron and focus group surveys that both helped to define the nature of the subway's problems and provided public review of suggested police tactics.

It was quite apparent that line officers desperately wanted administrative guidance and authority but were skeptical that it would be forthcoming. Their initial view, put simply, was

that managers dump problems into officers' laps, stick their heads in the sand, and then, when the inevitable legal challenges arise, say that dealing with homelessness is a hopeless task—a position that police managers took earlier with graffiti—and then return to business as usual. Fortunately, things did not work out this way. Although it required a replacement of the transit police leadership to implement the policies and tactics developed by the study group, the outcome was restoration of order and astonishing drops in the level of serious crimes, most notably a nearly 75-percent reduction in the number of robberies.²

Beyond the problem-solving aspects of the experiences, however, I returned to the literature on discretion to review the state of the art of police department rules and regulations and general orders. The study group anticipated that advocates for the homeless and civil libertarians would sue the transit police once order maintenance efforts were initiated, and that selective enforcement would be a major issue. Moreover, advocates made it clear that they would challenge our attempts to control panhandling using First Amendment free speech as the pivotal issue.

With awareness that the courts would look over our shoulders, it was absolutely essential that we deal with how we would shape discretionary guidelines and why panhandling, not just so-called aggressive panhandling, should be banned in the subway. Even technical legal issues were considered because we had to be prepared to demonstrate a "compelling governmental issue," if courts found panhandling to be a protected form of speech. Justifications had to be developed for police actions in the subway that would make the typical knee-jerk response—"throw the bums out" from the right and "criminalizing the homeless" from the left—untenable to the general public.

In short, we were making public policy about a specific set of problems in a particular set of locations that was similar to the process identified by Remington and Goldstein and implemented in Dayton. Reflecting back on the process, it became clear that our efforts to develop and implement policies to restore order in the subway attempted to meet at least 11 standards. The policies had to:

- Recognize the complexity of police work.
- Acknowledge that police will use discretion.
- Recognize and confirm how police work is conducted.
- Advance a set of values that may be applied to the substantive work issue at hand.
- Put forward existing research, facts, or data about the substantive issue at hand.
- Undergo development by practicing police officers and citizens.
- Undergo public promulgation in a manner clear to officers, the general public, community stakeholders, and the courts.
- Include rules about what officers should not do.
- Emphasize police adherence to a process (application of knowledge, skills, and values), rather than any predictable outcome, because outcomes of police interventions are often wildly unpredictable regardless of officers' skills, intent, and values.
- Establish accountability standards that identify competent and/or excellent performance, violations of organizational rules, and incompetent or uncaring work, including performance within organizational rules.
- Receive recognition as an ongoing and continuing process.³

These standards had broader applications and were presented to line personnel in training sessions and experiments with their development in several police departments.

Recognizing the Complexity of Police Work

The complexity of police work has two dimensions: the complexity of the situations or problems confronting police, and the complexity of police responses to those situations.⁴ Panhandling is an example of how complex a seemingly simple act can be. It is the subject of considerable litigation between civil liberties groups and police departments across the country, a clear example of external groups using litigation and the courts to limit police discretion. (Advocacy groups do so with good reason—police have used vagrancy, loitering, and panhandling laws to harass citizens and discriminate against groups in the past.)

Until recently, “loitering for the purpose of panhandling” laws were the state of the art and had appropriately replaced antiquated vagrancy and overly broad loitering laws. Recently, court support has drifted from laws against loitering for the purpose of panhandling to statutes that ban aggressive panhandling. These include laws against touching someone while in the act of begging, blocking free passage, and begging near automatic teller machines, to give just three examples. Many libertarians still object to such restrictions.⁵ This shift toward aggressive panhandling laws, of course, rests on the decision of some courts to elevate panhandling to the status of political commentary about economic injustices, and other issues, thereby making the practice a First Amendment free speech issue.

It is unlikely that panhandling can be completely eliminated from city streets. Because some beggars are no threat to anyone, it seems appropriate to limit legislation and police action to aggressive panhandling. Yet, in many cities, municipal officials are so certain that civil liberties groups will take the city and police to court if they attempt to enforce local panhandling laws that they no longer enforce their laws against loitering for the purpose of panhandling.

Those who advocate aggressive panhandling laws (or tolerate them in lieu of completely decriminalizing all begging behavior) and the courts that try to steer cities toward specific forms of panhandling legislation assume that aggressive panhandling behavior can be clearly defined in legislation, thus eliminating police discretion in this matter. This further assumes that aggressiveness can be defined solely on the basis of the act itself. This is a tragic misunderstanding of street realities that will result in endless street hassles for police officers and departments that understand the social and economic costs of unchecked panhandling.

