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## Police criminal charging decisions: An examination of post-arrest decision-making

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### ARTICLE INFO

### ABSTRACT

Scholars have encouraged studies of police decision-making to move beyond the arrest decision into research that broadens the understanding of police behavior. The criminal charge placed by officers against offenders is largely an untouched area of study. Examining criminal charging decisions goes beyond simple dichotomous decisions, such as arrest, but instead explores the area of police leniency or punitiveness. Randomly constructed vignettes describing a domestic violence incident were given to officers from four agencies. Officers indicated the criminal charges they would likely list against an offender if they were to make an arrest. Serious criminal charges were often supported by additional, but less serious, charges. Victim injury and an uncooperative offender were related to the decision to charge a misdemeanor offense. There was a significant negative relationship between the number of charges listed and more experienced officers and officers working in smaller agencies. The implications of this study and directions for future research are discussed.

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### Introduction

It has long been observed that individual police officers have high levels of discretion in how they carry out official action. Officers are regularly faced with scenarios where they are in a position to decide if and how to invoke their authority to take official action. Official action can take on a variety of forms, such as initiating traffic stops, issuing citations, informal reprimanding of offenders, making arrests, and using force. Many of these are low visibility decisions that are not reviewed by individuals internal or external to police organizations.

This study was conducted to examine an area of police decision-making that has largely escaped attention by the research community: the charging decisions of police officers. Charging decisions reflect the legal charges or accusations filed by police officers against those accused of crimes.<sup>1</sup> When filing an arrest report, for example, officers make determinations about the number and type of charges forwarded to prosecutors who subsequently use that information to help inform later decision-making (Worrall, Ross, & McCord, 2006). Officers presumably make these decisions based on legal factors such as the available evidence, victim and witness statements, and forensic evidence. There is also evidence, however, that these decisions were influenced by extralegal factors such as race (Sutphen, Kurtz, & Giddings, 1993).

There are several reasons to examine police charging decisions despite their lack of legal weight. When studying discretionary decision-making

by police, it is important to expand inquiry to consider a broader range of decisions. Schafer and Mastrofski (2005), for example, warned that “scholars must continue to look at a broader range of discretionary choices in greater depth to understand the true complexity of police decision making choices” (p. 236). Charging decisions, with a few notable exceptions (Oppenlander, 1982; Sutphen et al., 1993; Van Maanen, 1985; Wilson, 1978) has been largely ignored by researchers.

Some may consider an inquiry into police charging decisions as largely irrelevant since it is prosecutors who ultimately determine which charges will be filed in court proceedings. Police “charges” amount to little more than recommendations that are not legally binding in any way. In fact, literature searches on terms such as “charging decisions” almost exclusively reveal studies that address prosecutorial decisions as if these decisions are made in a vacuum. Thus, researchers may be inclined not to consider the police officers’ criminal charging decision as a serious subject of police behavior.

The conceptual foundation of the current research, however, was that these decisions by police are substantively important because such recommendations have important impacts on latter processing. Einsenstein and Jacob’s (1977) study of courtroom work groups pointed out that police are one of the key players in courtrooms. Police, they observed “have significant influence on the operation of criminal courts...the precise pattern [of which] varies with the degree to which each of the participants possesses [the] resources and [knows] how to use...them” (p. 24). Thus, while not binding, charges recommended by arresting officers have the ability to shape many of the other subsequent decisions made by prosecutors.

To explore this decision point, a literature review discussing police decision-making is provided, including a brief review of police behavior in

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domestic violence incidents to provide context for this study. The data collection methods are examined in detail, followed by analytical results. A conclusion, including directions for expanding this area of research, is provided.

### Theoretical perspectives and prior research

Law is a variable phenomenon that can be defined by both its quantity and quality (Black, 1976). When confronting alleged criminals, there is variation in how law is actually applied. Officers may, for example, reprimand an offender, arrest, or possibly use force when confronting alleged offenders. The application of law then varies in time and space and it is important to understand the factors that affect how law is administered.

### Determinants of police discretionary decision-making

#### Organizational factors

Researchers have noted that organizational influences have a capacity to influence the behaviors of police officers. Wilson (1978), for example, argued police departments place legal and organizational constraints on police officers that influence behavior. Wilson identified three distinct management styles that partially explain the interplay between organizational styles and the application of the law. Wilson's *watchman style* organization is one where the organization's focal point is "order maintenance." The *legalistic style* describes organizations where a clear application of the law is emphasized and discretion has a minimal impact on day-to-day activities. The *service style* of policing is where service delivery functions to the community are highly valued. Police officers, for example, would likely spend time engaged in activities not directly related to crime reduction but service delivery. Wilson (1978) argued that management style of a police department reflects "a general underlying principle that can be inculcated in the members of the organization" (p. 138). Thus, organizational mandates themselves influence how discretion is exercised.

Mastrofski, Ritti, and Hoffmaster (1987) found support for Wilson's typologies and reported that informal and formal norms create "organizational ethos" in police departments that explain how police should apply the law. The effects of such ethos, however, are somewhat conditioned by the size of the organization. In smaller departments, for example, higher levels of coupling between formal policies and officers behaviors were noted. In larger agencies, influences such as peer cultures and other environmental influences had large impacts on officer's behaviors; impacts that often resulted in significant departures between officer behaviors and policies. This suggests that the size and level organizational complexity partially explain how law is applied.

