

TO: N. Kolb 5/6/02 UWVCC 4/30/02 Senate 9/3/02

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LIBERAL STUDIES

01-71

Undergraduate Distance Education Review Form

(Required for all courses taught by distance education for more than one-third of teaching contact hours)

Existing and Special Topics Course

Course: PLSC 358/558

Instructor of Record: Gwen Torges phone: 7-7961 e-mail: torges@up.edu

Step One: Department or its Curriculum Committee

The committee has reviewed the proposal to offer the above course using distance education technology, and responds to the CBA criteria as follows:

- 1. Will an instructor who is qualified in the distance education delivery method as well as the discipline teach the course? Yes No
- 2. Will the technology serve as a suitable substitute for the traditional classroom? Yes No
- 3. Are there suitable opportunities for interaction between the instructor and student? Yes No
- 4. a. Will there be suitable methods used to evaluate student achievement? Yes No
- b. Have reasonable efforts been made to insure the integrity of evaluation methods (academic honesty)? Yes No

5. Recommendation:
 Positive (The objectives of the course can be met via distance education.)
 Negative

[Signature]
signature of department designee

4/4/02
date

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If positive recommendation, immediately forward copies of this form and attached materials to the Provost and the Liberal Studies Office for consideration by the University-Wide Undergraduate Curriculum Committee. Dual-level courses also require review by Graduate Committee for graduate-level offering. Send information copies to 1) the college curriculum committee, 2) dean of the college, and 3) Dean of the School of Continuing Education.

Step Two: UNIVERSITY-WIDE UNDERGRADUATE CURRICULUM COMMITTEE

Positive recommendation
 Negative recommendation

[Signature]
signature of committee chair

5/1/02
date

Forward this form to the Provost within 24 calendar days after review by committee.

Step Three: Provost

Approved as distance education course
 Rejected as distance education course

[Signature]
signature of Provost

5/4/02
date

Step Four:

Forward materials to Dean of the School of Continuing Education.

Part I: Written statements to address CBA criteria:

1. Will an instructor who is qualified in the distance education delivery method as well as the discipline teach the course?

- **Distance education qualifications:** The instructor has designed two other DE courses for IUP (PLSC111 American Politics and PLSC359 Constitutional Law and Civil Liberties). The American Politics course has now been successfully offered six times, and the Con Law class successfully offered once and will most likely be offered again in the future. Additionally, the instructor uses WebCT supplements in all of her regular course sections.
- **Discipline qualifications:** The instructor is a regular member of the Political Science Department faculty, and teaches PLSC358 Judicial Process as a regular part of her course load.

2. Will the technology serve as a suitable substitute for the traditional classroom?

While the delivery of this course is nontraditional (i.e., via the Internet), the content of the course is very similar to that when taught in the traditional classroom format. Instead of classrooms and lectures, students will regularly visit the WebCT site established for the course, which will serve as the focal point. Here students will find instructions, lessons, reading assignments, writing assignments, virtual discussions, and quizzes.

Web courses can be either synchronous or asynchronous in design. Synchronous courses are designed in such a way that at least some assignments require that everyone in the class be logged on at the same time, such as taking exams during a particular hour or participating in live chats. In contrast, courses designed asynchronously allow each student to complete the various components of a course at any time, independent of the progress of other students. Judicial Process will use what I call a "semi-synchronous" design. That is, there will never be a time during which everyone would be required to be logged on simultaneously. However, there will be a general time-table for the completion of the various assignments, and certain portions of the course, such as exams, must be completed within a particular timeframe (for example, tests are usually available for the student for 72 hours). Additionally, there will be weekly virtual discussions, in which each student must participate at least twice per forum during a seven-day period.

The course is divided into 15 lessons. The 15 lessons correspond roughly with the chapters of the textbook -- though not in the same order. The lessons are bundled into groups of three per unit, for a total of five units. At the end of each unit, students are required to take an on-line exam. Although there is a time limit on the exam (usually about an hour and a half), the exams are open for about three days, during which time the student can log on at any time and take the exam. During a regular semester, units are covered in three weeks, and during a summer session, it's about one unit per week.

In addition to the five on-line exams, students will also complete one short paper (five pages), and a group simulation project in which the students will be divided up into "courts," each with the task of emulating the decision-making and opinion-writing process of the United States Supreme Court. All research and writing for the project will be coordinated using various WebCT tools, such as e-mail and private bulletin boards.

As appropriate, students will be directed to various sites on the Web, such as FindLaw.com, and the official Web page of the United States Supreme Court.

All assignments will be submitted using the attachments function of WebCT.

