Chapter 9

Police Discretion and Community Relations

Discretion

- The police are street interpreters of the law.
- The police selectively determine what and how the law is to be enforced.
- Police discretionary decisions are frequent street decisions, directly affecting individual citizens and neighborhoods.

discretion

Main Entry: discretion
Pronunciation: 'dis-kre-shan
Function: noun
Date: 14th century

1: the quality of being discreet: CIRCUMSPECTION; especially: cautious reserve in speech
2: ability to make responsible decisions
3 a: individual choice or judgment <left the decision to his discretion> b: power of free decision or latitude of choice within certain legal bounds <reached the age of discretion>
4: the result of separating or distinguishing
Defining Discretion

- Discretion is an exercise of individual choice for judgment.
- The range of choices may be limited by certain legal, administrative, or ethical bounds, or it may appear to be limitless.
- Discretion requires discerning or distinguishing among options.

Elements of Discretion

- Discretion is personal, which means that individual experience, education, style, goals, and ethics are all involved in the decision-making process.
- Discretion requires judgment, which means that some choices are made among perceived options.
- Discretion often grants both personal autonomy and personal influence over the lives of others.
- The ability to discriminate is part of the exercise of discretion, but to use it differently or favor on the basis of anything other than individual method is an abuse.

Exercising Discretion in the System

- Police, many times during their work, will make decisions that, in effect, suspend or modify statutory laws.
- Citizens can choose whether or not to report crimes, or whether or not to testify in court, or to press charges, whether or not to support the police.
Exercising Discretion in the System (cont’d)

- Defendants and their attorneys can choose whether or not to cooperate with others in the criminal justice system, what strategies will be employed in the defense.
- Prosecutors choose whether or not to file, what charges to bring, what bargains are reasonable, what strategies to apply in the prosecution.
- Judges determine the legal questions, review cases and reports, and sentence offenders.
- Correction officials choose to a large degree what happens to the convicted offenders in terms of custody treatment so long as the offender is in their jurisdiction.

Operational-Level Choices

- The police officer has discretion to “bend” the law—or even fail to enforce it altogether—as they see fit.
- As legislators, they can specify what enacting legislators stated in general language; they can establish classes of exceptions that are not specifically provided for in statutory law.
- As judges, they may determine the suspect deserves a “suspended sentence” or some on-the-spot punishment at the officer’s own discretion.

(625 ILCS 5/12-603.1) (from Ch. 95 1/2, par. 12-603.1)

Driver and passenger required to use safety belt, exceptions and penalty.

(b) Paragraph (a) shall not apply to any of the following:
1. A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour.
2. A driver or passenger possessing a written statement from a physician that such person is unable, for medical or physical reasons, to wear a seat safety belt.
3. A driver or passenger possessing an official certificate or license endorsement issued by the appropriate agency in another state or country indicating that the driver is unable for medical, physical, or other valid reasons to wear a seat safety belt.
4. A driver operating a motor vehicle in reverse.
5. A motor vehicle with a model year prior to 1965.
6. A motorcycle or motor driven cycle.
7. A moped.
8. A motor vehicle which is not required to be equipped with seat safety belts under federal law.
9. A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier.
The Invisibility of the Police Officer’s Choices

- When a police officer chooses to act as a legislator, prosecutor, would-be judge, few people ever learn about or review their decisions.
- In those cases when the officer does not work alone, the officer’s partner will remain silent unless some very severe abuse occurs.

Decision Making at an Administrative Level

- When resources and personnel are limited, a sensible way to decide which laws to enforce is to find a mix: to provide the most law enforcement with the officers, funds, and material available.
- No administration can afford to ignore public opinion when deciding which laws to enforce.
- Administrators become attuned to complaints which constitute significant citizen demand, which does vary from city to city.

Bargaining and Law Enforcement

- Selective enforcement is common with law enforcement makers in the application of laws against various crimes or offenses.
- Parking laws may be strictly enforced in some areas. During the holiday shopping season, the police may adopt a policy of “forgiveness.”
- The police administrators abject to adopting a selective enforcement policy, which would be to strike a bargain with citizens.
- The citizens who support limited enforcement in exchange for support on more important law enforcement objectives.
The Rule of Silence

- Police and administrators rarely issue orders or make public statements listing the criteria for selective law enforcement policies.
- These assumptions, however, bear an important relationship to the laws that will actually be enforced in the community.

Decision Making at an Operational Level

- The reciprocal impact of both the officer and the community becomes clearer and it’s easy to bargain with these more intimate relationships:
  - Situational factors
  - Environmental factors
  - Education and experiential factors

Justification for Selective Enforcement

- Justification for keeping selective enforcement policies secret may serve to increase abuse and community distrust and may lower officer morale.
- If the policies were stated, then ministers would have to defend the quality of their decisions.
- Acknowledgement of such decisions would force police administrators to lose the image of impartiality.
- Statutory law prohibits the development of such policies.
- Discretion breeds corruption.
- There is a danger that stated policy, not statutory enactment, will become the limit of the law.
Justification by Officers
- The legislature did not intend for some laws to be applied literally.
- The statute in question is out of date; to apply it to a contemporary situation would work an injustice.
- The behavior violates the law but if the officer arrests the perpetrator, the official system will not handle the matter justly.
- The community does not support enforcement of the law in some cases.

Four Other Common justifications
- The community may want laws to be applied discriminatorily against “objectionable” persons whose general conduct and presence are not illegal.
- Other parts of the criminal justice system have suspended the operation of some laws.
- There may be a trading advantage of law enforcement value in the decision not to enforce the law.
- It may be inconvenient to enforce the law.

Selective Enforcement and Appropriate Guidelines
- Structuring police discretion:
  - Recognizing discretion and law enforcement
  - Enforcement policy boards
  - Composition of policy boards
  - Policy implementation units
Selective Enforcement and Appropriate Guidelines

- Reviews
  - Internal reviews
  - Legislature reviews
  - Community reviews