Additional research had also found support for Wilson's (1978) working typologies. Smith (1987) reported that officers working under legalistic models were two to three times more likely to make arrests of juvenile suspects. In a more recent study, McCluskey, Varano, Huebner, and Bynum (2004) reported that organizational priorities or "tones" are not static but are instead subject to change depending on changing goals. They reported that formal policy changes in police departments could be reflected in changes in how officers use discretion. The authors documented that a "get tough" policy toward juvenile crime was more than just ceremonial; instead, changes in organizational mandates resulted in substantive changes in juvenile referrals.

#### Situational factors

Research also suggests that police decision-making is influenced by characteristics of incidents they encounter. Most research focused

on the arrest decision or the decision to use force. Black (1980) examined police arrest behavior and found that seriousness of the offense, the victim's preference, and suspects' demeanor impacted an officer's decision to arrest. Smith (1987) reported that decisions made by police were influenced by the sex and race of the victims involved in the incident, as well as the status level of the neighborhood where the incident took place. Smith (1987) also found that the demeanor of the suspect and victim, and the victim's preference that the offenders be arrested, were important variables in determining if the suspect was arrested.

Prior research finds that the use for force, not unexpectedly, is connected to crime seriousness. Alpert, Dunham, and MacDonald (2004) reported force is more likely when officers encounter suspects in violent offenses (see also Friedrich, 1980). Additional research has also reported that force is more likely in situations involving weapon possession (Terrill, Paoline, & Manning, 2003) and when officers engaged in a foot or car pursuit (Kaminski, DiGiovanni, & Downs, 2003). MacDonald, Manz, Alpert, and Dunham (2003) found that, relative to suspect resistance, officers used more force in nonviolent property crime calls than in more violent types of service calls (e.g., domestic violence).

Police decision-making was also linked to suspect demeanor. Oppenlander (1982) conceptualized offender behavior as businesslike, self-controlled, sarcastic, and hostile. Some offenders exercised "passive resistance by refusing to do something the officer asked" (p. 457). Oppenlander stated that officers charge an offender with an offense that serves as "retribution for the assailant's hostility to the police" (p. 457), such as public intoxication or resisting an officer. Klinger (1996) examined the relationship between an offender's demeanor and the arrest decision. He found that only those cases in which the offender was extremely hostile (e.g., raising a middle finger or open verbal disrespect) were significantly related to the arrest decision.

#### Individual officer factors

It is plausible that officer behavior is influenced by individual-level characteristics of officers themselves; however, conclusions about this body of evidence are mixed. Research seeking to explain variations in the behavior of officers had included characteristics such as officer race, gender, age, and experience (Friedrich, 1980). Most of the research including individual officers' characteristics as independent variables found these features played little or no role in the behavior of officers (Paoline, Myers, & Worden, 2000). Worden (1995), for example, reported that officer race and gender have no relationship to the use of force, a finding confirmed by Terrill and Mastrofski (2002). Other research, however, found that some individual officer characteristics do influence how officers behave. Homant and Kennedy (1985) reported that female officers demonstrated different goals and values than male officers when dealing with incidents of domestic violence, resulting in a higher level of involvement when handling these incidents. Dunham, Alpert, Strohshine, and Bennett (2005) reported White officers to be twice as likely to issue a ticket as other officers. Other research found that years of service affect officers' behaviors. Officers with more work experience are less likely to make an arrest in a domestic violence incident (Breci, 1989; Stalans & Finn, 1995). Terrill and Mastrofski (2002) found that level of use of force decreased as years of service increased.

Police officer behaviors and decision-making processes are complex phenomena that are influenced by organizational, situational, and individual level factors. Prior research has established how these factors affect several areas of discretionary decision-making, including the decision to arrest and the use of force.

### Policing domestic violence

Considerable scholarly attention has been given to understanding the intersection of police decision-making and domestic violence over

the past few decades. Police officers were often observed avoiding official action when handling domestic violence incidents (Sherman, 1992) as such action was thought to take officers away from more important duties, such as writing traffic tickets (Buzawa & Buzawa, 1993). In response to ground breaking research in the 1980s (see Sherman & Berk, 1984), law enforcement agencies across the United States began to reconceptualize traditional responses to domestic violence and adopt mandatory arrest policies (Bracher, 1996). The purpose of mandatory arrest laws was to reduce police discretion by requiring arrests when certain legal thresholds are met (Bracher, 1996). While this notable shift in policy was quickly adopted by police organizations across the country, the transition was not consistent across jurisdictions. Mitchell (1992), for example, reported that officers' willingness to adopt mandatory arrest lagged behind legal and policy changes that addressed domestic violence.

Scholars had focused considerable attention to the arrest decision in domestic violence cases, in particular the role of situational variables, and the evidence is mixed. Some studies found victim injury significantly related to the decision to arrest an offender (Belknap, 1995; Feder, 1996), while other studies (Fyfe, Klinger, & Flavin, 1997; Robinson & Chandek, 2000) found the relationship was not significant. Prior research found that officers were often deferential to victims' preferences when encountering domestic violence situations. Police are significantly more likely to make arrests, for example, in situations where victims are willing to sign complaint forms (Berk & Loseke, 1980–81; Worden & Pollitz, 1984). Buzawa and Austin (1993) similarly found that officers often defer to victim requests; officers were inclined to file charges or adopt less formalized approaches (reprimand and release) depending on victims' wishes. Yet not all prior research supported the conclusion that officers are responsive to victim desires. Buzawa, Austin, and Buzawa (1995), for example, found that when the victim requested an arrest, 75 percent of their requests were ignored.

