

# The Better Part of Valor: Court-Overtime Pay as the Main Determinant for Discretionary Police Arrests<sup>1</sup>

Peter Moskos, Department of Law and Police Science, John Jay College of Criminal Justice

*Court is like our heroin; it's just something we need!*

—A Baltimore City police officer

To understand police discretion and arrest decisions in high-drug areas where the majority of arrests occur, variables related to the police officer must be examined. It is not that traditional suspect-based variables—race, age, sex, demeanor, and criminal activity—are unimportant, but a focus on suspects neither explains the massive number of discretionary arrests in high-arrest police districts nor the huge variances in arrest numbers among individual officers working in identical conditions. Discretionary arrests are more influenced by officer-based variables than any suspect-based variable. The discretionary will—even whim—of individual police officers, the desire to make an arrest, is the best predictor of arrest numbers. Desire for court-overtime pay is the single most important factor affecting the quantity of discretionary arrests. Age and morale are also significant causal variables.

A necessary condition for a patrol officer wishing to make a lot of arrests is the sale of illegal drugs. A large, public open-air market provides a virtually limitless supply of arrestable suspects. The drug block is a buzz of constant activity. Dealers hawk their wares, customers come and go, and addicts roam the street hustling for their next hit. Occasionally, a police car will appear, and the street crowd will disperse, slowly walking away from the police car. Being too fast or too slow can make oneself a conspicuous mark for police attention. So people walk, shuffle, and roll with a well-practiced nonchalance. Soon after the appearance of a police car, the street will be deserted. When the police car leaves, people return, and the action resumes. An arrest-based police culture can exist in a low-drug environment, but without a limitless supply of arrestable criminal offenders, an arrest-based culture cannot make a lot of arrests. Neighborhoods without public drug dealings will not produce a high number of arrests.

This participant-observation research was conducted in a high-crime and high-arrest police district with a flourishing trade in illegal drugs. The Eastern District is one of nine police districts in a mid-sized East Coast city that will be referred to as “Baltimore” (location names have not been changed). This police district, almost exclusively African-American, is home to approximately 45,000 residents. Every year, there are over 20,000 arrests. “It’s like shooting fish in a barrel,” one officer explained. “You’ll never run out of people to arrest here.” Levels of poverty, unemployment, homicide, and all other indicators of urban blight are very high. Research data, both qualitative and quantitative, were gathered over a 20-month period during which the author completed the police academy and worked as a uniformed police officer, mostly on the midnight shift (see Moskos, 2008).

## The Corner

The Baltimore Police Department estimates that 80% of homicides are drug related. The violence of Baltimore's drug trade may be extreme, but it is in many ways typical of drug-related violence in America's poorest neighborhoods: young men, usually African-American, with access to guns and involved in illegal public drug dealing, shoot each other for issues of protection, turf, and respect. Police response to an active drug corner follows a standard *modus operandi*: a citizen calls 911, a responding police car approaches, drug activity stops, and people—dealers, friends, addicts, lookouts, and any “innocents” who happen to be walking by—will slowly walk away. Officers who police the ghetto by and large hate the ghetto. The criminal justice system is perceived as a revolving door: “Justice for criminals” goes the well-worn police cliché. Police build their “stats” and earn court-overtime pay while residents get rap sheets and spend nights in jail.

A group of men selling drugs on the stoop of a vacant building will likely be ordered to go home. Yet police cannot legally order adults to go home. It is, after all, a free country. Police do not want every request turned into a confrontation. Requests need to be perceived as orders. To have such authority, police need to be respected or feared. An arrest is the “. . . or else” of a police order. Most often, corner boys will go for a brief walk around the block and then, after the police leave, reconvene on the same or a nearby stoop. Dispersing without being asked is considered a sign of criminal activity or perhaps an outstanding warrant. But police also view quick and unprompted departure—walking, not running—as a sign of respect and a satisfactory resolution to most problems. An officer in the police academy explained, “Tell them to leave the corner, and then take a walk. Come back, and if they're still there, don't ask questions; just call for additional units and a wagon. *You can always lock them up for something.* You just have to know your laws. There's loitering, obstruction of a sidewalk, loitering in front of the liquor store, disruptive behavior.” If a group remains on or returns to the same stoop despite an officer's order to leave, the officer is challenged and forced to follow-up on a threat. If you promise to lock somebody up, you have to deliver.

Only in high-drug areas do police officers make extensive use of discretionary non-drug-related charges. Any minor charge will suffice. In Baltimore, loitering is the most widely used minor criminal charge; in New York City, it is disorderly conduct. Loitering is defined in Baltimore, in part, as “interfering, impeding, or hindering the free passage of pedestrian or vehicular traffic after receiving a warning” (*Baltimore City Code*, Article 19, 25-1). In practice, loitering is failing to move when ordered to move by a police officer.

These arrests are invariably linked by police to the drug market. Arrests are believed to control the drug market by inconveniencing sellers, users, and others who benefit from illegal drug deals. One officer described an unorthodox approach he used very rarely: “Sometimes I'll flip a quarter for a loiterer. Tails he goes to jail and heads he doesn't. They'll be going, ‘Heads! Yeeah!’” I asked if they ever fuss when the coin came up tails. He said, “No, not really.” While this approach was rarely used (even by this officer), it illustrates both the discretionary nature of loitering arrests and the knowledge and acceptance of police discretion by officer and suspect alike. The suspect would be unlikely to complain because they know the officer could lock them up, and a 50% chance of walking free is better than no chance at all.