It is wrong to give meaning to behavior solely on the basis of an act itself because the meaning of behavior is to be found in its context. Identical behavior can be passive or aggressive, depending upon its context. At least five contextual elements give meaning to behavior: time, location, number or aggregation of events, condition of the victim/observer relative to the perpetrator/actor, and the previous behavior/reputation of the perpetrator/actor. A person standing at the top of subway stairs, holding a paper cup, and begging during the 8 a.m. rush hour is not much of a threat. At 10 p.m., the same panhandler, behaving in the same manner as observed during the rush hour, is a genuine threat to a solitary elderly woman returning home from work. The time and the location and condition of the woman combine to turn the beggar's behavior into a threat that anyone in the woman's position would feel and could result in hassles and inconveniences for the woman as well as her reluctance to ride the subway.

To the contrary, 20 panhandlers in Harvard Square in Cambridge, Massachusetts, are little threat to citizens or, in turn, to commerce. Harvard Square is so vibrant that it can absorb enormous levels of deviance without substantial threat to citizens or commerce. Twenty panhandlers in the central downtown area of Watertown, Massachusetts, however, would threaten many citizens—especially the elderly

and infirm—and could wipe out its commerce. In this situation, the number of panhandlers interacts with the location to give the behavior its meaning. (See “Police Must Put Behavior in Context.”)

The second dimension of complexity is officers' responses to situations or problems. In the mid-1980s, David Bayley and Egon Bittner published two papers that systematically viewed police work, its skills, and tactical choices.⁶ Based on research into police handling of domestic disputes and self-initiated traffic stops, Bayley and Bittner examined the teachable skills of patrol work. In the second article, Bayley “presents the results of an attempt to describe as fully as possible the actions of patrol officers in handling highly problematic situations.”⁷ Bayley and Bittner identify the tactical choices police can make at three stages of encounters with citizens: contact, processing, and exit. For example, a contact option for an officer during a traffic stop is to ask the driver whether he knew why he was stopped; a processing option is to warn disputants about what actions police might take if their dispute persists; and an exit option is to arrest a disputant.

Each tactical choice by the police, each citizen's response, counterresponses by each, and changes in other variables in the context (for instance, intervention of strangers) create a fluid, ever-changing encounter.

A number of generic problems can arise over the course of an encounter that may take officers beyond “common sense” or “command presence” as they weigh the context of the situation and the tactical choices available to them. Bayley and Bittner's research arose out of a desire to link officer behavior with outcomes. In the realm of policymaking, the goal is to go from hypothesized good practice—the wisdom or craft of the field as embodied in good police officers, case studies, and research—to prescribed “ways of thinking” about how to initiate a contact, process it, and close it that

are based on an officer's assessment of the event, its situational context, and his or her choices.

Indeed, officers do this implicitly all the time. The officer who sees a drunk harassing a pregnant woman with a young child at a busy intersection may opt to use force (contact choice) by grabbing the man by the shoulders, walking him away, and then admonishing him, rather than

simple admonishment, because he fears for the safety of the woman and child. The condition of the man (drunk and lurching), the condition of the woman (in late pregnancy and with another child), and the time of day and location (on the curb during a period of heavy traffic) are the contextual variables that determine the immediate use of force. Moreover, this incident, which did happen, could be followed through Bayley and Bittner's model with the changing nature

Police Must Put Behavior in Context

Virtually any specific behavior gains meaning by the context in which it occurs. Most police officers intuitively understand this and make their decisions about whether and how to intervene on their assessment of an act, or series of acts, within a context. Thus, for example, as part of a problem-solving exercise dealing with squeegee men, I spent time with a New York City neighborhood foot patrol officer who was perhaps as assertive in dealing with the problem as anyone in the NYPD. One night, because of some publicity after Mayor Rudolph Giuliani's election, the officer's district commander initiated a crackdown on squeegee men in his district.

I had come to the district to meet with the officer and to interview some squeegee men but discovered they were either in jail or had withdrawn from the streets because the word was out about the crackdown. The officer asked that we visit a particular intersection, where we came upon an African-American man, in his 50s or so, with a squeegee and a bucket of water. The officer called the man by name, and the man walked over to our car. He greeted the officer by name as well. The officer then advised him to "get off the streets, there's a crackdown." The officer then introduced the man to us; we talked for a short time and then exchanged goodbyes.

I questioned the officer about this exchange because he was known to be enterprising regarding squeegee men in his neighborhood; here he was warning such a person about a crackdown. "Joe is no problem," the officer responded. "He really washes windows. He's courteous; he asks people if they want their windows washed, backs off if they give any sign that they don't, and doesn't interfere with traffic. He's a veteran and can't get by on his pension. I just don't want him to spend a night in jail because the district commander is upset." For the officer, the context gave meaning to the event—the location, the reputation of the man, and the man's behavior when approaching cars shaped how the officer used his discretion. This is the essence of good order maintenance and peacekeeping.