Research had also established that one situational characteristic, offender demeanor, is particularly relevant to understanding police decision-making in the context of domestic violence. Scholars have long understood that suspect demeanor effects police discretion (Black & Reiss, 1970). That is, police are more likely to respond in coercive and formalized ways when encountering hostile suspects or individuals not displaying the appropriate level of respect for their authority. Worden and Shepard (1996), for example, reported that disrespectful or hostile behavior toward officers in the context of domestic incidents was significantly related to arrest, findings confirmed by Garner, Maxwell, and Heraux (2002). Although much of the prior research demonstrated that demeanor was an important predictor of coercive authority, its impact was not certain; Worden and Pollitz (1984) and Feder (1999) found belligerence toward the officer was not significant in the arrest decision. Thus, the impact of suspect demeanor is neither certain nor uniform.

One area of decision-making on the part of police that has largely escaped any serious inquiry by scholars, especially in the context of domestic violence, is charging decisions by police. It is particularly important to understand charging decisions in domestic violence cases because states have sought to formalize such responses with highly proscriptive statutes. The current research built on the existing literature by explaining these decisions, and in doing so, integrated both situational and organizational predictors into a unified model.

### Proposed research

Collectively, prior research supported the conclusion that arrest decisions are influenced by organizational, situational, and individual factors. The purpose of the current research was to extend the discussion about decision-making to a place that has largely gone unnoticed by prior researchers, variations in the criminal charge decision. Specifically, the focus was on charging decisions in domestic violence cases. This study examined several factors that influence

police decision-making in domestic violence incidents. This research can provide insight into the number of criminal charges that a police officer may list against an offender, the seriousness of those charges, the combination of criminal charges that may occur, and the factors that may influence the criminal charges.

There are several reasons domestic violence incidents provide a suitable venue for examining the criminal charging decisions of officers. First, domestic violence can cover a wide range of events from minor disturbances to incidents of near-fatal violence. Consideration of similar incidents with substantial levels of variation in seriousness provides the opportunity to understand how officers use or fail to use modes of legal interventions to diffuse these incidents.

Incidents of domestic violence also prove interesting because of mandatory arrest laws enacted in many states. The intent of mandatory arrest policies is to constrain the discretion of police officers by mandating arrest when specific legal thresholds are met. These laws, however, do not mandate how police are to handle the charging of suspects in these cases. Suspects may be arrested as a result of a legal requirement or to solve an immediate problem, but this may be done in a manner which ignores victim interests or about any long-term deterrent effects on offenders. In these situations, officers may apply a lower level offense that satisfies a legally mandated arrest but applies only minimal threat to suspects. If, however, officers accept mandatory arrest laws, there may be link between the types of charges or the number of charges a police officer lists against an offender.

### Methodology

#### Data

To examine the impact of organizational, situational, and individual variables on the criminal charge decision, data were collected from individual police officers in four different police agencies (described in greater detail below), and a vignette research design was used to measure the impact of situational variables on police officer criminal charge decision-making. Vignettes employ aspects of a random experiment by using scenarios that incorporate independent variables with definable dimensions. The dimensions of each variable are allowed to vary between vignettes in a way that produces situational typologies that are consistent with theory (Rossi, 1979; Rossi & Anderson, 1982). The available vignettes are then randomly assigned to respondents. A vignette design captures how respondents' decision-making varies with dimensions of each independent variable. That is, as the level of one dimension changes, its influence in the decision-making process may shift in relation to another dimension. See Appendix A for a sample vignette.

Vignettes offer several advantages for studying police decision-making. First, random assignment of systematically constructed vignettes applies principles of randomized experiments (Rossi & Anderson, 1982). Second, a researcher has the ability to control for situational variables, and connect those variables in a variety of random combinations. Further, the vignette design can control for factors that are unimportant to a study by either making them constants within a vignette, or not including them in the vignette. Third, combinations of events can be integrated into vignettes that are unusual and not easily observed in field research. Fourth, respondents can receive several vignettes, each vignette being unique observations, thus increasing the sample size (Cochran, Boots, & Heide, 2003). Finally, vignettes may improve upon studies that rely on police reports and victim surveys to understand police decision-making because official police reports often have validity and reliability problems, and surveys cannot develop "a feel for the total life situation in which respondents are thinking and acting" (Maxfield & Babbie, 2005, p. 272).

Finally, vignettes can also provide valuable insight into criminal justice decision-making that may be difficult to observe (Applegate,

Wright, Dunaway, Cullen, & Wooldredge, 1993). In the area of police decision-making, officers have responded in ways that do not reflect socially desirable answers, supporting the use of vignettes. For example, previous research using vignette designs found officers willingly admit to unacceptable behavior (Eterno, 2003).

#### Dependent variable

The dependent variable asked officers to indicate the state penal code charge that would be listed if an arrest were made in response to conditions in given vignettes. This was an open-ended question. Depending on what was described in the vignettes and how the events were distinguished by respondents, an offender might be charged with a felony, misdemeanor, violation, or a combination of charges. Several specific criminal charges were expected based on the conditions in the vignettes. Felony offenses included second-degree assault, first-degree criminal contempt, and aggravated criminal contempt. Misdemeanor offenses included third-degree assault and second-degree criminal contempt. The expected violation was second-degree harassment. Officers listed the criminal charge name as stated in the state penal code or by writing the associated penal code charge. For example, some officers would write "Assault 3rd" and others would write "120.10."

When responses were reviewed, almost all criminal charges were limited to harassment first degree, assault third degree, assault second degree, and some type of criminal contempt charge. Several vignettes received "criminal contempt" charges without reference to charge level. Some officers listed no criminal charges, while others listed as many as three. In addition, some officers listed the criminal charges in ascending order of severity, while others listed them in descending order.