## The Drug “Shop”

Street-level drug operations are called “shops” because of their operators’ business-centered outlook. Those involved consider themselves to have “jobs,” but the term *going to work* is reserved for employment in legal jobs (Venkatesh, 2008). Corner drug dealing has five distinct jobs or positions: (1) lookouts, (2) steerers, (3) moneyman, (4) slinger, and (5) gunman. In practice, these roles can be amorphous. More often than not, one person handles multiple positions, but a cardinal rule of drug dealing is to keep the money and the drugs separate. This limits everyone’s legal liability. There are other positions in a drug operation—the couriers or runners who transport drugs, the cookers who cook crack, the packers who package drugs in \$10 or \$20 units for resale—that are not actively present in the street-level drug trade and therefore not the focus of the patrol officer.

Lookouts are the lowest job in the drug operation. Almost always an addict, a lookout has the simple job of alerting others when police approach. The steerer, hawker, or tout is responsible for promoting the product and leading the customer to the seller. While the jobs of both the lookout and steerer are often freelanced to local addicts, the moneyman or “bank” holds the money and is therefore a position of some responsibility. A customer arranges the type, price, and quantity of a drug sale with the moneyman (who is not always a man). The slinger—*slinging* is also a term used for drug dealing in general—looks after and distributes the drugs to paying customers. Since the criminal justice system treats juveniles more leniently, many slingers are under 18. The fifth and final position in any successful shop is the gunman or soldier responsible for protection. Drug dealers regularly experience robberies due to the fact that they are unable to turn to the police for protection (Jacobs, 2000).

After a customer pays money to the banker, the slinger gives drugs to the buyer. This process is known as *hitting off*. The slinger will access a hidden stash of drugs as needed. The drug stash, containing perhaps a few dozen pills of heroin and vials of cocaine, is kept nearby in weeds, trash, alleys, holes in lampposts, windowsills, or abandoned buildings. The idea is to keep the quantity of drugs in possession small enough so that when arrested, the criminal charge will be simple possession rather than the more severe charge of possession with intent to sell. Dealers, in effect, use a street version of what is known in more accepted industries as “just-in-time inventory.”

If a shop is run efficiently, the boss—himself working for or with a mid-level dealer—should be able to sit and observe the operation. By not handling drugs or money, he faces little risk of arrest from uniformed patrol officers. Low-level slingers serve as easy targets for loitering arrests as they must remain near their drug stash. While any member of a drug-dealing group is considered fair game for arrest, the easiest and most docile arrest targets are the customers. Although being a drug addict is not an arrestable offense, drug addicts commit numerous other minor crimes while they hustle for money, search for their next hit, or possess small amounts of drugs. Heroin addicts in particular facilitate an easy arrest by being notoriously docile and nonconfrontational (except when going through withdrawal). Heroin addicts often stink and carry communicable diseases, but unlike people high on other drugs, they never fight. Since arrests are by definition “hands-on” and demand close physical contact, police officers would like suspects to be cooperative, noncontagious, and sweet smelling. But police will usually settle for one out of three.

When the legal community discovered the problem of police discretion in the 1960s, they declared it illegal, immoral, and in violation of a democratic ethos (Goldstein, 1960; Kadish, 1962; LaFave, 1962). Of course it would come as a surprise to most police officers that discretion was “invented” in 1960 (and that it was considered a problem). Though all but ignored in academic literature before then, police have used discretion since the first establishment of a modern police force (see Table 1). Egon Bittner (1967), arguably the first academic to cast a positive light on police discretion, described the difficulties in policing skid-row areas with their high level of “non-normal” behavior. At the root of the conflict were varying citizen expectations toward the role of the police. Bittner saw police discretion as an underappreciated skill learned on the job, allowing police to function effectively in areas with greater criminal activity.

**Table 1. Police Discretion in the Literature, 1936-2000**

Author	Key Discretionary Concept	Significance
Vollmer, 1936	Professional police	No mention of discretion
Whyte, 1943	Neighborhood	Different police response in different neighborhoods
Goldstein, 1960	Police power to not invoke the law	Introduces concept of police discretion
Kadish, 1962	Less enforcement of law in Black neighborhoods	Equates discretion with racism
LaFave, 1962	Non-enforcement of the law	Describes discretion
Banton, 1964	Discretion as a theoretical dilemma for police officer	Cops are in a bind in lower-class neighborhoods
Piliavin & Briar, 1964	Dependent on demeanor	Discretion based on juvenile suspect’s demeanor, not race
Bittner, 1967	As a learned skill	Discretion good
Wilson, 1968	Varies according to police department	Introduces <i>service</i> , <i>watchman</i> , and <i>legalistic</i> concepts of policing
Alex, 1969	Race of police officer	Black police officers have tougher job in Black neighborhoods
Black & Reiss, 1970	Complainant’s desire regarding suspect	Wishes of Black complainants responsible for disproportionate number of Black arrests
Van Maanen, 1978	The “asshole”	Suspects’ attitude key
Smith, 1986	Class of neighborhood key; race not important	Equal treatment by police within an area; better treatment in better neighborhoods
Anderson, 1990	Race, class, style of clothes, regular patrol officers versus specialized unit	Describes conflict of cultures in the ghetto
Klinger, 1997	Police district	Service varies by police district, regardless of neighborhood variations within district
Engel et al., 2000	Demeanor	Demeanor not significant
Mastrofski et al., 2000	Complainant’s desire regarding suspect	Complainant’s desire not very significant; severity of crime key
Robinson & Chandek, 2000	Domestic violence	Situational variables

James Q. Wilson (1968) believed that police behavior varied in different cities based on the department's general approach to policing. He articulated the familiar distinction among *watchman*, *legalistic*, and *service* styles of policing. Smith (1986) narrowed the focus and observed officers behaving differently in different neighborhoods within a city. Smith stressed class over race, arguing that discretionary arrests were more likely in neighborhoods with low socioeconomic status. In higher socioeconomic neighborhoods, conversely, police treated both Whites and Blacks better. But within each neighborhood, police treated both Whites and Blacks equally.

