

Discretionary Justice and the Courtroom Workgroup

Daniel C. Durham

Arizona State University

Discretionary Justice and the Courtroom Workgroup

The judicial component of the criminal justice system is comprised of a courtroom workgroup that includes prosecutors, defense attorneys, judges, and jurors. In determining the disposition of a case, these primary members of the courtroom workgroup are afforded a significant degree of discretion in choosing a course of action for a given situation. However, the decision by a member of the courtroom workgroup of whether or not to exercise discretion in a given case can have a significant, for better or worse, upon an individual who has been charged with a criminal offense. Accordingly, the focus of this expository essay is to provide a brief discussion regarding the cause and consequences associated with discretionary decision making by members of the courtroom workgroup. While there is no arguing the fact that individual members of the courtroom workgroup can abuse their discretionary powers, the central hypothesis of this essay is that discretion is a viable component of the criminal justice system.

Literature Review

Studies concerning the use of discretion by members of the courtroom workgroup generally agree that is a critical component of the criminal justice system. However, there is no universal answer to the question of why discretion is needed (Braslow & Cheit, 2011). From somewhat of an idealistic perspective, discretion within the criminal justice system, in particular, the judicial system, serves to change societal beliefs regarding the nature and ramification of criminal acts (Braslow & Cheit, 2011). A more realistic perspective merely involves the need to maximize the efforts of the courtroom workgroup due to increased caseloads and budgetary constraints (Spohn & Hemmens, 2012). However, the more fundamental question is whether the rule of law is weakened when discretion is utilized by members of the courtroom workgroup to affect the outcome of a given case.

The Discretionary Role of a Prosecutor

Without question, the most powerful member of the courtroom workgroup is the prosecutor given that they have the legal authority to make the decision of what charges should be brought against an offender as well as negotiating plea bargaining agreements (Spohn & Hemmens, 2012). More importantly, a prosecutor can make the decision to dismiss a case entirely and not prosecute an individual any further even when sufficient evidence exists. The underlying reason for the increased reliance upon prosecutorial discretion is rooted in the competing crime control and due process value systems within the criminal justice system (“Two Models of the Criminal Process,” PPT Presentation). The stark reality of today’s criminal justice system is that the reliability of the due process model of justice is more often pushed aside in favor of the more efficient assembly line crime control model. This consideration only serves to underscore the need of a prosecutor to effectively use their discretionary powers to process cases as quickly and efficiently as possible (Spohn & Hemmens, 2012).

Even those individuals who are critical of the concept of prosecutorial discretion recognize that, when judiciously applied, it adds value to the overall pursuit of justice (Spohn & Hemmens, 2012). However, the abuse of discretionary powers on the part of individual prosecutors can have a significant adverse impact upon the entire criminal justice system. By way of example, consider that the investigation and charges in the 2006 false accusation of rape made against three members of the men's lacrosse team at Duke University resulted in: the disbarment and conviction of criminal contempt charges on the part of the lead prosecutor in the case; criticism of the law enforcement investigation for violating internal department policies and continuing to pursue a case that was not supported by the evidence; and the accused individuals pursuing criminal actions and a federal civil rights lawsuit (McFadden, 2007).

The Discretionary Role of a Defense Attorney

The common misconception of the American adversarial system of justice involves the prosecutor and defense attorney competing before an impartial judge or jury with the most skilled combatant winning their case (Spohn & Hemmens, 2012). The truth of the matter is that the defense attorney is an integral part of the courtroom workgroup and processing of cases generally involves cooperation with the prosecutor rather than conflict. In general terms, the use of discretion on the part of a defense attorney is most applicable to which strategy most effectively serves their client's goals of acquittal or minimal punishment. A defense attorney's participation in the plea bargaining process also provides a unique opportunity for the use of discretionary powers ("Defense Counsel in the CJ System," PPT Presentation). While the rules of evidence weigh heavily upon the disclosure of information, the discretionary decision on the part of a defense attorney regarding what information to relay to a prosecutor and what information to withhold can potentially have a significant impact upon the type of plea deal that may be ultimately be offered by the prosecutor. The plea bargaining process also creates the potential for abuses of a defense attorney's discretionary power through actions that include attempts to convince a client the accept a guilty plea when the attorney's primary objective is to limit the scope and length of a case in order to better serve the interests of the courtroom workgroup (Uphoff, R. (1992).

