

# Discretion

## Chapter 11

### Discretion in Police Work

- Officers routinely use discretion in decisions involving life & liberty of citizens
- Examples:
  - Domestic Violence Arrests
  - Mental Health Commitments
  - Traffic Tickets
  - Juvenile Court Referrals
  - Deadly Force

### Discretion

- 1) An official action;
  - 2) by a criminal justice professional;
  - 3) based on that individual's judgment about the best course of action
- Pervades the entire CJ system

### "Street-Level Bureaucrats"

- Patrol officers exercise the greatest amount of discretion
  - Gatekeepers of the criminal justice system
  - Also determine public policy

### Potential Abuse of Discretion

- Discrimination
- Denial of Due Process
  - Harassment
- Systematic underenforcement of the law
- Poor Personnel Management
  - Lack of clear performance standards
- Poor Planning and Policy Development

### Proper Exercise of Discretion

- Proper Exercise of Professional Judgment
- Effective Use of Scarce Resources
- Individualized Justice
- Sound Public Policy
  - Homeless/Mentally ill

## Discretion and the CJ System

- Police
- Bail Commissioner
- Prosecutor
- Judge
- Probation/Parole

## Decision Points and Decision Makers

- Patrol Officers' Decisions – Crime
  - ☐ To patrol an area more intensively than normal
  - ☐ To conduct a high-speed pursuit
  - ☐ To stop, question, or frisk a suspect
  - ☐ To write a crime report
  - ☐ To make an arrest
  - ☐ To use physical or deadly force

## Decision Points and Decision Makers

- Patrol Officers' Decisions – Order Maintenance
  - ☐ To mediate a domestic dispute rather than make an arrest
  - ☐ To suggest that one party to the dispute to leave
  - ☐ To refer a person to a social service agency
  - ☐ To commit a mentally disturbed person to a mental health facility

## Decision Points and Decision Makers

- Detectives' Decisions
  - ☐ To stop investigating a crime because of lack of leads
  - ☐ To seek a warrant for a search
  - ☐ To conduct a stakeout

## Decision Points and Decision Makers

- Police Managers' Decisions
  - ☐ To adopt community policing or problem-oriented policing
  - ☐ To give high-priority to traffic law violations
  - ☐ To ignore minor drug offenses
  - ☐ To crack down on prostitution
  - ☐ To give social gambling low priority

## The Source of Discretion

- Nature of criminal law
- Conflicting social expectations
  - ☐ Crime vs. Vice
- Social & medical issues
- The work environment of policing
  - 1) Patrol officers work alone or in pairs
  - 2) Private places
  - 3) Little direct supervision
- Limited police resources

### Factors Limiting Patrol Officer Discretion

- Legal Factors
  - Supreme Court decisions
  - State court decisions
  - State law
- Administrative Factors
  - Department policy
  - Supervision
- Organizational Culture Factors
  - Peer officer culture

### Factors Limiting Patrol Officer Discretion (cont.)

- Situational factors
  - Seriousness of crime
  - Strength of evidence
  - Preference of the victim
  - Relationship between victim and suspect
  - Demeanor of suspect
  - Characteristics of victim
  - Race, Gender, Ethnicity of citizen
  - Characteristics of neighborhood
  - Characteristics of individual officer

### Other Factors Influencing Discretionary Decisions

- Organizational Factors
  - Official dept. policy
  - Informal organizational culture
- Social and Political Factors
  - Local Political Culture

### Control of Discretion – Myth of Full Enforcement

- Myth exists for several reasons:
  - Police want to maintain a public image of authority
  - If the police admitted that they didn't arrest everyone, it would raise questions about equal protection
  - Admission of discretion would raise questions about all police policies
  - Most states have laws requiring the police to enforce all laws fully
  - Denying discretion exists allows supervisors to avoid closely reviewing officer behavior & developing performance expectations

### The Control of Discretion

- **Abolish Discretion**
  - Not practical
    - Discretion is necessary
    - Can be used for positive purposes

### The Control of Discretion (cont.)

- **Enhancing Professional Judgment**
  - Control is exercised through the process of screening, training, & socializing members of a profession (traditional professional model)
- **Problems:**
  - Professional model doesn't apply
    - Standards are low
  - Peer culture obstacles
  - Policing is a craft, not a profession
    - Police are generalists, not specialists

### The Control of Discretion (cont.)

#### ■ Informal Bureaucratic Controls

- An arrest raises an officer's visibility since it is reviewed by a number of higher ranking officers
  - Constrains officers' behavior

### The Control of Discretion (cont.)

#### ■ Written Policies (Administrative Rulemaking)

- Seeks to guide officer discretion through written rules & regulations
- Rules typically specify:
  - What an officer must do in certain situations
  - What an officer may not do in those situations
  - Where an officer may properly exercise discretion
- Examples:
  - Deadly force
  - Domestic violence
  - High-speed pursuits

### Principles of Administrative Rulemaking

- Confining discretion
  - "Fixing the boundaries"
- Structuring discretion
  - Rational system for developing policies
- Checking discretion
  - Decisions are reviewed by another person

### Contributions of Written Rules

#### ■ Standard Operation Procedures (SOP) Manual

- Provide direction for officers on how to handle critical events
- Since policies are in writing, there can be no dispute about what officers should do or not do

### Contributions of Written Rules (cont.)

- There is persuasive evidence that administrative rulemaking has produced significant improvements in policing
  - Fyfe found that a restrictive policy on deadly force adopted by the NYC police dept. in 1972 reduced weekly average # of firearm discharges by 29.1%
  - Alpert's study of high-speed pursuit policies found that where restrictive policies were adopted, there was a reduction in the # of pursuits, accidents, & both officer & citizen injuries
  - In the LA Sheriff's Dept. the no. of citizens bitten by K9 unit dogs declined by 90% after the dept. put in place new controls over how dogs could be deployed

### Insuring Compliance with Rules

- CALEA (Commission of Accreditation for Law Enforcement Agencies)
  - Its book of rules is *Accreditation Standards for Law Enforcement Agencies*
- The primary simple strategy for ensuring compliance is to require police officers to file written reports after each incident and to have those reports automatically reviewed by supervisors

### Codifying Rules: The Standard Operation Procedure (SOP) Manual

- SOP Manual
  - Written rules and policies for a police dept.
  - Central tool of modern police management
  - Many departments place their SOP manuals online to increase transparency & promote openness
- Limitations:
  - Have tended to emphasize trivial issues and ignored critical issues
  - "Crisis management" process
    - Uneven manual development

### Systematic Rulemaking

- Allows police to anticipate problems before they become crises
- Uses critical decision points

### Citizen Oversight and Policymaking

- Policy Reviews
  - Individual citizen complaints are analyzed to determine whether the underlying cause was a lack of policy (or a bad policy) on the part of the police department
  - Recommendations for new policy are made as a result

### Limits of Administrative Rulemaking

- It is impossible to write a rule that covers every possible situation
- Formal rules may encourage evasion or lying
  - "Dropsy evidence"
  - "Accidental discharges"
- Complex written rules may create more uncertainty for officers rather than less
- Elaborate rules may create a negative atmosphere
  - Managers more concerned with control and discipline