

## ***RACIAL PROFILING: FIVE REASONS WHY POLICE EXECUTIVES SHOULD SUPPORT THE COLLECTION OF TRAFFIC STOP DATA***

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We are currently witnessing a large-scale, national movement toward the mandated collection of traffic stop data by police. This trend—primarily driven by politicians trying to address the controversial racial profiling issue—has forced thousands of police agencies across the nation to collect information on the race of drivers stopped, searched, and/or arrested within their jurisdiction. Twenty-six states have enacted anti-profiling legislation, and data collection is occurring in all but a few states; eleven states now demand collection of traffic stop data for *all* police agencies statewide<sup>1</sup>. The fact that most of these anti-profiling laws and mandates have been enacted within the last decade shows that we are experiencing a significant trend of importance to police executives.

Some jurisdictions undertake data collection proactively, but many police executives oppose data collection because the process can strain resources and lead to invalid claims<sup>2</sup> about what the data mean. Regardless of these legitimate concerns, police opposition has failed to slow the trend, and further obstruction of anti-profiling legislation threatens to diminish public support and create the perception that police are indifferent to concerns about racial profiling.

The purpose of this article is to identify and highlight the reasons why police executives should support rather than oppose the trend toward traffic stop data collection, and to persuade police who have been reluctant to endorse the movement that the advantages of data collection far outweigh the negatives. Opposition is unnecessary, and counterproductive to the interests of defending good officers, promoting professional practices, and bolstering public support for police. The process of data collection and interpretation can promote collaborative ties with the community and allied agencies. These same processes can validate police integrity and detect potential problems before a crisis develops. Traffic stop data can also provide a solid defense against civil liability claims. Finally, proactive data collection can supplant more burdensome political mandates. It would be absurd to argue that mandated data collection poses no significant problems for police executives because in many cases it does, but the five points below show that police have more to gain by endorsing rather than opposing this trend.

### ***Reason #1: Data Can Promote Collaborative Ties***

Over the last three decades, the culture of community policing has spread so thoroughly that tactics and strategies associated with the model have become common knowledge among law enforcement executives and street-level officers. By now, it appears that “everybody knows” that police need to successfully engage citizens and implement collaborative strategies to solve problems in the community<sup>3</sup>. Despite the popularity of community policing, one of the greatest threats to its continued success has been the issue of whether police can successfully engage minority residents, many of whom have historically viewed the police with skepticism, hostility, and even fear<sup>4</sup>. Sadly, despite almost four

decades of reform, programs that have worked to successfully bridge this divide continue to be the exception rather than the rule.

Under these circumstances, data collection could widen rather than close the existing gap in police-minority relations. There are some surprising examples however, that demonstrate the potential for positive outcomes and the creation of successful partnerships among police, community groups, and researchers as a result of these mandates. The key to producing successful collaborations is engagement—gaining the cooperation and trust of minority residents and civil rights groups by including them in the process of planning, implementing, and evaluating a prospective data collection program. Programs could develop as part of an ongoing police-community task force made up of representatives from both the department and the minority community<sup>5</sup>. The group could promote open dialogue regarding the important concerns of police and citizens, including: a) what each of these groups hope to gain through data collection, b) what information needs to be collected to accomplish those goals, and c) the meaning and interpretation of the data after it has been collected<sup>6</sup>. In this way, data collection may work to bridge the gap between police and minority communities rather than aggravate long-standing wounds.

The case of the New York City Police Department's (NYPD) Street Crimes Unit provides a prime example of how data collection programs can work to improve both police-community relations and police practices<sup>7</sup>. In 2003, the NYPD agreed to collect data concerning the activities of the Street Crimes Unit as part of a settlement with civil rights groups concerned about racial profiling. The agreement included provisions for analyzing the data in conjunction with an independent auditor and civil rights groups at quarterly meetings. Over time, groups that had been antagonistic began to collaborate in terms of both interpreting the data and altering police practices to the point that considerations of race became an integral part of the everyday problem-solving process of the NYPD<sup>8</sup>.

Data collection also has the potential to create stronger collaborative ties between police and researchers. First, analysis should be done by independent researchers rather than police to increase transparency and confirm the legitimacy of the data collection program. Second, most agencies would find it difficult to devote the manpower and other scarce resources necessary to conduct in-house analyses. The benefits of these types of collaborations became clear, for example, after the enactment of mandated data collection in Texas in 2001. Several police agencies in the Dallas-Ft. Worth region agreed to participate in a research project designed to standardize and improve the data collection process throughout the state<sup>9</sup>. This project helped to strengthen collaborative relationships that now extend beyond traffic stop data collection. The Dallas Police Department recently announced the creation of the \$9.5 million W.W. Caruth, Jr. Dallas Police Institute, a collaborative effort to develop innovative crime-fighting strategies and advanced education and training for police managers throughout the nation<sup>10</sup>.

### ***Reason #2: Data Can Validate Police Integrity***

The weight of existing evidence demonstrates that within many jurisdictions, minority drivers are stopped, searched, and/or arrested at rates that are disproportionate to their relative numbers in the population<sup>11</sup>. Some critics have misinterpreted the data and have argued wrongly that police must be profiling since minorities are overrepresented in the statistics. There are some valid legal explanations for jurisdiction-wide disparities. First, the enactment of intermittent crackdowns designed to focus police resources on particular problems like overweight trucks or impaired drivers may influence traffic enforcement patterns regardless of race. Second, research has shown that a large percentage of police actions during traffic stops are non-discretionary<sup>12</sup>. Officers are often compelled to take certain actions during traffic stops by organizational rules or state codes, such as searches that are conducted incident to an arrest or as part of a vehicle tow inventory, or arrests that are made as a result of the discovery of an outstanding warrant made during the course of a lawful traffic stop. In these instances, it doesn't matter what the race and or ethnic origin of the motorist is because the law compels the officer to act.

Claims of widespread profiling that are based entirely on data that reveal jurisdiction-wide disparities fail to consider the probable impact of factors other than race, including targeted enforcement and the non-discretionary actions of officers<sup>13</sup>. Ironically, the most effective way to answer these types of

claims is not the elimination of data collection, but rather, the collection and analysis of *more* data that can be used to validate the existence of good police practices and lawful decision-making. To provide evidence of lawful police actions, the traffic stop data collection instrument must include fields that explain the motivation for officer decision-making during the stop. For example, why did the officer stop the vehicle? On what legal basis was a search and/or arrest conducted? Was the vehicle stopped as part of a particular enforcement program?