#### Independent variables

This research examined four different variables associated with domestic violence incidents. *Injury* represents the level of visible physical injury to the victim. It represents one important proxy for determining the level of physical force used during events. Victim injury was included in this research because it has significant implications for officer decision-making. Visible injury reduces the ambiguity of the incident for the officer, and the officer is more likely to make an arrest and apply a criminal charge. In fact, victim injury is one of the most legally relevant variables when making the determination to make an arrest and which charges should be filed. Victim injury had three levels in the vignettes: no injury, a split lip (minor), or a cut that may require stitches (serious).<sup>2</sup> Other studies that included injury used a rather vague image, "victim injured," but did not include a clear description of the injury, such as a cut or bruise. This operational definition represents an improvement over prior research that used a dichotomous indicator (no injury/injury). An exception was found in the work of Waaland and Keeley (1985) who employed clear descriptions of injury in their vignettes (i.e., no injury, black eye, and broken bones).

A second independent variable examined in the domestic violence research is the existence of an *order of protection*. Forty-one states view violations of an order of protection as a separate criminal offense (Miller, 1997). For example, if the offender acts in a way that would be considered disorderly conduct or breaks any condition of an order of protection, then the order has been violated, an arrest is mandated, and the offender can be charged with the order of protection violation and any other related criminal conduct. A variable that measured the presence of an order of protection was included because it may have implications for police decision-making. For this study, an order of protection was dichotomized and operationalized in the following manner: no order of protection and an order of protection is in effect and in the victim's possession.

*Victim's arrest preference* was also included as a dependent variable. *New York State Criminal Procedural Law (2005)* put forward that an officer shall make an arrest "unless the victim requests otherwise." The victim's arrest preference is an aspect of state law that may influence police discretion in criminal charge decision. If the elements of a domestic violence incident mandate an arrest, but the victim does not want an arrest, the officer may arrest but charge for a lower-level offense. Victims' preference for an arrest includes three levels and was operationalized as: victim states that she does not want the offender arrested, blank (victim makes no statement regarding arrest preference), and the victim states that she wants the offender arrested. A "blank" dimension is an acceptable method for varying the level of a dimension (Jacoby & Cullen, 1999).

The final independent variable was the *level of cooperation* of an offender toward the police officer. Prior research found that officers are more likely to take punitive action (e.g., arrest) in situations involving uncooperative offenders (Fyfe et al., 1997; Worden & Shepard, 1996). Offender cooperativeness was included here to determine if it played a role in a police officer's criminal charge decision, as suggested by Oppenlander (1982) and Van Maanen (1985). Vignettes characterized offenders as either calm or hostile. This strategy was consistent with Klinger's (1996) operational definition of demeanor. Other aspects of vignettes were held constant: the victim and offenders were married, the incident took place at home, and the victim accused the offender of physically pushing her into the wall. Victim and offender descriptions were not provided (i.e., no race or age were indicated). A total of thirty-six possible vignettes were available when these four variables were randomly assigned within the vignettes.

One organizational variable and one officer variable were included in the analysis. First, data were collected from four different law enforcement agencies (discussed in greater detail below): a large city police department, two township agencies, and a county sheriff's department. Dummy codes were computed for each agency type and included as separate variables in latter analyses. This follows the suggestion of Crank (1990) who warned that features of communities influence police decision-makings. Second, officer *years of service* experience served as the individual officer variable in this study. It is expected that officer behaviors are shaped to some degree by their years on the job (Breci, 1989; Stalans & Finn, 1995). Other individual attributes of the respondents, such as race and gender were excluded from the study because this information would decrease the anonymity of the study, and potentially reduce the response rate, because three agencies had few or no female officers and few or no minority officers.

#### Sample

Four police agencies from the same region in New York State served as research sites (all agency names are pseudonyms). Table 1 provides general descriptive information for these agencies. The River City Police Department is a large police agency and has various operational (e.g., patrol, community police, detectives) and auxiliary (e.g., records, dispatch) subsystems. River City has a population over 200,000 with a downtown business center surrounded by typical grid-type neighborhoods. Roughly

**Table 1**

Description of research locations (2005 U.S. Census data and New York State Division of Criminal Justice Services crime data)\*

Jurisdiction	Officer/ pop. ratio	Number of officers	Index crimes (% violent)	Property crimes	Crime rate/ 1,000 pop.
River City	2.59	700	20,500 (19%)	16,700	73.88
Upper Town	1.89	17	400 (5.8%)	350	41.97
Lower Town	0.52	10	190 (2.6%)	160	9.06
Lake County Sheriff	0.55	60	1,600 (7.2%)	1,300	14.68 **

\* Violent and property crime data are rounded.

\*\* Does not include the population of three cities within the county that employ their own police agencies.

**Table 2**  
Frequency of most serious criminal charge in a vignette (N=917)

Criminal charge <sup>a</sup>	Charge #1	Charge #2	Charge #3
None	130 (14.2) <sup>b</sup>	379	782
Harassment second degree (violation)	129 (14.1)	330 (61.3) <sup>c</sup>	128 (94.8) <sup>d</sup>
Assault third degree (A misdemeanor)	258 (28.1)	191 (35.5)	0
Assault second degree (D felony)	21 (2.3)	9 (1.6)	0
Criminal contempt (no level)	152 (16.6)	0	0
Criminal contempt second degree (A misdemeanor)	65 (7.1)	0	0
Criminal contempt first degree (E felony)	148 (16.1)	4 (0.7)	0
Aggravated criminal contempt (D felony)	14 (1.5)	0	0
Other	0	4 (0.7)	7 (5.2)

<sup>a</sup> In New York State the severity of penal code charges listed in Table 1 progress in the following manner: violation, A misdemeanor, E felony, D felony.

