

1.9: How Cases Move Through the System

The criminal justice process is not what gets portrayed on television, and most cases do not go to trial or result in a prison sentence. Part of the problem is that our current system is overloaded and ensuring due process and crime control can be more challenging than one thinks. In order to effectively process cases through the criminal justice system, discretion is an important tool for police, prosecutors, judges, and correctional officials. Discretion provides freedom to make decisions, specifically it is the power to make decisions on issues within legal guidelines. Many people see discretion as for the most powerful tool of the criminal justice system.

[1][2]

Exercise on Discretion

Provide an example of discretion, which can be from a teacher in school, a dean, an officer, a judge, or boss. Describe what discretion impacted life outcomes today. When I was pregnant, my sister and I argued over the phone. This caused me to cry and emotions took over, which led to being pulled over. I encountered an officer who was understanding. He then told asked me to drive safely, and because my record was clean, he was not going to cite me. I was fortunate that I did not have to lose money for a ticket, and still, today, have never had a ticket.

Ethics refers to the understanding of what constitutes good or bad behavior and helps to guide our behaviors. Ethics are important in the criminal justice system because people working in the system get authority, power, and discretion by the government. [3] Imagine in the above case where the speeding and swerving occurred because the person drove drunk due to the break-up. It would be unethical for police to allow them to drive home because they were drinking and driving, which is a crime. Most people would see it an abuse of discretion if the officer said, "I know you are drunk, but break-ups suck. Please stop crying, drive home, and forget this happened." Ethics and discretion often go hand-in-hand.

In the News: How Would an Ethical Officer React? The New York Times wrote an article about ethical policing. Tobkin often asked his recruits, in any given situation, "How would an ethical officer react?" All recruits were required to take an ethics class called Police Legitimacy, which deals with how officers are viewed by the public and what they can do to improve or erode those perceptions. "There is about one patrol officer for every thousand citizens, so if the public does not see us as legitimate and they do not acknowledge our authority, then we are in big trouble," Tobkin said. Recruits also closely study the department's "use-of-force continuum," which dictates what level of force is appropriate in response to a suspect's behavior: tasers and batons on when a suspect is kicking or punching an officer, but generally not when a suspect is simply trying to get away. [4]

Samuel Walker referred to the criminal justice system as a funnel. In 1967, The President's Commission on Law Enforcement and the Administration of Justice published a report on the funneling effect of the criminal justice system. [5] The criminal justice system is often referred to as a funnel because most cases do not go through all steps in the system, some because of discretion, and a large portion because they are unknown to police. The question remains: is the criminal justice system effective at catching, prosecuting, convicting, and punishing offenders? Does the system properly do its job at all levels? Walker was critical of this report and said the report did not account for the crimes unknown to police, often referred to as the dark figure of crime. He also recognized that the most serious crimes are often reported the most, which may confuse the public about the reality of other crimes. [6] Others also criticized the report for only looking at reported crimes and adult crimes, but those issues will be highlighted in our next chapter on data in the criminal justice system. It is important to recognize that the disparity between crimes that were reported and not reported. This discrepancy was a shock in the 1970s, especially after the United States started asking people about their victimization. The number of crimes people say they experienced far exceeded the crimes they reported to the police. [7]

The main idea to understand is that the funnel effect is said to represent how cases move through the system by the offenses unknown to police verse known, arrests then made, prosecutions, plea bargains or trials, sentencing, and whether the individual receives probation, prison, or parole. [8]

In the News: The Crime Funnel The New York Times wrote an example of the crime funnel. Federal agencies publish numbers of crime that constitute a big funnel. For example, the "35 million crimes committed each year pour in at the top that can include everything from shoplifting, auto theft and drunken fights to rapes and murders. Of these, about 25 million are serious, since they involve violence or sizable property loss. But millions of these crimes go unpunished because the victims never report them. Only 15 million serious crimes come to the attention of the police." [9]

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Funnel Effect Example

Imagine selling marijuana to friends every week. No one alerts the cops and the person never gets caught, which means this remains in the category of offenses unknown to police. However, a friend gets busted selling too close to an elementary school, so the offense immediately is classified as known to police. An officer can choose to arrest or not, depending on the amount. If it is illegal in that state to deal, then an ethical officer would arrest and set discretion aside. However, it is up to the prosecutor to decide whether or not to file charges. If charges get filed, the friend may be encouraged to plead guilty and 'get it over with.' This would be more likely under a crime control model. However, his/her mom may say "No, I want you to go to trial," which would be more likely under a due process model and now that friend now has to decide. If he/she takes the plea bargain, they can skip the trial and go straight to sentencing. Let us say the plea bargain allowed the friend to avoid jail time and serve 300 hours of community service, but if convicted this friend could serve one year. Most may take the community service option and be under community supervision such as probation. If it were a more serious offense, they may serve a prison sentence and get paroled under community supervision after a specific amount of time.

The funnel is one way to look at the criminal justice system, but we will see later how it can be much more complicated then this analogy suggests. It is important to know many crimes are unknown to police, which we will often refer to as the dark figure of crime. Additionally, plea bargains are a comprehensive tool, especially since it would cost our society so much to prosecute and allow a trial for every individual that committed a crime. Costs are a genuine issue that the system faces daily, and if the U.S. were to punish everyone for violating the law, there would not have any money left over for important things like education, healthcare, repairing highways, and so much more. We would see most of our taxpayers paying for just crime control, which may not be the best use of all that money. Again, bringing in the importance of discretion in the criminal justice system.

Sometimes taking away discretion is excellent and sometimes having too much is wrong, but finding that balance is very important. Sometimes a judge may use discretion to release a domestic violence offender to community probation when an officer did not have the discretion to arrest. The judge's discretion may cause the victim to get revictimized, but it may not. Some offenders may be at a higher risk of reoffending and able to determine this is valuable. We will discuss this later when talking about using evidence-based practices in the criminal justice system.

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