

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Discretion in the Police Profession

**An Administrative Research Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

**By
Justin B. Davis**

**Round Rock Police Department
Round Rock, Texas
September 2009**

ABSTRACT

Discretion in the police profession is relevant to contemporary law enforcement because it takes a close look at departments' current policies, procedures, and an officer's own moral or ethical dilemmas in making everyday discretionary decisions. The purpose of this research is to examine the Round Rock Police Department's policies, procedures, and each officer's individual abilities to make discretionary decisions. The method of inquiry used by the researcher included a review of articles, internet sites, journals, a survey instrument distributed to 30 survey participants, and personal interviews. The survey instrument was distributed not only to law enforcement professionals but also to citizen police academy participants within the Round Rock Police Department.

The author analyzed the survey results and discovered that the existence of discretionary decision-making in the police profession is mainly governed by well-written policies. This showed to be true by 83.3% of the people surveyed. The researcher discovered that many of the participants in the survey made discretionary decisions based on well-written, clear policies; good management practices; and superior judgment. Only 16.6% of the participants felt that their discretionary decisions were based on ethical/moral issues. Although this finding is certainly not solely based on the leadership principles of the department, it is a direct reflection of employees' character and leadership styles.

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INTRODUCTION

Discretion is a powerful mechanism that many police officers face on a daily basis in their position as a law enforcement officer. Discretion is the freedom to make decisions based on current laws, policies, rules, and regulations within a given police department. This issue of discretion has been a heated subject with the public and in courts for many years. Discretion has made some officers make poor decisions, while others have made high-quality, sound decisions. Nevertheless, the way discretion is used by an officer will dictate what society perceives to be a good or bad decision by that officer. Individuals in positions of power are often more free to use discretion when deciding how to exercise or apply that authority. In the criminal justice system, police officers, judges, prosecutors, and juries often use discretion when deciding issues of criminal penalties and choice of punishment. Police officers, for example, have a choice in deciding who should be arrested or given a verbal reprimand.

The problem or issue to be examined considers whether or not police discretionary decisions are regulated by an officer's own moral or ethical code or departmental policy and procedures. Discretionary decisions are used in daily police functions. The subject of officer discretion continues to be challenged on a routine basis. Whether in the best interest of the community or in the court system, discretion will continue being a debated subject. The purpose of this research is to examine the decision-making process of an officer in regards to their perception, limitations, and justifications on their use of discretion in a police officer's role. The research question to be examined focuses on whether or not police officers with good moral, ethical, and well-written policies have a better use of discretionary decisions.

The intended method of inquiry will be research of various departments in the state of Texas by the use of a survey. An interview will also be conducted with a select group of citizens, from the community of Round Rock, to see what their expectations are in regards to the use of police discretion. This group of citizens will be limited to those that have been directly involved with the police department in some respective fashion or were graduates of the Citizens Police Academy. The anticipated outcome of the research will show that police departments with well-written policies, regulations, and management techniques have a significant effect on the officer's perception of his or her own discretionary authority. This can have the potential of limited authority in helping the community he or she serves.

Discretion is an issue almost all police administrators battle on a frequent basis. The implications of this research will suggest that law enforcement agencies with well written policies and procedures can be a guide for discretionary authority for an officer. The researcher also suggests that officers of good moral and ethical standards will make quality discretionary decisions on a reoccurring basis in comparison to police departments that have poorly written policies that allow for more discretion by an individual officer. The researcher will also show the consequence of a police department's leadership principles and its correlation to the law enforcement officer's awareness of his or her discretionary authority.

REVIEW OF LITERATURE

An important part of criminal justice, including law enforcement and the judicial process, is the freedom to use discretion in particular situations (Vago, 2006). Vago (2006) argued that exercising discretion is an integral part of the daily routine of police

officers for a manifold of activities, including motor vehicle stops and domestic violence situations. Based on what type of discretionary decision the officer makes, this often dictates if a civil lawsuit will face the officer and his or her department. Many special interests groups watch the decisions officers make on a daily basis and exercise their right to sue if the wrong decisions are made. Fortunately, many of the decisions officers make are based on current law and the policies of their respective departments.

The three causes of discretion are offender, situation, and system variables. Offender variables demonstrate that the police consider adult complaints more serious than those made by juveniles. Arrest and force, for example, are more common with African Americans, and individuals who show deference (good demeanor) are often treated leniently. People in society who are in the upper and middle class receive better police service. In addition, individuals in the middle and upper classes often receive superior police service. Gender and the mental health status of individuals also affect police incidents, and situation variables can result in the use of discretion. Situation variables are when police officers give more attention to serious crimes than non-crime matters or when the presence of weapons or acts of resistance result in increased police action. Types of property involved in situations also cause variances in police response and investigatory effort, and police-initiated activities are often pursued further than those begun by citizens. The level of visibility of the vice significantly affects enforcement. Another system variable occurs when police are forced to be lenient due to the courts and jails being used to capacity (Gaines & Kappeler, 2005).

