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The Benefits of Procedural Justice in Contemporary Policing

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ABSTRACT

Police agencies around the country, big and small, are all facing a similar set of dire circumstances. Budgets cuts and staffing shortages are making it harder to effectively and efficiently deliver police services. To further complicate matters, law enforcement, due to a rash of recent high-profile use of force incidents, is facing a mounting public perception crisis. Public perception, or how favorably people view the police, is an important indicator of one of the most valuable crime prevention tools law enforcement has at its disposal, legitimacy. As it relates to law enforcement, legitimacy refers to belief that police officers respect their authority and will use it in a fair and responsible manner. As a result, people will defer to the authority of a police officer believing they will be treated fairly during the encounter. In response to all these issues, law enforcement agencies need evidence- based methods that maximize their reduced resources, while also working to improve legitimacy. Procedural justice is one such strategy that solves both problems. Procedural justice refers to the belief that how police treat citizens during an encounter has a significant impact on how citizens view the police, their willingness to obey the law, and officer safety. Law enforcement agencies should employ research tested, procedurally just policing practices to increase public confidence and improve officer safety.

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INTRODUCTION

Law enforcement today is facing a growing number of issues that challenge the way agencies do business. Over the past several years there have been numerous high-profile officer involved shootings that have created unwanted negative attention not only for the officers or agencies involved, but the entire profession. When there is an incident in Ferguson, Missouri, New York, or South Carolina, the ripple effect reaches law enforcement agencies all over the country. In addition, many agencies are faced with fiscal challenges that have significantly impacted manpower, equipment, and facilities. To combat these issues, law enforcement has worked hard to earn back the respect that was lost, all while operating under tighter financial constraints. This has led to the creation of many new innovations, like CompStat and hot spot policing that use data to revolutionize the way police fight crime (Gold, 2013). Bernard Melekian, then Director for the Office of Community Oriented Policing Services (COPS), which is a component of the Department of Justice, was quoted at the 2011 COPS Conference as saying, "cities have furloughed and laid off more law enforcement officers, or left more vacancies unfilled, than contemporary police leaders have ever witnessed" (as cited by Bueermann, 2012, para. 4). Therefore, police administrators must be vigilant when considering how to allocate the dwindling resources that are made available to their respective departments. Given the pressure to maximize each dollar, one of the ways administrators can ensure the services being provided achieve their greatest effectiveness is to employ an evidence-based policing strategy. Evidence-based policing is a philosophy that implicates the use of research, evaluation, and analysis to determine what techniques provide the best outcomes. According to Bueermann (2012),

given the financial pressure to do more with less, it no longer makes sense to use policing strategies that have been proven scientifically ineffective.

The procedural justice approach to policing is one such empirically tested, evidence-based strategy that departments can use to be more effective, even at lower operating costs (Schulhofer, Tyler, & Huq, 2011). Procedural justice refers to the idea that how people regard the criminal justice system is associated more with the process being fair and how they were treated rather than the ultimate outcome (Gold, 2013). Smith (2012) quoted Tyler when he stated that “the underlying assumption being that if police exercise their authority in a way that is viewed as fair, respectful, and dignified, then citizens’ are more likely to hold favorable attitudes toward them” (p. 5). There are many benefits for any agency when they use policing practices that citizens consider fair. The benefit that creates the greatest number of positive residual effects is earning legitimacy. To fully understand the magnitude that police legitimacy has on an agency, there must be an understanding of how legitimacy is defined within the context of law enforcement and legal institutions. The Police Executive Research Forum (2014) states legitimacy reflect the belief that police officers should be allowed to exercise their authority to maintain social order, manage conflicts and solve the problems of their communities. Police legitimacy manifests itself in three judgements, all of which work together to improve police operations: Public trust, public deference, and fairness.

