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THE USE OF DISCRETION BY THE OTTAWA POLICE FORCE IN
RELATION TO CASES OF ASSAULT CAUSING BODILY HARM

William R. Penney

1982

"Submitted to the School of Graduate Studies and Research,
of the University of Ottawa, in partial fulfillment
of the requirements for the degree of Master of Arts
in Criminology."



William R. Penney, OTTAWA, Canada, 1983.

ACKNOWLEDGEMENT

I would like to express my sincere appreciation to Professor Justin Ciale, Ph.D., my thesis supervisor, for his advice and encouragement, and most of all, his patience. I would also like to thank Staff Sergeant Chris Murphy of the Ottawa Police Force for his invaluable aid in helping to overcome obstacles.

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CHAPTER I

INTRODUCTION

The purpose of this thesis is to determine whether the police forward every violation of the criminal law which comes to their attention to the prosecution stage of the criminal justice system, or if instead, they undertake a screening function of their own. The method will involve an analysis of cases of assault causing bodily harm, contrary to section 245 (2) of the criminal code (1), as they are dealt with by the Ottawa Police Force. The thesis will attempt to show how the outcomes of cases were determined; whether charge/arrest was the only consideration, or if factors particular to each case were taken into account, and options, other than the criminal justice system, were considered and utilized; and to what extent, if any, the police play a role in determining who will become 'the criminal'.

The offence, assault causing bodily harm, was selected for several reasons. First of all, it is an offence which can occur anywhere, and at anytime. Secondly, it can involve a wide range of participants,

including both male and female, as well as the juvenile, through to, and including, the senior citizen. Thirdly, it can include either a prior victim/offender relationship, or no prior affiliation, and, finally, it can consist of varying degrees of seriousness of injury, ranging from minor to that which requires hospitalization. Thus, assault causing bodily harm is a violation of the criminal law which can potentially provide a wide range of different factors on which a decision can be based, unless, of course, charge/arrest is the one and only consideration being made.

Many advances in research in the field of criminology have taken place since Tappan (4) stated that the focus of criminological research should be exclusively that of the criminal who has been convicted by the courts. Recent research, for example, has looked less at the criminal or end product, and instead at the processes such as the development of, and the administration of our laws, in an attempt to show the importance of the role these processes play, in determining who 'the criminal' will be. Montserin (3) for example, has clearly demonstrated that certain groups in positions of power can have their interests incorporated into law, and subsequently directed against a select group of others,

thereby increasing this select group's potential to be classified as 'criminal'. Hogarth (2), in a descriptive analysis of the judicial level of the criminal justice system, describes the role judges within the system play in separating the criminal/non-criminal as they exercise their discretion on a daily basis. The present research maintains this focus as it attempts to examine the initial stage of the criminal justice system - the police - in the light of full enforcement and discretionary application of the criminal law, in an endeavor to determine, what role, if any, the police play in determining who will become 'the criminal'.

On the one hand, if the role of the police is primarily one of full enforcement of the criminal law, then all cases will be treated in a like manner, and there will be a tendency towards a one-to-one correspondence between violations of the criminal law and charge/arrest. Their duties will include those of detection of violations, and apprehension and conveyance of offenders to the later stages of the criminal justice system. As such, they will not have a say in determining who will become the 'criminal'. On the other hand, if the police are in reality decision-makers within the criminal justice system, cases will instead be treated

on an individual basis, with options other than charge/arrest being considered. Rather than a one-to-one correspondence between violations and charge/arrest, there will instead be a decrease in the number of cases as they are sent on to the next stage of the criminal justice system. As such, the police would not only be playing a role in determining who 'the criminal' will be, but also in determining the outer limits of criminal law, as well as, the material the remainder of the criminal justice system will expend its energies on.

Within the full enforcement of the criminal law framework, the criminal code is analogous to the Bible in the sense that it should be followed to the letter of the law. Within this context, crime is defined as an act which is punishable by the state, and the main consideration is that an individual who has violated the criminal law must be brought to trial. However, within the discretionary application of the criminal law framework, the criminal code is instead a guide and not a set of specific instructions. Punishment does not necessarily follow the commission of an act which contravenes the criminal code, since factors, other than the fact that a violation of the criminal law has occurred are taken into consideration, and options

other than the exclusive use of charge/arrest outcome are taken into account.

Effective planning and the efficient utilization of resources of the criminal justice system is dependent on information and knowledge that is not clouded by myth and misconception. If the police role is strictly one of law enforcement, then problems of paramount importance include understaffing and inadequate facilities, for which additional funds should be allocated to maintain adequate movement through the system and thereby prevent overload and perhaps collapse of the system. However, if the police utilize discretion in an ongoing manner, of paramount importance would be high quality decisions, decisions which, if they come to the attention of the public, maintain the integrity of the system. High standards of selection and training must be maintained.

This thesis will examine how the Ottawa Police Force deals with cases of assault causing bodily harm, to determine the outcomes of cases, the reasons for the outcomes, and whether or not choice was an inherent component of the process, and, if it was, what factors were important in the selection of different options. Once this process has been described, the data will

be examined in the light of full enforcement and discretionary application of the criminal law, to ascertain which is congruent with the actual role the police play in our criminal justice system.

Chapter II will examine the literature regarding the initial stage of the criminal justice system - the police - in terms of whether it is in reality merely a conveyer of violators of the criminal law to the later stages of the system, or whether it is in fact a decision-making process, playing an important role in determining who will become the criminal. In Chapter III, the methodology will be outlined, describing the process of data selection, as well as the rationale underlying the method of analysis. Chapter IV will present the results and an analysis of the outcomes of cases in addition to influencing factors. Chapter V will discuss the implications of the role of the police that is supported by the data.

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CHAPTER II

FULL ENFORCEMENT AND DISCRETIONARY APPLICATION

On the one hand, we have a view of law enforcement which is synonymous with a policy of full enforcement or a one-to-one correspondence between violations of the criminal law and the laying of charges, and conforms to the ideal or principle of uniform law enforcement. On the other hand, we have a conception of discretionary application of the criminal law which is similar to a filtering process, in which there is a decrease in the number of cases as they proceed through the stages of the criminal justice system and is congruent with the idea of individualized justice.

Referring to official crime statistics, Nettler (18), Sellin (21), and Sutherland and Cressey (22), relate that a close examination reveals an attrition in the number of cases being dealt with as they proceed through the stages of the criminal justice system, from the police, through prosecution and the courts, to the correctional system. In fact, Cosmos states:

Only a very limited number of all crimes - here

defined as acts which can be followed by a penalty - actually result in penalties or some other form of sanction decided upon by organs representing society (7; p. 125).

Thus, there is not a one-to-one correspondence between violations of the criminal law and the application of the sanctions specified for their commission.

While the evidence appears to support the idea of a criminal justice system which is a decision-making process, Hartjen relates that although the use of discretion by judges and crown attorneys is an accepted, ongoing practice, "it is commonly assumed and officially mandated that the police enforce all laws no matter what" (12; p. 100). Grosman adds that "the public... continue to believe that the law is enforced as it is written - than any deviation by the police from full enforcement is unlawful" (11; p. 81). "Legislation, particularly that embodied in the Criminal Code, gives to the vast majority of citizens the impression that the law is mechanical, precise, and objective in its application" (11; p. 84).

However, the literature overwhelmingly supports the idea that the police are also decision-makers within the criminal justice system, and, do in fact, exercise

discretion on a daily, ongoing basis. Lejins (17), states, for example, that a strict policy of law enforcement would overload the criminal justice system, straining its structure to its very foundation, and would, perhaps, lead to its ultimate collapse. Hartjen (12) adds that the police do not have the facilities nor the personnel required to carry out a policy of full enforcement. Furthermore, Wilson notes, "When this incredible array of laws that the police are expected to enforce is added to the vast number of services they are obliged to perform, exercise of discretion by the police is inevitable" (24; p. 7). Thus, Eldefonso, Coffey, and Grace conclude, "The understaffed department cannot enforce all laws nor enforce all laws equally at all times" (9; p. 52). Thus, from a practical point of view, "the police are obliged to decide which laws are to be enforced and how much effort is to be given to enforcing some laws as opposed to others" (12; 100). Therefore, "Law enforcement is a matter of decision-making" (12; p. 100). Consequently, even though the criminal code contains those acts, the commission of which, allows officials of the criminal justice to intervene, the system incorporates the use of discretion, and, as such, is a decision-making process, even at the police level of the system (3, 19).

From another perspective, Sanders and Daudistel provide us with a different rationale as to why the police are decision-makers. They state that if we examine a natural law, such as the law of gravity, for example, "There are no ifs, ands, or buts about this law, and in all cases the consequences of 'breaking' it will happen immediately" (20; p. 3). However, on the other hand, if someone violates a man-made law, such as the criminal law, several things must happen before the consequences are invoked. Therefore, Sanders and Daudistel maintain, "the law of the land is not an unequivocal set of rules like 'natural' law but is subject to social mediation before legal sanctions are brought to bear" (20; p. 4). Thus, they note, that it is unlikely in the case of a woman who punches a man in the nose, that anyone would define the situation as criminal. From their point of view, the consequences for violation of the criminal law are neither immediate, nor are they inevitable. Instead, decision-making is an inherent component of any process that is based on man-made law. As such, alternatives, such as doing nothing, or the consideration of options other than the criminal justice system itself, are a necessary component of the process. To understand the law in action, one must do more than simply read the

sections of the criminal code, one must instead examine its everyday application (20).

