

DISCRETIONARY JUSTICE IN LAW ENFORCEMENT, THE COURTS, AND CORRECTIONS

Introduction

The public insists that the criminal justice system must be fair, effective to every individual citizen under the rule of the law. The criminal justice system's primary goals, within its three principal component (law enforcement, courts, and corrections) are to maintain order in society, apprehend criminals, fairly punish them, and effectively operate a correctional system. Since the criminal justice system carries out such difficult tasks in terms of the constitutional protection of due process, each organization of the criminal justice system is confronted with and challenged by various problems.

Although those difficulties emerge from political, legal, and societal causes in context of the criminal justice system, all concerns of this system are relevant to each other. On the one hand, negative factors of the criminal process prevalently contribute to the criminal justice system in decision making. On the other hand, negative factors, such as the lack of administration as well as management of the criminal justice system and ambiguity of the law, boost the conflict between the state's interest to control crime and the individual's constitutional protection based on due process. As a result of those concerns, the criminal process and its decision making are more likely to be "the unequal, the arbitrary, the discriminatory, and the oppressive" (Pogrebin 2003).

All components of the criminal justice system are likely to be altered in their functionalities when discretions are viewed as unauthorized or deemed as alleviation of organizational pressures. Officials of the criminal justice system can easily adapt their discretion because officials' behavioral attitudes to justice, their administrative environment, and their working conditions could be the influential factors in creating arbitrary circumstances. From another point of view, personnel of the criminal justice system encompass their interactions in the organizational structure.

Whether or not all negative factors derive from several resources, eventually, those factors encompass a deviation in each organization of the criminal justice system; otherwise, creating discretionary justice or

developing an informal system. But what are negative factors exactly in the context of discretion? Where do those complex issues emerge? The negative factors are found within the administration as well as management of the criminal justice system in terms of exercising discretion.

Even though discretion embodies the process of certain jurisdictions, its fundamental basis is explained by sociological and legal features of each of the organizations of the criminal justice system. In short, this paper focuses primarily on what factors should define discretion as well as how and why it becomes more complex for law enforcement, the courts, and the correctional system. This paper also discusses and analyzes the existence of some avoidable impacts on discretionary justice in each of the organizations accordingly.

What is discretion?

The term discretion is officials' power or right of decision making based on personal judgment when used with the criminal justice system. "Discretionary decision making and the nature of process by which legal agents structure and manage their handling of persons and events have become central concerns in recent studies of the criminal justice system" (Pogrebin, 2003:94). The main reason for this concern is that the exercise of discretion is extended. In other words, extensive exercise of discretion is inconsistent with the symbol of the due process model. Whereas discretion is founded by personal judgment of law enforcement in certain circumstances, due process requires established rules for fairness in context of the criminal justice system.

Feely (1992:26) notes that "...the adversary process presumes complete combat between the state and the accused." Peculiarity of those conceptualizations becomes a question of what is the consequence of their conflict? Although many types of responses may come from this, invisibility within the criminal justice system is more likely to be increased. On the other hand, the possibility of unjustness will increase within the problem of discretionary justice.

From one point of view, discretion is inevitable because there is a certain reasonableness that exists in the discretionary decision making of the law enforcement process. William B. Waegel (1979:94) notes that "discretion is an irreducible element in the behavior of legal agents. [For example], in police work, as in other socially organized activities, members do not always have a set of formal rules which provide an adequate decision

making base for organizing their conduct". However, critics in the criminal justice system are concerned with discretion because of discrimination.

Discretionary justice can be determined by both external and internal reasons in the context of the criminal justice system. Since every organization of the criminal justice system constitutes its own organizational structure as well as develops institutional features within their duties, the exercise of discretion is embodied differently by criminal justice officials in their occupational settings. In other words, the essence of discretion is explained by more internal factors of the criminal justice system.

Even though external factors of discretion, such as legislation can be a major stem in the exercise of discretionary decision making, internal factors, such as characteristics of officials, their beliefs, and attitudes to professionalism, are more powerful factors to the unequal as well as the discriminatory justice. Therefore, in order to better understand how discretion becomes complex within all components of the criminal justice system and why discretionary decision making is vulnerable to be discriminatory and oppressive, it is best to study officials' "behavioral characteristics of the occupational culture" in each area of the criminal justice system (Pogrebin, 2003:66). Establishing the dimension as well as existence of discretion, both scholars and practitioners should recognize the appropriate regulation of discretion.