Klinger (1997) built on Smith's neighborhood concept by noting that police discretion was dependent on the overall socioeconomic characteristics of the police district in which officers worked. While police behavior could vary greatly from one district to the next within any single district, the police would respond uniformly to all calls regardless of an individual's race or class. Klinger highlighted four key factors that affect officer discretion: (1) officer cynicism, (2) police workload, (3) the definition of "normal" crime, and (4) the degree to which officers believe victims were responsible for their predicament.

Engel, Shepard, and Sobol (2000) noted the characteristics of an officer's supervisor significantly affected police officer discretion. Robinson and Chandek (2000) examined officer discretion as it specifically related to domestic violence. They introduced important but previously overlooked situational variables such as the demographic characteristics of an officer, the victim's cooperativeness, the victim's injuries, and the time of shift. Barlow and Barlow (2000) argue that discretionary actions by both White and Black police officers discriminate against African Americans.

Overall, the literature establishes that police exercise considerable discretion in their day-to-day arrest decisions. While such discretion was initially seen as *prima facie* evidence of racism and something to be identified and eliminated, most contemporary research tends to see police discretion as inevitable and even desirable when used judiciously. While recent literature has begun to focus on police-related variables as a significant factor in discretion, no research has focused on police officers' desire for court and overtime pay as the main variable affecting quantity of low-level discretionary arrests.

## Identifying Discretionary Arrests

At the simplest level, police discretion is an officer's decision to act or not act when there is an option to do otherwise. Citizens in the Eastern District—African Americans—are routinely and legally asked by police if they have identification. Though there is no obligation to respond, police officers may ask people their names, where they are going, and where they live. Failure to carry ID or go by one's legal name is nearly universal among those questioned by police in the Eastern District. Since you cannot write a ticket to a person you cannot identify, all offenses, even nonarrestable offenses, become arrestable (technically, detention for the purpose of identification). This is the flaw in the street code's logic. Most drug suspects partake in multiple, if minor, illegal activities. More often than not, street-level drug dealers are rowdy teenagers who drink, shout, litter, loiter, and curse. Without identification, all these behaviors become grounds for arrest. This gives police great discretionary leverage in their dealings with citizens.

Once an officer has probable cause for arrest—and a smart officer tries to have legitimate probable cause for something—then any disobeyed command or bad attitude can result in arrest if the police officer so chooses. Strategically, officers gain compliance from a suspect and control of a situation by presenting their arrest decision not as a response to legitimate but technical violations of the law but rather as personal—even extralegal—officer discretion. Police commands are usually expressed in specific personal terms for which there can be no acceptable rejoinder. As long as police have *some* reason to lock up a suspect, then any disrespect or failure to follow a request (however reasonable or unreasonable) could be grounds for a legal arrest. On street corners in poor neighborhoods, people—usually young minority men involved in the illegal drug trade—are arrested when they refuse to obey a police officer’s orders to move or if they talk back to police. An analogy could be made to pretextual car stops (*Whren v. U.S.*, 1996). Officers are constitutionally permitted to stop a car for any reason as long as there is some legal reason (even if unrelated) for the stop. On drug corners, then, police, in effect, conduct pretextual arrests.

Though police-officer based variables are the key determinant for a discretionary arrest decision, suspect-based variables do matter. Criminal behavior and a bad demeanor certainly increase the likelihood of arrest. Polite people often avoid arrest, while rude folks talk their way into handcuffs. The primacy of officer-based variables can be seen in the wildly varying arrest numbers for the police officers in any given squad. If suspect-based variables—race, demeanor, and criminal behavior—were the key factors determining arrest, one would expect similar arrest statistics for the 13 officers for whom suspect-based variables are constant. As is typical among police, a small proportion of police make the majority of arrests. In one police squad, the three highest-arrest officers were responsible for 54% of the squad’s total arrests (see Table 2). The three lowest-arrest officers were responsible for just 7% of the squad’s total arrests. These variances can only be explained by examining the officers involved and the distinction between high- and low-discretion arrests.

**Table 2. High- and Low-Discretion Arrests per Officer (6-Month Period)**

Officer	Arrests (Total)	Felony Arrests	Nonfelony Arrests	Traffic Citations
Jake Atz	77	5	72	135
Charlie Bricknell	66	1	65	65
Terry Cox	49	6	43	59
Pat Duncan	31	11	20	18
Art Ewoldt	24	2	22	28
Gene Ford	20	8	12	20
Ross Grimsley	20	2	18	64
Tom Hamilton	18	0	18	19
Charlie Irwin	16	4	12	60
Gerry Janeski	11	3	8	40
Burt Kuczynski	10	2	8	36
Phil Lowe	10	1	9	28
Sherry Magee	4	2	2	5
Total	356	47	309	577
Mean	27.4	3.6	23.8	44.2
Median	20	2	18	36
Std Deviation	22.7	3.2	22.3	34.0