The collection of traffic stop data provides an excellent opportunity for police agencies to demonstrate that officers often make stops, conduct searches, and arrest individuals on the basis of organizational directives and/or state codes that compel them to do so regardless of the color of a citizen's skin. In this way, data could provide a number of valid legal explanations as to *why* minorities are disproportionately stopped, searched, and/or arrested in particular jurisdictions. Clearly, charges of profiling are much more difficult to substantiate when they stem from police actions that are non-discretionary or constrained by lawful organizational initiatives, but we cannot discern the impact of these factors unless we collect the data.

### ***Reason #3: Data Can Detect Potential Problems***

Large-scale racial disparities in traffic stops for highly discretionary and relatively minor infractions should be a concern to police executives, because they could signal a developing problem that needs attention. For instance, a lawful decision to search a vehicle and/or arrest an individual that was initiated on the basis of a minor infraction like an equipment violation are more likely to produce racial profiling complaints. Police managers need to know whether certain officers are skewing the numbers or possibly using these minor infractions to unfairly discriminate against motorists.

Traffic stop data can be used as a tool to identify potential problem officers and provide the basis of a racial profiling early intervention system similar to those that have been used to identify officers who use force inappropriately<sup>14</sup>. The stops of individual officers can be compared to others in the department, or similar groups of officers who work the same beat or shift. Does a particular officer stop more minorities than his or her peers? Could a large number of these minority stops be categorized as highly discretionary and/or based on comparatively minor infractions? Does a particular officer tend to conduct more consent searches on vehicles driven by minorities?

The existence of disparities among similarly situated officers does not prove that racial profiling has occurred, but this data can alert first-line supervisors to potential problems and the need for additional supervision, peer-reviews, training, counseling, or other more punitive forms of discipline. Ultimately, there may be a number of valid legal explanations as to why particular officers stop, search, and/or arrest more minorities than do their peers, but police administrators may be forced to scramble for answers only *after* the damage has been done in the form of complaints or lawsuits if the necessary data has not been collected.

### ***Reason #4: Data Can Defend Civil Liability Claims***

Scholars focused on the legal consequences of racial profiling often cite the Supreme Court's landmark decision in *Whren v. United States* (1996). The issue in *Whren* concerned the legality of "pretext" traffic stops, whereby a motorist is apparently stopped for a traffic violation when in fact the officer is motivated by a desire to obtain evidence of other types of crime, most notably drug-related activities. The court ruled that an officer's subjective motivation in conducting traffic stops (*e.g.* the investigation of drug-related activity) will not be questioned so long as probable cause exists for the stop in the form of an on-view traffic violation<sup>15</sup>. Despite heavy criticism from civil rights groups and the fact that some state courts have continued to challenge the legality of pretext stops<sup>16</sup>, the decision has clearly narrowed the scope of police liability in claims arising within the context of a lawful traffic stop.

As long as the *Whren* decision holds, most police agencies are unlikely to face claims that specifically challenge the constitutionality of pretext stops. Instead, police executives are more likely to be forced to defend discrimination claims as part of other types of lawsuits, mostly those that allege the excessive use of force, or those that involve vicarious liability, whereby the organization is alleged to: a)

promote a "pattern and practice" of discriminatory enforcement, b) maintain implicit or explicit policies that promote discrimination, and/or c) fail to properly train, supervise, and discipline officers in cases that involve racial discrimination. Claims such as these are overwhelmingly settled out of court during pre-trial negotiations, and the value of the mutually agreed upon settlement depends largely on the quantity and quality of evidence produced by each side. Given these realities, statistics collected as part of an ongoing data collection program can be used in conjunction with other pieces of evidence to create a strong defense, and ultimately lessen the amount paid in settlement.

Data regarding the stops of individual officers can be used to show a history of lawful decision-making regardless of evidence pertaining to the stop, search, or arrest in question. For example, it becomes increasingly difficult to sustain a claim of discrimination against a particular officer if traffic stop data shows a long record of justifiable behavior. More importantly, the creation of a data collection program demonstrates organizational concern and sensitivity to racial issues and the policing of diverse populations, so much so that plaintiff's arguments regarding vicarious liability become hard to establish. An agency that invests considerable time and resources to maintain a data collection program would be unlikely to put the organization at risk by employing and retaining officers who racially discriminate.

Finally, data collection programs that incorporate intervention and discipline against officers who fail to uphold agency standards provide an established record of organizational effectiveness that's difficult to refute. A demonstrated record of early intervention and discipline should be presented with other relevant evidence including formal policies that prohibit discrimination, rules that constrain officer discretion, and training and education programs designed to promote racial sensitivity among officers.

#### ***Reason #5: Data Collection is the Best Course of Action***

The ongoing trend toward mandated data collection appears to be gaining strength, and the experience gained by the thousands of agencies already affected provides a cautionary tale to those who continue to oppose the momentum. Thus far, police agencies that have voluntarily collected data in anticipation of legislative mandates have been in the best position to influence both the content and quality of the data collection programs. These agencies successfully put themselves "ahead of the curve" by developing protocols in lieu of being forced to do so by political or legal mandate<sup>17</sup>.

For example, the San Jose (CA) Police Department (SJPD) was among the first to create a voluntary data collection system. The SJPD was able to develop a system that proved to be superior in terms of both cost and administration to one that was proposed as part of a bill that would have required state-wide data collection. Likewise, the department was able to more effectively mitigate potential resistance by patrol officers and the union than would have been the case with a program that was politically mandated by forces outside the department<sup>18</sup>. The case of the SJPD and others illustrates a stark choice for police executives who must contend with the trend toward mandated data collection: they can lead the movement through active participation and support, or they can oppose racial profiling legislation and risk the imposition of protocols created by other groups with a vested interest in the issue.

#### ***Conclusion***

In the span of less than a decade, political fallout from the controversial racial profiling issue has pushed a nationwide movement toward mandated traffic stop data collection. At present, thousands of police agencies are collecting data pertaining to the race of motorists detained during traffic stops, and continuing public concerns about profiling are likely to result in more mandates in the years to come. Police in many jurisdictions have opposed this movement, arguing that data collection produces an unacceptable drain on resources, or worse, a never-ending stream of unfair complaints about widespread profiling. Experience has shown that many of these concerns are legitimate, and mandated data collection *has* generated costs in terms of both resources and invalid claims about what the data mean.