Skillful order maintenance activities acknowledge that squeegeeing, like prostitution, panhandling, and drug dealing, will never be eliminated, but good policing can determine the conditions under which and how such activities can take place and bring them into line with community standards. Was the officer taught how to use discretion in this fashion while he was in the academy? Did he turn to police guidelines about issues to be considered when deciding when and how to intervene in situations? Most likely he learned about discretion on the streets from colleagues and, if lucky, from supervisors as well as from his own experiences.

of the context interacting throughout the processing stage (the impact of comments by the drunk's friends) and the final outcome (use of force and arrest).

Because officers have not been taught to explicate their implicit scanning and diagnostic process, few of them can describe their handling of such events beyond saying they relied on common sense. With some prodding, officers can quickly move beyond such trivialization of their work. Ask the officer, "Would you have behaved differently if the drunk was harassing two power forwards from the Rutgers basketball team?" and he probably would reply, "I probably would have had to protect the drunk from the youths rather than vice versa." In other words, it is possible to change the context of a scenario in ways that officers will immediately recognize and, in turn, cause them to alter their responses.

In any policymaking or guideline development process it is necessary to include, if not begin with, an explicit statement about the complexity of both the problem and the range of officers' responses. How Bayley and Bittner's model should be included in a total guideline development process will become clearer in what follows because it is only the first of 11 elements. The second is the acknowledgment of discretion.

Prescribing What Officers May Not Do

Discretion is limited. Officers and departments cannot do particular things. Officers may use discretion in deciding whether and how to intervene in a panhandling incident, but they may not intervene on the basis of race. Officers may use their discretion to allow youths to stay in a park after curfew, but they may not authorize public or underage drinking (they may know that some of it goes on and be less than vigilant about catching it, but they cannot authorize it). Officers may work with neighborhood groups to control access to a neighborhood, but they must not discriminate against ethnic groups in the process.

In virtually every policy area, there are clear limits that must be prescribed to police officers, citizens, and vested interest groups. Including such limits in policy statements can make values explicit, remind officers that the exercise of judgment and choice is circumscribed, help them to say "no" to inappropriate demands from citizens or interest groups, and provide wide administrative authority to discipline unethical and inappropriate use of discretion.

Acknowledging Police Use of Discretion

The preceding discussion provided a context through which officers can think about how they deal with situations and problems and that will, hopefully, lead to development of training materials, ultimately identify the links between tactical choices and outcomes, and allow officers to talk about their professional practices in a way that gives due credit to the wisdom, skill, and values that are implicit and unacknowledged in police work.

In any policy statement or guideline, departments must explicitly authorize discretion and selective enforcement in the handling of situations and problems. Such continued restatements are important, despite their redundancy, because citizens, prosecutors, courts, lawyers, and legislatures must clearly understand that the issue is not whether police officers use discretion. The real questions are how officers use discretion and how their use of it is shaped. Linking discretion to scanning, diagnosis, and tactical choices makes it clear that use of discretion represents neither arbitrariness nor the personal inclination of officers. (See "Prescribing What Officers May Not Do.")

Inside police departments, assertions such as “I have a right to use my discretion” can mask renegade police claims to do virtually anything, or nothing, in the name of discretion. As Bayley and Bittner point out, tactical choices can be limited regardless of the complexity of the event:

Situations can be ranked along a continuum from the cut-and-dried to the problematic. For example, American officers have few doubts about what to do when a man is found drunk lying on the ground in the winter. He must be picked up and taken to a shelter. The choices are also fairly limited in serious traffic accidents, alleged housebreaking, and assault with a deadly weapon witnessed by a police officer. This is not to argue that some choices are not involved in such cases—officers can turn a blind eye or overreact—but rather that the appropriate responses are clearly recognized by everyone involved—patrolman, public, and command officers. The appropriate action may not be easy to take, but it is obvious.⁸

When officers, regardless of their motivations, fail to do what they should, “discretion” is no excuse.

Public officials’ assertions that officers rely on personal inclination in their work can mask the officials’ ignorance or serve as political ammunition in legislative or court processes. In litigation challenging police order maintenance efforts, defense attorneys often will attempt to sway judges by demeaning police motives and actions as expressions of the officers’ personal inclinations. Currently, many city attorneys and departments are ill prepared to counter such arguments because they have not intelligently articulated their position regarding discretion. For example, one city recently asked me to help defend its policies regarding homeless encampments. Because I knew selective enforcement would be an issue, I asked to see all relevant departmental general orders, training materials, and rules and regulations that were used to shape how officers handled this problem. No such materials existed. Under such circumstances, it is not the fault of

those challenging the police or the judge in the matter if the department or the city has not done its homework.