3. Are there suitable opportunities for interaction between the instructor and student?

The majority of communication between instructor and students will be through e-mail. Campus and home phone numbers of the instructor are provided, and students are encouraged to call if they have questions or concerns, or to set up an in-person meeting if they so desire.

4. a. Will there be suitable methods used to evaluate student achievement?

Students will be assessed on the basis of:

- | | |
|--|-----|
| • 5 on-line exams | 35% |
| • one writing assignment (approx. 5 pages) | 25% |
| • simulation project | 30% |
| • virtual discussions | 10% |

b. Have reasonable efforts been made to insure the integrity of evaluation methods (academic honesty)?

The academic integrity concerns for this course are almost identical to those when this course is taught in the traditional manner, since on-line exams are used in those courses as well. Exams are timed to limit the opportunity for the student to consult with others. Additionally, no exam results are released until after the exam period has ended.

MEMORANDUM

DATE: March 11, 2002

TO: Political Science Department Curriculum Committee,
University-Wide Undergraduate Curriculum Committee,
Graduate Committee,
Provost Mark Staszkiwicz

FROM: Gwen Torges
Political Science Department

RE: Proposal to offer Judicial Process, Political Science 358 (PLSC358), as a
Distance Education course

CC: CHSS Curriculum Committee,
Dr. Brenda Carter, Dean, CHSS
Dr. Nicholas Kolb, Dean, Continuing Education

Contents of proposal:

- Catalogue description
- Introduction
- Course design
- Technical requirements
- Course syllabus
- Sample Web modules

Catalogue description:

PLSC358 Judicial Process

3c-01-3sh

Prerequisite: PLSC111

Explores nature and limits of judicial power, courts as policymaking bodies, selection of judges, decision process, external forces impinging on the courts, and role of the Supreme Court in its relationship with Congress, the Presidency, and federalism.

Introduction:

While the delivery of this course is nontraditional (i.e., via the Internet), the content of the course is very similar to that when taught in the traditional classroom format. Instead of classrooms and lectures, students will regularly visit the WebCT site established for the course, which will serve as the focal point.

Here students will find instructions, lessons, reading assignments, writing assignments, virtual discussions, and tests.

Course design:

Web courses can be either synchronous or asynchronous in design. Synchronous courses are designed in such a way that at least some assignments require that everyone in the class be logged on at the same time, such as taking exams during a particular hour or participating in live chats. In contrast, courses designed asynchronously allow each student to complete the various components of a course at any time, independent of the progress of other students. Judicial Process will use what I call a "semi-synchronous" design. That is, there will never be a time during which everyone would be required to be logged on simultaneously. However, there will be a general time-table for the completion of the various assignments, and certain portions of the course, such as exams, must be completed within a particular timeframe (for example, tests are usually available for the student for 72 hours). Additionally, there will be weekly virtual discussions, in which each student must participate at least twice per forum during a seven-day period.

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In addition to the five on-line exams, students will also complete one short paper (five pages), and a group simulation process in which the students will be divided up into "courts," each with the task of emulating the decision-making and opinion-writing process of the United States Supreme Court. All research and writing for the project will be coordinated using various WebCT tools, such as e-mail and private bulletin boards.

As appropriate, students will be directed to various sites on the Web, such as FindLaw.com, and the official Web page of the United States Supreme Court.

All assignments will be submitted using the attachments function of WebCT.

Technical specifications:

The course has been designed so as to keep technical requirements for students to a minimum. All instructional content is available via the WebCT course page and the text book. There are no additional CDs, software or downloads. Thus,

students need not own a computer, and could quite feasibly complete the course if they simply have access to a computer with an Internet connection. Access to public computers, such as at a library, would be ample to successfully complete the course.

Ideally, the computer used should have the following specifications. A computer with a slower processor or slower Internet connection could be used, but might cause viewing Web pages to be frustratingly slow.

If using a PC computer

- Pentium II, Celeron, K6-2 or equivalent processor 300Mhz or better.
- Windows 95 or newer operating system
- Netscape 4.5 or Internet Explorer 5.0, or newer
- 57.6 Kbps modem
- 64 MB RAM

If using a Mac computer

- 68030 processor if running Netscape 4.0-4.05 or PowerPC if running Netscape 4.06 or higher
- Macintosh System 7.5 operating system if running Netscape 4.0-4.05 or Macintosh System 7.6.1 operating system if running Netscape 4.06-4.5
- 57.6 Kbps modem
- 64 MB RAM

Part II: Technical specifications

Technical specifications:

The course has been designed so as to keep technical requirements for students to a minimum. All instructional content is available via the WebCT course page and the text book. There are no additional CDs, software or downloads. Thus, students need not own a computer, and could quite feasibly complete the course if they simply have access to a computer with an Internet connection. Access to public computers, such as at a library, would be ample to successfully complete the course.