Nonetheless, police executives who focus too closely on these problems and choose to strongly oppose data collection risk losing sight of the proverbial forest for the trees. On the one hand, the myopic focus on problems has resulted in a failure to recognize the potential benefits of the trend to law enforcement. Police can use traffic stop data to demonstrate integrity and promote collaborative ties.

Police can also use the data to detect problem officers and defend themselves against unsubstantiated claims of racial discrimination. On the other hand, the policy of opposition virtually ensures diminished public support for police, especially among the large percentage of citizens who already think that officers regularly profile motorists. In this regard, opposition on the profiling issue serves only to weaken more important strategies designed to engage citizens in the fight against crime. Traffic stop data collection can positively impact citizens *and* police if the benefits to both sides are fully considered.

## Endnotes

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**"Reexamining the Exercise and Bases of Police Discretion  
Under Presumptive Arrest Policies  
in Terms of Dispositional Dimensions Related to Different Forms of Charging"**\*

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**Abstract**

This study of police dispositions in partner violence cases in two agencies with presumptive arrest policies examines how research treating arrest uncritically and dichotomously distorts findings about how arrest fulfills the purposes of these policies and fails to allow for adequate comparisons between agencies in their implementation of these policies. First, while presumptive arrest policies are supposed to allow police officers to arrest in cases where a misdemeanor has occurred where they do not witness incidents themselves, in one agency 40% of arrests were for aggravated assaults. Secondly, while such arrest policies are intended mainly to stop the violence, in one agency 25% of arrests were actually citations where the offender was not removed from the premises and taken into custody. Thirdly, while arrest are supposed to be for domestic violence, 20% of the arrests in one agency included cases involving violations of conditions of release or relief from abuse orders where no violence occurred. Fourthly, while these policies are specifically designed to protect victims who are intimidated from filing charges and are not to take into account the victim's willingness to prosecute the case, one agency actually categorized almost 40% of its non-arrest as "cleared case because of victim uncooperative." Dichotomizing disposition also fails to examine other official action such as police issuing relief from abuse orders, detoxifying offenders, and sending cases to the States Attorney's Office.

**INTRODUCTION**

The two pro-arrest policies, mandatory and presumptive, in domestic violence cases were established in order to protect victims who refused to file charges mainly because of fear of offender retaliation (Hoyle and Sanders, 2000). According to Townsend et al. in a report published in 2005, 77% of 14,000 police departments surveyed have written procedures in responding to domestic violence calls for service. As a consequence of these policies, police officer discretion in domestic violence cases presumably was to be severely restricted as police were instructed by policy that they "must" or "should" make arrests when there was probable cause to do so.<sup>1</sup> However, one of the major questions of numerous studies about these new pro-arrest policies is whether they actually have curtailed police officer discretion in domestic violence cases, particularly given the entrenched attitudes and behavior of the police toward private violence (Stanko, 1992).

According to Hirschel et al. (1992), police traditionally have been antagonistic to policies that limit their discretion. Prior to the introduction of pro-arrest policies, Berk and Loseke (1980-1981) suggested that "police decisions about arrest in domestic violence situations are found in their

interpretations of particular battering situations, their prior experience, and the situation-specific rationales for decisions inherent in the policing enterprise.” Studies done shortly after the establishment of pro-arrest policies found that adopting new policies did not guarantee officer compliance (Steinman, 1988). Balos and Trotzky (1988) concluded in their study that “despite statutes that would allow, and in some instances require arrest, and despite a stated Minneapolis Police Department policy of mandatory arrests, very few incidents of domestic violence resulted in arrests.” Bourg and Stock (1994), who examined 1870 domestic violence reports in a county sheriff’s department in South Florida, also found despite the pro-arrest policy that police arrested in only 28 percent of the cases. In yet another study, Blount et al. (1992), who surveyed 370 officers in west central Florida, found that officers reported arresting in only “15 percent of the domestic violence disturbance calls overall and in roughly 33 percent of the calls where violence was evident and a pro-arrest policy was in effect.”<sup>2</sup> Many other studies (e.g., Holmes et al., 1993) have found that even with the most restrictive mandatory arrest policy there are still many cases of non-arrest. A more recent major study (Hirschel et al., 2003), using National Incident-Based Reporting System data for 2,821 police jurisdictions in 19 states, found that only 41 percent of cases in jurisdictions with mandatory arrest policies ended in arrest and that 33 percent cases with preferred arrest policies ended in arrest.<sup>3</sup>

However, in contrast, Mignon and Holmes (1995) found that the implementation of a mandatory arrest law in Massachusetts significantly increased arrests of offenders, especially those in violation of a restraining order. Likewise, Zorza and Woods (1994) in their study found that increased arrest in domestic violence cases has been especially true in jurisdictions with mandatory arrest policies. Finally, Buzawa and Buzawa, (2005), conclude that the latest research now suggests that in many, if not most, departments, and regardless of measurement techniques and definitions of the crime chosen, arrest rates have risen for domestic violence. This was also found in Maryland by Simpson, Bouffard, Garner, and Hickman in article in 2006, where they found that there were increased arrests, but that the policy affected both male and female rates.<sup>4</sup> Policy had consistent impact across various offender and offense types (no difference between severe and less severe cases). Moreover, Buzawa and Buzawa note that domestic violence cases were more likely than non-domestic violence cases to result in the arrest of the offender.

The exercise of discretion and lack of compliance to policy is even more likely under **presumptive** arrest policies that allow more officer discretion (Hirschel and Hutchinson, 1991) and that are more common than mandatory policies throughout the United States (Hirschel et al., 1992).<sup>5</sup> While mandatory arrest requires arrest, telling officers they “must” arrest, presumptive or preferred arrest policies suggest officers “should” arrest under certain circumstances. In a study of presumptive arrest policy in London, Ontario, Steinman (1988) found that 77 percent of police officers surveyed reported that they usually do what they think is necessary even if they expect supervisors to disagree; and 43 percent felt they should use their own standards of police work even when department procedures prohibit them from doing so. Likewise, in her study of presumptive arrest policy in Phoenix, Ferraro (1989) learned that there was a wide gap between the ideological use of policy and its actual practice by officers, and that only 18 percent of offenders were arrested there under this policy. And, in their study of police response to domestic violence, Blount, et al. (1992) found that despite line officers’ positive attitudes toward the preferred arrest policy in their department, the overall arrest rate reported by the respondents indicated a lack of commitment on the part of a substantial proportion of the sample to intervene in domestic violence cases.

