

**An In-Depth Look at Police Discretion: A Study of Police in
Helena, MT**

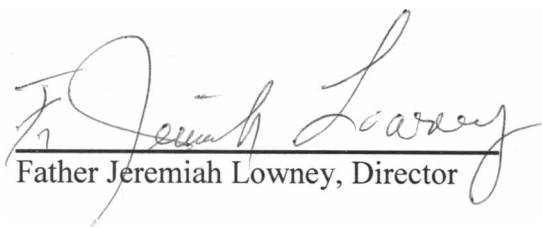
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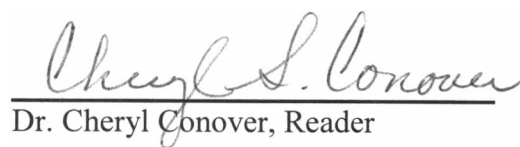
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Abstract

This paper examines the concept of discretion and how it functions within the criminal justice system. Specifically, this paper looks at the history of police discretion, and current definitions of discretion.

In addition, several theories are examined in cases where they apply to the use of discretion by police officers. The factors involved in decisions made by police officers every day are outlined and the importance of each factor and the effect it has on police discretion are looked at and evaluated as well as the importance of police discretion and its affect in the field of police work, with a closer look at its use in juvenile cases and its application and effect in Helena, Montana.

Case studies involving first hand accounts of the use of police discretion by Helena City Police Officers are included. Finally, the results of a citizen survey and an officer survey are included in the paper. The citizen survey gives an overall view of the opinions of Helena area citizens on the police in Helena. The police officers survey gives an overall view of the opinions of the officers on their and other officers' use of discretion on the job.

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BACKGROUND RESEARCH

History of Police Discretion

The American Bar Foundation is credited with discovering the topic of police discretion in 1956. Prior to 1956, the idea of police discretion was not studied because police officers, sociologists, and society did not acknowledge it (O'Connor, 2004).

Others claim that Joseph Goldstein (1960) "discovered" the use of police discretion in 1960. He first observed discretion in cases where the law and its proposed consequences were clear and there was ample evidence to prosecute. In addition, Goldstein's description of discretion deemed it acceptable for police officers to deviate from the "letter of the law" in those cases where they felt alternative consequences were in order (Landau, 1996). Goldstein's (1960) findings regarding police discretion led to the investigation of "police deviance" and ways of controlling such deviance by increasing the level of professionalism in all areas of police work (Landau, 1996).

Definitions of Police Discretion

According to Ronald Dworkin and H. L. A. Hart, discretion is defined in two ways. The "doughnut theory" describes discretion as "the hole in the doughnut." The outside of the doughnut is represented by all of the standardized policies and procedures officers are required to follow, and the hole is the area where there are no hard and fast rules to follow. The second definition given by Dworkin and Hart is the "natural law theory." The "natural law theory" describes discretion as "where the law runs out"

(O'Connor, 2004). "Discretion is not doing as you please"; it is bounded by norms of many kinds.

Kenneth Culp Davis gives an alternative definition of discretion (1969). He argues, "discretion is the making of choices among a number of possible courses of action." This definition includes the use of discretion in the areas where rules are clearly set forth, not just in the unexplained or undefined areas beyond where rules no longer apply (O'Connor, 2004).

The act of using discretion can include many different aspects such as using judgment or discernment. Using judgment would require moving away from "routine and habitual obedience" while being discerning means using common sense or wisdom. Discretion also involves the presentation of choices where police officers are then required to use their personal preferences and tendencies and to make a decision (O'Connor 2004).

Further, the Bureau of Justice Statistics Criminal Justice System¹ describes discretion as "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience." The BJS recognizes that discretion is used in all forms of government, varying by jurisdiction.

Because it would be impossible for a legislative body to outline every possible circumstance an officer or other official could be presented with, they rely on the discretion of the officials to take over when the law is no longer applicable. These situations lead the official to first, take action; second, to determine "where the situation

¹ Bureau of Justice Statistics Criminal Justice System will be referred to as BJS throughout the remainder of this paper.

fits in the scheme of law, rules and precedent”; and third, to determine “which official response is appropriate” (Department of Justice, 2004). This sort of discretion is always left up to professionals to guarantee the discretion is used responsibly.

In an article entitled “Law Enforcement and the Rule of Law: Is There a Trade-Off?” David H. Bayley states, “when police violate the rule-of-the-law they do more harm than good with respect to their collective and personal interests” (2002:133-154). He argues that this idea opposes those who presume that the practice of “cutting legal corners” by police is in the best interest of the public safety.