A better understanding of the power of the police to exercise discretion can be obtained from reference to Kelly and Kelly, who state:

It has long been recognized that under common law the police have wide discretionary powers in carrying out their general duties. This point was recently upheld by the English Court of Appeal. The police commissioner had circulated among the London Metropolitan Police a confidential instruction that no proceedings should be taken against gaming clubs for breach of gaming laws unless there were complaints of cheating or the clubs had become hangouts for criminals. In order to make the police enforce the law whether or not these specified conditions existed, a citizen applied for a Writ of Mandamus (a writ to compel the performance of a duty). The application for the writ was denied and the decision appealed. The appeal was also denied, and thus the discretionary powers of the police were upheld (15; p. 201).

In regards to the decision, Lord Denning stated, as noted by Kelly and Kelly:

It is the duty of every Chief Constable to enforce the law of the land...The responsibility of law enforcement lies on him. He is answerable to the law and the law alone (15; p. 201).

Closer to home, the Report of the Task Force on Policing in Ontario, provides us with a picture of the police as having a quasi-judicial, independent role, by stating that the courts have not pronounced themselves

on the authority of the constable not to invoke the criminal process where the elements of an offence may be proven. The Task Force states:

It is a fact of life that police are daily called upon to decide whether or not to invoke the criminal law process...our society has come to expect constables to exercise some degree of judgment in deciding when to invoke the criminal law process. However, the judgment of a constable must be related to the objectives of the particular law and how those objectives relate to the situation within his community. If it were related to the personality of the offender, or the social embarrassment of the offender, abuse could tear apart the entire fabric of Canadian law by, for example, creating one law for the rich and influential and another for the poor and helpless. Such a basis for decision-making is unacceptable in theory and in practice would be opposed by all citizens and by all professional police officers. Any police power of decision-making must be related to the purpose of a law and must be coordinated with the decision-making powers of the Justices of the Peace, the Crown Attorneys, and the Judges (23: p. 13).

The Law Reform Commission of Canada has made it clear through their background studies, particularly Studies on Diversion (16), that, in practice, the police do exercise a discretion on a day-to-day basis as to whether or not to proceed with charges or some alternative disposition. In short, they state that both the theory and the practice of our law support the principle of discretion in the laying of charges by the police. Therefore, as Beckman relates:

Law enforcement policy is made by the policeman, for he cannot and does not arrest all the offenders he encounters. (It is doubtful that he arrests most of them.) A criminal code, in practice, is not a set of specific instructions to policemen but a more or less rough map of the territory in which policemen work. How an individual policeman moves around that territory depends largely on his personal discretion (1; p. 88).

Therefore, although it is precisely defined in the criminal code when officials of the criminal justice system can intervene in the civil liberties of citizens, the mode of intervention permits the use of discretion. Thus, even though a violation of the criminal code might occur, thereby allowing officials of the criminal justice system to re-act as prescribed by law, the police officer is permitted to use his judgment as to whether or not to activate the mechanism of the entire criminal justice system.

According to Davis, a "public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction" (8; p. 4). As such, the police have, within certain limits, the power to decide when to activate the mechanism of the entire criminal justice system. According to Rossum, they are "the gatekeepers of the criminal justice system. It is their discretion - their decision and their actions - that brings defendants into the system or screens

them from it" (19; p. 68). This function, referred to as the 'exercise of discretion' means that an "officer who decides what to do or not to do often (1) finds facts, (2) applies law, and (3) decides what is desirable in the circumstances after the facts and the law are known" (8; p. 4). "This distinct exercise of discretion by police officers determines the kind of persons who enter our criminal justice system" (11; p. 81).

In studies of the exercise of discretion, several researchers have identified certain factors which have an influence on the decision made by police in regards to activation of the criminal justice system. Goldman (10), has noted, for example, that the gravity of the offence is a principal factor in determining whether or not an offender will be charged. Buckner (4) agrees, by stating that the police must deal primarily with serious offences, while their responsibility concerning minor offences is less compelling, as does Cooley (6), who relates that both the police and the public favour the use of discretion in regards to minor, but not serious offences. Hohenstein (13), notes that the seriousness of the offence, as well as, the victim's attitude and the offender's record were considered.

In a study similar in nature, but not in purpose,

to the present study, researchers (14; p. 48) identified the following factors as favouring a non-charge option in crimes against the person: (1) the presence of a victim-offender relationship; (2) minor assault; (3) attempts at reconciliation; (4) offender's attitude; (5) offender has a good background; and (6) competing demands on the officer's time, while the factors favouring a charging option include: (1) 'seriousness' of the offence; (2) feelings of the complainant; (3)-abusive or offensive attitude towards the investigating officer; (4) history of repeated offences; and (5) accused has poor background, while in a study of the social conditions, and of the factors which have an impact on the discretion of the police, Black (2) stated that factors such as the seriousness of the reported criminal behavior, the complainant's desire for police intervention, the relationship between the offender and the complainant prior to the crime, deference shown to the police officer, and the social status of the complainant were important determinants as to whether or not a crime report was created or not. Black did not find any evidence of purely discriminatory behavior among the police he studied.

In regards to the seriousness of the offence,
Black states:

The probability of arrest is higher in legally

serious crime situations than in those of a relatively minor nature. This finding certainly is not unexpected, but it has theoretical significance. The police levy arrest as a sanction to correspond with the defined seriousness of the criminal event in much the same fashion as legislators and judges allocate punishments (2; p. 54).

In reference to the presence of a victim-offender relationship prior to the offence, Black notes:

The greater the relational distance between a complainant and a suspect, the greater is the likelihood of arrest. When a complainant demands the arrest of a suspect the police are most apt to comply if the adversaries are strangers. Arrest is less likely if they are friends, neighbors, or acquaintances, and is least likely if they are family members (2; p. 54).

In relation to the desire of the complainant, Black relates:

Arrest practices sharply reflect the preferences of citizen complainants, particularly when the desire is for leniency and also, though less frequently, when the complainant demands arrest (2; p. 52).

In agreement with Black (2), is Rossum (19), who notes that there are several factors which affect police discretion. One such factor:

involves the nature of the crime. Thus, police have less freedom to ignore serious crimes such as murder than they do trivial ones such as petty theft (19; p. 25).

Another such factor:

involves the relationship between the alleged

criminal and the victim. The closer the relationship, the more likely the use of police discretion. Thus, for example, police are reluctant to make arrests in calls involving domestic quarrels. Not only are these calls extremely dangerous... but they also seem to defy proper legal resolution. Police are justifiably wary of risking their lives and safety by placing a participant in a domestic quarrel under arrest, only to discover the next day that the victim is willing to forgive the spouse and is reluctant to press charges. Where the victim and alleged criminal are strangers, however, the police are likely to behave with greater constancy. In such a case, there are fewer extenuating circumstances that may call for the use of police discretion (19; p. 27).

Thus, it appears that the police are discretionary applicators of the criminal law, that they are in reality decision-makers within the criminal justice system, and through the exercise of discretion, they do indeed make decisions which play a role in determining who 'the criminal' will be. Furthermore, it appears that the seriousness of the offence, whether or not there was a prior relationship between the victim and the offender, the preference of the victim/complainant in regards to the laying of a charge, as well as competing demands on the officer's time, are important factors in the use of discretion by the police. Alternately, the various factors will not have any effect on the outcome of a case, as the only consideration by the police was the laying of a charge.

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CHAPTER IIIMETHODOLOGY

In an attempt to determine whether or not the police exercise discretion, and in reality play a role in determining who the criminal will be, as was hypothesized, the offence, assault causing bodily harm was selected for analysis. It is an offence which potentially contains many factors, which, if discretion is being exercised, will result in different outcomes, unless of course, charge/arrest is the only consideration.

The study examined cases of assault causing bodily harm contained in the files of the Ottawa Police Force, which occurred during the period from September 1, 1979, to February 29, 1980. Coded as 1401 in the police computer, a printout containing a total of 124 cases was obtained. However, of this number, 37 were classified as unfounded, that is, the police do not believe that a crime occurred or was attempted. One such case was selected, reviewed and considered sufficient to represent the unfounded category. Then, the remaining 87 cases were withdrawn from the files and reviewed. Of these 87 cases, 5 were eliminated as they contained

simultaneous offences, that is, in addition to assault causing bodily harm, offences such as break and enter, or damage to property were also included. As such, the inclusion of these additional offences might have a bearing on whether or not a charge will be laid. Thus, a total of 82 cases regarded as assault causing bodily harm, were used in the analysis. As the source of data information, the cases selected during the six month period provided a sufficient number of cases for the analysis, as well as, avoiding any sampling problems.

Even though statistics provides the researcher with a powerful tool of analysis, a rigorous statistical methodology was not employed in the present research. To do so might have omitted factors revealed during a case-by-case analysis that were not previously taken into consideration. In any case, no attempt was made at a rigidly controlled quasi-experimental approach, as the categories do not lend themselves to quantitative classification. Also, the various factors might interact with each other to produce different results.