While there has been a plethora of research on whether police continue to exercise discretion under pro-arrest policies in terms of the dichotomized dispositional alternatives of arrest or non-arrest, discretion has really not been examined in terms of other dispositional dimensions and different forms of charging. First, seldom is a distinction made between an arrest and a citation. Besides an early study by Steinman (1988) where the distinction was made, Hall (2005), included in her coding of arrest a “warrantless arrest,” and issuance of either a warrant or criminal summons.” In issuing a citation, the officer charges the offender but gives him/her a notice to appear in court rather than taking him/her into custody. This actually undermines the basis for mandatory and presumptive arrest--to stop the violence and protect the victim by taking the offender into custody and incapacitating him. Similar to the function

performed by a restraining order, the offender given a citation is not prevented from further threatening or harming the victim. In fact, as Hoyle and Sanders (2000) found, the majority of those who want the perpetrator arrested do not want him prosecuted. They want the violence stopped (to resolve the immediate situation temporarily) and want to teach the perpetrator a lesson. So, citations not only fail to meet official objectives of the arrest policy but, moreover, are contrary to the wishes of the victim.

Secondly, no distinction has been made about differences in the use of discretion in charging offenders with aggravated or simple assault. Buzawa and Buzawa (2003:166) have criticized those who fail to separate misdemeanors and felonies, stating that "the latter may be crucial because officers may exercise discretion with a felony assault other than that used with misdemeanors."<sup>6</sup> Simpson et al. (2006) found in regard to mandatory arrest policy (although not presumptive arrest policy) no difference in terms of severe or less severe cases. Buzawa and Buzawa note that it continues to be assumed that police decision to charge offenders with aggravated or simple assault remains based strictly on degree of injury and not strength of evidence. Thirdly, only cursory attention has been given to arresting for charges other than domestic violence. Prior to mandatory and presumptive arrest policies, Oppenlander (1982) found that arrest was often for drunk and disorderly conduct rather than an arrest for assault itself. Buzawa et al. (1995) also found in their study of domestic violence in a Midwestern department that police classified many domestic violence cases as disorderly conduct, disturbing the peace, destruction of property, or family dispute. Finally, since there has been no research on multiple charging in arrests, it apparently has been assumed that such charging is based strictly on the behavior of the offender and not the exercise of discretion to support an arrest or a future prosecution.

It can logically be assumed that the reasons for exercising discretion under presumptive arrest policies when the dispositional alternatives are the dichotomized arrest and non-arrest categories would be different than reasons for the dispositional dimensions relating to different forms of charging. It is very likely that that different factors found in a recent study by Felson and Ackerman (2001) to be attributable to the exercise of discretion not to arrest, such as the reluctance of victims to sign complaints, the absence of witnesses, and the unwillingness of the police to arrest suspects for minor acts of violence against assault victims, are actually more likely associated with particular types of official action related to different forms of charging than to not arresting.

## **STUDY FOCUS**

The question posed for this study is not the conventional question of whether police exercise discretion under a presumptive arrest policy in terms of whether they arrest or not arrest, but instead how they exercise discretion while taking official action. It is assumed in this study that discretion is exercised in the selection of different forms of charging within the framework of dispositions involving official sanctioning. Moreover, it is assumed that given pressure to make arrests in these situations because of a pro-arrest policy the police will attempt to conform by taking official action, but continue to exercise discretion by distinguishing between different forms of official action in terms of different charging alternatives. One type involves taking official action that appears to be and counts as arrest but is actually not. This has involved charging the offender with the offense of domestic violence and issuing him/her a citation to appear in court at a later date rather than arresting and taking the suspect into custody. A second type involves finding other grounds for making an arrest. Instead of making an arrest for domestic violence, the police will arrest for other reasons, such as violation of a prevention of abuse order, violation of the conditions of release, burglary, vandalism, disorderly conduct, etc. A third type involves police arresting for domestic assault but also charging the offender with other offenses. Finally, in a fourth type, police exercise discretion in terms of whether to charge an offender with aggravated or simple assault (when there are circumstances, such as no weapons and no hospitalization). The study will ascertain the frequency and percentage of cases for each of the charging alternatives.

The policies of both agencies studied, the Burlington Police Department and Vermont State Police, specifically state that: "arrest is the Department's preferred response to domestic violence because *arrest offers the greatest potential for ending the violence*" (my italics). The arrest policy for these agencies was established for a number of reasons. First, the policy was supposed to allow police officers to arrest in cases where a misdemeanor has occurred in which the police did not witness incidents

themselves. This means that the policy is primarily designed to deal with simple rather than aggravated assaults, the latter of which police already have powers of arrest. Secondly, arrest was intended mainly, as indicated in the policy, to stop the violence rather than deter the offender from future violence or punish the offender for the violence that had already been committed. This means that the offender would have to be removed from the premises by being taken into custody and incarcerated, and not merely be given a citation to appear in court at a later date. Thirdly, arrest was supposed to be for domestic violence, not for some other offense or for a violation of a release from abuse order or condition of release. However, despite the different meanings and classifications of and reasons for arrest in partner violence cases, almost all recent research continue to treat arrest uncritically and dichotomously. For instance, in a recent article “Does the Criminal Justice System Treat Domestic Violence and Sexual Assault Offenders Leniently?” in the September 2007 issue of *Justice Quarterly*, Richard Felson and Paul-Philippe Pare coded an incident one on arrest (and zero otherwise) when victims “indicated that the offender was arrested, taken into custody, or charged with the crime at any time (page 444).”

Lastly, the study examines whether police in two different agencies, one an urbanized and the other a rural, operating under the same statutory framework and similar official policies exercise similar forms of discretion in regard to the aforementioned dispositional alternatives; and whether, in cases where they do, there are similar bases for doing so.