Types of Police Discretion

Richard K. Wortley (2003) outlined two different ways officers perceive police discretion. The Service-Legalistic scale uses a “flexible-inflexible continuum.” Officers who are Service-oriented tend to see police discretion as a way to “help solve social problems.” Service-oriented officers also tend to not see crime as problems caused by individuals. On the other hand, officers who favor the Legalistic approach feel that discretion impedes their duty to apply the letter of the law equally to all citizens.

Officers who favor the Watchman scale see discretion as a way to “maintain control.” These officers may overlook minor offenses so they can use a greater amount of time and power to combat those who commit serious crimes. Unlike the Service-oriented officers, Watchman officers see crime as caused by individuals. In addition, when Watchman officers use discretion it involves the application of “authoritarianism and ethnocentrism” (Wortley, 2003).

Factors involved in Police Discretion

Numerous factors could affect an officer's discretion. These factors are generally separated into offender-related variables, situation-related variables and system-related variables (O'Connor, 2004).

The most important factors to be looked at when examining offender-related variables that can affect police decisions are demographics such as age, race, gender, and socioeconomic status. In addition to the demographic-related variables, the officer can take into consideration the suspect's 1. demeanor, 2. mental health status, 3. attempts to resist arrest 4. attempts to obstruct justice, and 5. prior criminal record (Mays and Winfree, 2000).

Situation-related variables that can affect an officer's decision when dealing with a suspect include the seriousness of the crime, the use or nonuse of a weapon, and the type of property or victim harmed. In addition, the presence of an audience, witness, or media crew may influence the way an officer handles a situation. Finally, officers may be apt to care more about a crime they uncovered rather than a crime brought to their attention by a member of the public because crimes uncovered by police are usually more serious (Mays and Winfree, 2000).

LaFave (1965) and Davis (1969) argue that police may choose not to arrest a suspect due to a lack of time (O'Connor, 2004). The officers may be ready to be off shift and ignore a speeding car or may not feel like writing a report that would take them past the end of their shift. There also may not be enough officers working on a shift to justify taking up time making traffic stops when more important crimes are being committed.

System-related variables are directly related to the size and structure of the police department the officer works for. Other aspects that could be involved in system-related police discretion are the degree of congestion of the local court systems and the number of empty vs. full jail cells available for those arrested. Police may also look at the availability of alternative programs such as drug treatment and prerelease centers when deciding whether to make an arrest or press charges. The final reason police may be affected by the system-related variables could be the local community's need for revenue. Tickets may be issued at a higher rate if a city's need for capital and traffic fines are seen as a way to make money.

Education and Background of Police Officers

Discretion used by the police may be different in every situation because of the variety of education and backgrounds officers have. Those with more experience and education will make different decisions than rookies or those without a college degree. William DeLint (1998) argues that a four-year college degree should be required as a prerequisite to becoming a police officer. He asserts that a higher education will give the officer the broader knowledge base with which to apply the use of discretion (DeLint, 1998).

In response to an incident in Warren, Michigan, the Shelby Township Chief of Police Robert Leman decided to create a project called the Law Enforcement Awareness Network (LEAN). LEAN is a program that "trains police officers to recognize that they must respond differently to some people with whom they come into contact." It focuses

specifically on treating people with mental illnesses or other “hidden disabilities” (DeFrank, 2002:Macomb Daily News).

The incident that prompted this project involved Chief Leman when he was a patrol officer. He responded to a complaint made by a neighbor about a man mowing his lawn late at night. When the officers arrived they shouted for the man to stop mowing but the man did not respond. The officers assumed the man was drunk but to their surprise they found out that was not true; the man was deaf. Fortunately the officers had not made any decisions to “take down” the man in question.

In his book Justice Without Trial: Law Enforcement in a Democratic Society, Jerome H. Skolnick (1966) spotlights the “working personality” of police officers which is shaped by the officer’s constant exposure to danger, the authority with which he is granted, and the level of competence each individual officer has or is expected to have.

He also investigates the concept of the “blue wall of silence.” This concept claims that officers make up a subculture or cohesive group that differs from the overall culture and that they will protect each other in almost any situation, even when an officer has violated the law (Skolnick, 1966).

Skolnick claims that due to the danger officers are always under they may become paranoid and suspicious. Thus, they tend to associate only with other officers whom they are sure will not harm them. This isolation from those not in law enforcement leads the public to see officers as outsiders, even though the citizens expect the officers to protect them in times of need (Skolnick, 1966).