Therefore, the present study employed a simple methodology. It utilized the case-by-case approach, in which the data was analyzed in much the same phenomenological

manner that Hogarth used in his approach to an understanding of decision-making by judges (2). First of all, each case was reviewed to determine whether or not discretion was occurring, as we hypothesized. That is, was charge the only consideration, or were other options also being considered. At the same time, relevant information pertaining to the decision made, was collected on file cards for subsequent analysis. Each card contained the case number, the outcome of the case, the participants, the incident, the setting, and the factors deemed appropriate in regards to having an effect on the outcome of a case, such as the seriousness of the assault, whether or not there was a prior relationship between the victim and the offender, the desire on the part of the victim/complainant to have a charge laid, and whether competing demands on the officer's time were excessive. Thus, each case was examined to provide insight into the factors considered important in determining the outcome of a case. Then, a table presenting the data in summary form was constructed, including the outcome and the accompanying factors relevant to that particular outcome. The summarized version of each case was also grouped by category and by interaction of factors. Categories were then analyzed to determine which factors interacted to produce that

particular outcome.

It should be noted that for greater ease of recording of factors and for a higher consistency of analysis, the following letters were used to represent the outcomes of cases and the determining factors involved. For example, C was designated for charge, U for unfounded, CO for cleared otherwise, and US for unsolved. In regards to prior relationship, Black's criteria were used:

The greater the relational distance between a complainant and a suspect, the greater is the likelihood of arrest. When a complainant demands the arrest of a suspect the police are most apt to comply if the adversaries are strangers. Arrest is less likely if they are friends, neighbors, or acquaintances, and it is least likely if they are family members (1; p. 54).

Thus, an X was designated for cases involving strangers, a Y for cases involving friends, neighbors, or acquaintances, and a Z, for family members, as a measure of relational distance, with X meaning no relationship, Y a minimal relationship, and Z as the closest.

In regards to the seriousness of the offence, the criteria employed was that developed by Sellin and Wolfgang, as they had developed it specifically for the offence of assault causing bodily harm, and it provides the best

available classification for measuring the seriousness of this offence. They classify seriousness as follows:

"Minor" harm...refers to any bodily injury, however slight, which does not require medical treatment and may include pushing, shoving, knocking down, and even cutting. "Treated and discharged" includes any physical violence done to the victim that requires and receives medical care but does not require detention of the victim for further treatment. "Hospitalization" means that the victim received in-patient care for any duration in a medical institution, but also includes those cases for which the victim required repeated out-patient care for three or more visits (3; p. 191).

Their justification for the use of these criteria is:

(a) they are systematically recorded on the police offence reports, (b) they are objective data that require no impressionistic judgment for classification, (c) the variance in medical terminology would be slight from one area of the city to another and during a single year (3; p. 192).

In addition, the victim's or complainant's preference as to whether or not a charge will be laid, will be designated by a D for desire, when such a desire is expressly stated in the case, an L for leniency, when such a desire is expressly stated in the case, an ID, when the desire for a charge is implied, and, an IL, when the desire for leniency is implied. Therefore, leniency, L, is indicated when the victim/complainant expressly states that he does not want the matter pursued by police, or that he does not want a charge laid, or he states that a less harsh form of punishment is

preferable under the circumstances. Desire for a charge, D, is indicated when the victim/complainant insists that a charge be laid. Implied leniency, IL, will be noted when the victim/complainant accepts the advice of the police, that is, he does not object when the suspect is merely given a warning, rather than being charged, the victim makes no attempt to follow up the case, or does not return the investigating officer's calls. Implied desire for a charge, ID, is indicated when the victim/complainant complies with police requests for additional information, allows photographs of his injuries to be taken to be used in court as evidence, goes to police headquarters in an attempt to identify the suspect in a line-up, appears to be a willing witness in court, and returns phone calls made by the investigating officer.

The data will be grouped by category, and tables will be constructed to summarize the data, and facilitate its analysis. Then, the data will be examined in the light of full enforcement and discretionary application of the criminal law, to illuminate the role the police play within the criminal justice system, and, to determine, to what extent, the police play in determining who will become 'the criminal'.

REFERENCES

1. Black, D. (1971) The Social Organization of Arrest. in N. Johnston and L.D. Savitz, Justice and Corrections. New York: John Wiley & Sons, 39-57.
2. Hogarth, J. (1971) Sentencing as a Human Process. Toronto: University of Toronto Press.
3. Sellin, T., and Wolfgang, M.E. (1964) The Measurement of Delinquency. New York: John Wiley & Sons, Inc.

CHAPTER IVRESULTS

This study is oriented towards an understanding of the role the police play within the criminal justice system. It is an attempt to determine whether or not the police forward every violation of the criminal law which comes to their attention, to the prosecution level of the criminal justice system, or whether they play a role in determining who 'the criminal' will be, by performing a screening function of their own.

Data was collected on a case-by-case basis to determine whether or not discretion is occurring at the police level of the criminal justice system. Do various factors interact to produce different outcomes, or will they have no effect, and all cases will simply result in a charge being laid by police. An analysis of the results indicates that a great deal of discretion is occurring, as not only the charge category materialized, but three other categories emerged as well. These three other categories include; unfounded, unsolved, and cleared otherwise. The data is presented in summary form in Table I.

TABLE IFACTORS WHICH INFLUENCE THE EXERCISE OF DISCRETION

<u>Category</u>	<u>Factors Favouring a Non-Charge Option</u>
Unfounded (37 cases)	-police judge that they are not empowered to react, as prescribed by law, on the assumption that no crime occurred, or was attempted
Unsolved (16 cases)	-inadequate information pertaining to the suspect has been provided, and the police, because of competing demands on their time, and a heavy caseload, are unable to spend an excessive amount of time attempting to solve one of many cases
Cleared Otherwise (32 cases)	<p>-the police, taking several factors into account, do not believe that the offence will recur</p> <p>-if there is a likelihood of recurrence of the offence, police will not proceed by way of a charge, if there is a probability that the victim/complainant will drop the charge at the court level, thereby, wasting time spent in case preparation that could have been used in the investigation of other cases</p> <p>-the victim/complainant prefers that a charge not be laid, or that the police do not pursue the matter any further, indicating that the participants are able to resolve the matter on their own</p> <p>-the victim accepts partial blame for the offence and is therefore unlikely to seek revenge</p> <p>-the degree of injury to the victim was minor, and the victim is unlikely to seek revenge</p> <p>-there is a prior or a close relationship between victim and offender, thereby, providing a basis for reconciliation</p>

TABLE I (Con't)CategoryFactors Favouring a Non-Charge Option

Cleared Otherwise

-because there are no witnesses to the occurrence of the offence, and/or the victim is unable to positively identify the suspect, police do not believe that charges could be substantiated

CategoryFactors Favouring a Charging OptionCharge
(34 cases)

- taking several factors into account, the police judge that it is unlikely that the participants in the offence will be able to resolve the matter on their own, and there is a likelihood of recurrence of the dispute
- the offence occurred between two strangers who have no prior relationship to act as a basis on which to resolve the dispute between them
- the degree of injury to the victim was serious, and the victim might seek revenge if the matter is not brought within the scope of the criminal justice system
- the victim/complainant insists that a charge be laid, thereby, providing the police with an indication that the parties are unable to resolve the matter on their own
- there is evidence that the recent offence is an indication of an escalation of the differences between the victim and the offender, i.e. previous police intervention was required merely to solve a verbal dispute
- there is strong evidence linking the suspect to the offence in the form of witnesses, a blood analysis, positive identification of the suspect
- the victim is willing to testify in court
- the suspect has a criminal record

Unfounded

We will begin with the category classified as 'unfounded' by the Ottawa Police Force. Although there was a total of 37 cases classified in this category, on the recommendation of the office manager of the file room of the Ottawa Police Force, only one of these cases was selected for review, as he considered it typical of the cases which are included in this category. As such, it was considered sufficient to represent this category, as it contained the principal factor influencing the decision by police, not to proceed by way of charge.

The incident regarded as 'unfounded' took place between a fourteen year old, female, juvenile, and the houseparent of a house, owned and operated by a social agency located within the City of Ottawa. On the day of the incident, the offender had been disruptive. According to the victim, the houseparent, the offender, in a fit of rage, hit her on the back of the head with a clenched fist. Unable to control the offender, the victim then called the police for help. When the police arrived on the scene, the details surrounding the incident were recorded on an occurrence report. However, the exercise of discretion in this case resulted in the case being classified as 'unfounded',

because in the judgment of the police officer, no crime had occurred. The officer concluded, that since the offender was under the care of a social agency at the time of the incident, it would be difficult to prove the intent of the offender, an ingredient, necessary in establishing that a crime had taken place. According to a detective of the Morality Section of the Ottawa Police Force, a case becomes classified as 'unfounded' when it is judged by the officer that no crime has occurred. Thus, even though an incident of some kind has taken place, the situation itself is examined, and the police, exercise their discretion, conclude that no crime has occurred, take no further action.

Unsolved

Of the 82 remaining cases, 16 eventually became classified as 'unsolved' by the Ottawa Police Force. The main factor in the exercise of discretion in these cases not to lay a charge, was the fact that the police were unable to locate a suspect. The investigating officer, because of a heavy caseload, and because of other competing demands on his time, is unable to invest an excessive amount of time in an attempt to solve an individual case. Even though such a case might involve a serious injury to the victim, requiring hospitalization, unless additional

information is forthcoming, the officer must file the case as final, unsolved. The report will often include a description of the suspect, including details such as weight, height, and hair colour. However, there is still an insufficient amount of information concerning the suspect, and, the officer, unable to locate a suspect, or spend any additional time on the case, classifies it as 'unsolved', and then files it 'for information purposes only'.