Discretion in Law Enforcement

Since police are considered the most visible element of the criminal justice system, it may also seem that police discretion is more visible than prosecutorial and judicial discretions. Police discretion, however, would be more visible than other criminal justice institutions' discretion. The problem of police discretion is not whether or not it is extensive or narrow. Rather, it is important to recognize the reality of police discretionary behavior and identify how such discretion contributes to unequal justice. To understand these significances of police discretion, it is best to analyze "police culture". Professor Mark R. Pogrebin (2003) lectured that it is vital to look at every single ethnic group's culture if you want to understand the socialization or dark side of a social group. In other words, if police culture seems understandable to you, it would be supportive to discuss and analyze every stage of police work.

However, "police culture is at once more complex and elegant than suggested by a focus on dark elements of policing, such as corruption.

testimonial deception, and cynicism" (Crank, 1998:14). Crank also states that "culture is diffusion of the work-a-day world in which ways of doing work become habitual and habits become meaningful" (1998:14). Police culture, on the other hand, is occupational as well as socialization activity. Because of those reasons, police discretion, specifically policemen's discretionary behavior becomes more and more consequential in the criminal justice world.

The important aspect in this consideration is to determine how much police discretion renders the criminal justice system unjust or arbitrary'. Before discussing the main factors of police discretion as mentioned in the introduction (administration, management, and law), this position of the paper will present internal elements of police culture in light of the purposes of law enforcement.

Police work consists of certain kinds of rules, behavioral as well as professional norms, and a powerful authority. Generally, police are considered the closest organization to the community than other components of the criminal justice system. Police work is seen as the most dangerous as well. On the other hand, "police are expected to behave objectively and fairly as instruments of the law" (Crank, 1998:59). Despite those perceptions regarding police work, police enforce laws with discretion in order to maintain order and prevent communities from offenses. Police culture contains five aspects (danger, authority, secrecy, solidarity, and isolation) in the police occupational as well as socialization setting. Those cultural perspectives are helpful to better understand police discretion because such factors determine the themes of police culture.

Even though police are the most visible element of the criminal justice system, why is the "cop thing" not understandable to the community? On the contrary, cops know many things and they "know when a law is broken..." (Crank, 1998:56). They confront with the criminal facts, such as in dangerous situations and messy events. Because of professional features, "policemen generally view themselves as performing society's dirty work. As such, a gap is created between the police and the public" (Pogrebin, 2003:66). This suggests that it would be hard to recognize how police officers utilize their authorized power and act in certain circumstances according to personal judgments. John Van.Maanen (1973) stated that "in recent years the so-called 'police problem' has become one of the more institutionalized topics of routine conversation in this society" (Pogrebin,

2003:66). Although the police problem encompasses certain issues, officers' discretionary decision making is a vital concept both theoretically and practically in the context of the criminal justice system. Since the purpose of this part of the paper is to explain the casual connection between police discretion and police occupational elements, some features of the police cultural theme are presented subsequently.

By maintaining order and fighting crimes, police work is risky. Crank states that "danger is a central theme of police work" (Crank, 1998:106). Furthermore, danger is related to unpredictability. For police officers, it is important to recognize the real likelihood of danger when they perform their daily tasks. Pogrebin and Eric D. Poole (1988:87) state in "Humor in the Briefing Room" that "police are expected not to show fear in dangerous situations.

Pogrebin and Poole (1988:80) state that "through humor, patrol officers relate and interpret work experiences to reinforce their own perspective of policing". Police officers expect real police work even if the working environment is dangerous. Crank notes (1998:117) that "real police work engages the vital self, invokes a warrior's dream to make a difference in the battle against crime". However how does this police culture theme link to the police discretionary decision?

Police cultural elements, such as danger and situational uncertainty, are not direct factors of police discretion. However, because these statements are drawn from police occupational setting and professionalism, those themes of police culture contribute to the police behavior. In other words, for police officers, professionalism is one of the influential factors of how to operate discretion.

Even though every single crime is determined by criminal statute, a dangerous situation, for instance, of when a crime is being committed by offenders is determined by police officers' "special skills that derive from their unique experiences and enforcement training" (Crank, 1998:87). As Pogrebin and Poole (1988:88) note, "...police officers are expected to maintain a poised presence even under the most tragic circumstances". It suggests that police officers' discretionary decisions are based on their professionalism. This is more clearly viewed when police officers encounter incidents of victimless crime. The professionalism of police is relatively related to the administration and management of the police organization in the exercise of discretion, but it will be discussed later.