The authority granted and used by police officers will also contribute to the distance they feel from the public. Even though the public wants the police to protect

society and uphold the law, they do not want the police to be watching them if they are committing crimes.

In addition, a police officer must be a police officer 24 hours a day, 7 days per week (Skolnick, 1966). Law enforcement is not a job an officer can walk away from every day at closing time. Law enforcement officers must constantly be aware of their surroundings and be ready to “be on the job” at any time. In addition, officers of the law cannot go out in public and show themselves as anything but upstanding citizens.

This isolation experienced by police officers can be described by using “alienation theory.” According to Beisanz (1969) alienation is “a subjective feeling that one is an alien, a stranger--to others, to the environment and even to himself.” Schaefer (1992) defines alienation as “the situation of being estranged or disassociated from the surrounding society.”

Situations Conducive to Wide Use Discretion

In some situations discretion is used more often than in others. Many of these situations could be seen as private matters, crimes that could greatly affect that offender but not the public. Such crimes are known as “vice crimes.”

A vice crime is “a crime against public order or morality” that is considered to have no actual victim (O’Connor, 2004). Discretion is prominently used in cases that involve vice crimes. The laws against vice crimes are hard if not impossible for officers to enforce, as they require a complainant who is willing to report the crime. Additional factors that make vice crimes difficult to deal with are that most police departments cannot afford to place officers on vice squads that deal solely with vice crimes, and

attempting to solve such crimes may lead to police corruption or bending of the law (O'Connor, 2004).

Domestic violence is one area in which police have wide discretion to refer those involved to alternative treatment such as anger management classes or shelters where the victim or offender can get help from a social worker rather than being sent to jail. There are a variety of reasons why an officer would react this way, including the possibility of increased violence directed at the victim after the incarceration of the aggressor. Also, children are often involved in domestic violence situations (O'Connor, 2004).

Drunk driving is another crime where officers are able to use discretion. According to O'Connor three types of officers make DUI stops. The first type of officer O'Connor recognized was the "rate busters," second, the "moralists or drunk-haters," and third, the "bounty hunters." "Rate busters" are officers that try to make as many DUI stops as possible either for the recognition or to attempt to make the community safe. "Moralists or drunk-haters" make DUI stops because they believe that alcohol abuse is wrong. "Bounty hunters" make stops to collect overtime pay from writing lengthy DUI reports.

On the other hand O'Connor outlines three reasons an officer would chose not to make a DUI stop. First, because DUI reports are lengthy and time consuming, officers may resist making a DUI charge. Second, some officers believe that most people drive drunk once in a while making a DUI offense insignificant. Finally, some officers believe that making a DUI charge is not worthwhile because it does not deter drunk driving (O'Connor, 2004).

Hate crimes are another area where police use discretion based on the belief that they are supposed to protect all groups of citizens, not one over another. When lawmakers establish hate crime legislation the dominating idea is that even minor crimes have a major effect on the community. Discretion must be used by officers to determine what is a real threat and what is not. In general, police officers are expected to protect every citizen in spite of their values (O'Connor, 2004).

Another area where police officers have to use discretion is in working with the homeless, the mentally ill, and alcohol and drug abusers. According to O'Connor many poor families may use police services to obtain the care for their loved ones that they would otherwise be unable to afford (O'Connor, 2004).

Finally, any instance of alleged use of force by an officer is highly scrutinized. The officers' use of discretion and their decision to use force is almost always thoroughly investigated. Police manuals generally state that officers are allowed to use force that is "no greater than necessary and reasonable in a given situation" (O'Connor, 2004). The illegitimate use of force by an officer can lead to lawsuits for the police department and distrust from citizens (O'Connor, 2004).

Lustgarten (1986) argues that an officer's coercive powers may be substantially smaller than what is perceived by the public, although the police are seen as the strongest force in the public system of social services, especially in situations where physical force is used on a citizen (Landau, 1996).

DISCRETION IN JUVENILE CASES

According to the Coalition for Juvenile Justice, two terms are used to describe juvenile offenders. The Coalition defines delinquent as “youth under the age of 18, that engage in behavior---shoplifting, trespassing, assault---that if committed by adults would be deemed illegal.” The definition of “status offender” is “youth who engage in behavior---breaking curfew, running away from home, truancy--which if committed by adults, would not be considered criminal.” Each state has different laws that deem when a “youth” can be considered an adult (Coalition for Juvenile Justice, 2004). Of course these terms change from time to time and may vary from state to state.