Cleared Otherwise

When a case is classified as 'cleared otherwise', a crime, in the judgment of police, has occurred, and a suspect has been identified, but, taking the circumstances of the case into account, the police decide that it is preferable not to proceed by way of a charge.

A total of 32 cases were included in the 'cleared otherwise' category. Close analysis of the cases within this category, reveals that the decision by police not to lay a charge is influenced by many interacting factors. The following factors can interact with each other, or play a role on their own, and result in the case being classified as cleared otherwise by police; (a) the police do not believe that the offence will recur, (b) there is a likelihood that

TABLE II

Cleared Otherwise: Factors favoring a non-charging option
(n of 32).

	Seriousness of the offence					
	minor (1)		treated and (2) discharged		serious (3)	
	victim's preference		victim's preference		victim's preference	
	L	IL	L	IL	L	IL
Victim/ offender relationship	X		1	3	1	
	Y	4	2	8	5	
	Z		5	2	1	

Seriousness of the offence: 1: minor degree of injury
2: treated and discharged
3: hospitalization

Victim's preference for a charge: L: leniency
IL: implied leniency

Victim/offender relationship: X: strangers
Y: prior relationship
Z: family

the victim will drop the charge at the court level, thereby, wasting the time spent in case preparation that could have been used in the investigation of other cases, (c) the victim/complainant prefers that a charge not be laid, or that the police do not pursue the matter any further, thus, indicating to police that the participants are able to resolve the matter on their own, (d) the victim accepts partial blame for the offence, and is therefore, unlikely to seek revenge, (e) the degree of injury to the victim was minor, and the victim is therefore unlikely to seek revenge, (f) there is a prior or close relationship between the victim and the offender, thereby, providing a basis for reconciliation, and (g) belief on the part of the police that charges could not be substantiated, because there were no witnesses to the offence, or the victim is unable to positively identify the suspect.

In reference to Table II, there are a total of six cases which did not result in a charge, and involved a minor degree of injury to the victim. All of these cases involved a prior relationship between the victim and the offender, and, while in four of the six cases, the victim/complainant expressed a desire that the police do not lay a charge, in the other two cases, there was an implied desire that the police do not proceed by way of a charge. Therefore, when

two neighbouring families are involved in a dispute which requires only temporary intervention because they are able to resolve the differences between them on the basis of already having a friendship on which to resolve the dispute. In addition to the prior relationship, the desire on the part of the victim not to have a charge laid are indications to police that the participants have been able to resolve the dispute between them.

Referring to Table II, there are a total of twenty-four cases which did not result in a charge and which involved the treated and discharged degree of injury to the victim. Of these twenty-four cases, four involved strangers. In one of these four cases which occurred between a store owner and customer, the victim requested that police do not proceed with charges, so that he could instead request financial compensation from the offender. In one of the other cases, the victim, an operator of a parking lot was assaulted from behind. There were no witnesses to the incident, and the victim did not actually see the suspect hit him, consequently, police judged that it would not be possible to substantiate any charges. Therefore, even though strangers do not have a relationship which would provide a basis on which to resolve the dispute between them, a request by a victim not to proceed with charges, or the

fact that police do not believe that charges could be substantiated, therefore results in the cases being classified as cleared otherwise.

Thirteen of the twenty-four cases in which the degree of injury to the victim was treated and released, occurred between those who had a prior relationship. Of these thirteen cases, eight included an express desire on the part of the victim/complainant that no charge be laid. In an incident between two schoolmates, the complainant, father of the victim, stated that, instead of criminal charges, he would be satisfied if the offender was temporarily suspended. In another incident occurring between a prostitute and her client, the prostitute assaulted the client. However, the client did not want to press charges as it would harm his reputation at the bank in which he works. When there is an indication that the complainant will accept a less harsh punishment than criminal charges, or the victim does not want others to find out about his dealings with a prostitute, the police judge that such incidents are unlikely to happen again. In the other five of these thirteen cases in which the desire by the victim not to have a charge laid is implied, no charge was laid when 'drinking buddies' later had a chance to 'cool off', and it appeared to the officer that the incident had been resolved. Therefore, when it appears to the police

that the incident is unlikely to recur, because the victim does not have a desire for revenge, or two friends are able to resolve the dispute between them, no charge is laid.

Seven of the twenty-four cases in which the victim's degree of injury was in the treated and discharged category, involved participants who had a family relationship. Five of these seven cases involved an expressed desire on the part of the victim/complainant that no charge be laid, while the other two involved an implied desire for leniency. In two of the five cases which involved an express desire for no charge, the offender was suffering from a mental disability. In one such incident, the offender, suffering from an advanced stage of brain cancer, hit his mother over the head with a vase. He was conveyed to hospital for treatment. In another case involving two individuals who had been living together off and on for a couple of years, the victim did not want a charge laid as the suspect had not bothered her since the incident. In the two cases in which the desire not to have charges laid was implied, one involved a husband-wife relationship, while the other involved a common-law relationship. In both cases, the investigating officer did not believe that the victim would testify in court. Therefore, in one case, he advised the victim that if she did want to lay a charge she should contact

a Justice of The Peace to lay an information, while in the other case, the victim was advised to go to Family Court. Therefore, when it appears that the incident is unlikely to recur because a close relationship enables the participants to patch up their differences, the police do not lay a charge. However, in close relationships in which it does appear likely that the incident will recur, police are unwilling to proceed to the court level only to discover that the victim insists that the charge be dropped. Having devoted a considerable amount of time in preparing the case for court, the police, in the face of competing demands, prefer to devote their time to cases in which it is most likely to be well spent.

In Table II, there are two 'serious' cases. One of these involved an offence in which the participants were strangers, while the other occurred between family members. Both of these cases involved an expressed preference on the part of the victim not to have a charge laid. In the incident involving strangers, the victim claiming that the whole matter was a misunderstanding, assumed partial responsibility for the incident. In the other incident, a wife, assaulted by her husband, did not want a charge laid. In the case involving strangers, the police judged that the incident was unlikely to recur, while in the incident involving the husband and wife, the police did not want to proceed to

court with an unwilling witness.

The thirty-two cases in the cleared otherwise category which were examined give insight into the factors affecting the exercise of discretion, which, when taken into consideration, did not result in a charge. Often, when factors indicate that the offence is not likely to recur, the police do not lay a charge. When the degree of injury is minor to the victim, there is no need for him to seek revenge, and the police, judging that under such circumstances, it is unlikely to recur, do not lay a charge. However, if the degree of injury to the victim is minor, but the victim insists that a charge be laid, this is an indication to police that the dispute has not been resolved, and that the incident is therefore likely to recur, and the police will lay a charge. When there is a close or prior relationship between the victim and the offender, and the victim/complainant expresses or implies a desire that no charge be laid, such is an indication to police that the event is unlikely to recur. Regardless of how serious the injury to the victim is, when he indicates to police that he is willing to accept part of the responsibility for the offence, the police judge that he is not likely to seek revenge, and therefore, do not lay a charge. In the case of an offender suffering from brain cancer, conveyance to a hospital where he will receive

treatment, reduces the likelihood of recurrence of the incident. However, in the case of a wife, who police believe will drop the charge once the case reaches the court level, even though the incident might recur, competing demands on his time, and a heavy case load mean that the officer must devote his time to cases in which the results of his work have not been to no avail.

Charge

When a case becomes classified as 'charge', a crime, in the judgment of police has occurred, a suspect has been identified, and, after taking the circumstances of the case into account, the police decide that it is preferable to proceed by way of a charge.

There was a total of 34 cases in the 'charge' category. Close analysis of the cases within this category, reveals many interacting factors can have an influence on the decision to lay a charge. The following factors can interact with each other, or play a role on their own, and result in the case being classified as 'charge' by the police; (a) the police judge that the participants in the offence are unable to resolve the matter on their own, and it is therefore likely that the offence will recur, (b) the offence occurred between

TABLE III

Charge: Factors favouring a charge option (n of 34).

		Seriousness of the offence					
		minor (1)		treated and (2) discharged		serious (3)	
		victim's preference		victim's preference		victim's preference	
		D	ID	D	ID	D	ID
Victim/ offender relationship	X		2	1	5	1	8
	Y		2	1	4	2	4
	Z			2	1	1	

Seriousness of the offence: 1: minor degree of injury
2: treated and discharged
3: hospitalization

Victim's preference for a charge: D: desire for a charge
ID: implied desire

Victim/offender relationship: X: strangers
Y: prior relationship
Z: family

two strangers, who have no relationship on which to base a reconciliation, and therefore, require intervention in the form of the criminal justice to provide assistance in resolving the dispute between them, (c) the degree of injury to the victim was serious, and there is the possibility that the victim will seek revenge if the matter is not brought within the scope of the criminal justice system, (d) the victim/complainant insists that a charge be laid, thereby, indicating to police that the parties are unable to resolve the dispute on their own, (e) there is evidence that the recent offence is an indication of an escalation of the differences between the victim and the offender, (f) there is strong evidence linking the suspect to the offence, in the form of witnesses, a blood analysis, or a positive identification of the suspect, (g) the victim is willing to testify in court, and (h) the suspect has a criminal record.