## **APPROACH AND PROCEDURE**

### **Definitions of Critical Concepts in the Study**

In this study intimate partner violence is defined as involving physical assault against one of the parties in current or past intimate relationships.<sup>7</sup> Intimate partners include those who have been involved in a hetero- and homosexual relationship, such as that of spouses, unmarried cohabiting couples, lovers, ex-spouses, and ex-boyfriends and ex-girlfriends. While verbal and psychological forms of violence are usually associated with physical assault and part of a syndrome of domestic abuse, the study is limited to examining physical assaults.

Since domestic violence is defined in Vermont very broadly to include violence among any household members (even roommates) and not just partner violence, one of the first tasks involved separating out all cases from the Vermont Incident-Based Reporting System (VIBRS) incident reports that did not include partner violence. In Burlington this included 28 of the 286 cases, leaving 258 presumed partner violence cases. For the Vermont State Police (VSP) this included seven of the 295 incidents, leaving 288 incidents.

### **Data for Study**

The data for this study comprise all cases of domestic violence (546) involving intimate adult partners that have been identified as coming to the attention of the Vermont State Police (VSP) and Burlington Police Department (BPD) during the 2000 calendar year, which were derived from incident reports and narratives/affidavits that were originally completed for official purposes included in VIBRS.<sup>8</sup> Because the study examines police decision making and not the motivation of batterers and battered, these police documents are the appropriate source of data for the study instead of information from victimization surveys that focus on victims' attitudes and behaviors. Despite some criticisms, for the most part, the police narratives/affidavits describe incidents in detail and include valuable victim, offender, and witness testimony, as well as providing more accurate and elaborated descriptions of variables and often additional information than often recorded on incident forms completed by police.

### **Measures of the Different Dimensions of Disposition and Charging**

Cases from the two departments were sorted by the two dependent variables—disposition and charge. As previously mentioned, most studies on police response to domestic violence have dichotomized police disposition into the categories of arrest and non-arrest. Had the VIBRS disposition categories on the incident report forms only been used, police disposition also would have had to be dichotomized into arrest and non-arrest categories. However, it was clarified in reading the narratives/affidavits that many of these arrests were really not arrests but instead citations or flash citations, in which offenders were charged and required to go to court the next day or at a later date rather than taken into custody and lodged at a correctional facility. Besides sorting cases into the three major

disposition categories—arrest, citation (including flash citation), and no arrest, the arrest and citation categories were further broken down for whether arrest was for a restraining order (RFA or TRO) or for an actual assault and for whether one or both parties were arrested or cited, and two residual categories for alternative dispositions were included: whether the case was sent to the States Attorney and whether the offender was sent to detoxification. In those cases where no official action was taken, cases were further sorted into whether the victim was applying for a restraining order and the classification of the case (family disturbance, family offense, quarrels, citizen dispute, simple assault, suspicion, or other).

The incident report forms included the three other dimensions of charging that distinguish the type of disposition: (1) arrest for other charges; (2) arrest with multiple charges, and (3) arrested and charged with aggravated assault (a felony) as versus simple assault (a misdemeanor). Thus, for cases where official action was taken (for arrests and citations), cases were further sorted into whether the offender was charged with a simple or an aggravated assault (and if the latter, whether a weapon was used in assault), whether the offender was charged for another offense (family offenses, kidnapping, stalking, trespassing, robbery, disturbing the peace/disorderly conduct, violation of a prevention order/condition of release violence, family disturbance, vandalism, dui/liquor violation, burglary, or other). Cases were also sorted by type of charges besides assault (using the same categories as another offense) and by the number of charges besides assault were counted. This involved a further and more careful review of both incident report forms and narratives/affidavits.

### **Control by Department**

These two largest police agencies in Vermont, one, the Burlington Police Department, an urbanized police force and the other a rural police force, the Vermont State Police, act as controls for one another and screen out department effects. This is important given the finding that a wide variation among departments exists in the extent of arrests (Buzawa and Buzawa, 1993; Holmes et al., 1993), even when departments operate under the same statutory framework or “official” policies read similarly (Buzawa and Buzawa, 2005)

### **Coding Form**

Data from the incident reports and narratives/affidavits were extrapolated into items, which represent operationalized variables, on a coding sheet. Even though secondary data that existed prior to the study were used and not primary data generated from a survey to test preconceived hypotheses, a preliminary coding form was constructed based on categories and variables relevant to the study that had been developed through extensive review of the theoretical and empirical literature on police response to domestic violence and from reviewing and analyzing a considerable number of the VIBRS incident reports and narratives/affidavits in my previous three studies using the Vermont State Police part of the current data set. This form, similar to a questionnaire, provided organizationally useful categories for identifying dependent and independent variables that appear in the police narratives/affidavits examined. This coding sheet (which is attached) turned out to be three pages long and included case identification (incident number from incident form and agency), categories for the two dependent variables, disposition and charge, and categories for the seven independent variables (demographic, evidentiary, relationship between victim and offender, offender’s prior abuse/criminal history, situational, countervailing claims of offender, and victim cooperation).

### **Method of Analyzing the Data**

A content analysis was done of the secondary data--official documents, both police incident report forms and accompanying narratives and affidavits. The initial statistical analysis of the data presented here involve a simple percentage breakdown of the categories for each of the different variables and cross-tabulations of the variables in contingency tables.

## FINDINGS

If we examine only partner violence cases and use the dichotomous categorization of arrest, then arrests and citations are treated together as arrest and all other incidents as non-official dispositions (or no arrest) are treated together without considering temporary restraining orders, detoxifications of offenders, and cases sent to the States Attorney. Given this conventional type of categorization, as noted in **Table 1**, of the 258 partner violence cases handled by the Burlington P.D., 179 eventuated in arrest or citation, leaving 79 cases where there were no arrests made or citations issued. Thus, 30.62% of all (258) cases of partner violence handled by the Burlington P.D. involved no arrests or citations. Likewise, of the 288 incidents responded to by the VSP, arrests were made and citations issued in 185 (with 202 offenders because of dual arrest or citation), and no official action was taken in 103 incidents. Thus, 35.76% of all (288) cases of partner violence handled by the VSP involved no arrests or citations.