Public trust occurs when citizens view the police as honest and trying to perform the job to the best of their abilities. Most people realize policing is an important function of a free society and want to support the police in keeping their neighbors safe and free from crime. Secondly, legitimacy creates a sense of deference. Deference is defined by

the American Heritage Dictionary (2011) as “Submission or courteous respect given to another, often in recognition of authority” (p. 1). Deference occurs because citizens believe the police are honest and working hard, and, therefore, have an obligation to defer to their authority. Deference is a very important component of police work because it causes people to cooperate with an officer’s requests and commands during police-citizen encounters. Dire consequences ensue when law enforcement agencies attempt to operate with little or no deference. And lastly, legitimacy involves the belief that police will stand on the moral high ground when dealing with a situation. Citizens must believe the situation will be handled fairly and appropriately.

This purpose of this paper is to show that law enforcement agencies around the country should consider instituting procedurally just policing practices to increase public confidence and improve officer safety. There are two important caveats that should be mentioned when advocating for procedural justice. The first is that to maximize the benefits, the change must be in the form of a paradigm shift in terms of how the law enforcement agency delivers service to its constituents. Simply asking some officers, or one division, to make the change will not be sufficient. The progress made by one officer using procedural justice during a police-citizen contact can be negatively offset by another officer that uses a more coercive style. This must be a change that is promoted from the top down, throughout all personnel and ranks, officer and civilian, as standard operating practice internally and externally. This exact sentiment was underscored by Sergeant McCurdy (2013) of the King County Sheriff’s Office when he helped his agency implement procedural justice as part of the agency’s advanced training unit. McCurdy (2013) stated that “before we can ask officers to go out in the

field and apply the concepts of procedural justice to all interactions with citizens, we must practice what we preach as an agency” (para. 5). McCurdy (2013) continued by saying “we must then focus our efforts on hiring, training, and promoting the people who embody the principles of procedural justice” (para. 5). Secondly, procedural justice is never meant to replace other necessary policing tactics such as defensive and firearm training. It would be unreasonable by any standard to presume that procedural justice and legitimacy will cause voluntary compliance in every police-citizen encounter. Tyler and Huo (2002) considered this point when stating that while authorities want to encourage voluntary acceptance through procedural justice, their ability to use force is always present. It was further stated that “knowing authorities will apply coercive force if necessary assures all community members that others will cooperate; their cooperation thus prevents others from being free riders” (Tyler & Huo, 2002, p. 13).

POSITION

As mentioned above, procedural justice policing is an evidence supported policing style designed to increase police legitimacy and gain public compliance, which have many residual benefits. Many officers have used this style for years to treat citizens fairly and with respect. Adopting this as an agency wide initiative will create “buy-in” for the program. This will allow all employees to understand what it is, why it works, and receive the necessary training. Consequently, the continued use with every member of the community will produce increased trust and confidence in the police, resulting in more cooperation during future transactions and lawful behavior (Rahr, Diaz, & Hawe, 2014).

The philosophy of procedural justice has four pillars that form what is referred to as the L.E.E.D. model (Rahr et al., 2014). The acronym represents the first letter of all four pillars. The first pillar is listen. The purpose of this pillar is to give voice to people during a contact with law enforcement. Mell (2016) stated this “opportunity to make arguments and present evidence should occur before the police make decisions about what to do” (p. 34). The next pillar is explain. This happens when law enforcement explains the processes that are occurring, and the options being considered as a basis for a final decision. The third pillar is equity. According to Rahr et al. (2014), equity is shown when officers “tell [citizens] why [they] are taking an action. The reason must be fair and free of bias, and show their input was taken into consideration” (p. 2). This is an especially important step because it shows that law enforcement is using neutrality in the decision-making process. The fourth and final pillar is dignity (Rahr et al., 2014). This is manifested through the behaviors and words of law enforcement toward the citizens involved. Officers should treat citizens with respect throughout the process, even if the result of the encounter ends with a form of sanctioning like citations or arrest. An example would be when a citizen is issued a citation (negative outcome) during a traffic stop but was treated fairly during the interaction with the officer issuing the citation (positive process), the driver feels more confident about the fairness and is less likely to contest the citation or file a complaint against the officer (Kunard & Moe, 2015). Kunard and Moe (2015) further state that the process of procedural justice can be represented by the equation: $ASSESSMENT = OUTCOME + PROCESS$. As evident by the equation, research about procedural justice does not imply that people do not care about outcomes. However, the point here is that people are more accepting of