In reference to Table III, page 42, of the thirty-four cases which did result in a charge, four involved cases in which the degree of injury to the victim was minor. Two of these involved offences which occurred between strangers, while two involved offences between those having a prior relationship.

In regards to the two offences which occurred between strangers, one occurred between a bus driver and one of his passengers. The passenger, claiming that the bus driver had closed the door of the bus on his foot. The passenger then shoved his transfer in the bus driver's face, as well as, punching him in the face. In the other incident, the victim went to the police station and volunteered information concerning an assault that had just taken place. In both of these cases the victims provided the police with information when it was requested. Although the degree of injury in both of these cases is minor, the incident occurred between strangers, who have no relationship on which to base a reconciliation. In addition, both involved the ~~implied~~ desire on the part of the victim that a charge be laid. As such, an indication that the offence has not been resolved and is therefore likely to recur, is provided to police.

In the two cases in which the degree of injury to the victim was minor, there was a prior relationship between the victim and the offender. In one of the cases a charge was laid, because the suspect, in addition to having a prior criminal record, had been threatening the victim in regards to the dropping of charges in another case. In the other, the suspect, a juvenile who had struck his teacher, was becoming a discipline problem, not only for his mother,

who had been recently divorced, but also for his teachers. Consequently, a charge was laid at the discretion of The Ottawa Police Force. In both of these cases, police believed that the offence was not a single incident, but was likely to recur. It was judged by police that both required the intervention of the criminal justice system to prevent such recurrences.

In Table III, there are a total of fourteen cases in which the degree of injury to the victim is treated and discharged. Six of these cases involved incidents in which the victim and the offender had no prior relationship, five involved incidents in which there was a prior relationship, and three involved relationships between family members.

One of the six cases which occurred between strangers, involved an express desire on the part of the victim that a charge be laid, while the other five included an implied desire that the case proceed by way of a charge. In the case in which the victim demanded that a charge be laid, the suspect admitted to police that he was responsible for the victim's injuries. In the other five cases, the victim provided an implied desire to police that a charge be laid by allowing them to photograph their injuries, or by assisting the police, by attending a police lineup in an attempt

to positively identify the suspect. The fact that the participants in these cases were strangers, coupled with the victim's express or implied desire that a charge be laid, indicate to police the likelihood of recurrence of the event, and the need for intervention by the criminal justice system.

Five of the cases in which the degree of injury to the victim was treated and discharged, there was a prior relationship between the victim and the offender. In one of these cases, the victim expressly stated that he wanted the offender charged. The incident occurred when one taxi driver claimed that the other stole one of his fares. The offender, demanding compensation, but receiving nothing, then assaulted the victim. In one of the cases in which there was an implied desire by the victim to have the suspect charged, the victim, a bus driver, complied with police requests for additional information, and the suspect, a passenger on the bus, had previously been charged with assault. All of these incidents reveal that the victim and the offender are not close to resolution of the problem between them.

In three of the fourteen cases in which the degree of injury to the victim was of the treated and released degree, there was a family relationship between the victim and the

offender. Two of these cases involved an express desire by the victim that a charge be laid, while the other one included an implied desire that a charge be laid. In one of the cases which contained an express desire by the victim that a charge be laid, there was an indication of an escalation of the problem between the victim and the offender. Just that day, police had been called to settle a verbal dispute between the victim and the offender. The present incident to which they were responding was of a much more serious consequence. In the incident between the complainant, mother of the suspect, and the suspect, the victim complied with police requests for information regarding the incident. Therefore, even if there is a close relationship between the victim and the offender, if there is an expressed or implied desire by the victim that a charge be laid, police will comply. In addition, if the offence appears to be escalating, the police are more than willing to follow the desire of the victim that a charge be laid.

Sixteen cases which resulted in a charge included the degree of injury to the victim that required hospitalization. Of these, nine occurred between strangers, six took place between those with a prior relationship, and one occurred between family members.

Nine of the cases resulting in serious injury to the victim occurred between strangers. In one of these cases, the complainant, father of the victim insisted that a charge be laid. The incident occurred at a basketball game in a local highschool, when one of the participants in the game punched a member of the opposing team in the jaw, causing him to sustain a fractured jaw. Several witnesses did not feel that the punch was warranted. In one of the cases in which there was an implied desire on the part of the victim, witnesses of the incident held the suspect until police arrived. The seriousness of the injury, the desire on the part of the victim that a charge be laid, as well as witnesses, resulted in the police laying a charge. If a charge had not been laid, the victim, because of the severity of the injury, might have wanted to take the matter into his own hands. Thus, police lay a charge to prevent the victim from seeking revenge. In addition, the fact that the victim and the offender were strangers did not provide a basis on which to commence dispute resolution on their own. Consequently, to prevent a recurrence of the offence, the police laid a charge.

Six cases in which the degree of injury to the victim required hospitalization occurred between those having a prior relationship. Two of the six cases involved an

express desire by the victim that a charge be laid. In one of these cases, the suspect attempted to see his ex-girlfriend, but at the disapproval of her brother, was not allowed entry into the house. Refusing to leave, the ex-boyfriend then assaulted the girl's brother. Not only did the victim want the suspect charged, but the police arrested the suspect to prevent him from continuing the offence. In an incident resulting in serious injury to the victim, in which there was a prior relationship between the victim and the offender, and there was an implied desire by the victim that a charge be laid, the suspect was arrested shortly after the incident in case the victim attempted to retaliate. When the degree of injury is serious, there is an expressed or implied demand by the victim that a charge be laid, there is a probability that the offence will recur, and police therefore lay a charge.

One of sixteen cases in which the victim sustained a serious injury, and a charge was laid, occurred between family members. A wife was assaulted by her husband. Prior to the incident he had been drinking, and when he arrived home, he accused her of running around with other men. An argument ensued, during which the husband punched his wife, breaking her left cheek bone. The police, fearing that the offence might recur, arrested the suspect. The victim stated

to the investigating officer that she wanted her husband charged. The victim's insistence that a charge be laid, even though there was a family relationship between the victim and the offender, was a strong indication to police that the intervention of the criminal justice system was indeed required.

Therefore, the examination of the the thirty-four cases which resulted in a charge, reveal that police will lay a charge when they judge an offence will most likely recur. The following are indicators of recurrence of the event; (a) the offender and the victim had no relationship at the time of the offence, and, as such, do not have a foundation on which to begin a resolution of their differences, (b) there is a serious degree of injury to the victim, and without the intervention of the criminal justice system, the victim might attempt to gain revenge on his own, and (c) there is a desire, either express or implied, by the victim that a charge be laid, indicating to police that the matter is far from resolution

Summary

The major factor which in effect determines whether or not police lay a charge, in cases in which a suspect has

been identified, is an indication to police as to whether or not the participants are able to resolve the matter on their own, or whether it is likely that the offence will recur. Indicators that the victim and the offender are not able to resolve the matter on their own include; (a) a desire by the victim to have a charge laid, (b) there is an escalation of the problem, (c) the offender and the victim do not have a prior relationship on which to begin a resolution of their differences, and (d) the degree of injury to the victim requires that something be done. On the other hand, no charge will be laid when; (a) there is a close relationship between the victim and the offender, so that they have a foundation on which their dispute can be resolved, (b) the degree of injury to the victim is minor, and, as such, does not require the victim to take steps to get even, (c) the victim does not insist that the full extent of the criminal justice system become involved, that is, only minimum intervention was required, and (d) the offence was the first and only dispute between the participants.

Therefore, although section 245 (2) of the criminal code clearly states what the penalties for assault causing bodily harm are, less than half of the cases examined, resulted in a charge being laid by police.

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CHAPTER VDISCUSSION AND CONCLUSIONS

Although this is an exploratory study of the use of discretion by the Ottawa Police Force in relation to cases of assault causing bodily harm, and, as such, is based on information collected from files, which don't necessarily contain all of the facts relating to the outcome of a case, the information obtained does however provide an understanding of police decision making in regards to when they will lay a charge, as opposed to when they will classify a case as unfounded, unsolved, or cleared otherwise. Furthermore, it demonstrates that the police do not only apply the criminal law in a discretionary manner, but also that they are in reality decision makers within the criminal justice system (9), and that, through this 'exercise of discretion', perform a screening function which in effect allows them to play a role in determining 'who' the criminal will be.

While the consequences for violation of section 245 (2) of the criminal code are specific, fewer than half of the cases identified as being violations of this section resulted in a charge being laid. Within such a framework, the criminal code is not followed to the letter of the law,

but is instead a power instrument which allows the police to decide the degree of intervention required to maintain the peace, which in some instances results in a charge being laid, whereas, in others, no charge is laid. Thus, the police are not merely enforcers of the criminal law, instead, they exercise their judgment as far as the offence under study is concerned. Through an analysis of this exercise of discretion, the role of the police as peace keepers has emerged in relation to the handling of cases of assault causing bodily harm. Thus, the nature of police intervention in regards to this offence is that of dispute resolution. The police do not merely convey violators of the criminal law to the later stages of the criminal justice system, instead, they perform the function of filtering out those who are responsible for disputes, in which resolution by the participants themselves, appears to be impossible, and therefore, requires the intervention of the criminal justice system. Therefore, as peace keepers, the function of the police is to activate the mechanisms of the criminal justice system to remove those who pose a threat to the peace he must maintain. Thus, when the criminal code is violated, the police are empowered to react as prescribed by law, but since the mode of intervention permits the use of discretion, the police do not arrest all violators of the criminal law, but, in regards to the offence, assault causing bodily harm, they

charge/arrest those most likely to be involved in further offences, while allowing those who are able to resolve their differences on their own to remain out of the control of the criminal justice system.