Deviance as differentiated from delinquency is described by Brinkerhoff et.al. (1992) as “norms violations that exceed the tolerance level of the community and result in negative sanctions.” Schaefer (1992) described deviance in a similar way, stating it is “behavior that violates the standards of conduct or expectations of a group or society.”

Black and Reiss (1970) conducted the first study of the “police encounter with a juvenile suspect.” The results of this study were later replicated by Lundman (1978). Both studies found the factors that influence an officer’s decision to arrest a juvenile are largely influenced by “the seriousness of the crime, the preference of the complainant, the presence of ‘situational’ (ie: readily available) evidence, and the suspect’s demeanor” (Mays and Winfree, 2000). The attitude and amount of participation on the part of the parents is another factor that can be considered by officers when deciding what steps to take with a juvenile suspect.

In the studies of juveniles conducted by Black, Reiss and Lundman, the variable of prior record was not considered because it is not directly related to the encounter with the police officer, although it is a major part of sentencing (Mays and Winfree, 2000).

In his book The Social Organization of Juvenile Justice Aaron Cicourel stated that the variables that most affected the juvenile delinquency rates had more to do with the system-related variables within the police department rather than with the individual officers or the juveniles themselves.

Cicourel gathered information from two similar California cities in the 1960s. In City A where the officers were observed to be more cohesive and less corrupt, there were higher measured rates of juvenile delinquency. This was, in part, due to the fact that there were more officers assigned to the Juvenile Patrol Squad. These officers were more interested in rehabilitating the delinquent juveniles than in solving crimes (Cicourel, 1995).

In City B officers were politically motivated, as the Chief of Police was a mayoral appointed position. Cicourel observed lower levels of cohesiveness and higher levels of corruption among officers. The administration dedicated less manpower to dealing with juvenile delinquency and the cases involving juveniles were investigated for the main purpose of solving crimes (Cicourel, 1995).

Once police are involved with a juvenile they have several ways they can respond to the youth. The Coalition for Juvenile Justice has outlined and defined several ways an officer can respond to a youth who is being considered delinquent. The least serious measure an officer can take is the "street corner adjustment" in which a verbal warning or command is given. In "station house adjustment" the officer would take the youth to the

station house and give them a stern warning. The officer may take the juvenile's personal information at this time but no official report would be made.

In "station house adjustment with parental involvement," the youth is taken to the station by the officer. The juvenile's personal information is taken and put into the computer database and the youth's parents are called. The officer will give the juvenile and parent a stern warning and release the youth without making an official report.

"Police diversion" is used when the officer decides not to make an official report of the crime if the juvenile agrees to meet certain conditions specified by the officer. These conditions could include attending drug treatment or counseling.

The most serious action an officer would take against a juvenile would be to file a "formal complaint." A "formal complaint" can be filed if an officer has determined that the youth has been participating in "illegal or dangerous activities." The filing of a complaint would lead to charges being pressed against the juvenile. This step is usually taken with juveniles who have already had several warnings or less serious consequences. Brinkerhoff (1992) describes this path from informal to formal sanctions as "deterrence theory."

GOAL OF THIS STUDY

The goal of this research was to examine the concept of police discretion and how it can be applied by police officers in their day-to-day activities. In order to examine perceptions regarding police discretion two surveys were conducted, one of Helena police officers and one of Helena area citizens.

The goal of the police survey was to examine perceptions of members of the Helena City Police Department regarding their use of discretion. The police were asked to give their own definition of discretion and their opinions of why it is used so often in police work. They were asked when and why they think discretion should be used, if it should be used at all, and in what situations they most often use their own discretion as opposed to strictly adhering to the letter of the law. Finally, the officers were asked for their opinions on the professionalism and friendliness of themselves and their fellow officers and asked if they felt they have ever witnessed discrimination by themselves or other officers.

The goal of the citizen survey was to examine the perceptions of Helena area citizens regarding the local police department. The survey attempted to determine whether citizens thought officers should or should not be allowed to use discretion in their jobs. The citizens were asked in which situations they thought officers should be allowed to use discretion. The second part of the survey was used to gain insight on the professionalism and friendliness of the officers in Helena. Finally, citizens were asked if they had ever experienced a Helena City Police Officer discriminating against them or someone they knew.

METHODOLOGY

The methodology used to research police discretion was qualitative. Much of the background information documented in this paper was from studies previously conducted

on the topic of police discretion. The other information contained in this paper are the results from my own observations as a participant observer.