**Table 3. Correlation Between High- and Low-Discretion Arrests**

Correlation Between	F	Sig.
Nonfelony arrests (high-discretion) and traffic citations (high-discretion)	0.785	0.001
Nonfelony arrests (high-discretion) and felony arrests (low-discretion)	0.075	0.81
Felony arrests (low-discretion) and traffic citations (high-discretion)	0.018	0.95

Source: Baltimore Police Department Monthly Performance Sheets, compiled by author

For the purposes of this study, felony arrests are considered low-discretion and misdemeanor arrests and traffic citations are considered high-discretion. For felony crimes—especially those involving victims and violence, arrests are largely a function of luck and an officer’s ability to identify and locate a suspect. If a man is bleeding and a woman is holding a bloody knife yelling, “I cut that son of a bitch and I’d do it again,” she will get arrested. If the suspect cannot be located, the responding officer makes no arrest and hands the case over to a detective. For the most part, patrol officers stumble across felony arrests. The vast majority of police calls for service do not result in an arrest, and the bulk of arrests are not felonies. For minor and nonviolent offenses, such as traffic citations and nonfelony arrests, police officers exercise a great deal of discretion. In any given work shift, an officer can decide to write five traffic tickets and, in a high-drug area, lock up two low-level drug offenders. An officer can also decide to write no traffic tickets and give people warnings for minor crimes. Even when there is no drug charge, in high-drug areas most discretionary arrests are in some sense drug related (broadly defined). Likewise, many minor crimes become drug arrests when the search “incident to arrest” (*after* arrest) finds drugs on the suspect’s person.

To confirm the legitimacy of the high-discretion/low-discretion dichotomy, the correlation between these two categories is examined (see Table 3). If the categorization were false, it would be expected that there would be some constant correlation among all forms of police activity. That is to say, some officers may be more active than others, but there shouldn’t be a large difference between kinds of arrests within any given squad. In fact, however, there is.

The data strongly support (1) felony arrests as an indicator of low-discretion arrests, and (2) nonfelony arrests and traffic citations as indicative of high-discretion activities. Among individual officers, there is a strong correlation between the two independent measures of high-discretion activities (nonfelony arrests and traffic citations). Officers who make a lot of discretionary arrests also write a lot of discretionary traffic citations ( $F = 0.785$ ,  $Sig. = 0.001$ ). Yet, officers have little control over low-discretion arrests (felonies). There is no correlation between felony arrests and nonfelony arrests ( $F = 0.075$ ,  $Sig. = 0.81$ ) or between felony arrests and traffic citations ( $F = 0.018$ ,  $Sig. = 0.95$ ). In other words, distinctions between individual officers account for the variance in quantity of high-discretion activities. In pure quantity, high-discretion activities ( $n = 885$ ) far outnumber low-discretion arrests ( $n = 47$ ).

### Low-Arrest Officers

Officers who “look for trouble” open themselves up to use of force, physical danger, and the likelihood of civilian complaints. There is very little incentive and considerable disincentive to work more than the minimum required. You do not

but for some, the hassles of court outweigh the extra money. For one officer, the lengthy commute was the deciding factor:

*Fuck no, I don't want court. Like I want to come here on my day off. Two hours [pay] ain't worth it. With my drive, I'm going to spend more on gas. Or what if you get 1:30 [PM] court? I'm supposed to work midnight to eight, drive home, sleep for three hours, drive to court, sit around for a few hours, have the case be postponed, and then go back to work that night? No thank you. I used to make more arrests, and then they started banging us for no-shows [punishing officers for failing to appear in court]. Fuck it.*

Unlike police schedules, most courts operate on regular business hours. Court time is scheduled without consideration for an officer's work and sleep schedule. Since police do not work Monday to Friday, court cases are often in the middle of an officer's "weekend." An officer on the midnight shift may receive an afternoon summons, while an officer in a specialized unit working 7:00 PM to 3:00 AM will be expected to appear in court daily at 9:00 AM. There is no "officers' lounge" in court. Nor coffee. Nor may one read in the courtroom to pass the time. To put it bluntly, "Court sucks."

The hassles of the booking process can also serve as a deterrent to discretionary arrests. After an arrest, the officer must complete the booking process before going home. Most officers are hesitant to make arrests or get in situations likely to lead to an arrest toward the end of their work shift. Bookings are unpredictable. To control overtime pay, superiors also discourage late discretionary arrests. The simplest arrest, something like loitering, takes about an hour for the arresting officer to process: the procedure involves paperwork relating to the arrest, paperwork relating to the charging of the prisoner, and a commute to Central Booking for court paperwork. The amount of time needed to process an arrest can vary greatly: computers go down; shifts change; juveniles are booked separately from adults; prisoners demand medical attention (officers try very hard to avoid a multihour trip to the hospital—being under arrest does not allow you to jump the hospital's waiting-room queue); property and evidence must be submitted; drugs must be photographed and submitted; and wagons must be available for prisoners' transport.

A lengthy booking process—one involving drugs and the arrest of two suspects, one adult and one juvenile—can take more than eight hours. The volume, variety, and redundancy of paperwork in the police department is, to the uninitiated, shocking. For such an arrest, in addition to preparing drugs for submission (photographing the drugs in a heat-sealed bag and filling out an arrest log and a drug book), 21 forms and labels, 19 of them in longhand, need to be completed in five different locations: one primary incident report, one supplement report for the incident, one arrest form, one statement of probable cause, one charging document for the adult, one juvenile custody form, one juvenile supplement listing the charges against the juvenile, one list of prior arrests for the juvenile, two seized property forms, five property submission forms, one lab request for drug analysis, one pink property tag for a property bag, two envelopes for property submission, and two envelopes for money submission.



