

DISCRETION, THE BETTER PART OF VALOUR?

Empowering traffic officials to make discretionary decisions

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This article explores discretionary decision-making in a specific traffic police unit. This study was undertaken from a social constructivism perspective, using a single holistic case study design. The research involved presenting scenarios to traffic officials at different stages, first at the end of their training, and then again six months after they started work, to determine how they would deal with situations that required them to use their discretion. The study sought to understand the extent to which exposing newly recruited traffic officials to the realities of traffic road policing influenced their notions of discretionary decision-making. The findings suggest that there are gaps in the training of these traffic officers and it proposes that the existing pedagogical style of training be replaced with an andragogical one, focusing on judgment drills in ethical dilemmas.

Street-level bureaucrats, such as traffic officials, are the daily interface between members of the public and the government. As such, each official is judged by citizens on the basis of their expectation and hope for fair and effective treatment by government. Street-level bureaucrats have considerable discretion in how laws and regulations are operationalised, and effectively engage in policy delivery every time they interact with a member of the public.¹ Debates about discretion, and how to prepare traffic officials for decision-making in an occupation where they are required to regularly make discretionary decisions, tend to create more questions than provide definitive resolutions.² The questions raised centre on defining or describing discretionary decision-making, on how it should

be acquired and, foremost, whether discretionary decision-making ability arises from values learned or value predisposition.³

The view in this article is that discretionary decision-making results from an innate value set which is modified by learning and teaching, honing it into a useful knowledge and skill set. The manner in which this learning takes place is crucial to informing how it can be transferred to the work context.⁴

DISCRETIONARY DECISION-MAKING

Research by the American Bar Association in the 1950s showed that police work is not simplistic, rules-bound or under administrative control.⁵ Rather, the research found that the regular control mechanisms of police officials, such as rules,

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regulations, militaristic training and structure, are unsuited to the daily demands placed on policing officials. Nickels is of the opinion that this acknowledgement about the nature of policing is the 'single most important event' in the history of criminal justice studies.⁶ Although this view may be disputed, it does highlight the importance of formally acknowledging the importance of discretionary decision-making as a factor in policing.

Deliberations about discretionary decision-making challenge mechanical understandings of law enforcement, exposing the gap between the law in principle and the law in practice, and open debates about what discretionary decision-making is. Simply stated, no set of laws and regulations can provide exact guidelines for every possible situation that an officer will encounter.⁷ The law has to be interpreted and applied to concrete contexts, often in split second situations. This is where the discretion of the officer comes to the fore.

Discretionary decision-making remains a contentious issue in law enforcement discussions because limited guidance is available on how to operationalise it, yet so much depends on how well it is done. Mastrofski views discretionary decision-making as the leeway that officials have to choose the most appropriate way to handle a particular situation from a bouquet of legitimate options.⁸

Discretionary decision-making holds many benefits for traffic policing, as it allows for optimum resource allocation, judiciously applied prioritisation and responsiveness to the needs of the environment in which officials operate.⁹ This is necessary, because it is not possible for a law enforcement official to act on every infringement. However, the uncontrolled and inconsistent application of discretionary decisions violates individual rights, equal protection of the law, and offers little protection against self-incrimination and unlawful searches and seizures.¹⁰

METHODOLOGY

The study sought to determine the extent to which training of newly recruited traffic officials prepares them for discretionary decision-making. The

participants' innate value sets and the training they received are constants in this study. Their six-month exposure to the actual work context was the variable. During the study their ability to navigate operational discretionary decision-making within the given scenarios was evaluated. This study was conducted from a social constructivist perspective, using the single holistic case study design.¹¹

The study group consisted of 269 recruits, specifically selected to be trained as an elite group of traffic officials, and independently employed by the Road Traffic Management Corporation.

The study was conducted over a period of six months, April to October 2011, where the data collection instruments were exactly replicated, first at the end of the basic training period, and again six months later. The measurement instrument required their written response to five scenarios. They had to indicate how they would handle each situation, motivate their responses and say whether they thought that there were other ways in which the scenario could have been handled.