The theme of solidarity that frequently follows secrecy is another important element of police work. The solidarity of police is a social and occupational phenomenon. It implies both good and bad aspects in the police world. The good thing is that police officers can constitute positive perceptions regarding their duties and occupation. Conversely, the bad part of solidarity is that "police believe themselves to be a distinct occupational group, apart from society" (Crank. 1998:221). From this perspective, solidarity can be an influential factor to the "dark side of police culture, frequently described in terms of corruption, secrecy, and brutality against citizens" (Crank. 1998:40). The issue for consideration in this case is that police officers discretionary decision making is more likely to be less controlled under certain circumstances. For example, Pogrebin and Poole (1988:89) state in *A Study of the Strategic Uses of Humor Among Police* that "... if police perceive that a suspect who they feel deserves punishment is unlikely to be prosecuted or convicted, they may impose 'street justice' (e.g.. verbal or physical abuse)". From this statement, two objectives are a result of police exercising discretion.

First, police officers' efforts for their duties that rely on solidarity show subjective sense. In other words, they isolate themselves from the public. "Cops firmly believe that the public doesn't like them" (Crank, 1998:221). Therefore, police officers' discretionary decision making likely depends on how individual citizens act and treat them in a particular situation. This probability becomes clearer in the terms of proactively policing because "police must develop their own sources of information to discover crime" (Crank, 1998:245). When police officers proactively enforce laws, such as gambling and prostitution, discretion is highly exercised.

The second objective element is police secrecy. It suggests that police officers' beliefs as well as tactics are secretive even if their work is visible. It is not a police professional tactic to be used to detect crime. Instead, it is police's sophistication in law enforcement activities. On the other hand, secrecy somehow helps "cop's" work and "protect themselves from departmental directives and public oversight" (Crank, 1998:222). Nevertheless, secrecy produces a foundation of uncontrolled and unauthorized power; otherwise, "they [mostly] choose to stay invisible and avoid trouble" (Crank, 1998:223). Ultimately, the professional behavior of police is becoming a mystery day-to-day on their duty. Secrecy is not a direct effect to unequal discretion approach in the criminal justice system.

but it cannot guarantee appropriate discretion. As long as police officers are not known by the public, they are likely to be initiators of discriminatory acts as well. Police work is very susceptible as well as powerful. Pogrebin and Burton Atkins (1979:61) stated in *Some Perspectives on Police Corruption* that the police "officer is the object of conflicting standards because the community desires police officers who will not take bribes yet also wants to bribe them". It suggests that the consequence of police corruption creates cynicism between law enforcement officers and the public. Similarly, a gap between police and the public that can be drawn from too much secrecy generates pessimism; then, that circumstances would be vulnerable to brutality or to be abused. On the other hand, all of these cultural elements develop professional behavioral concepts in police work. As a result of this, police officer's discretionary decision making would easily create severity in criminal justice procedures.

Despite these internal elements of police organization, the use of police force is a significant factor to examine the exercise of discretion. As above mentioned, police officers' power and authority to use the uniform and access to a weapon are part of their occupational presence. "A cop uses force in the street because it does the job, solves a problem" (Crank, 1998:65). However, police officers may use force emotionally when they perform their duties. As Rubinstein (1973) notes, wearing a uniform and a badge, an officer says "who is gonna give you any trouble?" (Crank, 1998:63). From this report, police force as well as discretion needs to be controlled for the purpose of due process. Police power embodies deterrence as quite personal based on concrete exercise of coercion.

The main factors of the discretionary decision in police work are a lack of administration as well as management, and the ambiguity of the rules governing the law. For administration, the police are a paramilitary organization. Enforcing laws against criminals, the paramilitary police organization encompasses good as well as bad aspects in their occupational settings. Nevertheless, the concept of organization is somewhat arbitrary. Even though this can be explained by various reasons, the significance for police discretion is related to management as well as lack of administrative control. Management of police administration creates a suitable structure for police. Although the police are a visible form of the criminal justice system, in reality, because of various reasons, police are isolated from the public. Community policing is the significant concept to solve a contemporary

problem of the police organization. Obviously, community policing has its negative sides; for instance, police officers are more likely to be involved within the communities. This means that cops frequently become familiar with troublemakers and engage in friendships or any close contact. This circumstance negatively contributes to their performing their duties. The good thing in community policing is that police can be close to the community. "Rural police may have relatively less discretion because their work is more visible to the public" (Pogrebin, 2003:131). It suggests that as long as police are visible and close to the community, they would require less discretion: then justice would be dealt fairly.

Another factor of discretion is the ambiguity of the law as well as an untrustworthy legal system. Police are seen more conservative than other institutions. Cops factually know how offenders commit crime. They also feel how law violators act toward officers, specially, in domestic disputes. However, the laws and rules cannot fully regulate every single action and behavior according to Pogrebin and Poole's (1988) ethnographic study. *Humor in the Briefing Room*, which presents one fellow officer's expression on a domestic call. The officer felt in the domestic dispute that the woman had acted immorally as well as having a violent demeanor even as she demanded the police to protect her. Even though the woman factually violated an order, the judge decided to ignore the court order. From this story, the police officer could not bear this kind of a situation. The officer said that he "would have her arrested for drug use" (Pogrebin and 2003:89). Therefore, the police are more likely to prefer street justice when they believe the legal system is untrustworthy.