<sup>b</sup> Percent of charge #1.

<sup>c</sup> Percent of charge #2.

<sup>d</sup> Percent of charge #3.

twenty miles from River City are the Upper Town Police Department and the Lower Town Police Department. These small police agencies serve townships and each employs less than twenty part-time and full-time police officers. These townships border each other, as well as a city (not part of this study) of roughly 50,000 people. Police officers in the townships furnish routine patrol services, are dispatched to calls by the county sheriff's department, and provide no special services. The townships have traditional style neighborhoods that include single family and apartment housing, rural areas with farms and rural housing, shopping plazas, and secondary highways with extensive commuter, commercial, and tourist traffic. The fourth agency is the Northern County Sheriff's Department. Deputies provide patrol services for a large rural area as well as several small towns and villages that employ no other police services. Asking questions of officers from these four police agencies will improve generalizability of the findings.

There are important jurisdictional characteristics that should be noted. First, Upper Town, Lower Town, and the Northern County Sheriff's Department serve a fairly homogenous population, and have few violent index crimes. Second, River City is in a different county from the other three agencies, with a court and prosecutor dedicated specifically to handling domestic violence cases.

Several methods were used to collect data during the spring and summer of 2005. First, police officers from River City responded to three randomly constructed and randomly assigned vignettes in a research project specifically designed for River City officers. These surveys were passed out to 273 officers in River City during all roll call periods (day, afternoon, and night shifts) over the course of several days. In total, 267 officers completed the surveys and returned them in a sealed envelope to the researchers. Second, sheriff's deputies were provided surveys as part of a broader research project, different from the River City study, but containing vignettes identical to those used in River City. These surveys contained two domestic violence vignettes, also randomly constructed and randomly assigned, and were distributed to thirty-nine deputies in roll call during all work shifts. Thirty-eight surveys were completed and returned to the researcher in a sealed envelope. Some officers and deputies were unavailable during the data collection period (i.e., off duty, on vacation, off sick). Overall, roughly 60 percent of the street-level police officers in River City and 65 percent of Northern County deputies were available for data collection during roll call. Both agencies had a 97 percent response rate (four surveys from River City officers were not answered corrected and eliminated from the data file).

The survey instrument containing two domestic violence vignettes used for sheriff's deputies was also used in Upper and Lower Town. These agencies do not have a routine roll call period. The Upper Town Police had previously scheduled a department staff meeting during the data collection period. The police chief allowed the researchers to distribute surveys to police officers during the first part of this

meeting. Thirteen surveys were distributed and all were returned completed. The chief of the Lower Town Police Department allowed the researchers to leave surveys for officers in their departmental mailboxes. Officers returned the surveys to the police chief in sealed manila envelopes, and they were returned in bulk to the researchers. It is unknown if this procedure impacted the responses of the officers. Ten surveys were distributed and nine were completed. The unit of analysis is the vignette and not the individual police officer; therefore, the final data file contains an N of 917 satisfactorily completed vignettes.

## Finding

### Type of criminal charge

In 787 vignettes, an officer listed at least one criminal charge (130 vignettes did not result in a criminal charge), and many officers listed more than one criminal charge. In 538 cases, the officer listed a second criminal charge, and in 135 cases, a third criminal charge was provided. Three distinct variables were created in the data file to accommodate this result, with the most serious criminal charge listed first. Four vignettes garnered an assault second degree charge and a criminal contempt first degree charge, both E felony charges. The assault second degree charge was listed first. Criminal charge results are provided in Table 2.

Care should be exercised when interpreting these frequencies based solely upon the figures in Table 2. There are several observations that can be made regarding these frequencies. First, of the 130 cases in which no charges were listed, officers indicated that they were likely or very likely to arrest in twenty-one (16.2 percent) cases. It is unknown why an officer would suggest that an arrest is the appropriate police action, but not list at least one criminal charge. Second, in twenty-one vignettes an officer indicated a criminal charge of assault second degree, a D level felony. A careful examination of these twenty-one vignettes shows that sixteen of the assault second degree charges were associated with a serious injury (a cut that may require stitches). This criminal charge is reasonable for this type of injury.

A third result in Table 2 that bears note is related to criminal contempt charges. Of the 917 vignettes, 448 (48.9 percent) included an order of protection. An officer lists a criminal contempt charge (any offense level) in 360 cases (356 as the first charge, four as the second charge). It is assumed an order of protection has been violated based on the conditions in the vignette, thus eighty-eight (19.6 percent) of the eligible vignettes did not receive a criminal contempt charge. It is unclear what factors might contribute to a police officer's decision not to include this criminal charge. This is explored further in Table 3. Vignettes are separated based on whether an order of protection is present or not, and these vignettes are separated by the presence of a

**Table 3**  
Frequency of most serious criminal charge by order of protection and injury interaction (N=917)

Charge	Order of protection		No order of protection	
	Injury	No injury	Injury	No injury
None	18	14	34	64
Harassment second degree (violation)	7	5	51	66
Assault third degree (A misdemeanor)	28	1	218	11
Assault second degree (D felony)	6	0	15	0
Criminal contempt (no level)	106	41	5	0
Criminal contempt second degree (A misdemeanor)	41	22	1	1
Criminal contempt first degree (E felony)	104	41	2	1
Aggravated criminal contempt (D felony)	12	2	0	0
Totals	322	126	326	143

victim injury. This table allows an examination of how victim injury interacts with the presence of an order of protection in the charge decision. Vignettes that included an order of protection received some type of criminal contempt charge in 81 percent of the injury vignettes and 84 percent of the no injury vignettes. It was interesting to note that victim injury appeared to motivate some officers to list the most severe level of criminal contempt when an order of protection is present. When an order of protection is not present, but the victim is injured, officers list assault third degree in roughly two-thirds of the vignettes.

