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Influencing Discretion: Law Enforcement's Challenge in Meeting Societal Expectations

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Influencing Discretion

Law Enforcement’s Challenge in Meeting Societal Expectations

By Herbert Homan

Abstract

Society expects law enforcement to serve the public by managing the polarity between preserving public safety and protecting individual rights. But, as we have seen in the past few years, an imbalance creates turmoil, and neither objective is satisfied. Criminal justice scholars have identified the need for police reform for several decades. Yet, the evolution of law enforcement practices has not appeared to keep up with societal expectations. At the core of every traffic stop, arrest, search, act of bravery, and incident of misconduct is decision-making. This conceptual article explores the influence of organizational culture in law enforcement decision-making through the lens of a state-level agency to provide insight into how leaders can better align officer decision-making with societal expectations

Keywords: police discretion; law enforcement culture; societal expectations; bias, guilt anxiety

An ongoing concern for law enforcement is meeting societal expectations for managing the polarity between preserving public safety and protecting individual rights. Herman Goldstein (1977), an American criminologist and legal scholar, wrote that public interest in police reform is in response to revelations of police misconduct and the sudden realization that police services provided in the past were inadequate to meet the present needs. He also referred to several waves of public concern sweeping across the country (Goldstein, 1977). Recent events have shown how an imbalance creates turmoil, and neither objective is satisfied. As new generations come to understand the complexities of policing in a democratic society, law enforcement needs to be able to adapt to societal expectations.

The Ohio Statehouse, located in Columbus is referred to as the *People’s House*. It is where individuals can visit and exercise their First Amendment rights in

a safe environment. However, following the events on January 6, 2021, in Washington, DC, there were increasing concerns for security at state capitols. In January of 2021, as I stood on the steps of the Ohio Statehouse overlooking hundreds of demonstrators exercising their First Amendment Rights, I could not help but wonder how our society arrived at this point. I spent 34 years as a state trooper, with assignments primarily in rural Ohio and I was insulated from much of the discord experienced in the more diverse areas of the country. The events of 2020 and a few high-profile police shootings in the City of Columbus would put the premise of the safe exercise of First Amendment Rights to the test. As a result, for one last assignment before my retirement in January 2022, I accepted command of Capitol Operations.

Reflecting on a lifetime of public service, the majority in supervisory roles, provides me with unique insights into the

business of law enforcement and its many unique challenges. Paramount among them is the obligation of upholding public trust. The public expects law enforcement to enforce the law and maintain order without violating individual rights. Meeting this expectation leads to the issue of discretion, with the lowest-ranking police officer in a position to exercise the most significant discretion (Wilson, 1978).

Institutional factors have a considerable impact on individual officer decision-making. The actions of individual officers often overshadow the agency's responsi-

a rich history and solid reputation in the state of Ohio, as evidenced by a 2021 public survey that rated the Ohio State Highway Patrol as excellent or good (93%) as a law enforcement agency (OSHP Office of Planning, Research, and Development—Statistical Analysis Unit, 2021). Third is that the leadership at the Ohio State Highway Patrol is open to collaborative efforts aimed at improving service to the public. Although this article is limited to law enforcement culture, it is hoped that the insight gained has broader applications across all organizations.

Selective enforcement is often at the center of a discussion about officer discretion; however, there are many more aspects of decision-making to consider. For example, a trooper may decide where to work based on targeting a specific type of crime or instead assume a reactive posture. In addition, techniques employed require discretion in determining when and how to engage the public, along with many decisions to arrest, issue a warning, or to provide assistance. Finally, the trooper makes choices involving using force ranging from the officer's presence to lethal force.

bility to understand how institutional factors can support a culture inconsistent with public service. Leadership and culture are interconnected, and the most significant responsibility of leaders is to manage culture (Schein, 2017). I do not overlook the importance of individual accountability or discount other approaches to police reform. However, I believe progress is limited when the organization fails to recognize and act on the factors that adversely impact an officer's judgment and decision-making.