As can be seen in **Table 1**, the difference in percentage of cases of no arrest or citation for the Burlington Police Department and the Vermont State Police are really not statistically significantly different, indicating that a dichotomous categorization of disposition indicates similarities in disposition between the two different agencies. However, when arrest and no official action cases are broken down further, (1) the meaning of arrest and no official action is much more complex than one might assume from a dichotomous categorization, and (2) some very significant differences in disposition between the agencies come to the surface.

As can be seen in **Table 1**, of the original 179 cases in which arrests were presumably made by the Burlington P.D. that were classified as domestic violence arrests, 12 cases (with 14 people because in two incidents both parties were treated as offenders) involved citations issued rather than actual arrests made, eight cases involved offenses other than assault, 16 cases involved violations of relief from abuse or temporary restraining orders (where no violence was involved), and 19 cases involved a violation of the conditions of release (where no violence was involved). Thus, 55 cases (or 30.72%) were not actual arrests for partner violence at the time of the incident. Likewise, of the original 185 cases in which arrests were presumably made by the VSP, 43 incidents were only citations issued (although there were 61 citations, with six dual citations and five actual dual arrest incidents), 10 cases of violation of abuse orders, two cases of violation of conditions of release, and four cases of arrest for other offenses. Thus, 59 cases (or 31.89%) were not actual arrests for partner violence at the time of the incident. If we just subtract the number of cases of arrest for violation of abuse orders and conditions of release, arrests made and citations issued by the Burlington P.D. for actual partner violence were 144 and by the VSP 173. When we then examine the percentage of these cases that were actually citations instead of arrests, we get very different numbers for the two agencies. For the Burlington P.D. there were 8.3% of the presumed partner violence arrest incidents which were actually citations (with 9.7% people who were presumably arrested instead cited), while for the VSP there were 24.85% of the presumed partner violence incidents which were actually citations (with 35.26% of the presumed arrested cited). If we consider, additional cases which involved arrest on warrant, in which the offender was not arrested at the time of the incident (nine in Burlington), there is even more cases in which arrest did not meet the purpose of the presumptive arrest policy—to stop the violence at the time.

**TABLE 1**

**ACTUAL ARRESTS IN PARTNER VIOLENCE INCIDENTS**

	<b>Burlington P.D.</b>	<b>Vermont S.P.</b>	<b>Total</b>
<b>Total # of incidents</b>	<b>258</b>	<b>288</b>	<b>546</b>
<b>Total # of “no official” action incidents</b>	<b>79 (30.62%)</b>	<b>103 (35.76%)</b>	<b>182 (33.33%)</b>
<b>Total # of arrests &amp; citations incidents</b>	<b>179 (69.38%)</b>	<b>185 (64.24%)<sup>1</sup></b>	<b>364 (66.67%)</b>
<b>Total # incidents not actually arrests for partner violence</b>	<b>55 (30.72%)</b>	<b>59 (31.81%)</b>	<b>114 (20.88%)</b>
<b># of violations of relief from abuse incidents</b>	<b>16 (29.09%)</b>	<b>10 (16.95%)</b>	<b>26 (22.81%)</b>
<b># of violations of conditions of release incidents</b>	<b>19 (35.55%)</b>	<b>2 (3.39%)</b>	<b>21 (18.42%)</b>
<b># of citation incidents</b>	<b>12 (21.82%)</b>	<b>43 (72.88%)</b>	<b>55 (48.25%)</b>
<b>citations as % of arrest/citation incidents for partner violence)</b>	<b>12/144 (8.33%)</b>	<b>43/173 (24.85%)</b>	<b>55/317 (17.35%)</b>
<b>actual arrest incidents for partner violence (as % of total arrest &amp; citations incidents)</b>	<b>124/179 (69.27%)</b>	<b>126/185 (68.11%)</b>	<b>250/364 (68.68%)</b>
<b>% of actual arrest incidents for partner violence out of all incidents</b>	<b>124/258 (48.06%)</b>	<b>126/288 (43.75%)</b>	<b>250/546 (45.78%)</b>

<sup>1</sup> There were 202 offenders because of dual arrest/citation incidents

As can be seen in **Table 2**, there was also a major difference between the two agencies in how they charged the offender. On the one hand, of the 119 cases where the offender was charged by the Burlington police with an assault, the offender was charged with an aggravated assault in 47 cases or in 39.5% of the assault cases. When considering only actual arrests by the Burlington P.D., the offender was charged with aggravated assault in 41.82% of assault cases. On the other hand, of the 177 cases where the offender was charged by the VSP with an assault, the offender was charged with an aggravated assault in only 16 cases or 9.04% of the assault cases. And when considering only actual arrests by the VSP, the offender was charged with aggravated assault in 10.39% of assault cases. Since the presumptive arrest policy is intended for misdemeanor cases of simple assault, this means that the policy in the case of the Burlington P.D. affected even fewer of the types of assaults it was designed to affect.

**TABLE 2**

**TYPE OF ASSAULT CHARGED**

	<b>Burlington P.D.</b>	<b>Vermont S.P.</b>	<b>Total</b>
<b># of offenders charged with assault</b>	<b>119</b>	<b>177<sup>1</sup></b>	<b>296</b>
<b># of offenders charged with aggravated assault</b>	<b>47 (39%)</b>	<b>16 (9.04%)</b>	<b>63 (21.28%)</b>
<b>% of offenders charged with aggravated assault when arrest but not citation</b>	<b>46/110 (41.82%)</b>	<b>16/154 (10.39%)</b>	<b>62/264 (23.48%)</b>

<sup>1</sup>Includes both parties to dual arrest/citation incidents

As can be seen in **Table 3**, of the 119 cases in which the Burlington P.D. charged someone with an assault, 48 (40.34% of cases) were charged with only assault, 48 (40.34% of cases) included family offenses (or disturbance) charges as well, five (4.20% of cases) also included violations of abuse orders or conditions of release, and 18 (15.13%) included other charges. Out of the 163 cases of arrest and citation

for the VSP (that did not include 10 cases of violation of abuse orders, two cases of violation of conditions of release, and four cases of arrest for other offenses), the VSP charged the offender only with assault in 109 or 66.87% of such cases. The offender was also charged with family offenses in 14 cases (12.84% of cases), violation of abuse orders or conditions of release in nine cases (5.52% of the cases) and other offenses in 31 cases (19% of the cases).