Discretion in the Judicial System

The most important thing in the legal system in every society is to apply the law correctly. The court system is one important organization of the criminal justice system because the role of discretionary judgment increases in prosecutorial decision making processes. The chief feature of this system is that laws must be correctly applied as well as interpreted based on the principal of the United States' Constitution. On the one hand, in this system, due process is more demanded for individual citizen's constitutional rights. On the other hand, conflict between the due process model and the crime control model must be sharper.

In the current era, "[t]he discretionary process of decision making of whether to prosecute a case or not and decisions affecting guilty pleas

remain controversial" (Pogrebin. 2003:155). In the court system, both prosecutorial and judicial roles of discretion are high as well as adversary. The exercise of discretion is implemented by how a prosecutor charges the defendant or does not charge. For judicial discretion, the judge decides whether a defendant is admitted to bail and whether to grant or deny trial motion. The most concern in this area of the criminal justice system is plea bargaining because over 90 percent of criminal case are decided in this way (Pogrebin lecture. 2003:3). Whether or not plea bargaining is legal and immoral, it is a relatively major element for the courts now a days. In addition, a discretionary decision is considered inevitable as well as a complex issue in the administration of criminal justice. As William B. Waegel (1979:94) notes, "discretion is an irreducible element in the behavior of legal agents". However, control is necessary in the prosecutorial discretionary process in terms of the legality and morality. In other words, discretion acts as a "salt" of meal if it exists under the law.

If discretion is not controlled, it would produce inequality, discrimination, and oppression in the administration of the criminal justice system. In large part, the inconsistency of discretionary justice makes the legal system unjust in society. Since this topic is relatively broad and contradictory in the contemporary legal system, this part of the paper focuses primarily on the plea bargaining process, including the exercise of other discretions by judges, prosecutors, and defense attorneys.

The Fifth and Fourteenth Amendments to the United States Constitution require that the government treat citizens fairly. Under this constitutional concept, all organizations of the criminal justice system must strictly follow every rule governing the law. To follow this statement, judges, prosecutors, and defense lawyers confront the certain obstacles that are drawn from concrete circumstances when they deal with the criminal process. Those obstacles create informal processes and expand discretionary decisions within the courts. All of participants in the criminal courts are challenged when performing their functions because officials, like any other organization, want to achieve their goals.

Prosecutors' discretion is explained by plea bargaining. In other words, even though prosecutors in their discretion can decide whether it is necessary to charge defendants or not, their discretion is prevalently embodied in the informal plea bargaining process. When discussing plea bargaining, David Sudnow (1965) stated, "If you plead guilty to this new

lesser offense, you will get less time in prison than if you plead not guilty to the original, greater charge and lose the trial. It suggests that plea bargaining is beneficial for the accused; however, its reasonable factors seem visible low. As a result, questions abound, such as what are the factors that contribute to plea bargaining? How does plea bargaining cause inequality in terms of discretionary justice? What are the advantages as well as disadvantages? Is there a guarantee that individual citizen's constitutional rights are not violated?

According to research articles presented in *Qualitative Approaches to Criminal Justice*, there are several reasons to use the plea bargaining model in the prosecutorial process. First, plea bargaining is considered beneficial for avoiding a costly trial and relieving the prosecution of burden. Obviously, in recent decades, crimes have been dramatically increased, and prisons are becoming overcrowded. Because of this simple reason, prosecutors prefer plea bargaining in their prosecutorial decision making. On the one side, it is obvious. On the other side, however, it implies that it is an informal process.

Conducting research about prosecutors' adaption to plea bargaining. Milton Heumann (1978) states that new prosecutors do not prefer plea bargaining, but soon they begin to learn about plea bargaining. It simply suggests that plea bargaining is an informal process; it is only driven by practice. Nevertheless, after a while, new prosecutors allow plea bargaining because of the criminal case's seriousness. Heumann notes that "in the serious case with factual or legal defects they felt very strongly that plea bargaining was appropriate" (Pogrebin, 2003:213). Therefore, it says that case-load is not the only certain reason for plea bargaining, but the defendant's guilt is also another reason.