This conceptual article explores the influence of organizational culture in law enforcement through the lens of a state-level agency. My aim is to provide insight into how leaders can better align officer decision-making with societal expectations. I use the Ohio State Highway Patrol in my analysis for three reasons. First, my lengthy service at all levels has given me a unique insight into the organization's culture. Second, the Ohio State Highway Patrol enjoys

Organizational Culture

Culture refers to a pattern of basic assumptions developed and accepted by a group to cope and adapt to external forces and internal integration. Time and the intensity of shared experiences will shape the strength of the culture (Schein, 1990). Once formed, a leader may have to conform to the culture's norms for consistent interaction between the culture and the organizational leadership (Schein, 2017).

Discretion is necessary for the essential duties involving conflict management and crime suppression. However, observers may often disagree with the exercise of discretion and the resulting outcome. Moreover, the trooper realizes the potential for hostility and violence and is uncertain how much influence his authority as a trooper will have in any given situation. In these situations, a trooper may exceed his authority (Goldstein, 1977).

A trooper must successfully graduate from the academy and complete field training before assuming the full responsibility of their position by themselves. Afterward, the first primary decision is determining how to direct their efforts when not handling calls for service. Selective enforcement is often at the center of a discussion about officer discretion; however, there are many more aspects of decision-making to consider. For example, a trooper may decide where to work based on targeting a specific type of crime or instead assume a reactive posture. In addition, techniques employed require discretion in determining when and how to engage the public, along with many decisions to arrest, issue a warning, or to provide assistance. Finally, the trooper makes choices involving using force ranging from the officer's presence to lethal force.

As a young trooper, I worked the night shift. When not dispatched to a service call, I chose to focus on detecting and arresting impaired drivers. While I was assigned an area, I would patrol roads that I found to be used by impaired drivers. My approach was to stop as many cars as possible for various traffic violations to increase my probability of finding an impaired driver. Other troopers focused on stolen vehicles, some on truck violations, and some were content to take enforcement for ordinary traffic violations. At the time, I did not consider the motivation for my actions. Further, when I became a supervisor, I found that troopers could explain what they did but, at times, struggled to explain why. The why is at the core of decision-making and worth exploring.

Training and Socialization

In the Ohio State Highway Patrol, troopers develop deep beliefs, attitudes, and values during socialization, becoming part of their identity (Burke et al., 2009). This socialization begins with academy training, where all troopers in Ohio share a common bond dating back to 1933. Organizational artifacts such as the academy facility, historical icons, uniforms, and enforced military demeanor create an intense environment. The rigorous training is similar to a military boot camp, where discipline is central

to the experience. I graduated from the same academy as my father did 21 years earlier, with the same judge administering our oath of office. This long shared history and intense experience form the foundation of a strong culture (Schein, 1990). There are clear expectations of what it means to be an Ohio State Trooper with a common assertion that you are a trooper 24 hours a day.

The Academy experience provides a foundational understanding of expectations, which is necessary given the authority and discretion to meet daily demands effectively. Expectations are fluid and require ongoing refinement and reinforcement through training, policy, and communication. The culture that is created is an outcome of this process; however, leaders can leverage the positive aspects of the culture to meet societal expectations.

Peer Relationships

A trooper, once socialized, learns to hold shared assumptions that provide meaning, stability, and comfort in an unpredictable environment. As a defense mechanism, anxiety that arises from the inability to understand external events leads to automatic patterns of thinking, feeling, and behaving (Schein, 1990). Expectations are reinforced by a unique culture that emphasizes loyalty and trust among its members. Similar to a military environment, the expressed reason is the need to rely on your fellow officer during incidents of violent confrontation. Research indicates that creating in-groups is common, with occupation being second only to family as a top-ranked in-group dynamic (Hitlin et al., 2021). It is not uncommon for the psychological connection to this in-group to extend well beyond safety into daily life. I worked various shifts and moved several times to accept new assignments and developing relationships outside of work was difficult. Limited exposure to people outside work created a psychological attachment to the organization, as I was known simply as the state trooper in the community. As troopers isolate themselves from others, a false consensus emerges through the structured exchange of information. Members of the trooper's in-group receive

socially biased information samples even if they accurately interpret and recall the information (Kitts, 2003).