Despite the general culture of arrests that exists, given the amount of time an arresting officer may be out of service, superiors occasionally discourage arrests. One day, many officers called in sick and there weren't enough officers to cover all the posts. At roll call, the shift commander said, "Use discretion. I only want felony arrests or if you have to, like domestic violence. Tell the knucklehead on the corner to go home. You can get him tomorrow."

Older officers making few arrests can be defensive about their low-arrest totals, likely claiming that their arrests are "quality" or that the department will punish them if a prisoner complains about treatment. The quality of low-arrest officers is almost impossible to quantify. If you stay out of trouble and make the occasional arrest, nobody in the police department will give you a hard time. Some low-arrest officers are simply lazy. Others are burned-out. A few are simply afraid. In private, many older officers simply admit they got tired of policing cowboy-style. Ultimately, patrol officers are judged by their superiors with quantifiable "productivity stats," namely arrests, and the ability to stay out of trouble. Nevertheless, it is very easy for police officers to get away with doing very little work. Some low-arrest officers are excellent police, however. These officers see arrests as a sign of failed policing, disorder, and crime. Peacekeeping is an underappreciated skill for the patrol officer; officers receive no official credit for informally defusing potentially explosive situations.

Officers who ride together for the first time will ask each other about their work-related interests. On my first night riding with Officer Lowe (from Table 2; all names have been changed), he asked me, "What are you into?" But then quickly added a twist: "Whatever it is, we're not doing it. I don't get into *nothing*." Later that evening he explained, "I got sick of court. I don't arrest people anymore. And I don't go to court on my day off. You don't get rewarded for arrests. I prefer to sit on my post and prevent. I don't want to see [crime] pins on my map."

Lowe talked about his motivations and the department's emphasis on arrests and stats:

*The thing about this emphasis on stats is I haven't changed. I've policed the same way for the past five years. I guess when I first came out I was more gung-ho, jacking people up [stopping and searching people]. But then I got shot at. It's a humbling experience. . . . Now my priority is to me. I'm going to go home to me and my family.*

On another occasion, Lowe and I were riding together at 2:30 AM on a Saturday morning. We came across a group of seven young people sitting on their stoop and the stoop of the vacant building next door. They were all drinking bottles of malt liquor. Music was playing from a boom box, but not very loudly. There had been no complaint dispatched. Officer Lowe asked them for their IDs. Surprisingly, all but one had an ID. Only one was over 21. Lowe told them they weren't old enough to drink. He asked them to get off the vacant building's stoop and to take the beer inside. We were polite, as were the youths. When we left, Lowe said, "That's what pisses me off. I think I handled that well. I like to think that now they respect me a little more, too, because I wasn't a dick. Would I be doing a better job if I locked them up? *But I don't get any credit for good policing.*" Six arrests (for underage

drinking in public) would be an impressive month's haul for any officer, especially Officer Lowe.

Soon after school ended for the summer, Officer Lowe was walking in the courtyard of a low-rise public housing complex after midnight. A group of young teenagers was shouting and playing. Lowe stopped the juveniles and asked to see a parent or guardian. When an appropriate adult was found, Lowe lectured her about the need to respect the city curfew and honor the peace of her neighbors late at night. The process took about an hour. Lowe explained his actions to me:

*Where are their parents? Who knows. Grandma acts all concerned if I'm there. But they don't give a shit. If they did, they wouldn't let their kids hang out and drink in the middle of the night. I just try and be a buzz kill, so they drink somewhere else. . . . Everybody thinks I'm a hump [lazy officer]. And maybe I am. But I like to keep things quiet. If Cox wants to run around chasing punks, that's fine. But I prefer to take a nap. [My] post is quiet. I walk foot here for a few days [after school gets out] to make sure people don't think this is where the summer party is. You see what's going on 700 Port [St.]? They can go party there. A few hours of work now will keep things nice and quiet for the rest of the summer.*

Unlike younger officers, Officer Lowe was resigned to remaining on midnight patrol in the Eastern District. He saw no benefit to having good "stats" and claimed not to care how he was judged.

## High-Arrest Officers

Police officers who want to make arrests want them on their own terms, ideally without victims, complaints, or unnecessary paperwork. Police in general and young officers in particular believe that making arrests is the essence of police work. In my squad, the top three officers in arrest totals were three officers with the least experience. Within individual patrol squads, a few officers make the majority of the arrests. Officers who want arrests make a lot of them. Officers who don't, won't.

Within reason (and for good reason) most arrests in high-arrest areas are at the discretion of the individual police officer. For the police department, arrest numbers are a way to quantify police productivity and efficiency. These are your tax dollars at work. If the homicide numbers aren't going down, at least arrests show that police officers are doing *something*. For police officers, discretionary arrests are a way to make a buck. A legitimate late arrest may result in a few extra hours of overtime pay. Officers abusing squad overtime could quickly find themselves detailed to foot patrol as punishment. Court-overtime pay comes out of a different part of the budget, so police supervisors have no objection. When officers want consistent overtime, they go to court.