Police officers in Helena, Montana, were observed during the fall of 2004 to obtain first-hand accounts of their use of discretion. In order to observe police activity I rode along with several officers on day, evening, and graveyard shifts. Additionally, I spent several weeks working with and observing the activities of the Criminal Investigative Division of the Helena Police Department.

In the spring of 2005 questionnaires were administered to three officers to measure their perceptions on the reasons for and frequency of use of discretion. In addition, surveys were conducted among Helena-area citizens in order to examine their perceptions regarding the use of discretion and how effectively it is applied by the Helena Police Department.

INTERVIEWS

Police Interviews

Officers from the Helena Police Department were asked to complete a questionnaire regarding police discretion (see Appendix A). The Lieutenant of the Patrol Division selected three officers to complete the questionnaire. One of the officers has been with the department for more than twenty years, one for more than 10 years, and one for less than six months. All three officers were Caucasian. With the officers knowing that the questionnaires would be viewed by superior officers, it can be assumed

that the opinions given were not totally honest but rather a politically correct version of the truth.

When asked to define the term "discretion," the officers said that discretion is "using good judgment when faced with a choice," "the ability to make good decisions," and "using judgment to determine the best outcome." They all agreed that each situation is different and therefore discretion should be applied as needed in each situation.

When asked why they thought that police work often involved using discretion, all three officers agreed that the main reason was because "every situation is different" and each one can be "resolved differently with a successful result." One officer said dealing with "the fluidity of human emotions" is one of the main reasons for handling similar situations differently every time. Another officer stated that dealing with high stress situations requires experienced officers to be good problem solvers to resolve the situation successfully. The third officer said that discretion is used often in minor cases where a warning can be given so that things like traffic stops do not take the police officer's time away from serious situations that require immediate professional assistance.

Two of the officers stated that they are most likely to use discretion in traffic stop situations. The third officer stated that he felt he used his discretion the most in more serious or complex calls.

Two of the officers said that discretion is often used in situations involving the need for "mediation" or "information gathering". In order to maintain order in a situation some minor violations must be overlooked to gain information on serious violations. Also, in situations involving family members or neighbors, mediation between two

parties is needed and strictly applying the law to the situation may not result in a positive outcome.

One officer stated that he felt there was “no way that every situation could be put into law.” In those cases where the law does not apply, officers are required to use their discretion with the main goal of public safety in mind. Another officer stated that discretion should be allowed in the majority of minor cases but in more serious situations such as “drug crimes or crimes against persons” less discretion should be allowed.

One officer stated that the “spirit of the law” should be followed at all times as opposed to the “letter of the law”. He believes that the opportunity to use discretion helps to “create better professional relationships with the public”. This same officer stated that it takes years of working with the public to gain the knowledge and experience necessary to use discretion appropriately. He said that experienced officers lead newer officers by example and “encourage the use of discretion.”

Finally, when asked whether the officers had ever discriminated against someone on the job, two of the officers admitted that they probably had at one time or another and the third officer said he had not. One officer said that he works hard to “treat every citizen fairly and with respect and dignity” in order to gain the respect of that person in return. Another officer said that he also strives to be “consistent and fair” but feels like he may discriminate in some way against people he deals with “on a repetitive basis.”

In general the officers interviewed believe that the Helena Police Department does a good job of trying to balance justice and the safety of the community. The officers agree that a great deal of discretion needs to be used by all officers with more experienced officers acting as positive role models for younger officers. Definitions of

discretion given by Dworkin, Hart, Davis and the BJS match the definitions given by the officers stating that discretion is the use of good judgment in areas where there is no specific law to follow. The officers interviewed seemed to have a good grasp of what discretion is and how it should be applied in their jobs.

Citizen Interviews

A small survey of 28 Helena area citizens was conducted over a period of two weeks in the early part of 2005 (see Appendix B). The surveys were given out at random times on random days at the Helena Walking Mall, at Memorial Park, and to the employees at the Florence Crittenton Home. Of those approached with the survey 20 citizens were willing to answer part or all of the questions. Eight people declined to fill out the survey.

Of those who declined to fill out the survey, two white teenagers, one male, one female, did so because they did not have time and one young adult (ages 20-30), white male did so because he had never had any contact with the police in Helena. Of the remaining five citizens who refused, one young adult white male and one young adult white female declined saying "No, we aren't getting into all of that." Two teenage females, one white, one Native American, declined to complete the survey because they did not want to talk to me about the police. One teenage Native American male also refused, saying he would not have anything good to say or he would have "too much to say" on the survey.