- In the first two scenarios a stationary vehicle was spotted next to the freeway with two men standing next to the car, relieving themselves. The two scenarios differed only in terms of the traffic volume associated with the act.
- In the third and fourth scenarios two vehicles drove very slowly in the middle lane of the freeway during peak traffic volume. In the first case the driver was a young man, absorbed in listening to music on his iPod, and in the second the driver was an elderly gentleman, bewildered by the traffic around him.
- The last scenario depicted a highly complex situation where a stolen vehicle with two small children locked inside was found abandoned in a parking lot.

The participants understood that taking part in the study was voluntary and anonymous.

The responses to the scenarios provided by the traffic officials were post-coded during data transcription and the researcher maintained a reflective journal with copious analytic memos. Categories of responses were created through open

coding, developing categories, and evolving into thematic coding. The emergent themes were interpreted and validity of the data was achieved through triangulation of the data sources and using thick and rich descriptions. *In vivo* quotes, taken directly from the participants' responses to the scenarios, were used verbatim.¹² Minimal changes in the participants' responses to the scenarios were evident over time, indicating little development over the six-month period.

The findings cannot be generalised, as a representative sample of traffic officials was not used.

FINDINGS

Nothing illustrates better the value of experience in making discretionary decisions than the change to the response following all five scenarios, which was 'Do you think that there is another way in which this situation could have been handled?'. The typical response during the first research phase was 'No, I don't think there could be another way to handle the situation other than locking them up.' Only one of the participants indicated that there might have been other ways of handling it.

In the second research phase almost all the participants acknowledged that there would be alternative ways of handling the scenarios. This suggests recognition that discretionary decision-making is a reality when working as a traffic official. Despite this, their handling of each scenario remained much the same after six months' work. This suggests that they are not empowered to use their discretion when making decisions.

Positive change occurred in the multidimensional scenario. The majority of the inexperienced recruits wanted to resolve the situation (of children abandoned in the back of a stolen vehicle) by themselves, not recognising that it required a team approach. One first phase response:

'If 48 hours have passed, add the children on the SAPS missing list ... take them to the nearest safe

children home ... Take the car to the nearest police station and the children to the police station and inform radio station (control) about the discovery ...'

This participant added as motivation for his decision: *'I have followed the protocol and procedures of the Criminal Procedure Act.'*

However, their experiences during the intervening six months led them to respond differently in the second research phase. The vast majority of the participants indicated that they would *'Call the relevant team which specialises in such situations ... I would be offering my service to them to help.'*

Some overreaction was evident during the first phase of the study. One participant replied to scenario 5 as follows: *'First assess the situation, call for backup ... and bomb squad in case there is a bomb in the car ...'* In scenario 3 participants wanted to *'confiscate the iPod'* and in scenario 1 they wanted to *'...take them to the SAPS cells.'* A typical response to scenarios 1 and 2 was *'We are going to lock up the gentlemen and open up a docket for public indecency and drive their vehicle to the nearest police station for safekeeping.'*

The overreaction was absent in the second phase of the study, indicating a realisation by the participants that the response required should be commensurate with the violation observed.

The participants' own prejudice was evident during the first study phase, as shown in this response to the scenario involving the slow-driving youth:

'Drag him out of the road. He is disrespecting other road users ... the youth of Gauteng are ill disciplined, disrespectful. They only think of themselves. They are stupid and ... they need to be severely punished ... arrest him immediately and get a punishment of 6 months in jail, maybe he will grow up.'

Almost all the responses during the first stage of the study were sympathetic to the elderly gentleman's plight, while the youth was viewed quite differently. The stereotypical response to the

scenario involving the youth was *'pull him over and charge him for reckless and negligent driving ... Issue him with an infringement because he is intentionally obstructing the flow of traffic ...'*

During the second phase of the study, however, most participants indicated that they would treat both the young and the elderly man in the same way, suggesting a change in their views.