The four categories analyzed in this study are congruent with the role of peace keeper that the police play in relation to cases of assault causing bodily harm. In cases classified as 'unfounded', the police do not believe that a crime has occurred, and, as such, they judge that they are not empowered to intervene. Therefore, they do nothing more than write a report which is later filed for information purposes. Believing that no crime has occurred, they then proceed on to those cases in which they do believe that one has taken place. In regards to cases classified as 'unsolved', the police are limited by a strict budget. Heavy caseloads, and competing demands on the officer's time, do not permit him to allocate an excessive amount of time in the hope of locating a suspect, for whom an inadequate description has been provided. Such acts between strangers often occur spontaneously, taking place in a bar, on the street, or in a parking lot, and, as such, are not likely to recur. He therefore concerns himself with cases in which an identifiable suspect is available, or reopens an unsolved case if additional information is provided which links a suspect to the offence.

The role of the police as peace keepers in relation to cases of assault causing bodily harm can be seen more clearly in an examination of cases in the cleared otherwise category. In this category, no charges have been laid, because, in most instances, the police judge that the participants are able to resolve the dispute between themselves. The role of the police in regards to these cases is that of temporary intervention, allowing the participants time to resolve the dispute by themselves. Moreover, when the degree of injury to the victim is minor, there is no need for the victim and the offender to assume the role of adversaries during the course of a costly court battle. In addition, the victim does not desire compensation or revenge in such cases. This finding is supported by the results which indicate that when there is a close relationship between the victim and the offender, as soon as the victim has had a chance to 'cool off' there is no further need for police intervention, and the police therefore, do not lay a charge.

An exception to the role of the police as peace keepers in cases classified as cleared otherwise, are those occurring between husband and wife. The police, reluctant to lay a charge, only to have it dropped at the court level of the criminal justice system, instead advise the victim to see a Justice of The Peace, or attend Family Court for resolution

of the problem? The police, aware that the problem will likely recur, and that nothing has been resolved, are unwilling to expend valuable time on a case, only to have the charges dropped at a later point in time. While legislation is on the horizon which might eliminate the non-charging option of the police in regards to assaults by a husband on his wife, it is questionable whether the sanctions of the criminal law will provide a solution. Not only will the offender attain a criminal record, but such action will probably result in an end to the marriage. Perhaps a pre-charge alternative, better suited to the needs of those involved would be a preferable solution. Mandatory counseling in lieu of a charge, which, if complied with, would eliminate the option to charge (1).

The role of the police as peace keepers is also supported by the results pertaining to the charge category. If the victim/complainant insists that a charge be laid, such is an indication to the police that the parties are unable to resolve the dispute on their own, and, intervention, in the form of the criminal justice system, is required. When the offence itself is very serious, the police lay a charge and thereby remove the need of the victim to take the matter into his own hands, for the purpose of gaining revenge. When the degree of injury to the victim is minor in comparison, the

the victim is less likely to have a desire to retaliate. In addition, when there is a possibility of recurrence of the event, not only will the police lay a charge, but they will also arrest the individual in an attempt to prevent such a recurrence. When the present offence is a sign of escalation of the differences between the parties concerned, a charge will be laid. An example of this occurs when the police settled a verbal argument between the participants during the afternoon, but had to return that evening to intervene in a physical assault.

Therefore, the data in regards to the exercise of discretion by the police in relation to cases of assault causing bodily harm, point to the role of the police, not as law enforcers, but as peace keepers. If it is likely the participants will resolve the dispute on their own, as do those with close or prior relationships, the police are prepared not to lay a charge. If the victim admits partial responsibility for the offence, he is not likely to hold a grudge against the offender, and no charge is laid. When the victim does not want the police to proceed by way of a charge, an indication that dispute resolution is occurring is provided to police and they do not lay a charge. However, when there is evidence that the participants are not likely to resolve their differences, the dispute appears to be

escalating, and is likely to recur, the police proceed by way of a charge on the assumption that the intervention of the criminal justice system is required to preserve the peace.

Therefore, in order to understand the role of the police, one must do more than just read the sections of the criminal code, one must instead examine the everyday operation of the police (9). One will find that the police are a part of a complex decision-making process. As such, the responsibility for charging or not charging an offender lies within their hands. From the point of view of the criminal justice system, this non-charge/charge option, is an invaluable tool in the hands of a conscientious police officer, for not only does it permit him greater flexibility in regards to offender disposition, but it also helps in reducing the strain on the limited resources of the criminal justice system. In an age when a slap resulting in a slight bruise, and a punch, resulting in a multiple fracture of the jaw, for example, are both violations of the criminal law, does it make sense to deal with them both in the same manner (6)? Thus, discretion allows the police to consider the factors involved, select the best alternative, and, at the same time screen out those who would otherwise add to the backlog of the system.

Furthermore, discretion is a valuable tool, for without it, there would have to be a rule to cover every situation. Not only is it impossible to have a rule or policy covering every possible situation, but an attempt to do so would strangle the system, by overburdening it with an excessive amount of paperwork, while providing the officer with a greater amount of material to learn. In addition, discretion provides fairness through individualized justice, for a \$1000.00 fine to an individual earning \$100,000.00 per year, is not, realistically speaking, the same to someone struggling to survive(6).

While discretion has the potential to result in favouritism and corruption, its use should therefore be open and accountable to maintain the integrity of the system. As Kelly and Kelly (7) note, in order to control discretion, one must be able to see it. Therefore, those responsible must be answerable for any decisions they make as representatives of the police force, so that, as Davis relates, instead of tyranny, "where law ends, wise and beneficent exercise of discretionary power will begin (3; p.3).

From the point of view of the field of criminology, research which attempts to shed some light on the role of those who play a role in determining who 'the criminal' will be,

should be encouraged (8). Only with knowledge that is based on solid evidence, can the various components of the criminal justice system hope to progress and continue to meet the needs of the community they serve.

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APPENDIX ACASES BY CATEGORYUnfounded

Case #79-081461: The offender, a fourteen year old, female, juvenile, struck the supervisor of a treatment facility owned and operated by a social agency within the City of Ottawa. Unable to control the offender, the victim called the police for help. The police did not lay a charge, judging that it would be difficult to prove 'intent', a necessary ingredient in proving that a crime had occurred.

Unsolved

Case #79-065763: N:1:X. In this incident, the owner of a Preston Street club, was hit over the head with a beer bottle, by a customer who was causing trouble at the club. While several attempts were made to locate the suspect, the amount of information supplied was inadequate.

Case #79-065959: N:2:X. Apparently the victim wanted to resolve the matter on his own, and provided inadequate information.

Case #79-072288: N:2:X. In this case, the victim was driving his car when he almost had an accident with a cyclist. The cyclist, infuriated, stopped, and with his bicycle chain broke one of the car windows. When the driver got out of his car, the cyclist assaulted him. Although there was a witness to the event, she was unable to provide sufficient details that would allow police to locate the suspect. The report concluded, that, unless there is additional information, the report will be considered final, unsolved.

Case #79-073230: N:2:X. The victim, a woman, was on her way home when she was assaulted, and knocked semi-conscious. She did not know why the assault took place, or who the offender was.

Case #79-074014: N:1:X. In this case, three male juveniles were making a nuisance of themselves at the back of a bus. The suspect in question told them to be quiet. When they continued the disturbance, the suspect kicked and punched them. The bus driver later filed a report, but the case remained unsolved, as it was not possible to locate a suspect.

Case #79-074062: N:2:X. The victim, accused by the suspect of throwing eggs at a football game, was then assaulted

by the suspect. Police were unable to make a positive identification of the suspect.

Case #79-074752: N:3:X. In this case, the victim, cleaning windows, was approached by the suspect, who punched him and knocked him to the ground. The police were unable to identify a suspect.

Case #79-074753: N:2:X. The victim, placing his briefcase in the trunk of his car, was struck from behind by an unidentified assailant.

Case #79-074955: N:2:X. The victim, assaulted from behind, was unable to provide a description of his assailant.

Case #79-078463: N:2:X. The victim, while talking to a friend in an arcade, was knocked down by the suspect. The suspect was never located by police.

Case #79-081788: N:2:X. In this case, the victim claims that, as he was walking down the street, he was approached by another individual, who pointed a container at his face, the contents of which, exploded. Unable to locate a suspect, the police advised the victim that he would have to provide them with more details about the suspect, or the case would

remain unsolved.

Case #80-083787: N:1:X. The victim was at the corner of Bank and Somerset, when he was confronted by three youths. One of the youths demanded money, and when the victim refused, he was punched and kicked. Only a general description of the suspect was provided by the victim.

Case #80-086107: N:2:X. The two victims in this incident claimed to have been attacked by several men. Both suffered cuts and bruises. They were unable to provide sufficient information for police to locate any of the suspects.

Case #80-086177: N:2:X. The victim claims that she was struck in the face by another woman. The police were unable to locate a suspect.

Case #80-087605: N:2:X. The victim in this case claims that as he was cleaning the men's washroom, he was assaulted from behind.