If discretion is properly linked to complexity, as suggested above, it will become increasingly clear that discretion is, or at least ought to be, shaped by professional police and departmental knowledge and skill, not personal inclination.

Recognizing and Confirming How Police Work Is Conducted

The nature of police work can be explicitly detailed in departmental guidelines or policies. It is important that everyone involved in developing or using these guidelines either understands or acknowledges policing realities, which include the following:

- The majority of police work is conducted by an officer working alone or with a partner.
- The officer must make decisions outside the purview of supervisors or a command system.
- The officer must make decisions based on internalized knowledge and skill.

These circumstances are not incidental to American policing. In both England and the United States, police originally were diffused throughout society rather than either barracked or deployed in units for tactical reasons (to increase their presence) and for control and accountability purposes. Officers operating alone and embedded in the community would be strongly influenced by citizens and forced to seek their approval—an essential element in early 19th century policing given how distrusted police were in both countries.

There can be exceptions to officers working alone—special units, group activities, and so forth—when immediate command or supervision is present, but standard police operations call for an officer to work alone or with a partner without overseers (in a literal sense). The full consequences of diffusing officers throughout

communities may have been mitigated by use of automobiles and radios. Nevertheless, myths that officers can be supervised or commanded directly must be undone because they perpetuate the current misconceptions that police work can be organized and administered like a factory process. Such organizational control over officers simply does not exist.

Advancing Values

The term “values” has two meanings in the context of police discretion: (1) overall values to be articulated and attained, and (2) underlying values and morals that shape discretion and limit tactical choices. The distinction between attaining values and attaining goals is based on police organizations’ need to maintain vision and perspective. The values to be attained in the New York City subway system included providing safe, rapid, comfortable, reliable, and fear-free transportation. A number of departments and agencies were responsible for attaining these values. The police had and shared particular responsibilities, including graffiti control, protection of passengers and staff, maintenance of order, and protection of citizen rights. In performing these responsibilities, goals were set: eliminate graffiti by 1989, limit and regulate panhandling, reduce robberies, protect schoolchildren during rush hours, and so forth.

When departments articulate the ultimate values to be attained, officers can focus on loftier goals than the trivial, messy, and distasteful tasks that make up much of daily police work. Where such values are not articulated, it is difficult for officers to maintain the idealism and vision that many bring with them as young recruits. Perspective on the proper police role in society also suffers. Values in this sense inspire officers, especially when they are wrestling with nitty-gritty problems, considering tactical choices, and planning overall strategy. In this light, dealing with panhandling in New York’s subway system is not seen as “throwing the scumbags out” but, rather, as protecting citizens, reducing fear, putting police in contact with hardened criminals, and

preventing crime—all of which contribute to quality transportation, especially for the working classes who cannot afford other options.

The external benefit of getting and keeping police officers focused on the higher values inherent in their work is that doing so communicates to the public a true vision of the purpose of policing in a democratic society.⁹ In controversial policy areas, putting values forward is not only important in its own right but also does not concede the moral high ground to policy opponents. In developing policing policies for New York’s subway system, we believed that advocates for the homeless, with their insistence that the homeless should be allowed to camp in tunnels—as dangerous and unhealthy as they are—were cynically exploiting the issue to make a political point. Protection of the constitutional rights of all citizens, including the needy homeless who lived in the subway system, was a key value to be articulated. While the homeless enjoyed the same rights as everyone else, they also had to abide by the rules.¹⁰ (It was common practice for transit police to waive the fare for homeless persons who would ask the officers if they could use the subway to get to a shelter. The officers knew that this was often a scam, but, nonetheless, the rules of the subway were honored in the request and civility was maintained. Moreover, many persons were desperate and needed free transportation to get to help, and it was appropriate for officers to assist them. Under certain conditions police would even call a van to get groups of persons to help or to shelters.)

Values in the latter sense refer to the maintenance of moral and constitutional values in police work. Virtually every police department now has some statement of departmental values, which, while undeniably proper, arguably are of little relevance to day-to-day policing. While the high value put on human life shapes policies regarding use of deadly force in every police department, deadly force is “sexy” stuff—shooting people—and has little to do with routine police work.