The issue in these findings is that the plea bargaining draws from prosecutors' subjective considerations. In other words, since prosecutors' discretionary decision making for plea bargaining is so subjective, it is easy to be abused for political and economic interests. In short, it is hard to control prosecutors' discretion in this stage. Plea bargaining may cause inequality in prosecutorial discretion. Who wants plea bargaining? Probably, defendants who come from lower level social classes or indigenous offenders follow prosecutors offer to plea guilty because those defendants can gain benefit from the negotiation of plea bargaining.

Another basis of plea bargaining is a weak case. Prosecutors believe that defendants are guilty before the case is discussed in the courtroom. In Heumann's research, one of the prosecutors responded that:

I like to negotiate cases where I have a problem with the case. I know the guy is guilty, but I have some legal problem, or unavailability of a witness guy is guilty, but I have some legal problem, or unavailability of a witness that the defendant doesn't know about that will make it difficult for us to put the case on. I would have trouble with the case. Then it is in my interest to bargain; even in serious cases with these problems, it is in the best interest of the state to get the guy to plead, even if it's to a felony with a suspended sentence. (Pogrebin. 2003:213).

As the prosecutor said, if the defendant is really factually guilty on his admission of crime, the prosecutor's discretion is inevitable in terms of the state's interest as well as the crime control model. However, this circumstance cannot always be true. There are two critical points based on prosecutorial discretion.

First, the term "weak case" creates a critical component in the context of the criminal process. In reality, prosecutors cannot be firsthand and confidential witnesses for a crime occurrence compared to police officers. Even police officers cannot always be eyewitnesses to the defendant's factual guilt for a particular crime. Prosecutors' beliefs are less reliable to factually know if the defendant is guilty. Perhaps, prosecutors know that a person is guilty, but this knowledge must come from evidence. Therefore, the meaning of a "weak case" is inconsistent with prosecutors' subjective consideration. As Lisa Frohmann (1990:160) notes, "the promotion policy of the county district attorney's (DA's) office encourages prosecutors to accept only "strong' or 'winnable' cases for prosecution by using conviction rates as a measure of prosecutorial performance". By this fact, it seems that prosecutors possess discretion to achieve individual goals in the prosecution process. On the one hand, prosecutors' discretion is possibly abused by their professionalism as well as their success in the case. On the other hand, prosecutors' discretionary decision making of plea bargaining on the face is antagonistic with the constitutional principle - innocent until proven guilty. Practically, officials prefer to support the state's best interest based on the crime control model, which is very important but how to avoid an unjust system. The main measure would be in this plea bargaining the question-who pleads guilty?

The second critical idea in the prosecutorial decision is that there is inconsistency between the exercise of discretion for plea bargaining and the demand of the laws. Logically, discretion is used by officials when there is a lack of law or when personal judgment is necessary. Because of this reason, the law must be clear and accurate in its language. If there is any vague meaning, it would be discussed and interpreted. Instead, plea bargaining is obtaining the feature of the market day-to-day. Malcolm M. Feely (1992:188) notes that “there is a kind of ‘plea market’, so that a case which has been vigorously bargained over or decided at trial can establish a new going rate’ for all subsequent similar cases”. In short, if someone asked why plea bargaining occurs, the response would be because of bargaining interest, not the law. The law is the second consideration, but prosecutors’ discretionary decision making can increase the inequality in the courts.

Feely (1992:188) notes that “in classic plea bargaining, defendants attempt to secure reductions of charges or guarantees of reduced sentences in exchange for their pleas of guilty”. In reality, negotiation of the plea bargaining process is between prosecutors and defense lawyers. Even though a defense lawyer is supposed to protect his or her client based on the law, plea bargaining shows the difference between “private-and public-supported criminal defense lawyers and their clients’ attitude toward each of them” (Pogrebin, 2003:171). This means that to nolle or to reduce the charge depends on who the defendant is.

Indigent defendants lack the opportunity to have their rights defended in court. From one side, an indigent defendant lacks litigation in the process in court. From the other side, the public defender forfeits the effort to secure the client’s rights. Indigent defendants typically are lower class and racial and ethnic minorities. Those circumstances generate the possibility of discrimination. During an interview, Robert who was a public defender said that “...if the defendant is truly indigent, that’s not something you can do for him... You can’t present that” (Pogrebin, 2003:196). Sudnow (1965) stated that “... the system of providing ‘defense’ to indigent persons described above is not representatives of criminal defense work generally”. In practice, every plea bargain cannot be classic; therefore, it may generate an arbitrary view within the criminal process.

Despite the plea bargaining process, in court, judicial discretion is exercised through the judge’s decision to suspend sentences, release on probation, or to admit bail. “Sentence is still formally set by the judge, but

usually prescribed by the prosecutor” (Feely, 2003:31). Nevertheless, judges are “key courtroom actors in securing guilty pleas” because the whole criminal process - from arrest to sentence - shows “the contrast between social discipline and a crime control system based upon factual or legal guilt” (Pogrebin, 2003:249). However, a judge's discretion seems more complex than police and prosecutors' decision making.