Most of the participants indicated that they didn't know how to handle the first two scenarios and preferred to ignore it, rather than dealing with it. The insecurity displayed in the first phase of the study by ignoring the illegal stopping of vehicles on the highway, shifted in the second phase with the recognition that the incident might have been more significant than first anticipated. *'... then request them to submit to alcohol tests since ... it is mostly drunk people who will not manage to hold or contain themselves ... until the appropriate place.'* Almost a third of the participants in the second phase of the study indicated that they would utilise the opportunity to determine whether vehicles were roadworthy, and to be on the lookout for driving under the influence of alcohol. They now viewed the stationary vehicles as potentially dangerous: *'Firstly I will approach the situation with utmost care as you don't know if the men are armed or not ... I will assess the situation and tell them to put their hands where I can see them until I make sure that they don't have any weapons.'*

The months on patrol taught them that apparent insignificant incidences might be pointers to larger problems. This concern was absent in the first phase of the study, suggesting that the participants may have encountered danger while on patrol.

During the first phase of the study the participants were careful to show that they would deal with motorists politely, as shown in these two responses:

'I will greet them, be respectful ... politely ask them why they ... explain to him politely ... encourage him to ... I understand his fear ... respect would be a priority ... speak to him politely ... be polite, courteous in a professional way.'

'I will kindly greet the guys and ask them nicely ... to educate and avoid conflict and unnecessary argument that may lead to very bad situations.'

In the second set of responses references to politeness had virtually disappeared. This change may be ascribed to the negative attitude of motorists towards traffic officials.

During the first phase of the study, participants assumed that the transgressors in the first four scenarios did not know that they were acting unlawfully, and felt the need to 'educate' the motorists. Responses such as *'It is my responsibility to educate road users'* were commonplace. One participant said in relation to scenario 1 that he would *'Give them a lesson about public indecency. It is important to respect the environment. Let them know what they are doing is pollution ...'*

This seems to have changed after six months, where the responses included the verbs: *'order them'*, *'tell them'* and *'reprimand them'* more frequently than during the first phase.

Only two participants in the second phase of the study mentioned education: *'Educating road users about the rules of the road is helping us as traffic police to ensure that more people obey the road rules and make our roads safer Give them a lesson that it is public indecency to relieve themselves in the open.'* This participant motivated the need for the 'lesson': *'It is important for individuals to have good morals, as visitors from other countries might end up thinking that this is what all South Africans are like, which is a wrong concept.'*

The responses indicated that the participants did not know how the law applied to them. One participant in the first phase of the study wrote in reaction to scenario 1 and 2 that *'I do not have the power to arrest a person.'* Another said, *'Sometimes you cannot arrest a person without telling a person why you are doing that.'* Some participants stated that the prescribed minimum speed on the highway is *'60 to 80 km'* [per hour] while another said that *'the only speed on the highway is 120 km'*. One participant said that they would *'ask the elderly gentleman to keep right and let others pass on the left...'*

This level of ignorance of the laws did not change after six months' experience, as demonstrated by one participant's response to scenario 5: *'I will take the vehicle to the police station and take the children to child care while I am still investigating'*, despite the fact that she had no investigating powers, and would destroy the crime scene by moving the vehicle prematurely. In addition, during the second phase more than half of the participants said they would summarily arrest the gentlemen in the first two scenarios, despite the fact that road violations of this nature do not warrant arrests.

During the second phase of the study a larger number of participants failed to correctly identify the core issues. In relation to scenarios 1 and 2, the participants ignored the fact that the vehicles had stopped illegally and focused on the fact that the men had relieved themselves rather than on the illegal stoppage. Phrases such as *'you confront them and charge them with public indecency'* appeared in approximately half of the first group of responses and in two thirds of the second group. One participant wanted to *'place them under arrest, no other way'*. The reason for this deterioration is not clear, as it would be expected that their exposure to the policing context would allow them to identify core problems and not focus on lesser matters. Their failure to identify the core issue in these two scenarios may be due to the fact that such behaviour has become so common that it has become a priority issue to address.

