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## WHO DESERVES A BREAK? AND HOW WOULD WE KNOW?

### *A Sheriff's lieutenant urges cops to consider the individual before making an arrest*

“Are you really going to put a felony on this guy? Here is a kid that could have been planning on going into the military, being a cop or fireman, and/or just being a guy with a career.”

*By Julius (Jay) Wachtel.* When Los Angeles County [Sheriff's Lieutenant Bill Evans](#) issued an instructional memo setting out a fictional encounter between a deputy and a Christian college student with a switchblade (it's described as an “illegal folding pocket knife”) he didn't expect that the document would ricochet around the country at the speed of the Internet.

But it did. Now everybody from Maine to Montana to this blogger wants to weigh in. (Well, not everyone. At last check the President's stayed out of it.) Not all the reaction has been positive. Hubert Williams, president of the [Police Foundation](#) and former chief in Newark didn't think that focusing on the youth's character was appropriate. “The moment you start saying ‘take the individual into account’ you've opened the door to allow bias into the decision-making process.” [Merrick Bobb](#), southern California's famous police watchdog, had another concern:

What if the same kid was a black student with long dreadlocks at Dorsey High? What if the same kid was a Latino and undocumented? A single parent with a young child at home? I would hope the same ability to empathize and exercise compassionate discretion would be triggered in those instances also.

Discretion is an inescapable part of policing. Agencies choose how and where to deploy cops and which crimes to emphasize, while individual officers decide whom to stop and what to do with them afterwards. Cops, of course, can't simply act how they please. Some laws – domestic violence comes to mind – require an arrest when there's sufficient evidence. Even if not mandated by law, it would be unthinkable for cops not to arrest an armed robber or a violent criminal. Police discretion is bounded in other ways. As [James Q. Wilson](#) pointed out, communities influence the police, and conduct that may lead to an arrest in one city may not in another.

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So what *should* a cop do about a college student with a switchblade? Seeking guidance from the [LAPD manual](#) (regrettably, the LASD's isn't online) we come across section 1/508, "Police Action Based on Legal Justification." It advises that what's appropriate varies with the situation. Hmm. Then there's section 1/512, "Alternatives to Physical Arrest, Booking or Continued Detention," which warns that if an arrest is legally justifiable, the decision to invoke a less serious alternative must be based on fact alone:

Once a violator has been identified, it is the function of the Department to initiate the criminal process; however, there are circumstances when a crime may occur and the Department will not make a physical arrest. There may be a report written and an application for a complaint made; or in some cases, when the offense is of a minor nature, a verbal warning or other direction may be given. The decision not to make an arrest will be guided by Department policy and the factual situation involved, not by the personal feelings of the officer.

That's all well and good if there is an applicable policy and there are plentiful "facts." Yet the paradox is that policies governing the exercise of discretion tend to lack detail precisely because these "facts" are often nonexistent or too ambiguous or politically incorrect to articulate, let alone put into writing. To be sure, one could draft a policy that gives a break to youths carrying switchblades that they *don't* intend to misuse. But on what "facts" would cops be expected to rely? (For New Haven PD's exceptionally detailed policy, which applies only to order-maintenance situations, click [here](#).)

Lieutenant Evans knows that officers often exercise leniency. Perhaps he'd like the practice to increase. Yet encouraging them to do so in weapons cases seems questionable. Decisions to arrest are influenced by perceptions of a suspect's dangerousness, and it so happens that weapons possession is its most salient indicator. Criminal record, gang involvement and suspect demeanor are also important. All are demonstrable "facts," so if an agency wishes to regulate the use of discretion each could probably be part of a defensible policy.

On the other hand, turning to extrinsic factors such as religiosity or which college one attends invites fatuous distinctions. Decisions to let someone go shouldn't rest on idle speculation. That's probably what spurred a Sheriff's station commander to suggest that it would have been better to share the memo at a meeting where the "subtleties" of police decision-making could be properly addressed.

There's no question but that the lieutenant was well intended. Where, he asks, would some of us be had we run into a "hard-line cop" when doing "crazy stuff" in our younger

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years? Fair enough, but as we mentioned in [Before JetBlue](#) it's precisely the overlooking of crazy stuff that has allowed ticking time-bombs to become police officers. It goes without saying that everyone benefits when characters who may have a penchant for violence are formally rather than informally processed. Sure, be compassionate, but when it comes to carrying a switchblade (incidentally, it's a misdemeanor under [P.C. 653k](#)) being Christian seems like an awfully flimsy excuse.