A final observation from Table 2 shows that in 65 vignettes, officers listed criminal contempt second degree (misdemeanor level) as the primary criminal contempt charge, and in 152 vignettes, the specific level of criminal contempt was not listed. For the moment, it will be assumed that the 152 criminal contempt charges that included no degree level would have been criminal contempt first degree, the appropriate charge. When an officer listed a criminal contempt charge as suitable for the vignette, 15.5 percent were for the lower level criminal contempt offense. A careful reading of state law indicates that a criminal contempt second degree charge is inappropriate for an order of protection violation in a domestic violence incident.

What cannot be gleaned from the figures in Tables 2 or 3 is the combination of charges when two or more criminal charges were listed by the police officers. A review of the data file offered several observations regarding charging combinations. First, when the most serious charge a police officer listed was harassment second degree (129 cases), only one case included an additional charge, a second count of harassment second degree. It was not surprising when an officer listed a charge of harassment second degree as the most serious charge that a second criminal charge was not included. Harassment second degree is a violation, a low offense level, and including additional charges may be considered superfluous. Second, 259 cases involved assault third degree as the most serious charge (a misdemeanor criminal offense). Of these cases, 178 (68.7 percent) included a charge of harassment second degree. One officer included obstructing justice, one officer listed menacing, and two officers included resisting arrest as an additional charge. It is speculated that the officers included resisting arrest in response to the offender's behavior toward the officer. It should be recalled that offender behavior toward the officer was verbal, and it is difficult to see how an officer could justify a criminal charge of resisting arrest based on this type of offender behavior. What may be most significant is the fact that this charge was listed very infrequently. Third, when an officer indicated that the most serious charge would be criminal contempt (any offense level), 339 of those cases (89.4 percent) included an additional criminal charge. The second criminal charge was either assault second degree (2.6 percent), assault third degree (56.3 percent), or harassment second degree (41.0 percent). An expanded examination of this combination of criminal contempt, assault, and harassment charges showed that when a police officer indicated the most serious charge would be criminal contempt (any offense level), 124 of those cases included a charge of assault third degree and a charge of harassment second degree. These findings suggest that police officers are supporting a criminal contempt offense with an additional criminal charge, and 36.4 percent of those cases included multiple charges. Overall, by examining the combination of criminal charges it can be seen that when an officer makes a decision to charge for a higher level offense, such as any level of criminal contempt or assault third degree, the officer tends to include a supporting lesser criminal charge.

It should also be noted that in twenty-one vignettes, police officers indicated they would be likely to make an arrest, yet provided no criminal charges. Seven officers made up the bulk of these "arrest-no-charge" vignette responses. Conversely, officers responded to twenty-six vignettes that they were unlikely to make an arrest, but indicated that they would file assault or criminal contempt charges, and twenty-one of the vignettes listed multiple criminal charges. Of these twenty-six "charge-no-arrest" vignettes, eight police officers responded to all three vignettes in this way (twenty-four of twenty-six). It was

speculated that those cases in which a police officer indicated that they would be unlikely to make an arrest, but the officer still listed criminal charges, would bias analysis. Therefore, these twenty-six cases were eliminated from criminal charging analyses.

### The charging decision

When a vignette contained certain conditions, specific criminal charges could be anticipated. After reading the vignettes, officers charged for either the anticipated offense level or officers failed to charge the anticipated offense level. For example, if a victim was injured, the criminal charge is expected to be assault third degree, a misdemeanor. If an officer listed assault third degree, the dependent variable was coded 1. If an officer did not list assault third degree, the variable was coded 0. Logistic analysis was used because the dependent variable is dichotomous (Hosmer & Lemeshow, 1989). Logistic regression coefficients are interpreted "as the change in the natural log of the odds of the dependent variable associated with a one-unit change in the independent variable" (Bachman & Paternoster, 1997, p. 574). It is difficult, however, to think in terms of "the log of the odds" of an event occurring, therefore the "odds ratio" of the coefficient is calculated (i.e., the coefficient is exponentiated) because of its ease of interpretation (Hosmer & Lemeshow, 1989).

Table 4 provides the logistic regression results when a domestic violence vignette includes any injury. It is anticipated that a police officer will list a misdemeanor criminal charge rather than a violation. Cases that included a felony charge (e.g., criminal contempt or assault second degree) were excluded, as were cases with no criminal charge. A total of 382 cases were analyzed. When all variables were held constant, a unit increase in the injury variable increased the odds that a police officer would list a misdemeanor level offense rather than a violation by 32.236. The results were significant at the .001 level. Thus, a visible injury significantly influenced an officer to charge the offender with a misdemeanor level crime. It should be noted that police officers in Lower Town appeared to respond to domestic violence vignettes with minor criminal charges.

Wilson (1978) asserts that an officer will make an arrest to solve a problem and will charge the offender with a low-level offense. Van Maanen (1985) and Oppenlander (1982) suggested officers will charge for a low-level offense when the offender challenges the officer's authority. If a domestic violence vignette involves an uncooperative offender, then a police officer might be likely to report charging for a low-level offense. An uncooperative offender may be a signal to the officer that the domestic violence offender will continue to be a problem, and an arrest is a short-term solution to solve the immediate problem, or an uncooperative offender may be seen as a challenge to police authority. An arrest will restore the officers' status and will require a minimal criminal charge to justify the arrest.