outcomes, even ones that do not favor them, when they feel the decision was achieved through a process that is considered fair. The transparency and fairness of the process that happens, utilizing these four principles, leads to the belief that law enforcement is legitimate institution deserving of respect and support.

Another benefit of continued use of procedurally just policing practices is that by proving their legitimacy, officers gain more compliance. As stated earlier, the ability to apply coercive measures to gain compliance is always present during police encounters with the public. Officers are equipped with an array of options that can be used when citizens do not give voluntary compliance. However, the goal of law enforcement agencies should be to gain voluntary compliance and deference. Voluntary compliance leads to fewer instances where officers use force, resulting in less use-of-force encounters that are often highly publicized, even when justified. Additionally, police officers gain the benefit of having a safer working environment since the potential to be injured increases during these encounters. Research suggests that “citizens who see the police as legitimate are, in their interactions with police, more likely to comply with police commands, directions, and requests” (Worden & McClean, 2017, p. 6). Another benefit of compliance with the law is acknowledging that communities are safer when law enforcement and citizens work together to solve problem of crime and social disorder. Tyler (2003) stated, “It has always been recognized that the police and courts benefit when those in the communities they regulate cooperate with them in a joint effort to enforce the law and fight crime and criminal behavior” (p. 291).

COUNTER ARGUMENTS

For a law enforcement agency that is considering the implementation of a procedural justice program, one of the first considerations is cost. This is especially true of the current economy that has many law enforcement agencies dealing with massive budget cuts. In some instances, those budget shortfalls have reached into the millions of dollars, requiring agencies to do more with less. That was the case for King County Washington Sheriff John Urquhart in 2016 when his agency faced a \$3.8 million reduction over a two-year period (“King County”, 2016). When faced with budget cuts of that proportion, many agencies will start with the areas within the department like training or other specialized divisions, saving personnel reduction as a final option. In extreme cases, however, law enforcement agency administrators are forced to make the tough choice of cutting both. Chief David Dial of Naperville, Illinois Police Department is “cutting nine vacant positions, including three officers, and \$60,000 out of his training budget” (Bohn, 2008, para. 3). These are just a few examples of how fiscal challenges have negatively impacted law enforcement.

To overcome budget issues, law enforcement agencies should research and apply for some of the many available federal grants that pay for training. According to the United States Department of Justice (2017), it “offers funding opportunities to support law enforcement and public safety activities...to provide training and implement programs.” (para. 1). This is an excellent way to procure the funding that is needed to train department personnel in procedural justice. Additionally, the COPS office, through the Critical Response Technical Assistance Program, can work with agencies that have been involved in critical incidents. In the case of Pasco Police Department, after being

involved in a high-profile officer involved shooting that received national media attention in 2015, COPS agreed to work with the department over a twelve-month period to provide training in procedural justice (United States Attorney's Office, 2015). Another option agencies can consider is only sending the training personnel to a procedural justice train-the-trainer program. That curriculum can then be brought back to the agency where a training program can be developed for all other department personnel.