Case #80:087751: N:2:X. The victim claims that he was sitting in a local tavern when another individual came over to him, and struck him with an ashtray. The victim did not report the incident for several hours

Cleared Otherwise

Case #79-063856: N:2:Y:IL. The incident in this case occurred at a party when the victim, requested by the suspect, to get off of a car, refused to do so. The suspect then assaulted him. Three stitches were required to close the wound.

Case #79-064543: N:3:X:L. This incident concerns a misunderstanding about a telephone that was already in use. The offender, incensed when the victim hung up a phone that he was using, assaulted the victim. The victim later told police that it was all a misunderstanding, and that he was partially responsible for the incident.

Case #79-065235: N:2:Y:IL. The victim, a female, age 10, suffered a broken right arm, when the offender, a male, age 10, grabbed her off of a restraining wall, causing her to land on the ground.

Case #79-065356: N:2:Y:IL. Both the victim and the offender were drinking together when a dispute arose. Although the victim received injuries, he cooled off in a few days.

Case #79-065978: N:2:Z:L. This case concerns an offender

who was suffering from an advanced stage of brain cancer at the time of the incident. The offender was conveyed to the Civic Hospital for treatment.

Case #79-067223: N:2:Y:IL. The suspect, a female, age 41, was intoxicated at the time of the incident, as was the victim. They were drinking together when the dispute arose.

Case #79-067633: N:2:Z:L. The suspect, a rubby of no fixed address went to his father's house and demanded a loaf of bread. Then, for no apparent reason, he punched his father in the ear. The victim did not want charges to be laid.

Case #79-069504: N:2:Z:L. This case involves a 32 year old male who broke two of his father's ribs. It was learned that the suspect was a certified patient, and was therefore returned to hospital.

Case #79-069545: N:2:Y:L. The victim, returning to his room, discovered that his roommate was drinking his liquor. The victim, demanding that his roommate stop drinking, was then assaulted. The victim did not want charges laid.

Case #79-069947: N:2:Y:L. This incident involved a fight between two males who were dating the same girl. The

victim did not want charges laid.

Case #79-070261: N:2:X:L. The victim claims that he was in the back section of a corner store, when, the owner came and asked him what he was looking for. Upset, the victim asked the owner if he thought he was a thief. The owner then told the victim to get out. The victim claims that, as he was leaving the store, the owner hit him with a baseball bat. The victim did not want to press charges, instead, he wanted to see how much the offender would pay him if he would not insist on charges being laid.

Case #79-073243: N:2:Y:L. In this case, the victim suffered flash burns to her eyes, when a blank gun that was pointed at her face, was discharged. She did not want to lay charges, as she did not want to be considered a 'fink' by those responsible.

Case #79-073886: N:2:Z:L. This case involves two people who had been living together on an irregular basis for several months. When the female objected to the living arrangement, the male assaulted her. Since the suspect has not bothered her since the incident, the victim did not want to press charges.

Case #79-074000: N:2:Y:L. This case involves a juvenile female suspect who made fun of another juvenile female.

She then kicked her in the eye. The victim's mother stated that she preferred to keep the matter out of court.

Case #79-076526: N:1:Y:L. This dispute took place between two neighbourhood children. Within a couple of weeks, the complainant no longer wanted the police to pursue the matter.

Case #79-077534: N:2:Y:L. In this case, the victim, a female, age 26, suffered a bad cut over her left eye. The police did not lay a charge, when the victim later told them that she no longer wanted them to pursue the matter.

Case #79-078685: N:1:Y:L. The victim, while holding a twenty dollar bill in his hand, had it snatched by an individual who went to the same school. Later, demanding its return, he was assaulted. The victim did not want the police to lay a charge as he feels partially responsible for the incident.

Case #79-078982: N:2:Z:L. The victim states that her husband returned home late one night, and for no apparent reason, beat her up. After a short time, she no longer wanted the police to pursue the matter.

Case #79-081697: N:2:Z:IL. In this case, the victim, a wife, was assaulted by her husband. On two previous occasions, she had been assaulted, and on both occasions, she had the charge withdrawn at the court level. In regards to the present case, the investigating officer, told the victim, that, if she wanted the matter pursued, she should go to Family Court and lay her own information.

Case #79-082569: N:2:Y:L. This case involves an incident which occurred at a party, at which the offender was visiting his ex-wife. The victim, the suspect's sister-in-law, did not want a charge laid, in relation to her injuries.

Case #79-083097: N:2:Z:IL. In this case, the victim's common-law husband returned home drunk, and assaulted his common-law wife. The investigating officer did not believe that the victim would proceed to the court level, even if a charge was laid. Since there were no witnesses, he therefore advised the victim to contact a Justice of The Peace to lay an information if she wanted to pursue the matter.

Case #80-083470: N:3:Z:L. The victim in this case is a wife who was assaulted by her husband. Although she suffered serious injuries, she refused to press charges.

Case #80-084541: N:1:Y:IL. The two participants involved in this case were dating at one time. When the victim did not respond to the offender's advances, he then assaulted her. The victim no longer seemed interested in having a charge laid.

Case #80-084835: N:1:Y:L. An argument ensued when a tenant was locked out of his apartment by the superintendent. The tenant assaulted the superintendent. Initially, the superintendent wanted a charge laid, but he later relented, saying that he had been intoxicated at the time of the incident, and this possibly contributed to the disturbance.

Case #80-086727: N:2:Y:IL. In this incident, both the complainant and the suspect suffered injuries, and, since both provided conflicting stories about the incident, and since there were no witnesses, the police were unable to determine who was responsible for the dispute.

Case #80-086816: N:2:X:IL. Although the victim in this case claims that someone tried to rob him, his employer believes that he was involved in a fight in a hotel. The police were unable to substantiate the victim's version of the incident.

Case #80-087393: N:1:Y:L. The victim claims that, after

refusing to dance with the suspect at a party, he then grabbed her by the ankles and pulled her to the floor. The victim did not want to have a charge laid.

Case #80-087962: N:2:X:IL. The victim claims that as he was crossing the street, he was almost hit by a car. As the car passed him, he slapped it with his hand. The driver then stopped the car, got out, and started punching him. The victim later did not want to press charges.

Case #80-088193: N:2:X:IL. The victim, operator of a parking lot, claimed that the suspect would not pay him. Although the victim was later assaulted, he did not see who hit him. The investigating officer believed that charges could not be substantiated, and classified the case as cleared otherwise.

Case #80-088242: N:2:Y:L. This case concerns the assault on a male, by a female. However, the victim did not want a charge laid because the publicity might affect his position in a local bank.

Case #80-089572: N:1:Y:IL. The victim claims that the suspect assaulted him while he was doing maintenance work on his house. The victim later did not want to press charges.

Case #80-090283: N:2:Y:L. The incident in question, occurred in a local highschool. The victim, as he was walking down the corridor, was approached by the suspect, and asked whether or not he wanted to fight. The suspect then assaulted the victim. The complainant, father of the victim, said that, instead of criminal charges, he would be satisfied if the youth were suspended temporarily.

Charge

Case #79-064250: C:2:Z:D. This case involved a dispute between a male and his common-law wife. On the same day as the dispute in question, the suspect had a disagreement with his son that police had been called to.

Case #79-065340: C:3:X:ID. This incident occurred, when two youths told another individual that the owner of a store had punched one of them. In retaliation, the suspect then assaulted the store owner. Photographs of the victim's injuries were taken by identification. The suspect was booked and later released on a promise to appear.

Case #79-065355: C:2:Y:ID. This incident involved a dispute between the superintendent of an apartment building and an individual who was staying with a friend in the building.

The individual staying with the tenant was not paying any additional rent, and when requested to do so by the superintendent, punched the superintendent several times. A charge was laid the following day.

Case #79-065364: C:2:X:ID. The victim was entering a fast food restaurant, when the suspect tried to pick a fight with him. The suspect assaulted the victim, and was later booked for the offence.

Case #79-065433: C:2:Z:D. This case involved an assault by a male, on his common-law wife. The victim wanted a charge laid.

Case #79-066969: C:3:X:ID. The victim was stopped in his car at a red light, when the suspect jumped on the hood of his car and caused a dent. The victim then got out of his car, and when attempting to follow the suspect, was then punched by the suspect, sustaining a fractured jaw. The suspect was held for a show cause, and was later remanded in custody.

Case #79-068185: C:3:X:ID. The victim claims that he was walking down the street with his girlfriend, when the suspect hindered his progress. The suspect punched the victim

causing him to sustain a broken jaw. The suspect was later picked out of a police lineup including eight others.

Case #79-069959: C:3:Y:ID. The victim told his work supervisor that he should fire a certain individual. Later, that individual and the victim had words. A short time afterwards, the victim was found suffering from a concussion. There were no witnesses to the incident. The suspect was already on probation. The suspect denied hitting the victim, but was later booked on the charge.

Case #79-067960: C:3:Y:ID. In this case, one of the participants, after an argument with the victim, asked his older brother to help him get even. The older brother picked up the victim and threw her on the ground, breaking her right collar bone. The suspect was apprehended, fingerprinted, photographed, and then released on a promise to appear.

Case #79-070232: C:2:Y:D. In this incident, a taxi driver, claiming that another taxi driver had stolen one of his fares, demanded financial compensation. When he was refused, he assaulted the other taxi driver. Even though both individuals worked for the same company, the victim wanted a charge laid, and the police complied with his desire.