While "collars for dollars" is more a New York City term, the concept of arresting people for profit exists in Baltimore as it does in all police departments. Each prosecuted arrest requires multiple court appearances by the police officer as there are always numerous postponements. For officers who want overtime money, court is an easy way to get it. More serious cases can drag on over many months, even years—that's a lot of overtime. When not on scheduled duty, Baltimore police officers are paid time-and-a-half overtime and are guaranteed a minimum

of two-hours pay for each court appearance. With the exception of traffic court, police officer testimony is rarely required, perhaps in about 5% of all cases. Yet an officer's presence is required even when no testimony is needed. An officer who is working a shift will be summonsed to court only when needed. When off-duty, however, police officers must come to and will be paid for all court appearances.

Knowing an officer must be present for a case to proceed, some suspects use postponements strategically. Other suspects simply don't have their act together. The first postponement is usually because the suspect does not have representation. The second postponement often comes when the suspect failed to secure or meet with his or her court-appointed attorney. And then, of course, postponements happen for various legal reasons. The only thing that matters to a police officer is that he or she is paid to be there.

In District Court, if a case is not prosecuted, officers can punch in at 9:00 AM and punch out at 9:01 AM, a practice known as the "9:01 Club." This is considered the ideal arrest to maximize overtime pay and to minimize time in court. Active officers with a court appearance per day can add 30% to their take-home pay, a huge incentive to some. While police officer pay is lower in Baltimore City than most other jurisdictions, paychecks in Baltimore City can be larger: "You might get paid more in the [Baltimore] County. But you can make more here [in the city]."

Officer Charlie Bricknell provides a useful case study for a high-arrest officer. He is a short, weight-lifting young officer with an attitude both aggressive and self-effacing. Though hard-headed, Bricknell is also quick to point to his faults: "I'm dumb as a sack of rocks. I am definitely not the sharpest tack in the box. . . . I'm a poster child for ADD." While some officers enjoy the relaxation of slower periods, Bricknell says he needs to keep moving. He explained this need to me: "Look, Mr. Harvard. You always got something to read. Maybe you like that. I can't sit still. Can you imagine me reading a book? I'm lucky I can spell my name. I've never read a book. I prefer to twiddle my thumbs. I won't even pick up a magazine unless it's got pictures and even then there better be some pictures of half-naked ladies or beefy guys [muscle magazines]."

In March, after the series of low-arrest memos, Bricknell decided he was going to set the record for number of arrests in one month: "The major wants stats; I'm going to give him stats. . . . I may want to transfer somewhere else some day. I want the stats . . . and Atz [who claimed to have the record for number of arrests in a four-week work period] doesn't think I can beat him."

Bricknell decided that the easiest way to make lockups was to arrest people for violating bicycle regulations. Many bikes, at least late at night, are used by drug runners and drug lookouts. At night, all bikes are legally required to have a light. Bricknell would stop bicyclists for this violation. If the rider had ID, he would write a citation. Most people didn't have ID. These riders were locked up. While the specifics of bicycle lockups were largely unique to one officer, the general approach to discretionary arrests was very typical.

One sergeant was dismissive, "I wouldn't accept those as arrests. That's not real police." Our sergeant, however, was supportive: "But the lieutenant eats that shit up! . . . As long as the lieutenant likes them, I'm all for it." Bricknell defended his actions:

*I lock up bicyclists. It's called zero tolerance. If you're biking in violation of the law, I'm going to write you a ticket. At 3:00 AM, you need a light. You ever seen a light here? If you don't got ID, C.B.I.F. [jail]. All those humps [less active officers] can call me whatever they fucking want. I don't see them arresting Al fucking Capone. It's legal. And I'm gonna do it. If they don't want to get locked up, all they gotta do is follow the law. It's even easier. All they gotta do is carry ID! But boy, do they hate me at ECU [the evidence room where the bikes were submitted as prisoners' property].*

Bricknell set the record with 26 arrests in one month.

Later our sergeant told me,

*Look, I don't know what his [Bricknell's] motivations are. But I think it's good. He's locking people up, which is more than half the people in this squad. You think the lieutenant doesn't like those stats? It's good for all of us. And he gets a lot of [drugs] off those lockups. Most of them are dirty. And it's all legal.*

Squad members were mostly dismissive of Bricknell's particular high-arrest strategy. The general consensus was that if you want to make a lot of arrests, you should make "real" low-level arrests such as targeting loitering, low-level drug possession, and traffic-related offences. One squadmate said, "Giving tickets to people on bikes who have no money? That's just wrong." Another officer said, "It's stupid. But if that's what he wants to do with his time, good for him. I couldn't do it. But he doesn't care what people think." Another said, "Man, with Bricknell and Atz, it's like Tweedledee and Tweedledum. One's pulling over every bike, and the other is locking up every junkie that comes from the Southeast [District]. Is it making the sector any safer? I don't think so."

Officer Atz, who had more experience than Officer Bricknell, defended his own high-arrest workstyle:

*Unless it's a busy night, I'm going to jack-up whoever I can. They [drug dealers] may not all have drugs on them. But nine times out of ten, one of them is dirty. It may not even be what they're dealing. Maybe just a blunt for "personal consumption." Either way, I win: a good lockup or 9:01 court. I don't like to sit on my ass and hump out all night. I've got a short attention span. I need to go out and do something.*

I asked Atz about his predilection for loitering arrests. He replied, "Sarge really likes arrests, and I give them to him. . . . Conspiracy to possess. Loitering. I don't give a shit if they [state's attorney representatives] won't take it. That's their problem." The sergeant defended Atz's high-arrest strategy as well: "Crime right now is all on Twenty-Two and Twenty-Three Post. And if you start knocking off [arresting] one or two [addicts] a night, you start making a difference. That's what we did in Twenty-One Post. It works!"