Society believes that there are many reasons why police do not arrest offenders for criminal and traffic laws (Vago, 2006). One such reason is that society feels the

police think lawmakers were putting certain laws into affect for the appearance of being tough on crime. Another reason is that the community they serve wants them to be a little less lenient on certain crimes, and by arresting individuals for these crimes, the law enforcement professional may lose some support of the community. Society feels that the police have more important or other things they need to be doing like courtroom testimony or building confidential informants.

Reactive police work is a response to citizen mobilization. Before a citizen can be reached by a police officer, discretionary power is exercised by police dispatchers at the communication center (Vago, 2006). Many times, when the dispatcher receives the initial phone call from a citizen, the dispatcher must decide one of two things: whether immediate police response is needed or whether the matter can be handled by the dispatcher or another officer by phone. Many in society feel that when they make a police related phone call to the local police agency, they want to speak to or see an officer. The discretionary powers of the agency to handle the call in different manners brings out societal opinions with the agency they are currently dealing with. Often, the difference between discretion and discrimination is subtle and subjective. With discretion playing a significant role in daily law enforcement, including who to regard as a criminal, responses to citizen complaints, or decisions about arrest, then an officer's perception of an individual is also important. An officer's perception of his correspondence with an individual affects who he deems a criminal. If the behavior by some individuals is more frequently considered criminal, then this results in them more often being deemed as criminals (Vago, 2006).

In the state of Texas, a law was created to monitor the profiling of individuals based on race, age, or ethnicity by police officers. The racial profiling law requires a variety of questions to be answered by self-initiated activity of police officers. Some of the questions the law enforcement officer has to answer are whether the contact is a traffic stop, a suspicious person/incident, or a criminal offense. Secondly, the law enforcement officer answers questions regarding the gender and race of the individual or individuals stopped as a result of the contact. The officer must also answer if a search was conducted on consent or probable cause and if anybody was arrested. The new racial profile laws have not changed the order in which a law enforcement officer handles his job performance. All traffic stops are initiated because a law was broken or there is some type of suspicious incident that has occurred. Reporting the required data because of racial profiling is just another task required by a police officer. Racial profiling information is collected, and a report is generated at a later date by the chief of police. This is a requirement done by the racial profiling law.

Brown (1981) discussed police discretion that centers on the norms of working officers and their effective decentralization of decision making, with or without the consent of the organization. He noted the limiting effect this has on hierarchal control within police agencies and believed it created the mere illusion of centralization when, in fact, hierarchical controls “merely constrain a patrolman’s decisions without really controlling them” (Brown, 1981, p. 95). Brown (1981) also contended that discipline is a way of supervising individuals who work alone with discretionary powers. Although unproven, young adults, the poor, minorities, migrants, and those who appear disreputable by the police often receive more police brutality and are arrested more

frequently than more “respectable” individuals. Because they are often less deferential towards officers, they are also sanctioned in greater numbers, regardless of whether legal grounds exist (Vago, 2006).

Police officers do not have statutes or regulations that guide them as to the frequency they should patrol particular streets, alleys, or parks. They are free to choose how they conduct investigations, including the location of stakeouts or lines of questioning. Officers may also choose which particular informants to pay or trust. Within tacit parameters, officers choose how to best enforce the law and serve the public. On busy roads, for example, officers use discretion in deciding whether everyone who exceeds the speed limit should be ticketed (Maggs, 1992). In addition, few legal standards dictate who to help or how much assistance to provide. Assistance cannot be offered to all calls with equal vigor. Violent criminal activity, for example, often requires more attention than minor thefts. Police are also free to choose the order and their manner when responding to calls. Sometimes in domestic disputes, for example, negotiating a resolution to a problem yields better results than exercising the full authority of the law (Maggs, 1992).

Police officer discretion is brought up many times in the courtroom setting. Many lawyers, judges, and prosecutors will ask why and how the officer used discretionary power to arrest or cite the defender. Most attorneys advocate that the law enforcement officer has ruined his client’s life by using their discretionary power to arrest the offender. What most ordinary citizens do not comprehend is the defendant is the individual who violated the law and must face its consequences. Laws are created by discretion and are enforced by the same methods. Many prosecutors will use their

discretion for whether they want a case to go to trial or to plea bargain the case.

Punishments and jail time are also a form of discretion. Whether it is the discretion of the judge, jury, or the prosecutor, punishment is decided by evidentiary conclusions.