Those citizens who declined to complete the survey seemed to have negative opinions of the police. They may have feared the reaction of the local officers or of the

surveyor if they gave negative answers. They also may have felt embarrassed at the thought of telling a stranger that they had been arrested or otherwise in trouble with the law.

Of those who did complete the survey, one was a teenager, 11 were in their 20s, one in her 30s, one in her 40s and six in their 50s. Four of the citizens either did not know their yearly income or they declined to provide that information. Two citizens made less than \$10,000 per year, five made between \$10,000-20,000 per year, five made between \$20,000-30,000 per year, two made between \$30,000-40,000, and one made over \$50,000 per year.

Helena, Montana has few minorities, so it was difficult to find minority citizens to survey regarding their perceptions and interactions with the police. Two of those citizens who refused to answer the survey were Native American. Of those who completed the survey, one was Hispanic, two were Native American, and the remaining 17 were Caucasian.

The first question asked the citizens if they think police officers should have the right to use wide discretion in their jobs or if they should be forced to follow the letter of the law at all times.

Six citizens said they felt that the officers should be allowed to use their own discretion as opposed to always following the law. Three citizens stated that police officers should not be allowed to use their own discretion but the letter of the law should be followed at all times. One of those who thought no discretion should be used said this was so that all citizens would be "treated equally," and another said it was so that "all citizens' rights would be respected." The third citizen said that discretionary law can

lead to abuses of the law and that discretion should be applied only after charges have been filed and the courts are in control.

Seven of the citizens said that strictly following the letter of the law and using discretion in police work should be balanced. One of these seven stated that some discretion is required because "law enforcement is not black and white." Three of these citizens said that the use of discretion strongly depends on the situation the officer is involved in. One citizen stated that some level of police discretion is needed, but more discretion should be allowed for in the court system.

Four of the citizens interviewed said that discretion should be used only by those officers who are able to use it in a "reasonable and responsible" way and when the officer is a "competent judge of when to use it."

The second question on the survey is in what situations do you think police officers should be allowed to use discretion. One citizen chose not to answer this question. One citizen said that there are no situations where officers should be allowed to use their discretion. Five citizens said that they felt there were at least some situations in which officers should be allowed to use at least some discretion. One said they should be allowed to use it "whenever they feel it is necessary" another said that discretion should be allowed in situations that are not "normal" or situations that are not outlined in the law.

One citizen said that officers should be allowed to use discretion when "doing searches and when deciding to fire a shot." Another said that discretion should be allowed in "domestic situations and when arresting teenagers." Yet another citizen stated

that the use of discretion should be left up to the experienced officers in charge or those with “positions of authority and increased trust.”

Two of the citizens said that discretion should be allowed only in situations where “minor laws have been broken” but never in situations that are “serious or life-threatening.” On the other hand, eight citizens agreed that discretion should mostly be used in situations that are “hostile”, “where violence is involved,” or in “life and death circumstances.” The majority of these citizens believed that discretion should be used in times when the officer’s safety or “life is in danger” as well as when a citizen’s life or safety is in danger.

Question three asked citizens if they had ever had any contact with the officers of the Helena Police Department. Fourteen of the citizens surveyed said they had had at least some contact with the police in Helena, but they did not specify if it was positive or negative contact. Two said they have had very little contact with the police. Three of the citizens said they have had no contact with the Helena Police and one did not answer the question.

Question four on the survey asked citizens if they felt that they personally or anyone they knew had ever been discriminated against by the police in Helena, Montana. Thirteen of the citizens surveyed said that they did not feel that the Helena Police had discriminated against them or anyone they knew. One citizen said he was “not aware” of any discrimination but that it had probably happened.

Six of the citizens said that they or someone they knew had indeed been discriminated against by a Helena police officer. Two citizens said that they knew of people who had been discriminated against “because of their last name” and “because

they had had previous encounters with the police.” Two of the citizens stated that officers discriminated against them or others “due to their age.” One citizen stated that she felt that high school age students are “treated unfairly in many situations.” Another citizen stated that she had seen discrimination due to gender, age, and race.

The fifth question asked the citizens to state their opinions regarding the professionalism of the police officers in Helena. Six of the citizens said they viewed the police as “very professional” at all times. Nine of the citizens said that they feel that the police act in a professional manner most of the time. Two citizens said that they have not had enough contact with the police to judge their behavior as professional or not.