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- 57.6 Kbps modem
- 64 MB RAM

Part III: Course syllabus**PLSC358 – JUDICIAL PROCESS****I: Catalogue description:**

PLSC358 Judicial Process
Prerequisite: PLSC111

3c-01-3sh

Explores nature and limits of judicial power, courts as policymaking bodies, selection of judges, decision process, external forces impinging on the courts, and role of the Supreme Court in its relationship with Congress, the Presidency, and federalism.

II: Course objectives:

1. Understand the historic and contemporary relationship of the judiciary with the executive and legislative branches of government.
2. Understand the dual (i.e., federal and state) structure and nature of law and courts in the United States.
3. Be familiar with the constitutional and statutory structure and function of the federal judiciary, as well as the structure and function of the average state court system.
4. Understand the various sources and categories of law in the U.S.
5. Understand the nature and scope of judicial review and its impact on public policy.
6. Be familiar with the various actors and their roles in the judicial process.
7. Understand the basic civil court process.
8. Understand the basic criminal court process.
9. Be familiar with how judicial rulings are implemented, and the overall impact of such rulings on public policy.
10. Develop critical thinking skills and demonstrate critical writing skills to consider contemporary issues of relevance to the U.S. judicial system.

III. Course Outline:

- | | |
|---|-------------------|
| <p>1. The basics of law in United States.</p> <ul style="list-style-type: none"> a. Types of law b. Sources of law c. Function of law d. The power of judicial review | <p>10 percent</p> |
| <p>2. The structure and function of courts in the U.S.</p> <ul style="list-style-type: none"> a. Trial courts b. Appellate courts c. Structure of federal courts d. Structure of state courts e. Structure of Pennsylvania courts f. Evolution of the structure and role of the courts | <p>10 percent</p> |
| <p>3. The various actors and their functions</p> <ul style="list-style-type: none"> a. Federal judges b. State judges c. Lawyers d. Litigants e. Interest groups | <p>25 percent</p> |
| <p>4. The criminal process</p> <ul style="list-style-type: none"> a. Defining and quantifying crime b. The Bill of Rights and criminal procedural protections c. Discretion in the criminal process d. Pre-trial procedures e. Procedures during a criminal trial f. Sentencing and other post-trial procedures | <p>20 percent</p> |
| <p>5. The civil process</p> <ul style="list-style-type: none"> a. Nature and substance of civil law b. Categories of civil law c. Nature and types of civil remedies d. Pre-trial procedures e. Procedures during a civil trial f. Implementation of civil rulings g. Alternative dispute resolution | <p>20 percent</p> |
| <p>6. Implementation and impact of judicial policies</p> <ul style="list-style-type: none"> a. Impact of higher-court decisions on lower courts b. Interaction with legislation branch c. Interaction with executive branch d. Societal impact of judicial policies | <p>15 percent</p> |

IV. Evaluation methods:

Quizzes **35 percent**
 There will be five short on-line quizzes. The quizzes consist of multiple choice and true/false questions, and will be taken via WebCT. A practice WebCT quiz is available for students to familiarize themselves with taking an on-line quiz.

Journal article reviews **25 percent**
 Students are required to read and review four journal articles on issues related to the courts. Two of these will be from a political science journal, while the other two will be from a law review journal. The purpose of the assignment is to familiarize students with the various approaches to the study of law. The final essay, of approximately five typed pages, will include brief summaries of the articles read, and a comparison of the approaches and styles of the articles.

Simulation project **30 percent**
 Students will participate in a group simulation project to emulate the decision-making and opinion-writing process of the United States Supreme Court. Students will be divided into groups of four to six students, and will be given a case to rule on. Using the WebCT group e-mail, bulletin boards and chat functions, students will coordinate the research and writing of their opinions. The final product will be one or two formal written opinion(s) (the number will depend upon whether the group voted unanimously or was split).

Virtual discussion **10 percent**
 A few times during the semester, questions will be posted on WebCT to stimulate "virtual" discussion. Students are required to post at least two responses to each issue. Students are expected to consider not only the question posed by the instructor, but are to consider and address the comments of others who have already posted a response.