## **Morale and Arrests**

While some officers rarely make any arrests, even high-arrest officers will stop "producing" during periods of low morale: "It's a cliché, but it's true. If you don't do nothing, you can't get in trouble. I used to go out there and bust my balls. But after you get a complaint or two, bullshit ones, you say fuck it. If this department

won't defend me, assumes I'm guilty, I'm not going to do shit." While arrests are mostly determined by the discretion of individual officers, overall morale greatly affects this discretion. Alexandre Mas (2006) highlights the link between morale and arrest statistics: in the months after police officers lose pay-related arbitration cases, arrest rates and average sentence lengths decline.

Officers' arrest numbers can vary greatly over a short period of time. Officer Lowe (from Table 2), the low-arrest officer, made ten arrests during a six-month period. His monthly arrest totals ranged from zero to four. Officer Lowe made no arrests during the month in which Officer Bricknell locked up 26 people. Yet Bricknell made only three arrests in November and just one arrest in December. A few observations from a period of a few months illustrate the effect of morale on Bricknell's (and others') productivity.

One officer did not come to work one day as he had been approved for a day off. However, his day off had been disapproved without his knowledge. When he returned to work, he was charged with being AWOL, a fireable offence. He was angry when he told me, "I could do shit out here! Write warrants, get guns, but you see the support you get? It's not worth it. So you just answer calls. If you're out there doing your job, you're going to get complaints against. Someone will go to the phone and say, 'I was locked up and I didn't do nothing!'"

In early December, a brief and official memo, universally called a "95," was required from every officer who failed to make at least one arrest in the previous four-week work period. Until then, there had been no formal pressure to make arrests or write traffic citations. As a squad, many members felt that the different workstyles of various squad members complemented each other. I asked my sergeant about the real significance between my one arrest that month and the other officers' zero arrests. The sergeant said that the difference came from above: "If you make an arrest, I don't have to write a 95 on it. Now I have to write a 95. And they have to write a 95, too!" He continued, "This is Compstat bullshit. It's all numbers. The major goes downtown and gets grilled if they see a zero in any category. So now we can't put zeros down for anything. . . . If I get yelled at, then I'm going to be pissed. . . . Look at the list; you made an arrest. They didn't say anything about you. But Janeski and Irwin had no arrests. . . . There's no excuse in 15 [work] days not to make one arrest!" The sergeant told Officer Janeski, one of the officers with no arrests, "Make one freakin' arrest. It will keep them off my back and me off your back."

Janeski said he was unwilling to police aggressively because he did not want to be the victim of a lawsuit or internal investigation:

*Sarge says some people are just coming in here to get a paycheck. But is that wrong? I don't want to lose my job and my retirement because some idiot doesn't pull over and kills a pedestrian. . . . What if I turn on my lights and he makes a right on Washington [the wrong way down a one-way street] and slams into someone on the other side of the street? Who's to say I wasn't chasing them? Me!? What's wrong with wanting to avoid lawsuits? IID [Internal Affairs] numbers? It's not worth it. I want to retire.*

An officer explained the difference in arrest numbers among squad members:

*Look, you can go out there and try and get into shit or you can be a hump. The more shit you do, the more lockups you'll get. But if you want lockups, you just pick up junkies. You stop cars. You can lock up as many as you want. A lot of stuff you don't have control over. Domestic? You've got mandatory arrest. If someone is cut, you cuff the dude with the knife. But those aren't usually on-view. And if they are, it's hard to run from. Anyone can make bullshit lockups. But sometimes you just get tired of it all.*

After the low-arrest memo criticizing officers with poor "stats," squad monthly arrest totals decreased from 73 to 50.

New Year's Eve is a hair-raising night to work. Traditionally, many residents celebrate by shooting guns in the air. Starting a few minutes before midnight, literally hundreds of gunshots are discharged: big guns, small guns, even a few automatics. After the very intense initial volley, frequent gunfire is heard until 1:30 AM, after which things calm down and remain relatively quiet. The sheer number of guns in the area illustrates both the need for and the futility of gun control laws.

The commissioner canceled all regular and vacation days off. The shift commanding lieutenant called in sick. He said he had hives. With all the other officers reporting for work, there was an entirely predictable shortage of cars and radios. I asked one officer why he had stayed in the Eastern District all his seven years:

*I can't get out . . . I've put in for [a lot of promotions and even straight transfers]. But none came through. . . . One time I solved a homicide on the day it happened. A witness said Funk-funk did it. I knew right away who that was and where he lived, Spring Street. I know this area. So I go there and get the guy and the gun. Later, the Lieutenant tells me that I'm too valuable, and he can't afford to have me leave midnights. So what do you get for doing good work?*

Police officers working in the Eastern District captured about a dozen guns that night. The following roll call, on New Year's Day, the lieutenant returned in high spirits and with no sign of hives. When he gave a routine injunctive to back each other up, there were coughs in the roll-call room. Later an officer expressed a common view: "Who the hell is he to tell us to back each other up? Where was he? Whatever respect I had for him went right down the drain."

A few days after New Year's, all officers with one or no arrests the previous month were again required to write a 95. This time the bar had been raised to two. Squad members were angry, even those who previously made a large number of arrests. One officer told me, "You asked in the beginning what is it that gives everyone a bad attitude. Well, now you see. . . . How dare the major or L.T. [Lieutenant] call my work unsatisfactory when they have no idea what kind of job I do!"