Guidelines and policy statements can be at the core of linking values to police work. Moral and constitutional issues are rife in police work, and it is almost inevitable that one will confront these basic issues in any attempt to solve problems or develop policies. A good example of linking values to policy in routine matters is found in the San Diego Police policy statement regarding undocumented persons that was discussed earlier. In the context of a discussion about what role the local police department should play in the enforcement of immigration laws, the statement “the San Diego Police Department recognizes and values the diversity of the community it serves” gains fresh and specific meaning.¹¹

Likewise, the New York City transit police had to consider a mayoral edict (i.e., that no one could be ejected from public facilities if the temperature dropped to 32 degrees Fahrenheit) in developing policies regarding when rule breakers would be ejected from the system. The value that underpinned this decree was, of course, the value of human life—that someone ejected from a public facility could freeze to death. The question was whether the Metropolitan Transportation Authority and the transit police were going to honor this proclamation (as a State agency, the transportation authority is not under the mayor’s direct administrative control, although the mayor has enormous influence over its policies and practices). The initial response of almost everyone in the study group was reflexive: of course, the rule would be honored. To consider the widest possible range of options in the effort to restore order, however, members of the study group ultimately agreed that ejection of disorderly persons had to be considered in practically every circumstance, including bad weather. Given the volatility of the issue, the study group understood that Chairman Robert Kiley of the Metropolitan Transportation Authority would make the final decision. We were obliged to wrestle with the issue and make recommendations to him.

The discussions about whether people should be ejected from the subway system during freezing weather were fraught with emotion. One member vehemently maintained there was no way that he was going to order someone ejected to die in the cold. The issue was complicated by the fact that the majority of the homeless persons who violated the rules were serious alcohol and/or drug abusers, mentally ill, or both. Clearly, this was a vulnerable population in need of special consideration. At the same time, people were dying of hypothermia in the subway. Staying in the subway, as some advocates urged the homeless to do, exposed them to life-threatening risk. The group’s final recommendations to Kiley were that rule violators were to be ejected regardless of the weather; that at temperatures below 40 degrees, bus transportation should be made available for those who wished to go to a shelter; and that in cold weather police should be especially scrupulous about taking into custody any persons who appeared to be incapable of helping themselves or who were improperly clothed and refused bus transportation to a shelter.

Value issues need not be so grand as life and death. What about youths in parks on hot summer nights in densely crowded neighborhoods? Should they be allowed to stay beyond a 10 p.m. curfew if they are quiet and don’t drink? What potential values would be served? What values would be eroded? What about street vending? What rights do vendors have or should they have? Do the current means of obtaining licenses inadvertently discriminate against particular groups or persons? Are there ways to control or manage vending that do not deprive poor persons of the opportunity to earn money in otherwise honest ways? How are the rights of vendors balanced against the rights of shopkeepers who are paying high rent and other forms of overhead?

How should civil initiatives be used? What self-imposed limits should police develop in the use of civil initiatives as a tactical choice in solving problems? Does their use at times inappropriately circumvent criminal due process?

These are issues that police themselves should address because, if they do not, it is only a matter of time until others, most likely the courts, will do so. Even if the courts or other authorities do address these issues, it would be better if the police position were presented proactively after it has been carefully carved out in the real world and adapted in such a way that routine police work makes concrete the abstract values that need to be articulated when the relevance of the values is not always apparent.

Putting Police Knowledge Forward

Over the past several decades, research and case studies have enriched the factual and empirical base from which police operate. Much of this knowledge is available not only in traditional forms—academic publication in books and journals and in research publications of the National Institute of Justice—but also, more recently, over the Internet. The Police Executive Research Forum, for example, currently publishes case studies of problem solving on the Internet. Such research and case studies are valuable for at least three reasons. First, they put forward a model of systematized thinking about police business. Second, they provide factual evidence about the impact of particular police activities. Finally, they provide the intellectual justification for police practices, especially when they are challenged legally.

In New York’s subway system, for example, two bodies of research were of special importance in developing policies. The research about homelessness was valuable because it helped distinguish the subway’s problems, which were primarily problems of disorder, from the general problems of homelessness. Moreover, research about the links between disorder and fear was relevant to police managers and officers, who needed to be convinced that order maintenance was important police business, and also to the media and general public.

The transit police studying the problem, however, did their own research as well. They counted the homeless, checked records to deter-

mine the criminal histories of rule violators, surveyed middle level managers about their perceptions of the problems, talked with persons violating subway rules, photographed locations to determine the extent of rule violations, conducted focus groups with passengers, and surveyed riders through the Metropolitan Transportation Authority. Consequently, the literature reviews and independent research were presented not only in policy statements but also in training materials, educational materials intended for the general public, and media releases. It was also essential in the litigation that accompanied policy implementation.