The main reason is that the judge's decision is the final decision to determine the fate of the case. Because a judge's discretion is more individualistic, the public can see how the judge imposes the sentence on a particular defendant. Logically, as long as discretion is free of the law, there would be higher risks of discretion to produce unfairness. For the judge, there is great opportunity to use the sentencing arrangement. Even if it is a flexible justice, the judge's discretion would be the biggest problem in court. Perhaps, the judicial discretion directly depends on who the judges are. For example, the following cases display a judge's decision.

The public condemn that judges focus more on upper and middle class individuals' cases, such as white-collar crime offenders compared with poverty and uneducated people's prosecutions. This compares two young women's murder cases. Rose Marie Dinkins, “a twenty-three-year-old black woman, was arrested for killing two policemen...” and was sentenced to two concurrent life terms in prison without any stipulation (Watterson, 1996:26). Another woman, Heidi Fletcher, a twenty-one-year-old white woman, whose father was former deputy major of the district, was sentenced “to a maximum of nine years in prison, with the possibility of release any time before then” (Watterson, 1996:26). This disparity of sentencing suggests how judges can make decisions based on their perceptions. The judge's discretion dimension is more controversial than that of police and prosecutors.

Corrections

In recent decades, crime rates and statistics of prison population have rapidly increased. As a result, prison systems have been expanded. According to statistics (U.S Department of Justice Office of Justice Program), during 1971-2001, from 1.8 to 5.6 million adults had been imprisoned (Pogrebin lecture 2003, 11.17). However, many researchers and critics have been concerned that the expansion of prison systems over the past decades has had no impact on crime. Rationally, correctional system officials' work-load is increasing.

Since prison is a special institution in the criminal justice system. - correctional officers' working condition, prison policies and rules are main factors to define the discretion of prison administration. Because of institutional purpose as well as obligation, discretionary decision making may generate the likelihood of abuse for inmates. The administrative authorities are determined by organizational purposes and policies. The correctional system carries out rehabilitation and incapacitation models. Stan Stojkovic stated that "rehabilitation was not why the prison was built; rather, it was intended to make prisons more manageable" (Pogrebin, 2003:274). In other words, correctional officers are not concerned with prisoners' rehabilitation. In short, the discretion of prison administrators is directly related to the prisoners' rights, relations between correctional officers and inmates, and specific rules of the prison. From one side of the issue are the prison's security systems and discipline procedures; from the other side. The abuse of prisoners' rights, immoral attitudes of correctional officials, and drug contrabands are reasons for the exercise of discretion as well.

Correctional officers' aspects of their work create problematic issues in this field. Their working environment is relatively hard and "correctional officers partly adapt to the prison system by taking on the traits attributed to them by others" (Pogrebin, 2003:275). According to correctional officers' explanations, having reduced discretion, prison officers are neglected by prison administrators. As a result, this systematical problem exists in entire correctional institutions. The chief concern in this field is does discretion in prison generate inequality or maintain order?

At the administrative level of the prison, inmates' rights and demands are important. This is a necessity that is supposed to be addressed in policies and practices. Imprisonment encompasses various pains. Those pains "can create more prison management problems than [they] solve" (Johnson, 2002:61). "Sykes argues that imprisonment, by its very nature, deprives liberty, limits, goods, and services, deprives or at least sharply reduces access to heterosexual relations, and limits both autonomy and security" (Johnson, 2002:63). As a natural law principle that demand follows supply, the pains or deprivations of prisoners provoke illegal actions as well as corrupt the inside of the prison.

"The first deprivation of imprisonment is the loss of liberty" (Johnson, 2003:63). It is clear to the letter of the statement. Prisoners must follow prison rules or maintain prison order. From this provision of inmates.

there is another relation between prisoners and officers. For example, "as one officer stated. 'Phone calls are really important for guys in this place... you cut off their calls and they get pissed. So what I do is give them a little extra and they are good to me'" (Pogrebin. 2003:278). Conceivably, situations like these are common in prison life, but it recommends that officers want to maximize as well as demand respect in their occupational setting. Based on this logic, many kinds of crime are committed. Similarly, correctional officials create pleasant conditions for themselves.