The Discretionary Role of a Judge

To the majority of Americans, a judge is the symbol of the judicial system and is the most important actor in the court workgroup. While accurate to a certain extent, the reality is that the prosecutor has a more substantial role in the determination of a charge, negotiation of a plea bargain, and often a recommendation of a sentence (Spohn & Hemmens, 2012). In the

adversarial system of justice, the judge must remain impartial and provide an independent assessment of the facts and how the law applies to a given case (Spohn & Hemmens, 2012). However, a judge has discretion on all matters relating to the conduct of a trial, except for issues which are governed by law. Concerning the application of the law, a judge is responsible for applying the law to the facts and issues that arise in a given case and rendering a decision. While a judge has a broad range of discretionary authority in this decision-making process, their rulings cannot be arbitrary, unfair or, in the case of a jury trial, prejudice the jury in any manner (Spohn & Hemmens, 2012).

In decades past, a judge had nearly complete discretionary authority in the sentencing decision of individuals convicted of a crime. Judges could consider mitigating factors associated with the offender's situation and render punishment that aligned with the severity of the crime. However, the discretionary sentencing authority of a judge has since been significantly limited through the enactment of sentencing guidelines and mandatory minimum sentencing requirements ("The Goals of Sentencing," PPT Presentation). Additionally, the discretionary authority of a judge was further restricted by the Supreme Court decision in *Alleyne v. the United States* (2013) which stipulates that a jury must decide any increase in a mandatory minimum sentence. If a judge were to not adhere to these sentencing requirements in determining the punishment imposed upon a convicted individual, it would equate to an abuse of their discretionary authority.

The Discretionary Role of a Jury

By design, a jury is required to reach a verdict based on the law and facts of a given case. In practice, however, a jury has the discretionary power to return a verdict of Not Guilty despite the belief that the defendant is guilty (Spohn & Hemmens, 2012). While a jury does not have the

legal right to nullification of the law in this manner, the members may refuse to apply the law for reasons that range from the desire to send a message on concerning a more significant social issue to considerations that the law is contrary to their sense of justice (Cornell Law School, 2010). For whatever reason a jury decides to nullify the law, the overwhelming concern is that this abuse of discretionary power enables the jury to make decisions that are arbitrary or discriminatory (Spohn & Hemmens, 2012).

Conclusion

The code of law cannot be developed for every eventuality or identify how to apply the law to every postulated event. Accordingly, the courtroom actors must use their discretionary powers in crafting an acceptable solution. Additionally, strict adherence to the law in every case, overwhelming the judicial system notwithstanding, can sometimes result in an unjust outcome for a defendant. In these instances, the underlying theme of cooperation on the part of the courtroom actors can often lead to a more palatable solution for all parties. Given these considerations, in the absence of dishonesty and deceit in the application of the law by the primary courtroom actors, the effective use of their discretionary powers does not weaken the law, but rather enhances the fair and equitable application of the law. Or, as stated by Sir John Falstaff in Shakespeare's play Henry IV, "Often the better part of valor is discretion" (Shakespeare & Kastan, 2002).

References

- Alleyne v. United States*, 133 S. Ct. 2151 (2013). Selected Supreme Court cases on sentencing issues." *United States Sentencing Commission*. Oct. 2013. www.ussc.gov/Legal/Court_Decisions/Supreme
- Braslow, L., & Cheit, R. (2011). Judicial discretion and (un)equal access: A systematic study of motions to reduce criminal sentences. *Journal of Empirical Legal Studies*, 11(8), 24-47.
- Cornell University Law School. (2010). Jury Nullification. *Legal Information Institute*. Cornell University Law School. Retrieved October 5, 2013 from http://www.law.cornell.edu/wex/jury_nullification
- McFadden, C. (2007). Prosecutorial misconduct: The Duke lacrosse case [Television series episode]. In *ABC Nightline*. New York, New York: ABC.
- Shakespeare, W., & Kastan, D. S. (2002). Falstaff. *King Henry IV*. (p. 88). London: Methuen.
- Spohn, C., & Hemmens, C. (2012). *Courts: a text/reader* (2nd ed.). Thousand Oaks, Calif.: SAGE Publications.
- Uphoff, R. (1992). The criminal defense lawyer; Zealous advocate, double agent or beleaguered dealer. *Criminal Law Bulletin*, pp. 559-77. In Spohn & Hemmens (Eds.), *Courts: A text/reader* (165-170). Thousand Oaks, CA: SAGE Publications, Inc.