Undergoing Development by Practicing Police Officers and Citizens

I have been involved with practicing police officers in problem-solving exercises from the early 1970s in Kansas City (to determine how increased numbers of police should be used in the South Patrol District—a problem that gave rise to the Kansas City Patrol Experiment) through the 1990s in New York City around the problem of squeegee men. Some of the exercises have been quite formal, others less so. The sincerity with which officers approach such exercises has been impressive, but, to be sure, they view such exercises with great skepticism. Task forces, they have said, are used to undercut unions, or officers’ comments and observations will be ignored. Often, officers harbor unspoken resentment that a civilian—a social worker from Harvard at that—should be involved in helping police think about what their work is and how they should do it. When such posturing is finished, however, officers have worked hard to understand problems, consider solutions, and carry messages out to their colleagues—an invaluable asset in attempts to gain officer support of new efforts. Some task force members remain cranky—in some departments I have deliberately requested that the most obdurate officers be placed on a serious task force—but I have observed those same officers often either join the study process or allow their “crankiness” to be managed by the other officers.

Regarding “big ticket” issues, such as restoring order in the subway, it is also worthwhile to broaden input through targeted departmental surveys. For example, we anticipated that we would have to develop wide support for order maintenance activities among transit district captains. To do so, we had to understand their concerns and seek their input in developing policies. Meeting with all district commanders proved to be unworkable. Consequently, a draft policy was distributed to district captains along with a questionnaire to ascertain whether the policy accurately reflected the problem, recommended appropriate responses, and offered realistic implementation plans. The data gathered were then used to shape the evolving plan.

Persons who do the work and understand the daily issues provide rich experiences, data, and insight during problem-solving or guideline-developing exercises. Many officers need help in articulating their points of view. Some ideas must be validated. More than once, I have heard an interesting point of view put forward by an officer who was pounced on by an administrator who said “we can’t do that.” Yet, it later became apparent that the idea could be implemented and, moreover, provided the key to unlocking the solution to the problem.

The role of citizens in guidelines development is less clear. Generally, it is a good idea to involve citizens. What form citizen involvement should take, and whether all policy issues require or should have citizen input, also is less clear; police departments are gaining experience in how to approach this issue. In the New York subways, citizen input came from civilian Metropolitan Transportation Authority employees and focus groups. As a general principle, citizens should be involved in policymaking, and the burden of proof always should be on those who wish to exclude citizens from a role in policymaking, not on those who wish to include them.

Clearly, depending upon the issue, citizens should consent to and support police policies. The notion that police can operate in a demo-

cratic society authorized solely by the law went out with the riots of the 1960s, although police must relearn this lesson in some communities. Additionally, we want citizens to cooperate with police when called upon to do so.

Finally, in many issues police need the active partnership and collaboration of citizens to solve problems. In such cases, citizen involvement in policy development seems to be a prerequisite for collaboration. A myriad of issues, of course, surface when citizens become involved in policymaking. Which citizens? Should they be representative? Of whom? To what extent should opponents of policies—say homeless advocates who are opposed to antiaggressive panhandling ordinances—be involved in policy development? How do police reconcile competing interest groups in communities? Such questions aside, citizen involvement can educate individuals about problems, involve them in decisionmaking, define the citizen role in problem solving, gather citizen support for police action, and help citizens understand police limitations.

Undergoing Clear and Broad Public Promulgation

Police policies should be clearly written and targeted at practicing police officers and the affected citizens, which should include political leaders, community stakeholders, and the media. Guidelines should be communicated to these target groups in ways that encourage their discussion and review.

Many people outside policing would be shocked by the current business-as-usual approach to general orders and rules and regulations, often about highly controversial and politically charged issues, that many police departments pursue. Frequently drafted by and for lawyers (staff lawyers of police departments and city attorneys), they are filled with legal and bureaucratic jargon. Practicing police officers are not involved in their development and do not review them before they are promulgated. Important

general orders are distributed many times in pay envelopes (and promptly thrown out as junk mail). Their reading at role call is often perfunctory, often accompanied by the reader’s sneers or eye rolling, and delivered in a fashion that discourages discussion or questioning. It is no wonder that in department after department I have observed officers treat such policies with disdain: they are written to protect the city and management from liability; they have “someone’s name on them”—they are written in response to a particular officer’s mistake; they are used to “get” officers when they make honest, but highly public, mistakes; and so forth.

While our experience in dealing with disorder in New York City’s subways was a “big ticket” problem—one that required a shift in the basic operation of the department—how the policy was promulgated was instructive. All documents were either developed by or reviewed by police officers in the study group. As drafts emerged, study group members were encouraged to share them with other officers and to solicit feedback about their relevance and clarity. Once policies had been developed, in addition to training and video messages played at roll call and made available in all districts, a leaflet was developed and distributed to all officers. The leaflet explained the new policies and answered critical questions about what was being done, why it was being done, what moral and constitutional issues were raised, and what impact the new policies were expected to have. Officers were encouraged to carry copies of the leaflet and to distribute them to citizens who might question police policies.