Selective exposure to other troopers promotes a general tendency to perceive a false consensus for one's beliefs, attitudes, attributes, and behaviors. For example, troopers commonly talk to each other about the experience of horrific crash scenes, death notifications, and physical confrontations, perhaps not being able to share these experiences with their families. In addition, causal attribution attached to errors made by public members may influence the magnitude of the false consensus bias (Miller & Prentice, 1994) perceptions, and feelings differ from those of their peers. Pluralistic ignorance, as this phenomenon is called, yields numerous significant consequences for the self (e.g., illusory feelings of deviance). By default, the public becomes the out-group.

Social identity theory strongly suggests people prioritize in-group members and differentiate from out-group by developing a sense of positive distinctness. This sense flows from the importance of cooperation from in-group members to hostility toward out-group members. It has been argued that this is at the core of observed discrimination and prejudiced behaviors at the individual and structural level, while others believe it may lead simply to apathy (Hitlin et al., 2021).

Troopers may be reluctant to challenge how others frame a social situation, even at the expense of compromising firmly held principles (Miller & Prentice, 1994), perceptions, and feelings different from those of their peers. Pluralistic ignorance, as this phenomenon is called, yields numerous significant consequences for the self (e.g., illusory feelings of deviance). This reveals the need for social support and self-esteem maintenance. The motivation to misrepresent their true feelings is a fear of embarrassment by acting inconsistently with the collective. Confounding the error is a failure to recognize that fear is also a motivation for the action of others.

Guilt Anxiety

Culturally induced guilt anxiety occurs when a trooper feels as if they are not living

up to some ideal self-image, disappointing superiors, or failing to honor some perceived obligation (Burke et al., 2009). I have witnessed this phenomenon at all levels in the Ohio State Highway Patrol. For example, a primary responsibility of the post commander is reducing the number of traffic fatalities in the geographic region of the state for which they are responsible. Each month, the post commander reports to superiors on crash trends and efforts to address these trends. From my experience with many elaborate statistical calculations, I can assure you the trends are speed, seatbelt usage, and impairment. The acceptable response from the post commander is to encourage enforcement for speed and seatbelt violations and arrest impaired drivers. Effective post commanders will use the mission of saving lives, personal loyalty, and recognition as tools to motivate troopers to produce results. High performers thrive in this environment, and there is pressure to deliver results.

My desire to excel in detecting and arresting impaired drivers was influenced by my first post-commander, who was like a coach. He followed a behavioral model that encouraged me to constructively adapt to the organization's expectations (Barner & Higgins, 2007) and to understand the impact of my behavior on myself and others. As a result, I developed a loyalty to him and wanted to meet his expectations. When I became a post-commander, I adopted a similar coaching approach, taking a personal interest in the success of the troopers while achieving organizational goals.

Policy and Procedure

Policy and procedure offer one method to control officer discretion. Therefore, one may assume that an officer will follow departmental policy at the risk of sanction. However, given the ambiguous nature of law enforcement, structured discretion does not come without consequences. First, the common-sense resolution to a situation may not fit the policy. Second, the policy may expose the officer and department to civil litigation in cases where the officer did not follow the policy for a good reason. Finally, actions that comply with the law