Additionally, two of the citizens surveyed said that “most of the officers are professional but some are not.” One citizen said that it varies from one officer being very professional to another “not being professional at all.” Another citizen said, “Most are very professional but some are rude and ignorant.” Finally, one citizen said that the professionalism of the Helena police officers “could be much better” because “most are corrupt.”

The sixth and final question asked for opinions regarding the friendliness of the police officers in Helena, Montana. Seven citizens said they felt that the police officers were “very friendly.” Eight of the citizens said that they felt that the officers were “mostly friendly.” One stated that the officers in Helena “were much more friendly than the officers on the East Coast.”

One citizen said that the officers in Helena are only friendly some of the time and one said they are “not friendly enough.” Another stated that some officers are very friendly but “a lot of them are rude and seem to be on a power trip.”

In response to this question one citizen stated that he did not feel that “friendly” was an appropriate word to describe the police but “approachable” was a better term. He stated that he feels that all of the officers in Helena are approachable.

Additional comments given regarding the Helena Police Department were mostly positive and in support of the officers. One citizen said she is very supportive of the police while another said, “everyone can improve.” Another citizen said that the officers in Helena had gone “above and beyond” to help her out of a negative domestic situation.

In general, the Helena citizens who took part in the survey had fair to excellent views of the police. The younger citizens had more negative views than the older citizens with most of the reported discrimination and unfriendly behavior coming from the citizens in their teens and twenties.

The groups of citizens who thought that discretion should or should not be used were mixed by age, race, gender and income. Similarly, the groups of citizens who thought discretion should be used in minor, less serious situations, and those who thought it should be used more in serious, life and death type situations, varied by age, race, gender and income.

The majority of citizens said that they had at least some contact with the local police department with the majority of those citizens having good things to say about their interactions. Those citizens who did not give information on that question probably have experienced some negative interaction with the police and were unwilling to express that to the surveyor.

CASE STUDIES

The following situations were observed during an internship I completed during the fall semester 2004. The case of the DUI stop and homeless man were both observed during the graveyard shift on the same day. The case of the Partner Family Member Assault with Juvenile was observed on an evening shift. The accounts as written are from a journal kept during the internship as well as from conversations with the officers regarding each situation.

DUI Stop

A police officer pulls over an older model, "junky" car that is missing a taillight. The officer routinely calls into the dispatch station to report that he is engaged in a traffic stop. The dispatcher runs the vehicle's license plates and driver through the computer system to look for information regarding a previous driving history and warrants. The dispatcher informs the officer that the driver has no record of previous traffic violations and no warrants.

While obtaining information from the driver of the vehicle, a white female in her 20's, the officer detects the faint smell of alcohol in her car. He now has to make a decision either to ignore the odor or to inquire further about where the odor is coming from. He asks the female a set of questions to determine if she has been drinking. She states that she has had a couple of beers but it had been at least two hours since her last drink.

The officer begins to administer the first round of field sobriety tests, which consists of observing eye muscle movement. The female states that she is very nervous and that she is late to pick up her small child from the babysitter's. The officer finishes the test and decides not to go any further with his investigation. He gives the female a ticket for the missing taillight and lets her go.

According to the officer the decision not to proceed further with the DUI testing was based on several factors. First, the female did not receive a high score on her eye

movement test which means she passed. Second, he did not feel as if he had enough evidence to take to the city attorney to get a charge against the female since she had passed the eye exam. She may have been intoxicated, but it was not determined that she was under the influence enough to get a DUI ticket. Finally, the officer was working the last day of his workweek and a DUI report takes a very long time to complete and he did not feel like taking that much time to complete a report.

A Homeless Man

A homeless man was kicked off the premises of the local homeless shelter. He was intoxicated and therefore not allowed to stay in the shelter overnight. An officer was called to remove the man from the property; at that time he was sleeping behind the dumpster in the yard. The officer informed the homeless man that he was going to be "trespassed" off the property, which meant that he would not be allowed to return for the night.

The man asked the officer if he could be taken to jail because he had no other place to go.

The officer informed the man that he would not be able to take him to jail because he had not broken the law.

Later, the officer stated that he wished he could have taken the man to jail because it was a cold night and the homeless man would have then had access to food and shelter. He also reported that in many cases the person needing a place to stay would commit a crime in front of the officer in order to be arrested and taken to jail.

The local jail at the time was filled to its maximum capacity. In order to be taken to jail the man would have had to be considered a threat to himself or society.