Externally, promulgation was widespread. Signs were posted delineating subway rules; op-ed pieces were published; political leaders, advocacy groups, and the media were consulted with and briefed; and other agencies that would be affected by subway policies and had been included in planning were also briefed. In addition, leaflets made to look like desk appearance tickets (citations) were printed for distribution to rule violators during the 2-week period prior to

implementation of the new policies. In essence, they informed rule violators that they would be subject to ejection, citation, or arrest if they persisted in violating the new rules after a particular date.

To be sure, this was a “big” problem and enormous resources were spent in developing and implementing policies. Nonetheless, the principles hold true even for routine matters: they not only involve citizens and police in developing policies but also put those policies forward in ways that are clear and forthright.

Emphasizing Police Adherence to a Process

Our understanding of the links between police actions and citizen reactions and outcomes is so extraordinarily primitive that we cannot realistically hold officers accountable for outcomes. An officer handling a person on the threshold of committing suicide might apply all the craft of the police trade and the result could still be a suicide. Likewise, a unit handling a hostage situation might negotiate with considerable skill, yet a hostage might be killed. Even in minor situations, an officer might gently reprimand an aggressive panhandler and still wind up with an ugly incident.

The goal is to train officers to assess situations accurately and choose responses that are consistent with the state of the art of their occupation. Moreover, police should articulate both the complexity of situations and the reasons for their tactical choices—that is, to end their reliance on justifying their actions as “common sense” or “appropriate action.” In effect, good policy statements prescribe not what an officer should do—this is impossible in the real world; rather, they prescribe how an officer should think about a problem and choose among alternative solutions. Good policy statements should say: “These are the factors you must consider when you approach a situation. These are the values that should guide you. These are the choices you have at your disposal.”

Good policy statements should provide the language that officers use to describe their work for both development of ongoing police knowledge and supervisory purposes. So little police work is conducted under the eye of supervisors that the only way to oversee most routine police work is for officers to talk about their work with their superiors. Talking about police work allows supervisors to mentor officers in problem solving (e.g., “What alternatives did you have at this moment?”) and, over time and with the assistance of case studies and other research, begin the process of linking police thinking and tactics to outcomes. (A note regarding mentoring officers: this approach to supervision does not assume that sergeants “know best” about how officers should have handled situations. Sergeants should help officers review their work to ensure they considered all the proper factors in their decisionmaking process.)

Establishing Accountability

Good policy guidelines allow supervisors and administrators to distinguish between officers who operate within the rules and yet behave in an uncaring and incompetent fashion, and officers who bend or break the rules and yet behave in a caring manner. In one example, an officer in a midwestern city was dispatched to respond to a call from a two-story flat. A man who lived alone upstairs had called the police at about 11 p.m. on a winter night to report that two young girls, ages 7 and 9, who lived downstairs had been left alone for several days. The responding officer investigated and found the report to be true. The two girls had been alone for two nights and did not know when their mother would return.

The police department had established a clear policy for dealing with such incidents. The officer was to contact an oncall social worker and turn case responsibility over to the social welfare department. The officer called. The social worker, after listening to the officer’s account, suggested that because the upstairs neighbor obviously was concerned about the girls’

welfare, as evidenced by his call, the police officer should ask him to take the girls into his home for the night. The social worker would come first thing in the morning to pick up the girls. The officer refused to do this. To settle the resulting impasse, the officer bundled the two girls into his squad car, stopped at a McDonald’s for food, and took the girls to the police station where they spent the night. By doing this, the officer broke departmental policy by not transferring the case to the social welfare department and departmental rules by transporting the girls in his squad car.

In reviewing the case with the officer, it was clear that he put a set of values about children, strangers, and the protection of children above departmental policies and rules. (When I first asked the officer why he acted as he did, he said, simply, “Well, it was just common sense.”) Happily, to the officer’s knowledge, everything turned out satisfactorily. Nobody reviewed the matter with him, and the children were picked up by social welfare workers the next morning.

In my conversation with the officer, I played out two alternative scenarios. In one, the officer’s car was hit by a drunken driver while he was transporting the children, injuring them. I asked the officer what authorized him to use his discretion as he had; in other words, how would he defend himself if charged with violating policy and breaking rules? The officer knew of no basis in guidelines, policies, or traditions in the department that he could use to justify his actions. In fact, he firmly believed that the department would discipline him if the scenario I had spelled out had occurred.

In the second scenario, an officer comes to the scene, observes the same conditions, but follows the welfare worker’s suggestion. The girls are molested by the man. The officer believed that while he would have been disciplined for violating departmental guidelines and rules if he transported the children and his cruiser was hit by a drunk driver, the fictitious officer who left the girls with the upstairs neighbor would not have

been. Why? The officer who placed the children with the man had observed the rules and despite the tragedy could not be held responsible. He, the real officer, had broken rules and would be held accountable if the children had been injured. (It is by no means certain that the officer would have been disciplined by the department.)