"The second deprivation is that of goods and services" (Johnson. 2002:64). This is important to examine in the context of prison culture. Deprivation of goods as well as services can be the foundation of many problems among incarcerated offenders. As in the example where inmates "are the ones involved in spud [alcohol], dope and sex...they don't give a shit about nothing and have been state raised so they know nothing but prison" (Pogrebin. 2003:278). This is a problematic issue for officers. As a result of the deprivation of goods and services, underground economies, such as special food, cloth, and drugs, are provided by many kinds of resources. Since the lower staff spend a lot of time in prison and enforce all prison rules, they play a major role in simulating inequality drawn from the necessity of goods and services. In other words, correctional officers have an enormous amount of discretionary power.

The next pain of imprisonment is related to sexual deprivation. "Sykes notes that the pains of heterosexual frustration go beyond physical discomfort and entail psychological pains that call into doubt the gender identity of the lonely convict" (Johnson. 2002:65). Officials consider that today's prisoners "suffer less sexual hunger than their counterparts from earlier years" because of the increase conjugal visits (Johnson, 2002:69). Nevertheless, this type of deprivation produces homosexuality as well as abnormal relationships between same sex inmates and sexual abuse. "Correctional officers justified their treatment of inmate sexual activities as normal..." (Pogrebin, 2003:282). This attitude of correctional officers suggests sexual abuse exists in contemporary prison systems. In other words, the administration of the correctional system has adopted this problem.

Prisoners suffer deprivation of autonomy. The prison is a difficult place. Obviously, it is a challenge to delicately balance the many sophisticated and hard-core criminals (there are even many first as well as short term inmates) with a small number of officers charged with keeping

peace and enforcing the rules. Most correctional staff condemn that the prisoners' rights are enhanced and officers' discretion is reduced. In reality, this issue of deprivation is more complex than others. The reason here is because the most important purpose of the correctional system is to control prisoners. It is directly involved in categories of sentencing goals, which are incapacitation and deterrence. Largely, it is a kind of requirement of the administration of the criminal justice system. And this deprivation is explained by prison rules. However, the issue in officers' discretionary power is as to whether or not the rules are evenly followed by every inmate.

The last deprivation that inmates suffer from is a loss of security. This generates enormous problematic issues in the administration of the criminal justice system. Although this concern requires broad interpretation in the context of the justice, there are two basic grounds contributing to inmates' security or lack of security.

First, prisoners themselves create aggressive behavior as well as oppressive actions. Physical and psychological abuses are potentially high in prison. As long as inmates are incarcerated, prisoners gain aggressive behavior in prison even if they had already obtained some degree of aggression. Because of many reasons, such as to gain privilege, prisoners oppress and abuse one another. Prisons have become more difficult and potentially dangerous places than in previous decades, because of the "prison new generation" (Pogrebin, 2003:309). In contemporary prison, gangs increase extortion, intimidation, violence, and drug contraband. The impact of trouble among gangs influences the prison staffs exercise of discretion. There is almost no regulation of discretionary power for correctional officers.

Second, correctional staffs generate risk to prisoners' security. Discretion is exercised by correctional officers for many reasons. Officers using their discretionary power threaten inmates. Inside the prison environment, in other words, proves how constitutional rights are symbolic for inmates. Discrimination exists among the prisoners as well as the staffs attitude toward inmates. Using their power of authority, correctional officers produce the unequal and unfair practices in prison. What factors encourage gang behavior? Hunt (1993) found three reasons why guards create uneven positions in their occupational setting.

First of all, guards make money. Their salary is low and, as earlier mentioned, they are neglected by the administrators. In short, their monetary

interest encourages gang behavior. An example would be "if there are gangs, and there are associations, if there is some threat in that focus of security, they make more money" (Pogrebin, 2003:304). What is this saying to us? This cautions that concrete circumstances require controlling the use of discretion in the correctional system.

The second reason is related to a non-financial interest of staffs to encourage gang behavior. Like other people, prison guards have friends and relationships. They sometimes may be confronted with the dilemma to refuse to help inmates illegally because of such reasons. "Guards [sometimes] bring knives in, weapons, food" (Pogrebin, 2003:304). However, who would receive those things in prison and what would happen? Of course, abuse and oppression emerges among the inmates.

The last reason is totally linked to the control of inmates. Guards "encourage gang activities...in order to control the prison inmates more effectively and 'keep the peace out of prisons'" (Pogrebin, 2003:304). Practically, this technique widely spreads throughout correctional facilities. As a result, physically weak inmates are oppressed. Possessing extensive discretion, correctional officers are supposed to provide equal rights for inmates in order to achieve institutional goals. Unfortunately, inside prison life, correctional officers demonstrate that corrections work is not only regulated by due process as well as rules of the law, but it is also exercised by their extensive discretionary power. Therefore, the issue of the control of discretion may determine whether correctional officers' job performance increases pain to prisoners or not.