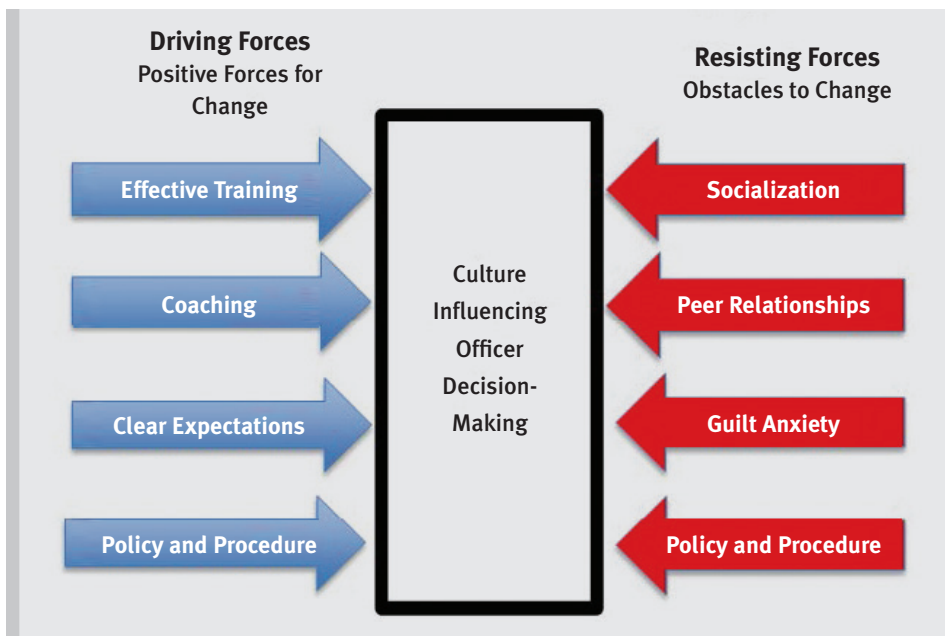


Figure 1. Officer Decision-Making Force Field Analysis

but violate departmental policy can become issues in successfully prosecuting criminal cases (Goldstein, H., 1977). For these reasons, policy often allows for flexibility at the expense of structured discretion.

Policy and procedures regarding recognition and awards, which is a part of the culture adopted from the military, also communicate the organization's emphasis on certain activities, and influence decision-making. There is a coded system where, for example, yellow uniform ribbons that signify physical fitness are awarded for maintaining a designated weight and green uniform ribbon signify safe driving. I wore a red ribbon with blue and white stripes that showed I had earned a college degree.

Earning a uniform ribbon is a powerful motivator in this culture and can have a positive impact. However, an example of an award recognition that holds potential for adverse impact on officer discretion is drug interdiction operations. After extensive and ongoing training in the importance and limitations of the 4th Amendment I understood that if certain legal conditions were not present, there was no authority to search. I also understood case law could be fluid and the message was to take a conservative approach to search and seizure issues. In the early 1990s when drug interdiction efforts and the increased use of consent searches were in their infancy, if there were no legal grounds to search, I could ask, and if the

person consented, I could proceed with a search. My objection to this approach was that many law enforcement orders that are presented as requests, are understood as non-negotiable (May I see your license? Would you step out of the car?). "May I search your vehicle?" is not seen as an option and may undermine public trust. When an award and uniform ribbon were instituted for drug interdiction efforts, it added a self-serving motivation to the officer's decision-making process and held the potential to undermine public trust.

Competing Forces

Criminal justice scholars have consistently identified the need for police reform for several decades. Yet, the evolution of law enforcement practices has not appeared to keep up with societal expectations. Training seems to be the default response in the aftermath of an undesirable police event; however training alone cannot overcome environmental factors and culture to bring sustainable change. Many policing models have been developed over the years, such as the watchman style, legalistic style, service style, professional models, data-driven, community-oriented, etc. Each approach has strengths and weaknesses; however, with 18,000 agencies across the country (Banks, 2016), no single system fits the needs of every law enforcement operation.