Nevertheless, the importance of putting forward values in policy guidelines becomes apparent. The officer had strong personal and professional values about protecting young children from victimization that he held above specific policies and rules. One simply does not put young children into the hands of strangers except in the most dire circumstances, no matter what policy dictates. The officer who cared enough to think through the situation and use his discretion was clearly in need of prior authorization to do this as well as support in case the children were accidentally injured. The officer in the scenario, however, who obeyed the policies and rules, did so unthinkingly and uncaringly and put the children at serious risk. The message is, of course, that following the rules ought to be no protection from charges of incompetence and discipline when clear guidelines mandate the values that should undergird police actions.

In another example, Madison, Wisconsin, Police Officer (now Sergeant) Joe Balles recounts how he used his discretion and violated a court order that barred a father from access to his child. The father, known to Officer Balles, was involved in a custody dispute with the mother of the child. The father called Balles directly late one night to report that the mother was seriously drunk and unable to tend to the child. Balles tried but was unable to find suitable care for the infant for the remainder of the night. Based on his familiarity with the father, the mother’s condition, and the complete absence of resources to care for the infant, Balles left the child with the father for the rest of the night and made arrangements to pick up the baby the next morning. Balles knowingly acted against the court order. As in the first case,

contextual exigencies made the officer’s responses entirely reasonable. Happily, the father turned the child over to authorities in the morning.

Policy guidelines can ferret out officers who follow the rules but underperform and avoid responsibility as well as identify officers who break rules to protect important values or achieve departmental goals. As noted above about values, guidelines can put forward positive expectations about officer performance and set achievement standards.

Receiving Recognition as an Ongoing Process

Policy development is ongoing. It is a repetitive, never-ending aspect of police work. Just as the students in Dayton changed every year, requiring the development of a new contract between police, students, and neighborhood residents, so the composition of every neighborhood constantly changes. Changing conditions, laws, traditions, and standards require continual updating of police guidelines.

Notes

1. Kelling, George L., and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities*, New York: Free Press, 1996, especially Chapter 4, “Taking Back the Subway: New York City’s Quality of Life Program”: 108–156.
2. Ibid.
3. This list is a variation of one first presented in *Fixing Broken Windows*. The variations from the first list testify to the evolving nature of my thinking.
4. Because complexity is the most complicated element in policymaking, this section will be considerably longer than any that follow.
5. This issue is discussed in considerable detail, including legal details, throughout Kelling and Coles, *Fixing Broken Windows*.

6. Bayley, David H., and Egon Bittner, "Learning the Skills of Policing," *Law and Contemporary Problems* 47 (4) (Autumn 1984): 35–59; and Bayley, David H., "The Tactical Choices of Patrol Officers," *Journal of Criminal Justice* 14 (1986): 329–348.

7. Bayley, David H., "The Tactical Choices of Patrol Officers," *Journal of Criminal Justice* 14 (1986): 329.

8. Bayley, David H., and Egon Bittner, "Learning the Skills of Policing," *Law and Contemporary Problems* 47 (4) (1984): 36–37.

9. For a discussion of such values, see Moore, Mark H., *Creating Public Value: Strategic Management in Government*, Cambridge, MA: Harvard University Press, 1995.

10. A friend described an incident he had seen recently. He had observed a person approach a police officer in a subway car to complain about a disheveled man who literally reeked. The person had asked the officer to eject the disheveled man. The officer patiently explained that, although he understood the man smelled bad, this was not a basis for ejecting him from the subway. The disheveled man was obeying the rules and, therefore, had a right to use the subway. The officer quietly did something very important: he not only defended the man's right to be there but also encouraged the complaining person to be more tolerant.

11. San Diego Police Department, Field Operations, Department Procedure 6.18, December 20, 1987.

Conclusion

One of the lessons learned over the past three decades, a lesson incorporated into community policing, is that in a democratic society effective policing can be achieved only with community support and involvement. Sir Robert Peel understood this when he sent bobbies into the toughest areas of 19th century London with a mandate to persuade people to behave. Police demeanor was such that officers gained the sympathy and support of the population. We still have much to learn from this, especially since policing teeters near the edge of militarism in so many locations as part of the "war" on drugs and drug dealers. Viewing the police, as the late Frank Remington

and others have done, as an administrative agency obliged to develop guidelines publicly that will shape its inevitable use of discretion offers one more way to develop community support and involvement in policing urban America. This viewpoint not only will improve the quality of policing but will also improve public understanding and support of police. But guidelines development must not be seen as a one-shot deal—write the manual and send it out. It must be understood to be an integral, ongoing part of policing. At its essence, developing guidelines is the process of creating a community consensus about our moral and legal basis for urban life.