The discretionary decision-making varied significantly within the group, meaning that some participants reacted very differently to the same scenario than others. There is little discretionary consensus to use the legal bouquet that they have in hand and the same scenario might be handled very differently by different traffic officials. The assumption is that the values of traffic officials are pre-dispositioned and discretionary decision-making ability is innate, yet the analysis indicates that it is not so. The socialisation model of police ethics indicates that norms and values are learned through a process of organisational socialisation, but this is not evident in this study.¹³ In fact, the

responses from the participants developed minimally during the six months of being exposed to practice. Six months may be too short for significant development, but at least some organisational socialisation should have occurred.

EMPOWERING TRAFFIC OFFICIALS IN DISCRETIONARY DECISION-MAKING

The ability to use one's discretion in decision-making implies that individuals have the normative condition to make practical determinations because they possess special knowledge and expertise in relation to their sphere of specialisation.¹⁴ When it is recognised that officers need to make a discretionary decision, it will *ipso facto* be presumed that they are competent to implement it. Young refers to the fact that only a third of police officials in the USA receive more than five hours' training in discretionary decision-making, with little change over the last 30 years in post-academy training.¹⁵ The participants in this study were exposed to very little training in decision-making, which was only covered in passing in sessions focusing on corruption awareness and communication skills.¹⁶

Mastrofski purports that many research projects focus on the importance of controlling police discretionary decisions, yet he has little to say about the manner in which it should be done.¹⁷ Ideally one would want consistent judgments in discretionary situations, resulting in equal treatment of all members of the public. This can be attained through moral reasoning and frequent discussion sessions, which will have as their outcome judgments that are more closely aligned.

Young emphasises this point by stating that 'an excellent character comes through learning and practicing moral behavior that conforms to accepted professional standards'.¹⁸ Ellwanger identifies that shortfalls in training on professional conduct and guidelines for discretionary decision-making diminishes the quality of service delivery.¹⁹ This allows personal whim to be the basis of discretionary decision-making and exposes the agency and individual

officer to liability suits. Training traffic officials in discretionary decision-making is not easy, however deLint contends that real-life policing dilemmas could augment the formal curriculum.²⁰

Cederblom and Spohn advocate a model for teaching criminal justice ethics that involves integrating a theoretical understanding of ethical reasoning with practical application to situations students are likely to encounter.²¹ Judgment drills are useful tools to improve discretionary decision-making. They provide an integrated learning opportunity to practice ethical, legal, professional and occupational standards, principles and objectives in decision-making. Marenin supports this and views the ultimate goal of police training in a democratic dispensation as 'the capacity to make situational judgments which are in accord with democratic, societal and legal norms and expectations.'²² The manner in which ethical principles are inculcated is important.²³ The traditional pedagogical learning approach was utilised in teaching limited decision-making skills to the participants in this study.²⁴ Pollock and Williams claim that traditional pedagogical approaches are ineffective in developing the ability to make value-based decisions, and that an andragogical approach is a better fit for the teaching of values and ethics to police officials.²⁵ The fact that an andragogical tool offers relevant realistic learning and practical application, may prove to be beneficial in advancing the ability of traffic officials to use their discretion consistently and fairly. The work setting is the most powerful agent in professional socialisation and it is thus imperative that traffic officials should be trained to use their discretion, using real-life examples.²⁶

CONCLUSION

Discretionary decision-making is an integral and valuable tool for traffic officials, but the ability to make discretionary decisions is not predisposed. This was evident from the scenario analysis, in that the participants' responses fluctuated wildly. This ability was not taught during their basic training, as the method of teaching did not encourage the students to select relevant responses from the available options. Enabling

traffic officials to confidently make decisions based on their discretion, and that also are in line with the law, would contribute towards better policing and better civilian-police relations.



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