**TABLE 3**

**NUMBER OF CHARGES IN INCIDENTS**

	Burlington P.D.	Vermont S.P.	Total
<b>total number of incidents with assault charge</b>	<b>119</b>	<b>163<sup>1</sup></b>	<b>282</b>
<b>incidents where only assault charged</b>	<b>48 (40.34%)</b>	<b>109 (66.86%)</b>	<b>157 (55.76%)</b>
<b>incidents that included family offenses/ disturbances as well as assault</b>	<b>48 (40.34%)</b>	<b>14 (12.84%)</b>	<b>62 (21.99%)</b>
<b>incidents that included violations of abuse orders or conditions of release as well as assaults</b>	<b>5 (4.20%)</b>	<b>9 (5.52%)</b>	<b>14 ( 4.96%)</b>
<b>incidents that included assault and other charges besides those listed above</b>	<b>18 (15.13%)</b>	<b>31 (19.00%)</b>	<b>49 (17.38%)</b>

<sup>1</sup>Because of dual arrest/citation there were 177 different offenders in these 163 incidents

As can be seen in **Table 4**, in non-dual arrest incidents, the Burlington P.D. arrested 15 women (or 12.10% of 124 arrests) and flash cited three other women (27.27% of 11 citations). The Vermont State Police arrested 8 women (or 6.5% of 123 arrests) and cited 12 women (32.43% of 37 citations) in non dual-arrest incidents. In dual arrest incidents, the Burlington police arrested one woman (33.33% of 3 arrests) and cited two women (66.67% of 3 citations ) versus arresting two men in dual arrest situations; while the Vermont State Police arrested six women (33.33% of 18 arrests) and cited 15 (62.50% of 24 citations) versus arresting 12 men and citing 9. The much lower number of cases of dual arrest incidents for the Burlington, P.D. is attributable to its primary aggressor policy. Without such a policy, it can be seen that the Vermont State Police exercises discretion in terms of citing instead of arresting women more often than men. To somewhat of a lesser extent, but still significantly so, women were also more likely to be cited instead of arrested in non-dual arrest incidents.

**TABLE 4**

**WOMEN OFFENDERS ARRESTED AND CITED**

	Burlington P.D.		Vermont State Police	
	Arrests	Citations	Arrests	Citations
<b>Non-dual arrest incidents<sup>1</sup></b>	<b>124</b>	<b>11</b>	<b>123</b>	<b>37</b>
<b>Women</b>	<b>15 (12.09%)</b>	<b>3 (27.27%)</b>	<b>8 (6.50%)</b>	<b>12 (32.43%)</b>
<b>Men</b>	<b>109 (87.90%)</b>	<b>8 (72.27%)</b>	<b>115 (93.50%)</b>	<b>25 (67.57%)</b>
<b>Dual Arrest Incidents<sup>2</sup></b>	<b>3</b>	<b>3</b>	<b>18</b>	<b>24</b>
<b>Women</b>	<b>1 (33.33%)</b>	<b>2 (66.67%)</b>	<b>6 (33.33%)</b>	<b>15 (62.50%)</b>
<b>Men</b>	<b>2 (66.67%)</b>	<b>1 (33.33%)</b>	<b>12 (66.67%)</b>	<b>9 (37.50%)</b>
<b>All incidents</b>	<b>127</b>	<b>14</b>	<b>141</b>	<b>61</b>
<b>Women</b>	<b>16 (12.60%)</b>	<b>5 (35.71%)</b>	<b>14 (9.93%)</b>	<b>27 (44.26%)</b>
<b>Men</b>	<b>111 (87.40%)</b>	<b>9 (64.29%)</b>	<b>127 (90.07%)</b>	<b>34 (55.74%)</b>

<sup>1</sup> When only one party labeled offender

<sup>2</sup> When both parties labeled offender

When suspects were not arrested, that did not mean that no official action was taken. As can be seen in **Table 5**, in Burlington, eight were “detoxed,” two were given trespass notifications, and 9 victims did apply for a temporary restraining order or relief from abuse order (although none were referred to the States Attorney), accounting for 24.05% of the total cases where arrests were not made or citations not issued. The state police “detoxed” four offenders, issued restraining orders in another 11 cases, and sent four more cases to the States Attorney’s offices, accounting for 18.45% of the total cases where arrests were not made or citations not issued. More significantly in terms of contradicting policy, as can be seen in **Table 6**, for the Vermont State Police there were 39 cases of the 103 cases of no arrest or citation that were classified as ECVs (Cleared Adult/Victim Uncooperative) or EJVs (Cleared Juvenile/Victim Uncooperative) in which the victim was presumably uncooperative, while there were only two such cases for Burlington Police Department. The reasons for no official action also varied as categorized in incident report forms.

**TABLE 5**  
**OFFICIAL DISPOSITIONS OTHER THAN ARREST OR CITATION**

	<b>Total # of cases no-action<sup>1</sup></b>	<b>Detoxed</b>	<b>Restraining Order</b>	<b>Trespass Notification</b>	<b>Sent to Atty. Gen.</b>	<b>Percentage of no-action cases</b>
<b>Burlington P.D.</b>	<b>79</b>	<b>8 (10.13%)</b>	<b>9 (11.39%)</b>	<b>2 (2.53%)</b>		<b>19/79 (24.05%)</b>
<b>Vermont S.P.</b>	<b>103</b>	<b>4 (3.88%)</b>	<b>11 (10.68%)</b>		<b>4 (3.88%)</b>	<b>19/103 (18.45%)</b>
<b>Total</b>	<b>182</b>	<b>12 (6.60%)</b>	<b>21 (11.54%)</b>	<b>2 (1.10%)</b>	<b>4 (2.20%)</b>	<b>38/182 (20.88%)</b>

<sup>1</sup>This total includes cases other than the special categories to the right

**TABLE 6**  
**CASES CATEGORIZED AS UNCOOPERATIVE VICTIM**

	<b>Total number of No-action Cases<sup>1</sup></b>	<b>Number of cases Categorized Uncooperative</b>	<b>Percentage of Total Cases Victim Categorized as Uncooperative<sup>2</sup></b>
<b>Burlington P.D.</b>	<b>79</b>	<b>2</b>	<b>2.53%</b>
<b>Vermont S.P.</b>	<b>103</b>	<b>39</b>	<b>37.86%</b>
<b>Total</b>	<b>182</b>	<b>41</b>	<b>22/53%</b>