Many people in society today use discretion to either use the turn signal or speed. It is the discretion of the law enforcement officer to stop an offender and issue a citation.

Ultimately, the courts will decide if the discretion was justified or not. For this reason, officers belong to a wide variety of associations or unions. Special interest organizations such as the Combined Law Enforcement of Texas, the Texas Municipal Police Officers Association, and the Fraternal Order of Police help officers stand by the decisions they make. Many officers pay for the memberships to these organizations out of their own pocket to be protected from frivolous law suits. Police officers have never had unrestrained discretion. They are limited by the constitution. An officer cannot arrest someone on discretion alone. According to the Fourth Amendment, officers must have probable cause to make an arrest. There are other legal restraints, including statutes and administrative regulations that also limit flexibility. Local rules may dictate booking and detention procedures.

There have been many discussions on the effect of discretion in regards to departmental policies, rules, regulations, management styles, and perceptions of their discretionary authority. What one must consider in the issue is not if the discretion exists but what departments are doing to structure and hinder discretion. Some officers state they are confined or restricted in their abilities to perform their job efficiently. Many officers have been surveyed, and they have shown that they feel like their discretionary powers are well-defined in their departmental policies. Many officers working the patrol

environment feel like they are more constrained than those working in the investigative divisions of the department. This is due primarily to the patrol setting having more contacts made with the public than in the investigative divisions. Police discretion is also limited by the instructions of supervisors, the opinion of fellow officers, and the department's traditional approach. With discretion being less rigid than legal rules, officers rarely deem them to be a hindrance to their duties (Maggs, 1992). Most police departments offer flexibility and discretion for their officers. Law enforcement agencies are responsible for a few missions, including ensuring compliance with the law, protecting individuals and property, road safety, and apprehending criminals. Individual officers and departments have the freedom of discretion in choosing how to accomplish these goals.

Media plays a large role on what society might think about the discretionary issues with police. When an exciting story unfolds about a police agency and the discretion they use, it is immediately aired on the television. The media will try to inform the community of the event and get some feedback from the community. In Austin, Texas the Austin Police Department is being hammered with many discretionary decisions. In the latest police discretion decision, an officer shot and killed an offender who ran away from him (Plohetski, 2007). Community outcry in the affected area where the shooting took place stated the officer's discretionary decision to shoot the offender was wrong and will be dealt with accordingly. Given a little history, the department has had many problems with the community who perceive a racist department killing innocent African Americans. This last shooting was a young African American who ran from the police and was shot by a white officer. The societal viewpoint deems this to be

another bad shooting and a racist incident. Many organizations such as the NAACP and the Young Black Panthers are watching the outcome on how the officer involved in the shooting is dealt with. Local television stations have aired, from amateur video, the incident prior to this shooting. In this case, one can question the discretion of the officer to shoot the individual or not. Before condemning the discretion of the officer, all evidence must be taken into consideration including the finding of a handgun. This example of discretion shows how it affects society as a whole and whether a change will take place in policies and procedures within the police department. In addition to determining priorities, most department administrations are free to choose which particular style of policing they will employ. Some choose a more aggressive role. Others will abstain from local politics unless specifically asked. Some departments act as watchdogs or overseers, while others offer themselves more as public servants eager to help with problems.

The foundation of law enforcement is trust. Police often are free to choose how they perform. Most of the limitations on discretion are informal, including department supervisors citizen review panels. Other restrictions, including budgetary constraints, limit the number of activities a department can engage in but does not prohibit any particular effort. Rarely does a legal rule constrain department policy decisions or the actions of particular officers (Magg, 1992).

At times, discretion does lead to problems. As do all humans, officers make mistakes. And similar to others, sometimes officers abuse the flexibility of their authority. Whether the abuse of authority occurs in the forms of self-aggrandizement, payoffs, cover-ups, or malicious injury (police brutality), with large numbers of officers and

freedom of discretion, there will always be intentional wrongdoings.

METHODOLOGY

The research question to be examined considers whether or not discretion is a moral or ethical decision or one based on well-written departmental policies. The researcher hypothesizes or speculates that most police officers are making discretionary decisions based on departmental policies and not on moral or ethical dilemmas. The method of inquiry will include: a review of articles, Internet sites, periodicals, journals, a survey distributed to 30 survey participants, and personal interviews. The personal interviews will be conducted with the Citizens Police Academy participants. The participants were selected to go through a modified police academy, learning how the Round Rock Police Department trains their officers and the approach the department uses in outcome-based policing. The participants will be selected as an inclusion in this project due to their involvement in the community and with the department. The author will utilize the survey and distribute it to current Round Rock police officers and volunteer departmental employees. The instrument that will be used to measure the researcher's findings regarding the subject of discretion in the police profession will include a survey. The size of the survey will consist of six questions, distributed to survey participants from the Round Rock Police Department and volunteer departmental employees. The response rate to the survey instrument resulted in 80% of the 24 surveyed officers' and six volunteer employees believing that well-written policies regulate the use of discretion. The officers will be picked by assignment to the traffic detail and a daytime patrol shift. Volunteers will be picked who were working during normal business hours. The information obtained from the survey will be analyzed by

the author to have a better understanding of the effects of decision and operational discretion making in the Round Rock Police Department.

