

# Criminal activity



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Discretion Discretion, in general, is defined as “ an individual’s power to make decision without any one else’s advise or consent or the power of free decision-making” (Garner, 2004). In criminal law, it is “ the capacity to distinguish between right and wrong, sufficient to make a person responsible for his or her own actions (Garner, 2004). Judicial discretion is defined as “ the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law” (Garner, 2004). Prosecutorial discretion on the other hand, is a prosecutor’s power to choose from the options available in a criminal case (Garner, 2004). In the criminal judicial system, discretion plays a very significant role especially as to how decision-making process are made by each of players involved and the interdependence that they have.

The court administrator has a very important task of not only giving such ample time for the judge to effectively adjudicate cases, but must also display “ management knowledge and capability” for the judiciary to fulfill its function (USAID, 2006). Hence it necessarily sees to it that there is a smooth and efficient operation of courts. Selection of a court administrator should not only be based on his or her knowledge of the law but must also have such management skills to cope with such responsibilities and therefore, should have a high degree of competence and qualification.. In reality however, judges appoint or select a staff of their own who may not necessarily hold such qualifications required or desired of a court administrator (Neubauer, 2007). Aside from this selection problem, bureaucracy must also be taken into consideration as there is a need to manage large numbers of personnel as well appropriately budget the local government or state funded operations of courts (Neubauer, 2007). The

efficiency in the operation of courts is not only affected, but impacts as well on the judgment of a court administrator's discharge of duties. The prosecutor, an important player in the criminal justice system, has such "broad discretion" in the choices available to him in a criminal case such as "filing charges, prosecuting, not prosecuting, plea-bargaining and recommending sentence in court" (Garner, 2004). However they also must ensure that justice is dispensed with in each case they handle (Neubauer, 2007). Their conduct is governed by rules of procedure, which in case of violation, may be admonished by the district attorney's office (Neubauer, 2007). The US Attorney General who heads the US Department of Justice, is accountable for prosecutions made at the federal level (Neubauer, 2007). Inefficient bureaucracy is also existent in this department, which the US Attorney General must consider in its decision-making (Neubauer, 2007). The political process in the selection of US attorneys who are either nominated by the President and confirmed by the Senate at the federal level (Neubauer, 2007) or by popular election for Attorney Generals in respective states or local districts, may in effect have some political considerations or political sensitivity, which can influence and affect the kind of cases that they may prosecute or the manner of prosecuting them (Von Mehren and Murray, 2007).

The defense counsel known to fight for the cause of his client and represent those charged with violation of law, has a role in probing into the state's evidence, to ensure that there is enough or "sufficient evidence to prove the defendants guilt beyond a reasonable doubt" presented by the prosecution (Neubauer, 2007). The current practice however, is that plea-bargaining may be resorted to in order to resolve cases (Neubauer, 2007) instead of the

prosecution proving such guilt. Indigents furthermore, enjoy having defense counsels (Neubauer, 2007) especially if they cannot afford to have the services of a private lawyer. This not only increases the need for more defense counsels as well as the resources to defend accused indigents, the “quality of representation” may also be a problem especially if such court appointed defense counsels do not have the needed skills and experience to ensure that justice is served (Neubauer, 2007).

Part of the criminal justice system, are the judges and jurors who must manifest the character of impartiality in their evaluation of issues (Neubauer, 2007). Selection in both the state and federal court system is very important as they evaluate and examine every case at hand. However, problem in terms of equal representation is still existent since minority attorneys in both federal and state bench, seem to be minimal despite the so-called “affirmative action criteria and judicial redistricting” (Neubauer, 2007). This problem can in turn affect how decisions are made especially in their evaluation of cases.

Finally, criminal defendants who are also part of the criminal justice system, mostly come from the minority group, who are “young, poor and minority males” still have some “considerable racial and socio-economic bias” against them in current judicial system (Neubauer, 2007). The treatment of the courts in terms of “courtroom interactions and operations,” (Neubauer, 2007) affects the decision or final resolution of a case, as it may already have been prejudged even before the facts, evidence and the law have been examined. In this case, dispensing with the meaning of true justice therefore may be difficult to achieve.

## References

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