Required texts:

- *Judicial Process in America*, by Robert Carp and Ronald Stidham. 1998. CQ Press.
- *Reason in Law*, by Thomas F. Burke. 2002. Longman.
- On-line readings, as appropriate

V. Bibliography

- Abel, R. 1980. "Redirecting Soc. Studies of Law." *Law and Society Review*. 14(80).
- Abel, R. 1989. *American Lawyers*. New York: Oxford University Press.
- Abraham, Henry J. 1993. *The Judicial Process*. 6th Edition. New York: Oxford University Press.
- Auerbach, J.S. 1976. *Unequal Justice--Lawyers and Social Change in Modern America*. New York: Oxford University Press.
- Association of American Law Schools. *The Pre-Law Handbook*. [Note: a new edition of this book appears yearly.]
- Brandeis, Louis. 1916. "The Living Law." *Illinois Law Review*. 10(461):461.
- Cardozo, Benjamin. 1921. *The Nature of the Judicial Process*. New Haven: Yale University Press.
- Ball, Howard. 1987. *Courts and Politics: the Federal Judicial System*. 2d ed. Englewood Cliffs, NJ: Prentice Hall.
- Baum, Lawrence. 1986. *American Courts: Process and Policy*. Boston, MA: Houghton Mifflin Company.
- Carlin, J.E. 1966. *Lawyers' Ethics*. New York: Russell Sage Foundation.
- Holmes, Oliver Wendell, Jr. 1881. *The Common Law*. New York: Little, Brown and Company
- Hall, Kermit L. 1989. *The Magic Mirror: Law in American History*. New York: Oxford University Press.
- Kairys, D., ed. 1998. *The Politics of Law*. New York: Pantheon Books.
- Kennedy, D. "Form and Substance in Private Law Adjudication." 89 *Harvard Law Review* 1689 (1976).
- Moll, R.W. 1990. *The Lure of the Law*. New York: Penguin Books.
- Pound, Roscoe. 1954. *An Introduction to the Philosophy of Law*. New Haven: Yale University Press.
- Rosenthal, D.E. 1974. *Lawyer and Client*. New York: Russell Sage Foundation
- Poster, Richard A. 1985. *The Federal Courts: Crisis and Reform*. Cambridge, MA: Harvard Business Press.
- Tushnet, Mark. 1981. "Legal Scholarship: Its Causes and Cure." *Yale Law Journal* 90(1205).
- Wice, P. 1991. *Judges and Lawyers*. New York: Harper Collins, 1991.



PLSC358: JUDICIAL PROCESS
Lesson 1, part 3
Justiciability

OBJECTIVES:

At the end of Lesson 1, part 3, you should be able to answer the following questions:

- **When does the Constitution mean by a "case or controversy"? Why is this important?**
- **What is justiciability? How do the courts determine justiciability?**

READING ASSIGNMENT:

- **Port text, chapter 1**

CASES AND CONTROVERSIES:

As an institution, the courts are reactive, not proactive. That is, although the courts do have the considerable power of judicial review, Article III of the Constitution specifies that the federal judiciary can only act when an issue is brought before it in the form of a "**case or controversy**."

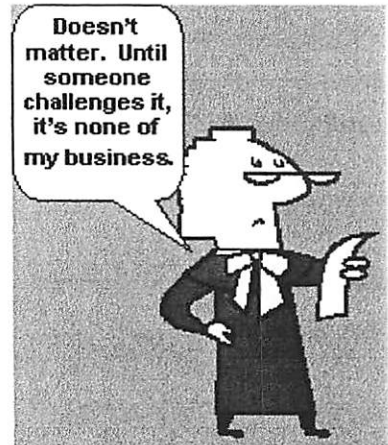
Hey, Mr. Justice,
did you see the
law Congress

So, what's a "case or controversy"? This means that the courts do not seek out laws that might be unconstitutional or misinterpreted; rather, it must wait until such things are brought before it. When Congress is working on a bill, federal judges do



not look over their shoulders and shout, "hey, that sentence you just wrote was unconstitutional, you'd better rewrite it!" Nor do they look over laws after they've been passed by Congress and signed by the president. Even if a law were obviously unconstitutional, there's nothing the federal courts can do, until that law is brought before them in the form of a case or controversy. And not just any case or controversy will do. The court must first determine whether or not the action brought before them is **justiciable**. That is, whether or not the issue before them rightfully

belongs before the court.



The Constitution does not define just what a "case or controversy," or justiciability is. Over time, however, **cannons of construction** have developed that help guide the court in determining if a controversy is justiciable. In general, the court will consider four issues: standing to sue, ripeness, mootness and the doctrine of political questions.