FINDINGS

The researcher's survey is composed of two types of participants. The first are commissioned Round Rock police officers and the second are current members of the Round Rock Police Department's citizens police academy. The majority of the participants in this survey were in the officer and sergeant rank. The sergeant rank made up 10% of the survey, 50% were of the officer rank, and 40% were in the Citizens Police Academy. Each participant was assigned in the patrol division of the police department and happened to be males. The participants from the Citizen Police Academy were both females and males. Seven participants were male and five were females. The surveyed participants' ages ranged from the late thirties to the early sixties. All participants in the survey were white Anglo Saxons. Approximately 83% of the surveyed participants stated that discretionary decisions are based on well-written policies in the police department. The survey participants indicated that 16.6% of them made their discretionary decisions based on moral and ethical standards. As a review of the survey, ethics was not a concern when a discretionary decision had to be made. It was determined through the survey that citizen volunteers and commissioned officers had the same approach when an issue of discretion was brought to their attention and the rationale to make the right assessment.

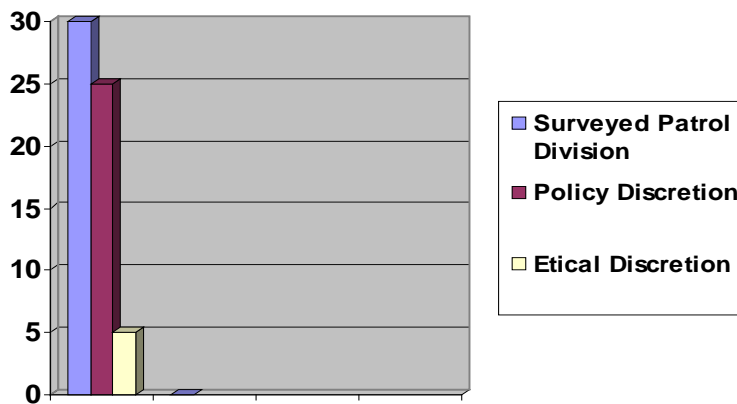


Figure 1. Discretionary decision making in the Round Rock Police Department.

DISCUSSION/CONCLUSIONS

The problem or issue examined by the researcher considered whether or not discretion in the police profession was based on moral or ethical code or was a decision based on well-written departmental policies and procedures. The purpose of this research was to verify the discretionary decision-making in the Round Rock Police Department. The research question that was examined focused on dilemmas in making discretionary decisions. The researcher hypothesized that the level of discretionary decision making was not a moral or ethical dilemma but was based on well-written policies and directives. The researcher concluded from the findings that the commissioned officers and citizen police academy volunteers in the Round Rock Police Department made decisions based on well-written policies and directives and did not have moral or ethical dilemmas when making decisions.

The findings of the research did support the hypothesis. The reason why the findings did support the hypothesis is probably due to the leadership displayed in the department and well-written policies. This is also credited to the high hiring standards in

the police department. Limitations that might have hindered this study resulted because there were no females available in the patrol work setting at the time of the survey. Also, not every division within the Round Rock Police Department was considered for this survey. The reason the patrol division was only considered is due to the fact that the police department is divided into three separate buildings at the time of the survey. The study of discretion in the police profession is relevant to contemporary law enforcement because it examines the decision making process and the use of discretion with the law enforcement professional. The Round Rock Police Department and many law enforcement professionals stand to benefit from the results of this research. The survey provides both the community and law enforcement a look at discretion as it relates to well-written policies, morals, and ethics.

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APPENDIX



Justin Davis
Round Rock Police Department

This survey is intended to collect data in conjunction with research to meet the partial requirements of the Law Enforcement Management Institute of Texas, Leadership Command College. The data being collected is in reference to the use of discretion by commissioned Round Rock Police Officers and civilians with the citizen police academy.

1. Do you feel that you have the power to make your own discretionary decisions?
2. Making discretionary police related decisions cause you any ethical dilemmas?
3. Do you believe that well written policy governs your discretionary decisions?
4. What is your current job assignment?
5. Are male or female?
6. Do you believe you have the appropriate level of discretion in use of force situations?

Thank you for your time and participating in this survey!