**Table 4**  
Logistic regression model for injury charging decision (N=382)

Variable	Coefficient	S.E.	Wald	Exp [b]
Intercept	1.977	1.268	2.430	
Any injury	3.473***	.372	86.963	32.236
Order of protection exists	.092	.448	.042	.837
Victim requests arrest	-.214	.341	.392	.531
Victim requests no arrest	-.394	.361	1.194	.674
Offender uncooperative	.554*	.282	3.862	1.740
Officer experience	.031	.023	1.820	1.032
Upper Town Police Department <sup>a</sup>	-1.047	.716	2.138	.351
Lower Town Police Department <sup>a</sup>	-2.462***	.723	11.586	.085
Northern County Sheriff <sup>a</sup>	-.419	.510	.678	.657
Pearson chi-square	149.837***			

<sup>a</sup> River City is the reference police department.

\* p<.05.

\*\* p<.01.

\*\*\* p<.001.

**Table 5**  
Logistic regression model for “uncooperative” charging decision (N=512)

Variable	Coefficient	S.E.	Wald	Exp [b]
Intercept	2.545	1.115	5.206	
Any injury	3.557***	.345	106.453	35.054
Order of protection exists	-.690*	.309	5.003	.501
Victim requests arrest	.044	.283	.024	1.045
Victim requests no arrest	-.583*	.282	4.267	.558
Offender uncooperative	.555*	.227	5.959	1.742
Officer experience	.034	.019	3.284	1.035
Upper Town Police Department <sup>a</sup>	-.950	.608	2.446	.387
Lower Town Police Department <sup>a</sup>	-2.044**	.709	8.321	.130
Northern County Sheriff <sup>a</sup>	-.144	.469	.095	.866
Pearson chi-square	221.745***			

<sup>a</sup> River City is the reference police department.

\*  $p < .05$ .

\*\*  $p < .01$ .

\*\*\*  $p < .001$ .

Data from this research provided the opportunity to examine this assertion. In this research, only those cases that involved a felony level charge (e.g., criminal contempt, assault second degree) were eliminated from the analysis because it is very likely that any criminal contempt or assault second degree charge would likely be a felony level charge. Five hundred twelve cases were analyzed and the logistic regression results are shown in Table 5. Results indicated that if an offender was uncooperative toward the responding officer, then the offender was likely to be charged with a misdemeanor offense over a lower-level violation, a finding contrary to what was expected. It was noteworthy that the injury variable and police officers in Lower Town continued to be significant in the decision to charge for a misdemeanor level offense. The existing order of protection was negatively related to the decision to charge for a misdemeanor. This finding was understandable in light of the fact that an order of protection would likely bring a felony level charge. Also, when a victim requests that the offender not be arrested, officers charged for the lower-level offense. It is possible that an officer is attempting to satisfy two conflicting aspects of these none-felony cases: the officer is making an arrest to satisfy state law, but is likely charging for a lower-level offense in an effort to comply with the victim's request.

As shown earlier in Table 2, over 500 vignettes garnered two criminal charges and 134 vignettes earned three criminal charges. An examination of the relationship between independent variables and the number of criminal charges that an officer listed was conducted. Table 6 shows the results of an ordinary least squares regression model. This model examined the number of criminal charges listed, not the type of criminal charge. Results indicate that, on average, the number of criminal charges increased when a victim had a minor injury, and on average, the number of criminal charges increased by .764 when a victim had a serious injury. When an order of protection existed, on average, the number of criminal charges increased by .769. Also, the number of criminal charges increased by .209 when the offender was hostile toward the police officer. Finally, on average, the number of criminal charges decreased by .013 when the officer had more experience. It should be noted that there was a significant negative relationship between the officers in the township agencies and sheriff's department and the number of criminal charges listed in response to the vignettes.

## Conclusion

In this theoretical analysis of criminal charging decisions, domestic violence vignettes were used to examine police charging decisions. The findings indicate that charging decisions were delimited to a few criminal offenses that appear appropriate to the circumstances in the vignettes. Results also show that officers tended to support more serious criminal charges with a second, and sometimes third, less

serious criminal charge. Still, results show that almost 20 percent of the officers did not list a criminal contempt charge when an order of protection was in effect. It can be strongly argued that if the conditions of the domestic violence vignettes are compared with language contained in New York State legislation, vignettes that included an order of protection justify a criminal contempt first degree charge. The fact that one in five of suitable vignettes did not receive this criminal charge was surprising.

Logistic regression results indicate that when an officer charged an offender, there was a statistically significant relationship between victim injury of any type and a misdemeanor level assault charge. This finding can be contrasted with the results of descriptive research showing that minor injuries, such as bruises and contusions, were often classified as harassment rather than assault (Frisch, Mackey, Hall, & Worden, 2001). The misdemeanor charging decision exposes another variable worthy of note. There appeared to be a significant relationship between an uncooperative offender and the decision to charge for misdemeanor assault. This finding suggests that officers are not simply arresting an uncooperative offender and applying a minimal charge to satisfy the arrest, as suggested by Oppenlander (1982). It may be that officers are taking the opportunity to “stick it to” an offender that fits Van Maanen's (1985) description of an “asshole.” It was unclear why officers in the Lower Town Police Department are charging for a lower-level criminal offense in response to the vignettes. It is possible that the chief's management style has some influence on the officer's charging decisions, or some aspect of the department's working environment is influencing the charging decision. Additional research is needed to determine what features of Lower Town, or similar jurisdictions, might be influencing the charging decisions.