Discussing discretionary decision making in one area of the criminal justice system, an important question arises. Although success of the correctional system exists in the criminal justice field, it is important to recognize what factor negatively contributes to the ultimate goal of correction work. The question, then, is what category of the sentencing purpose is dominated in the prison system. The term rehabilitation is one of the categories of the sentencing purpose. Some scholars may believe that rehabilitation is the most important for inmates. Johnson states that "our prisons today are typically called correctional institutions, which implies that the rehabilitation of prisoners is their main agenda" (Johnson, 2002:10). In reality, it seems that offenders are incarcerated as a means of incapacitation. When the parole board's extensive discretion is exercised, parole decision makers examine whether or not there is rehabilitation in prison. The primary

reason in this stage of the criminal justice system is to determine whether or not an inmate is ready to be released as well.

In short, parole board members' decisions rely on inmates' good behavior, including current and prior offences, and inmates' progress on how they have been rehabilitated. Using various kinds of criteria, parole board members review inmates' information and make decisions whether to grant or deny parole. Mary West-Smith (2000:352) states that "inmates believe that completion of treatment requirements and good institutional behavior is primary criteria the parole board considers when making a release decision". Even though parole board members focus primarily on how inmates are rehabilitated by punishment, as West-Smith notes, board members decisions are broadly subjective as well as constitute inconsistency with real rehabilitation processes. "Many Americans endorse the idea that prisons should rehabilitate offenders, "but it is fairly altered when offenders are imprisoned. Normally, "prisons are human institutions, and as such they are as good or bad as we make them" (Johnson. 2002:10-11). If it fails to rehabilitate inmates, it would create recidivism; otherwise, correctional officers' extensive discretion may be utilized for generating brutality in prison.

Conclusion

Discussion of some indicators within the criminal justice system does not present all of the factors as to how discretion is exercised in all areas of the criminal justice system. The primary goal of this paper is how discretionary justice causes consequences within the criminal justice system. The impact of discretionary justice would determine whether discretion in all three areas of the criminal justice system is appropriate or not. In other words, if there are many problems in the criminal justice organizations, discretion would be a major indicator of such problems.

On the other hand, discretion itself requires certain circumstances. If there are suitable circumstances that directly link to officials' duties, discretion produces fewer violations to due process. Circumstances may derive from legal, social, and administrative factors. For example, "The strategic use of 'jocular aggression', Pogrebin and Poole [1988] argued, allowed lower-level personnel in a department to collectively and acceptably counter disagreeable policies and regulations" (Crank, 1998:270). They explored how police officers express their distaste with administrative management, policies, and rules through humor.

One case story follows:

The new sergeant was obviously fatigued from attempting to be with his patrol officers at every call. He was seen as constantly invading officers' territory and interfering with the tactics each officer had developed for handling interactions with suspects and citizens. Jocular aggression was abundant that night, as evidenced in the remarks of one officer during debriefing: (Crank. 1998:271)

Hey. Sarge! Where were you when I got that call on those bikers' loud music compliant over on the east side? I figure you could have made it there if you used your lights and siren. It was only about five miles from where you were. Hell, if you ran hot at 90 miles an hour, you could have been there to help me. (Pogrebin and Poole. 1988:193)

The meaning in depth suggests that if law enforcement officers feel the law as well as the administrative regulation is inconsistent with real work, they make their decision according to their experiences. As in the above situation, the individual circumstance can be a fundamental factor of discretionary decision making. The impact of the decision is either right or wrong. Due to these reasons, the control of discretion has to be balanced.

For the courts, generally, the outcome of criminal prosecution and sentencing are the efforts of all the participants within the criminal justice system. Discretionary power at this stage is exercised through plea bargaining, which is more visible as well as prevalent. Even if an individual citizen is still provided constitutional rights through due process, plea bargaining maximizes administrative authority. Logically, it generates an absence of regulation as well as control in the exercise of discretion. Perhaps, plea bargaining is beneficial for prosecutors. It may be considered to maintain crime control as well. However, it is not absolutely true. Indeed, discretion in plea bargaining creates cynicism between the public and the criminal justice system. If a researcher interviews a middle or upper class person regarding plea bargaining, he or she might respond that plea bargaining is necessary as well as useful. Conversely, he or she never goes to plea bargaining.

Within the correctional system, management needs to alter the cynicism between officials, especially, lower level staff members and the administrators of the system. If the criminal justice system maintains fairness, officials cannot achieve their primary goals even if they access high technological devices. Ultimately, the criminal process as well as

correctional work is a human relation. The public feels discretionary justice exists, whether it is fair or not, even if it is visible or invisible.

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