<sup>1</sup>This total includes cases other than the special categories to the right

<sup>2</sup>Official categories are ECV (Cleared Adult/Victim Uncooperative) and EJV (Cleared Juvenile/Victim Uncooperative)

## CONCLUSIONS

Unlike most research on domestic violence that has focused on police response in urban jurisdictions (Logan et al., 2003), this study compares police response for an agency (the Vermont State Police) in a rural jurisdiction to an agency (the Burlington P.D.) operating in urban area. When dichotomizing disposition into simple arrest/no arrest categories, the two agencies would seem to be similar in their treatment of partner violence offenders. However, a totally different picture arises when further specifying disposition. The Burlington Police Department is much more severe in its dispositions. It is much less likely to issue citations instead of arresting and much more likely to charge offenders with aggravated instead of just simple assaults. We also see that the Vermont State Police is much more likely not to take official action in cases in which the victim is uncooperative, given the much greater percentage of no official action cases which are categorized as ECVs and EJVs.

This study breaks new ground by being methodologically different from other studies that examined police discretion under pro-arrest policies by merely dichotomizing police dispositional alternatives into arrest and no arrest (no official action) categories. By focusing on dispositional alternatives in terms of the four different forms of charging, this study demonstrates that when a policy limits discretion by encouraging official police action, that discretion is exercised in terms of alternatives within the framework of official action.

### Endnotes

<sup>1</sup> Both mandatory and presumptive arrest policies required state legislatures to pass legislation allowing police to arrest in situations where the assault was a misdemeanor and when it was not witnessed by the police.

<sup>2</sup> Applegate (2006) found that police in England and Wales felt HMIC policies curtailed their discretion concerning domestic violence responses and that top down control over police practices had increased, even though they had more enlightened attitudes toward the policing of domestic violence than they previously held.

<sup>3</sup> Study by Logan, Shannon, and Walker of 315 officers in one city that they believed treatment was more appropriate than sanctions for domestic violence offenders.

<sup>4</sup> See Feder and Henning (2005) on dual arrest and Houry, Reddy, Parramore (2006) on factors related to dual (coarrest) arrest of women. For information on primary aggressor policy see Henning, Renauer, and Holdford article (2006). Increased arrest of women in recent years is discussed by DeLeon-Granados, Wells, and Binsbacher (2006). Finn and Bettis (2006) note police officer justifications for making dual arrests. Stalans and Finn (2006) found that experienced officers vs. rookie officers and lay persons more likely to arrest only the husband. Hirschel and Buzawa (2002) argue that dual arrest affects the subsequent reporting of violence and call for greater police discretion.

<sup>5</sup> Article by Rajah, Frye, and Haviland (2006) notes four problems with mandatory arrest: (1) dual arrest; (2) retaliatory arrest; (3) nonarrest; and (4) unwanted arrest.

<sup>6</sup> Felson, Ackerman, and Gallagher (2005) have included seriousness of offense as a control variable.

<sup>7</sup> See Townsend et al. (2005) on definition of a domestic relationship (p. 2).

<sup>8</sup> Besides gaining permission to access the Spillman system and VIBRS from the Department of Public Safety (which has authority over these records), the investigator also had to gain permission to copy all the documents. This meant that names had to be redacted on each copied document before being allowed to take them outside the Department of Public Safety to be analyzed.

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## **A SCIENTIFIC & PRACTICAL APPROACH TO PREVENTING FRIENDLY FIRE AND FORCE**

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The shooting death of Omar Edwards and incidents like in the United States in recent years represents that now is the time for academicians and policing administrators to implement changes in the New York City Police Department that will make it less likely that there will be a reoccurrence.

While the media has focused on “Friendly Fire” the reality is that Friendly Fire events are rare. More common are **Friendly FORCE** events. These are situations in which officers of color are pummeled by colleagues in a mistaken belief that they are criminals. Usually, the black officer is making an arrest or pursuing a criminal. The arriving officers wrongly assume that the black officer is a perpetrator attempting to harm another. As a policeman, I would pull myself up and brush myself off and listen attentively to the apologies. There have been incidents in New York, Philadelphia, Boston, Chicago, Washington DC and Oakland in which a black officer’s “police” action has been rudely and violently interrupted.

The New York City Police Department, like most big city police departments, does not have adequate policies and procedures to prevent **Friendly Fire and Friendly Force**. The job of a policymaking body tasked with making change must consider the following: (1) in police work in the U.S., we must do a better job of psychologically screening men and women for police work. While each and every one of us has within our Sociological baggage, stereotypical notions---- what makes one police applicant different from the other is the degree to which he\ she can dispel such notions and the speed with which the notion can be dispelled;

(2) Police officers in America’s big cities should reside within the municipality in which they patrol. New York City is infamously known for hiring significant numbers of people who are born and raised on Long Island and that they continue to reside on the Island during their police tenure. Long Island does not appear to offer the racial diversity and exposures that best prepare young men and women for police work in America’s mega Metropolitan venues.

(3) Police agencies can play a major role in changing a Police culture that rewards officers for discharging their weapons but seldom for wrestling a gun from a suspect or talking a suicidal man off of a ledge. The ethos of any morally right police agency is one which instills in its officers that just because a deadly force response is “legally” permitted in a particular situation, a police officer is expected to try to avoid the use of lethal force. If every police officer in the US fired his gun when the law and policy allowed, there would be an officer involved shooting in the US approximately every 3 seconds. Academy and in-service instructions and training must accomplish showing that officers must not shoot an individual simply because the individual is holding a gun. Rather, the police officer must show respect for human life; a consideration that the person holding the gun may be the victim (e.g., homeowner or a person who over-powered the mugger and took his weapon); and he or she must show bravery, courage and good judgment. This approach is the inverse of “Shoot First and Ask Questions Later” and shouting “drop the gun” as you have already commenced fire. Opponents of this recommendation would be quick to argue that delays engendered by this approach would enable a real bad guy to open fire. In response, the writer asserts that as police officers we made a commitment to take risks.

When it’s not a cop and even when it’s a bad guy, we are not to act as judge and jury. The nature of government in the U.S. and the quality of life that it affords should remind police officers that most Americans expect police officers to give individuals a right to surrender or identify themselves before a he/she (policeman) opens fire.

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