Case #79-070661: C:2:Y:ID. In this case, a passenger in a taxi gave the driver a \$10.00 bill for a \$6.45 fare. He would not give her any change, claiming that she owed him a prior fare. However, when she would not get out of the cab, the driver summoned a police officer. The police officer, telling the driver that it was a civil matter, should instead call the city inspector and make his own arrangements to get her out. Instead of following the officer's advice, he drove his cab to another location and forcibly removed the passenger. The suspect was later charged for the offence.

Case #79-071903: C:2:X:ID. In this incident, the victim was playing pool, in a poolhall, and his sister was standing nearby. When the female was bothered by another individual, the brother attempted to intervene. He was violently assaulted, sustaining both a bleeding mouth, and a cut to his right eye. Identification arrived on the scene and took several photographs of the victim in his injured condition. The suspect was later charged and then released on a promise to appear.

Case #79-071977: C:3:Y:D. This case involved an incident between a male, age 21, and the brother of his former girlfriend. Attempting to see his former girlfriend again, the suspect was told to leave by her brother. Refusing to

do so, a fight ensued in which he assaulted the girl's brother, knocking out one of his teeth, and causing him to sustain a fat lip. Not only did the complainant want the suspect charged, but the suspect was escorted to a jail cell by police to prevent a recurrence of the incident.

Case #79-072915: C:3:X:ID. A spectator at a local highschool sporting event, the victim was assaulted by a suspect who, according to witnesses, had a chip on his shoulder, and a hot temper to match.

Case #79-073109: C:1:X:ID. In this incident, the victim, at the insistence of a friend, appeared at the information desk of the Ottawa Police Force and related the details of the assault that had taken place shortly before. She provided police with the name of a suspect. Checking the suspect's house, police found a blood stained jacket, an analysis of which, linked him to the offence.

Case #79-073857: C:2:X:D. The victim, sitting in a city park, was assaulted when he had attempted to investigate a scuffle that was occurring nearby. The victim was able to identify the suspect, and wanted the police to pursue the matter. The accused, when interviewed, admitted being responsible for the injuries suffered by the complainant.

Case #79-073954: C:2:X:ID. The suspect, having trouble finding another apartment, returned to the apartment he had occupied the month before. Attempting to enter, he was met by the new tenant. An argument ensued, during which the suspect assaulted the new tenant. The suspect was conveyed to police headquarters, booked for the offence, and later released on a promise to appear.

Case #79-075010: C:1:Y:ID. The suspect, a juvenile, male student, struck his teacher with a knapsack. The mother of the suspect had just gotten a divorce, and was having a major problem trying to discipline her son. At the discretion of the Youth Liason Section of the Ottawa Police Force, the juvenile was charged.

Case #79-075099: C:3:Y:ID. As a result of a disagreement which took place during a hockey game in which both the suspect and the victim were participating, the suspect hit the victim over the head with a hockey stick, rendering him unconscious. All of the witnesses questioned, related that, it was an aggressive act, not done in the spirit of the game.

Case #79-076077: C:3:Y:D. In this case, a male, age 70 assaulted a female, age 68, causing one of her facial bones

to separate. The victim insisted that the police press charges.

Case #79-078225: C:2:Z:ID. In this case, the mother witnessed her husband beat their child. She insisted that a charge be laid.

Case #79-078935: C:2:X:ID. An argument ensued when a pickup truck knocked over some flower pots. During the argument, the victim was pushed to the ground, and then through a glass door. The entire incident was witnessed by an R.C.M.P. officer who provided police with details of the incident. The suspect was later arrested at his house and conveyed to the police station.

Case #79-078986: C:3:X:ID. The victim claims that he was driving down the street, when cut off by another vehicle. He was then dragged out of his car and assaulted. While at the emergency ward of a local hospital, explaining details to police, the suspects also appeared at the emergency ward. They were immediately arrested by police and then conveyed to the police station. Both suspects had a criminal record.

Case #79-079128: C:2:Y:ID. This case involved a dispute over the custody of a female juvenile. The suspect, attempting

to gain custody of the little girl, who was staying at her mother's relative's house. The suspect, who was the little girl's grandfather, began to argue. He then assaulted one of the occupants of the house, as well as, breaking the window of the front door. Scratches, which the suspect sustained to his face when he broke the window, helped to link him to the offence.

Case #79-079570: C:2:X:ID. The victim, a manager of an arcade, was assaulted by two males who were causing a disturbance. The two suspects were later positively identified by the manager.

Case #79-079790: C:3:X:ID. The suspect attempted to have his cheque cashed ahead of others who had been waiting in line before him. A fight broke out, and the suspect punched the victim in the mouth.

Case #80-080596: C:3:Y:ID. In this case, the victim was hit in the mouth by a piece of steel pipe, causing him to lose two front teeth at a cost of \$1200.00. The incident was witnessed by a third party.

Case #80-083811: C:3:Z:D. In this incident, a husband assaulted his wife, breaking her left cheek bone. The

victim wanted her husband charged. In addition, police arrested the suspect to prevent a recurrence of the event.

Case #80-084035: C:1:Y:ID. The victim related that the suspect had threatened him regarding the dropping of charges in relation to another offence. When he would not agree to the suspect's demands, the suspect then assaulted him.

Case #80-084499: C:2:Y:ID. In this case, a bus driver had been bothered by the suspect in the past. In this incident, the suspect became infuriated when the bus driver requested to see his bus pass. The suspect then punched the bus driver in the face. A check of the suspect's past, revealed a previous assault charge.

Case #80-085571: C:1:X:ID. The suspect, claiming that the bus driver had closed the door of the bus on his foot as he was entering the bus, shoved his transfer into the bus driver's face, and then punched him.

Case #80-088186: C:3:X:ID. Several witnesses saw the suspect assault the victim, during which, the victim sustained a broken hip. One of the witnesses held the suspect until police arrived. The suspect was escorted to a police cell.

Case #80-089523: C:3:X:D. During a basketball game, the victim was punched in the jaw by a player on the opposing team. The complainant, the victim's father, definitely wanted the matter to proceed by way of charge. Several witnesses stated that the punch was not warranted. The suspect was photographed and fingerprinted.

Case #80-091553: C:3:X:ID. The victim claims that he attempted to tell the suspect that he was mistakenly entering the ladies washroom. Taking offence to this, the suspect then assaulted the victim. He was later conveyed to the police station.

THESIS SUMMARY: THE USE OF DISCRETION BY THE OTTAWA POLICE
FORCE IN RELATION TO CASES OF ASSAULT CAUSING BODILY HARM.

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The study examined cases of assault causing bodily harm, dealt with by the Ottawa Police Force, during the period, September 1, 1979, to February 29, 1980. Its purpose was to determine whether the police forward every violation of the criminal law which comes to their attention, to the prosecution level of the criminal justice system, or instead, they exercise their discretion, taking into account the interacting factors of each case, and consequently, perform a screening function of their own. If the police do in reality exercise their discretion, the implications are: (a) the police control the gateway of the criminal justice system, (b) they determine the material the remainder of the criminal justice system will expend its energies on, and (c) they will play a role in determining who 'the criminal' will be.

A case-by-case analysis of incidents pertaining to assault causing bodily harm, reveals that the police do exercise their discretion in relation to assault causing bodily harm offences. Although there was a total of 124

cases of assault causing bodily harm recorded by the police as occurring during the stated time period, five of these cases were immediately excluded from the analysis, because they contained multiple offences which occurred spontaneously, and which, therefore, might have had a bearing on the outcome of the case. Thirty-seven cases were classified as 'unfounded', that is, the police do not believe that a crime has occurred, or was attempted. In these cases, the police exercise their discretion and judge that they are not empowered to react as prescribed by law. Sixteen cases were classified as 'unsolved', that is, the police were unable to locate a suspect from the description or the details, provided by the victim. Having to classify a case as unsolved, reveals that the police operate under a strict budget. Heavy case loads, and competing demands on the police officer's time, do not allow him to spend an excessive amount of time, attempting to solve a single case. Thirty-two cases were classified as 'cleared otherwise'. An analysis of these cases reveals that the police will not lay a charge when there are indications that the victim and the offender will be able to resolve the matter on their own. Indications, such as a close or prior relationship, providing the participants a basis on which to begin a resolution of the dispute, the victim's preference for leniency, either expressly or implied, indicating that the problem has been resolved, or a minor

degree of injury to the victim, so that there is no need on the part of the victim to seek revenge, provide the police with an indication that the incident is not likely to recur, and that further intervention by the criminal justice system is therefore not required. In 34 cases, there was a charge laid. A charge will be laid when it is indicated to police that the victim and the offender are probably not able to resolve the dispute between them. A serious degree of injury to the victim, indicating that he might seek revenge, no prior relationship between the victim and the offender, on which they could base a reconciliation, and an implied or expressed desire on the part of the victim that a charge be laid, meaning that the dispute has not been resolved, are indications to police that the offence might recur, and they therefore lay a charge, activating the mechanism of the entire criminal justice system.

This analysis of the exercise of discretion by the police reveals that they have a peace keeping role when it comes to cases of assault causing bodily harm. Cases which are exceptions to this role, indicate that the police operate under legal and financial limitations. It also indicates that the police play a role in determining who 'the criminal' will be.