Additional analysis of the charging decisions of police officers shows that victim injury, the existence of an order of protection, and an uncooperative offender contribute to the number of criminal charges an officer listed. An interesting finding is that officers with more experience listed fewer criminal charges at a statistically significant level. The number of criminal charges an officer listed is also influenced by the type of police agency. Township police officers and sheriff's deputies listed fewer criminal charges at a significant level in contrast to the River City officers. There may be environmental factors that influenced a police officer in River City to list multiple criminal charges. River City has a domestic violence court that has been in operation since 1999. The court has a single presiding judge to handle all stages of a domestic violence case, as well as a dedicated prosecution team from the district attorney's office. Further, during data collection in River City, it was learned from a district level supervisor that street-level officers are aware that prosecutors tend to reduce charges due to the volume of domestic violence cases. It is speculated officers in River City

**Table 6**  
OLS for number of criminal charges (N=8 91)

Variable	b	S.E.	Beta
Constant	.819***	.084	
Minor injury	.614***	.062	.320
Serious injury	.764***	.061	.402
Order of protection exists	.769***	.049	.422
Victim requests arrest	.104	.061	.054
Victim requests no arrest	-.081	.061	-.042
Offender uncooperative	.209***	.049	.115
Officer experience	-.013**	.004	-.087
Upper Town <sup>a</sup>	-.787***	.147	-.145
Lower Town <sup>a</sup>	-.378*	.174	-.058
Northern County Sheriff <sup>a</sup>	-.384***	.090	-.117
R Square	.371		

<sup>a</sup> River City is the reference police department.

\*  $p < .05$ .

\*\*  $p < .01$ .

\*\*\*  $p < .001$ .



increase the number of criminal charges to reduce the opportunity for a domestic offender to receive light treatment from the court.

Additional research should try to expand on the limits of this study. First, additional control variable can be integrated into vignettes. Situational conditions such as presence of a witness or a child, and individual conditions such as the use of alcohol by the offender or victim, might influence the charges listed against an offender. Second, future research might attempt to address organizational characteristics beyond a simple size dichotomy. For example, cities may have multiple patrol districts with different characteristics and crime rates. This may cause within-agency variation in officer decision-making. Third, where this research relied on self-reported behavior to conditions contained in vignettes, other studies can extend the examination of police decision-making by simply including additional items during data collection. For example, official police reports often contain information on the charges placed against an offender, thus it is simply a matter of examining data that is already available.

Second, other studies should expand on the type of incident handled by an officer to broaden the understanding of the criminal charge decision. For example, traffic tickets provide an officer with discretionary decision-making. Research into racial profiling often measures if a ticket is written, but not the type or severity of ticket (e.g., moving or nonmoving violations). If a ticket is written, the traffic offense charged can render a better understanding of the intent of the ticket. Third, additional research should expand on the individual officer characteristics and the organizational characteristics on the criminal charge decision. Research shows there are different types of police officers (Paoline, 2001) and different characteristics to the working environments of small and large police agencies (Stojkovic, Kalinich, & Klofas, 2003). These factors should be integrated into future research.

#### Appendix A. Sample vignette (dimension levels are italicized)

You receive a call about a domestic violence incident. The dispatcher tells you that an unknown person called about a disturbance at the neighbor's house. When you arrive at the scene of the disturbance, you knock at the door, and a female opens the door. You tell her that you received a call about a disturbance, and you ask her for her name. She answers "Michelle Smith. I got into an argument with Rich, he's my husband. (*He got mad and pushed me into the wall, but I'm okay/he got mad and pushed me into the wall, and I got this split lip/he got mad and pushed me into the wall, and I got this cut.*) You see a cut over the victim's eye that may require stitches.)

Michelle then states (*"I got a No Offense order of protection two months ago."* Michelle shows you the order of protection from Criminal Court, and it states that there is to be no assaultive behavior, no harassment, and no intimidating or alarming activity, such as threats with a weapon, between Rich Smith and Michelle Smith./"I'm thinking about getting an order of protection, but I never thought I'd need one.").

You ask Michelle if her husband is still around. She says "Yea, he's watching T.V. Come on inside. I've called you guys before, and the cops that showed up that time made him leave. (*I don't want you to arrest him/I want you to arrest him.*)" [blank]).

Michelle shows you into the house. When you enter the living room, you see a male sitting on a sofa and watching the T.V. You ask his name and he informs you that his name is Rich Smith, and then Rich says (*"I don't know what she told you, but really man, I came in here to watch T.V. and get away from her/Why don't you get the fuck out of my house?"*).

#### Notes

1. While charges recommended by police officers are not legally binding, they have some weight on decisions made by other actors in the criminal justice system, such as prosecutors. The "courtroom work group" concept suggests that court processes, including prosecutorial decisions, are influenced by shared values and favorable working relationships among the various actors in the criminal justice

system (Einsenstein & Jacob, 1977). This suggests that while not binding, charges recommended by police officers are given serious weight and consideration by prosecutors.

2. According to research in the New York State Division of Criminal Justice Services (Frisch, Mackey, Hall, & Worden, 1997), bruising, swelling, contusions, and black eyes tend to be interpreted by officers as minor injuries. Offenders were often charged with a violation (harassment), not a misdemeanor. This research settled on "split lip" and "cut above her eye that may require stitches" for two reasons. First, these injuries appear almost instantly (as opposed to a black eye) and are sustained for a period of time (as opposed to a bloody nose). Second, these injuries are clearly visible to officers, so there is little doubt that, assuming that the injury occurred from the case at hand, the law has been broken and an arrest is acceptable, if not required.

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