Police Discretion

Power and Process

Discretion

- The power to act in an official capacity in a manner which appears just and proper under the circumstances - in this action the officer takes in correspondence to personal judgment, conscience, morals, attitude, and/or beliefs as well as the officer's training, experience, and education (Black's Law Dictionary)

Dimensions of Discretion

- Decision whether or not to invoke the criminal justice system process
  - People's views on discretion are affected by their view of criminal justice

Contextual Framework

- Due Process Model - emphasizes due process and individual rights- insuring the people receive some measure of fundamental fairness
- Crime Control Model - rights and protection of society as a whole and gives police larger measures of discretionary power to protect society

Characteristics of police officers

- Curious
- Able to perceive danger
- A Tragic Perspective
- Decisive
- Self-Control
- Use Varied Approaches

Key Terms

- Bias
- Prejudice
- Discrimination
- Discretion
- Minority
Key Terms

- Bias - A partiality that prevents objective consideration of an issue or situation
- Prejudice - An opinion or judgment formed without due examination; prejudgment; a leaning toward one side of a question from other considerations than those belonging to it; an unreasonable predilection for, or objection against, anything; especially, an opinion or leaning adverse to anything, without just grounds, or before sufficient knowledge.
- Note: one's values and attitudes that are developed through socialization
- Minority: A class or categories of persons with less power than others

Key Terms (cont)

- Discrimination - selecting from among a set of alternatives and acting on that selection
- Discretion - When effective limits on a public official's power leaves her/im free to make a choice among a number of possible courses of actions - exists because it is virtually impossible to establish rules and regulations to cover all but mechanistic and repetitive jobs.

Instances where discretion is practiced “normally”

- domestic disturbance
- gambling
- minor misdemeanors
- use of force
- traffic enforcement
- provision of service
- homeless

The discretion myth

- Full enforcement of the law

Reasons for The Myth

- Legality
  - criminal code written such that police are given the authority to make arrests - there are no policies or laws that give police officers the right not to arrest.
- The nature of the police organization
  - A closed system operates with the intent of limiting access to internal happenings by anyone not immediately affiliated with the organization

Reasons (cont)

- The authoritative image of police
  - Police are expected to enforce and uphold the letter of the law. Failing to do so through the use of discretion, or admitting the use of discretion could damage the authoritarian image and leave police vulnerable to an increase in discrimination law suits or claims of unequal protection
Where does discretion come from:

- Environment
  - Police handle a variety of situations alone
  - Supervision is limited
  - Many situations are known only to those involved

- Administration
  - Criminal laws - interpretation presents many possibilities
  - Combination of the Police organization, the prosecutor's office, the courts, and overall resources - results in a combination of attitudes, goals, and resources available

- Individuality
  - Each officer is different - different "personalities" produce different outcomes

Control of discretion

- Internal
- External

Internal

- Actual Full Enforcement
- Pretend Full enforcement
- Selective Enforcement

External Controls

- Civilian Review Boards
- Legislation
- Courts

Civilian Review Boards

- Maintain effective discipline of the police
- Provide satisfactory resolution of citizen complaints
- Maintain citizen confidence in the police
- Influence police administrators by providing feedback from citizens

Civilian Review Board Activities

- Fact finding performed by civilians
- Fact finding performed by sworn officers, but dispositional recommendations made by civilians
- Fact finding and dispositional recommendations are made by civilians to civilians who have ultimate authority over the final disposition
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