There are several elements of procedural justice that sound like the community oriented policing programs that many law enforcement agencies have already implemented. For many departments, they have already committed valuable resources to staff this program. It would be wasteful and redundant to commit additional resources during a time when money is already scarce. Community policing is a philosophy that encourages partnerships with the community to help law enforcement agencies combat crime and disorder. There are similarities to procedural justice in that community-oriented policing has three components that make up the strategy, like the procedural justice pillars. These components are community partnerships, organizational transformation, and problem solving. The components are designed to increase legitimacy, similar to procedural justice. Community policing focuses on working with the community to reduce crime, therefore, "it has often been seen as an effective way to increase citizen satisfaction and enhance the legitimacy of the police" (Center for Evidence-Based Crime Policy, n.d., para. 2). It has been such a popular policing strategy that as of 2013, "about 7 in 10 local police departments, including 9 in 10 departments serving a population over 25,000 or more, had a mission statement that included a community oriented policing component" (Reaves, 2015, p. 8). So,

community-oriented policing accomplishes many of the same goals as procedural justice.

Law enforcement agencies should always consider every opportunity that helps aid in crime reduction, citizen satisfaction, and officer safety. According to the COPS (n.d.), "Procedural Justice and Community Policing provide the framework for organizational change and ultimately officer safety" (p. 1). While working to achieve many of the same positive results, law enforcement must understand that these two revolutionary programs are designed to combat the problem of crime and public safety from different perspectives. While community oriented policing builds agency partnerships with the community through programs, procedural justice builds confidence that individual law enforcement officers can be trusted to treat members of the community with respect and neutrality.

RECOMMENDATION

As stated in the beginning, contemporary law enforcement agencies are under more pressure than ever before. Most agencies face the unenviable task of providing the same level of policing services that the communities have come to expect, while being required to provide those services with reduced resources. To add to the strain, these same agencies are also under the microscope by the media and public because of several officer-involved shootings around the country. Now more than ever, the law enforcement profession needs policing strategies that are multifaceted, given the tighter budget and reduced personnel. Polices that are ineffective or underperforming should be evaluated against more progressive policing strategies.

Additionally, law enforcement must earn back the trust that was lost and improve upon their public perception.

Law enforcement agencies should consider using evidence-based policing practices. In doing so, many of the concerns mentioned above can be addressed. These ideas have been empirically tested by criminal justice researchers and compared against currently used practices. The concept of procedural justice is one such philosophy shown to deliver better results. The theory behind procedurally just policing is nothing new. For years, good police officers have used this style of policing to provide excellent service to citizens. However, over the past several years many agencies began using a more sanctioned based, zero-tolerance approach. While these polices produce mixed results, when used over a long period of time they began to erode the public's trust. Procedural justice is a way to build public confidence in the police and improve officer safety through increased compliance. The pillars of listen, explain, equity, and dignity give officers a proven formula to accomplish that goal.

Teaching these pillars at the beginning of a law enforcement career, as the foundation for a way to behave, is paramount. The Texas Commission of Law Enforcement (TCOLE) should require at a minimum, eight hours of procedural justice training as part of the normal curriculum for the basic peace officers course. Police recruits are impressionable, providing the ideal time to introduce concepts that help legitimize the profession. Recruits should be taught the pillars, the science behind the philosophy, and the positive benefits that are achieved during police-citizen encounters. Many agencies are in the midst of tighter budget constraints. Additionally, statistics prove that most agencies are already committing resources to community oriented

policing programs. Implementing policies or practices that sound similar in nature will not sound fiscally responsible to some. While similar, these policies are not the same but rather build on one another. Agencies with limited training budgets can consider sending only essential training staff through a procedural justice train-the-trainer program. Those personnel will then have the knowledge to create a comprehensive training program for their respective agencies. Another viable option is applying for a federal grant that can be used to fund the training program, at no cost to the agency.

New methods, creative budgeting, and forward thinking are just a few of the skills needed by police administrators today. Procedural justice can meet many of those demands. Through empirical testing this strategy has shown to consistently increase public confidence in police. More trust in the police results in more cooperation and compliance. The increased compliance means officers use force less often, decreasing the number of officer and citizen injuries. Increased cooperation results in a stronger police-community partnership, which is essential to crime prevention and safer neighborhoods. Many in the law enforcement community are recognizing the benefits of procedural justice, those success stories will cause many more to follow in the coming years.

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