In January, with morale lowered by the second low-arrest memos the squad arrest total dropped from 50 to 46. The number of officers making no arrests increased. In early February, the third and final low-arrest memo was released. More officers complained, but the sergeant complained about officers complaining: "Those who do the most complaining are the ones doing the least work!" One officer, whose monthly arrest total dropped from seven in December to one in January said, "They started fucking with us, so we stopped working. . . . This shit they have

with the 95s? If they're going to worry about production and pressure us to make traffic stops and arrests, fuck 'em." Although squad arrests increased to 61 that month, three officers made zero arrests.

During this period, a memo read in roll call stated that officers in the Eastern District were using too many disposable plastic handcuffs at a cost of 70¢ each. The irony of this memo was lost on no one. One officer said, "I love this bullshit! First they tell us to lock people up. Then they tell us we're using too many cuffs. We could just ask the whole district to march single-file down to CBIF."

At the end of each shift, officers record their work statistics on the squad stat sheet. As in baseball, where even the weakest Texas-League single looks like a line-drive in the box score, for police, all arrests—good, bad, guilty, innocent, convicted, or never charged—look the same on the stat sheet. The more the better. Felony arrests look like home runs. But nothing is wrong with a misdemeanor single.

## Conclusion

Historically, research on police discretion and arrest decisions has focused on suspect-related variables and the nature of police/public interactions. By looking only at officers working in the same squad, suspect-based variables can be held effectively constant. Yet, a large variance in arrest numbers remains. The most important determining factor is an officer's desire for court-overtime pay. Officers who want to go to court make a lot of discretionary arrests. Officers who do not want arrests only make a few.

Arrest numbers are a standard measurement to quantify police performance. In the police world, arrests are good. Young officers with high morale are the most likely to seek arrests and the resultant court-overtime pay. A minority of high-arrest officers account for the majority of all arrests. The majority of all arrests are discretionary. Discretionary arrests do in fact reflect real (though minor) violations of the criminal code. But these arrests, by nature discretionary, are not necessary. They occur because police organizations encourage arrests, and individual police officers, often motivated by court-overtime pay, want lockups. Arrests decrease when the hassles of arrests—lack of departmental support, citizen complaints, the burden of court, and/or an ineffective court system—make putting away the bad guys no longer fun or worth the trouble. Very few patrol officers remain committed to a high-arrest style of policing after more than about five years on the force.

While there should be nothing explicitly racist or discriminatory about making legal arrests, to arrest in quantity, police work in areas with many potentially arrestable people. Public drug dealing and the resulting circus of dealers, addicts, and other customers provide the perfect milieu for high-arrest officers wanting to make discretionary arrests. These neighborhoods are disproportionately poor and minority. In other words, cops do not go out trying to lock up Black people, but it just so happens the neighborhoods where they can lock up lots of people happen to be Black.

The implications for this research are rather straightforward. If we wish to reduce arrests (and it is by no means a given that police organizations wish to reduce arrests) and the number of minorities entering the criminal justice system, changing

an arrest-based police culture should be the goal. Ultimately, the importance of arrests in a police culture needs to be examined. Understanding the nature of arrests from a police perspective is the first step. While current trends in policing hold police commanders accountable for reducing crime, the rank-and-file police officers are still largely judged on “productivity stats.” Arrests and response time are used to justify productively regardless of any relation to crime prevention. Police at *all* levels should be judged by the absence of crime in their jurisdiction and not police reaction to crime after the fact.

Alas, a desire to change police culture is quixotic, perhaps futile, and susceptible to unintended consequences. We could reduce arrests simply by recognizing what we already know: discretionary arrests occur because arresting officers want money. It would be rather simple to reduce arrests by providing opportunities for police overtime that are easier and more reliable than are off-duty court appearances. Increased pay is also likely to reduce arrests, but not as long as court remains the most convenient overtime option. Further research could examine the correlation between the availability of alternative sources of overtime pay and number of arrests. If, as this research claims, arrests in high-drug areas are primarily the result of an officer’s desire for court-overtime pay, then alternative sources of easy overtime should decrease the total number of discretionary arrests. For instance, there is a law (much maligned in the press) in Massachusetts requiring a uniformed police officer at all road construction sites. While this is certainly featherbedding of a sort, along with making police rather easy to find, the law should reduce the quantity of for-profit arrests. It is easily argued that it is better to pay police officers overtime to stand in uniform on the street than it is to pay the same officers to sit in a courthouse awaiting another postponement (while also having to pay a non-union flagman to stand at the construction site). Significantly, police chiefs should focus on what role arrests should play in a greater crime prevention strategy. Police management needs to move beyond a simple, “arrest is good” philosophy. While in some circumstances discretionary arrests may indeed be good, arrests need to be seen as a means to a greater police goal and not simply an end in themselves.

## Endnote

<sup>1</sup> This article borrows from Chapters Four and Six of *Cop in the Hood* (Moskos, 2008).

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**Peter Moskos**, PhD, is assistant professor of Law, Police Science, and Criminal Justice Administration at the City University of New York's John Jay College of Criminal Justice. His first book, *Cop in the Hood*, is published by Princeton University Press ([www.copinthehood.com](http://www.copinthehood.com)). Moskos specializes in a sociological approach to police culture, police patrol and crime prevention, drug violence, police/minority relations, and qualitative methods. He is a former Baltimore City police officer.

*Contact Information*

Peter Moskos, Professor  
John Jay College of Criminal Justice  
899 10th Avenue  
New York, NY 10019  
[pmoskos@jjay.cuny.edu](mailto:pmoskos@jjay.cuny.edu)  
[www.petermoskos.com](http://www.petermoskos.com)