Partner Family Member Assault with Juvenile

A thirteen-year-old girl reported to the police that her father had physically abused her. The police arrived, called for medical assistance to guarantee the girl was safe, and took a detailed report of the incident. Both the father and daughter admitted to being involved in an argument. The daughter stated that she had been beaten over the head by her father although the father stated that she was attempting to harm him and he hit her in retaliation.

After a lengthy investigation of the two parties, other family members and family friends, the police reported that they had decided not to press charges or ticket either of the individuals who participated in the act of domestic violence because the girl stated she was not in fear of her father; the girl was reported to have made several false reports against the father in the past; the father could face losing his job if he were charged with domestic violence or assault; and finally, the girl had an alternative home in which to stay until things could be calmly settled with her father. In addition, the officer stated that according to Montana statute a parent or guardian is allowed to use a certain amount of "justified force" against a child in their custody. It is then up to the officer's discretion to determine if the force is justified or not.

In this case the decision to not press charges was determined mainly because the charges would have caused the family more harm than good.

CONCLUSION

The goal of this research was to examine the concept of police discretion and how it can be applied by police officers in their day-to-day activities. A citizen survey was conducted in order to examine the perceptions of Helena area citizens regarding the local

police department. A police survey was conducted in order to examine perceptions of members of the Helena City Police Department regarding their use of discretion.

Additionally, participant observations were conducted during an internship with the Helena Police Department at which time the patrol officers and criminal investigators were observed.

Three officers, chosen by the Lieutenant of the Patrol Division, completed the police interviews. The officers agreed that the definition of discretion was “using good judgment” and making good decisions. They stated that the reason discretion is used often in police work is because all situations are different each needing to be handled in a professional way in order to be successful. Two of the officers believed that experience and training was key in sound decision-making and that senior officers in Helena strive to teach new officers these skills.

The officers felt that discretion should be used in both minor and serious situations as well as when there is a need for “mediation” or “information gathering.” One officer stated that he felt he should be required to follow the “spirit of the law” as opposed to the “letter of the law.”

Two of the officers admitted to having discriminated against a citizen at some point in time but stated that the discrimination was not intentional. They said that they attempt to treat everyone fairly and with respect in order to gain respect in return.

Overall the officers interviewed felt that they do a good job of balancing being just and protecting society. They all felt that a great deal of discretion needs to be used by officers everyday in their jobs. The officers interviewed seemed to have a good working knowledge of the concept of discretion.

The citizen survey gathered the perceptions of 20 Helena area citizens. Eight citizens declined to fill out the survey. The majority of those who were surveyed were in Caucasian, in their 20s and low to middle income.

The majority of those surveyed thought that police should be allowed to use at least some discretion on the job with a small group stating that it should be used in a “reasonable and responsible” way. Those who thought discretion should be used, stated that it should be used anywhere from minor to life and death situations.

The majority of those surveyed said they had had at least some contact with the Helena Police with a slight majority of the group saying they had never experienced any discrimination by the officers. Half of the citizens said that the Helena police officers were professional most of the time with one fourth of the citizens having complaints. Finally, the majority of citizens said that the police in Helena are “mostly” or “very” friendly.

In general, the Helena citizens who took part in the survey had fair to excellent views of the police. Some of the younger citizens had slightly more negative views than the older citizens with most of the reported discrimination and unfriendly behavior coming from the citizens in their teens and twenties.

The common belief among the citizens is that police should use discretion in situations ranging from minor offenses to violent situations. The majority of the citizens felt that discretion is a necessary skill to be used by the police if the officer is a “competent judge of when to use it.”

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Appendix A

Police Officer Questionnaire:

1. Define discretion:

2. Describe a situation in which you used discretion:

3. Why do think discretion is used so often in police work?

4. When do you think discretion is most likely to be used?

5. When do you think you use discretion the most?

6. Do you think discretion should be used or should officers be forced to follow the letter of the law at all time?

7. Do you feel that the Helena Police Department is professional yet personable with the citizens it comes into contact with?

8. Do you feel you have ever discriminated against anyone on the job?

Appendix B

Citizen Survey:

Name:

Age:

Race:

Gender:

Yearly Income:

Occupation:

1. Do you think that police officers should have the right to use wide discretion in their jobs or should they be forced to follow the letter of the law at all times?
2. In what situations do you think police officers should be allowed to use discretion?
3. Have you ever had any contact with the police officers in Helena, MT?
4. Do you feel like you (or anyone you know) has ever been discriminated against by a police officer(s) in Helena, MT?
5. In your opinion how professional are the officers in Helena, MT?
6. In your opinion how friendly are the officers in Helena, MT?
7. Any other comments?