At the core of every traffic stop, arrest, search, act of bravery, and incident of

misconduct is decision-making. With the rise of video recordings, the ability to establish what happened has improved but video cannot explain why it happens. When compelled to defend one's actions, following orders or prior training is often the default answer; however, decision-making is still involved. Therefore, it is important to understand the forces that influence decision-making. While law enforcement may appear unmoved, it is not. As explained in Lewin's Force Field Analysis, there are forces in the organization and its environment that push the system toward its goal and forces that prevent this movement (Burke et al., 2009).

Figure 1 illustrates the environmental forces that influence officer decision-making that I have outlined. These forces constantly affect the decisions of individual officers daily and throughout their careers.

Culture Change

Many factors complicate effective police reform. There are 18,000 separate law enforcement agencies across the country (Banks, 2016), each responsible for establishing and enforcing standards set by various political entities. With the quality of service spanning the spectrum, attempts to generalize the problems in law enforcement, let alone effective reforms, do not resonate with all audiences.

Leadership is essential to learning. In a paramilitary structure, leadership is distributed at all levels of the organization, however considerable weight is given to the words and actions of higher-ranking officers. The leader sets expectations and then confirms or withholds approval. During difficult times, the leader will demand new or different behavior to help the organization evolve (Schein, 2017). Even if organizations have leaders with the insight and skills to influence culture, if reforms are not institutionalized, when the leader leaves, the organization will revert to old ways.

An Expectation of Change

Assessing the culture is the first step in response to an identified issue or problem. An example of this is how in 2016,

I coordinated the Ohio State Highway Patrol's support of the United States Secret Service and Cleveland Police Department during the Republican National Convention. When the Secret Service agent showed me to my office in the Federal Building, he said I would have a good view to watch Cleveland burn. I soon realized his pessimism was due to a lack of coordination of local law enforcement resources. The convention site was secure with ample Federal resources; however, the challenge was the streets and neighborhoods of Cleveland. We developed detailed, written plans and discussed contingency plans through meetings with individual operational commanders of over 2,000 officers from agencies all over the country. The clear and repeated expectation was to focus on ensuring a safe environment. Although we had tactical teams and officers in riot gear, we deployed officers in regular uniforms because we believed the public did not need to see these resources. We encouraged officers to talk with people but avoid discussing political ideology. Additionally, monitoring social media was an excellent resource to ensure we had sufficient officers visible in the high-risk areas, with additional resources staged in reserve if needed. As a result, Cleveland did not burn, and there were no significant incidents.

The leader must be able to communicate the threat that the problem presents to the organization and emphasize the need for change. While the leader may not possess the skill, knowledge, or time to assess the culture, it is difficult for anyone outside an organization to understand the culture beyond the observable artifacts and stated values. Therefore, an insider is needed to provide context, perhaps working with an outsider such as a researcher or consultant, to create the process to obtain a more detailed understanding to reach the underlying assumptions of the culture. With this knowledge, the leader can institute new role models that reflect the desired changes while researching potential solutions. As behaviors evolve toward the desired change, the leader needs to take steps to reinforce and institutionalize the desired behaviors (Schein, 2017).

Conclusion

Early in my career I received training from the United States Holocaust Memorial Museum. The training focused on how, in the 1930s, the Nazi party believed that due to the community's trust in the local police, involving the police would minimize resistance to the relocation of the Jews to concentration camps. Furthermore, the institutional conditioning of the police officers would ensure they would follow orders regardless of their beliefs (*German Police in the Nazi State*, n.d.). From studying this dark period in history, two lessons stand out. First, while there are challenges with the decentralization of policing which may result in calls to standardize policing nationwide, this may be one of our most significant safeguards to democracy. And finally, if leaders can use institutional influence to commit unspeakable acts, I believe leaders can use the same power to meet societal expectations.

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When not working, he volunteers as a Court Appointed Special Advocate, representing children adjudicated abused, neglected, or dependent. He has been married for 35 years and is the father of two adult children. Herbert can be contacted at hbhoman@BGSU.edu

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