CANNONS OF CONSTRUCTION FOR DETERMINING JUSTICIABILITY

- **Standing to sue:**
The party bringing the case must have standing to sue (also commonly referred to as simply "standing"). This means that the party can demonstrate a legal injury -- in other words, that they have been negatively impacted by the law. There might be a law on the books that you feel is unconstitutional. But unless you have been negatively affected by it, you would not have standing to bring the case to court.
- **Ripeness:**
The courts will not issue advisory opinions or opinions on a hypothetical situation. There must be real, concrete facts involved before a law can be challenged in court.
- **Mootness:**
While an issue must be ripe, it cannot be moot. A case is moot if the passage of time has settled the matter.
- **Doctrine of political questions:**
The courts will not consider questions that they consider would be better handled by one of the elected branches of government (i.e., Congress or the president). Although the doctrine of political questions is relatively easy to define, it's very hard to predict when the courts will invoke it. For example, I would have thought there was a good chance the Supreme Court might have invoked the doctrine of political questions in the fall of 2000 in order to refuse to hear the Gore/Bush controversy, but, obviously, that was not the case.

Lesson 4, part 3: Justiciability





PLSC358: JUDICIAL PROCESS
Lesson 4, part 2
Discretion in the criminal justice system: Police

OBJECTIVES:

At the end of lesson 4, part 2, you should be able to answer the following questions:

- In what ways do law enforcement officials exercise discretion?
- What is the impact of police discretion?
- What are the three styles of police departments? What level of discretion is exercised in each style?
- Do law enforcement officials have more or less discretion than in the past?
- What are the various theories on the meaning of discretion?

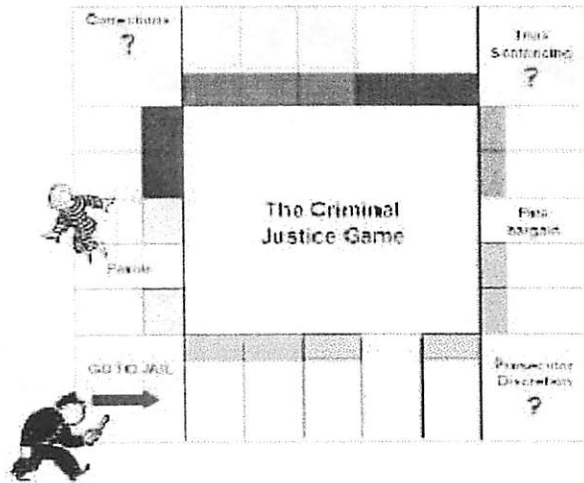
READING ASSIGNMENT:

- Carp and Stidham text, chapter 5

DEFINING DISCRETION

At first blush, it may seem odd that discretion is such an integral part of the criminal justice system -- especially among police officers. But the simple truth is that the law does not cover every situation that an offer encounters, nor would resources allow for complete enforcement of every law. On any given day, a police officer might encounter a situation never before even thought of by the legislature.

Police discretion was not formally recognized by scholars until the 1950s. The assumption had always been that police officers did not exercise discretion, because discretion could result in corruption. But in 1955, the American Bar Foundation issued a



study which documented that police officers did indeed exercise a tremendous amount of discretion. The report upset the public, and at first, police administrators attempted to eliminate police discretion.

Of course, completely abolishing police discretion is impossible, and the public and administrators have gradually accepted the idea that discretion is a necessary evil. It's not discretion that's the problem; it's the *abuse* of discretion that's the problem. The goal, then, is to find ways to better structure police discretion. As will be discussed below, police departments handle discretion in different ways.

DISCRETION IN THE SYSTEM

As was previously noted, the criminal justice system can be divided into four parts, each with its own set of actors. As was previously discussed, the criminal justice system has a "filtering" or "funneling" effect. You'll recall that for every 1,000 serious crimes committed, only about

law enforcement



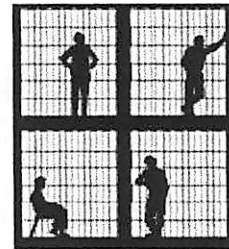
prosecution / pre-trial



trial / sentencing



corrections



The Bureau of Justice Statistics (within the U.S. Justice Department) has created a detailed flow chart of the various stages in the system.

Discretion: In each of these stages of the criminal justice system, the key actors involved have at least some level of authorized discretion (of course, some individuals within a system may choose to exercise more discretion than they legitimately possess, but for now, we are concerned with legitimate discretion, defined by statute, court precedent and tradition).

You'll recall that for every 1,000 serious crimes committed in the United States, only about 18 adults and 5 juveniles are actually incarcerated. Much of this is due to crimes not being reported, and many of the crimes reported are never solved. But a great deal of the winnowing effect is the result of discretion of those involved in each stage of the process.

DISCRETION IS POLITICAL

The amount of discretion within each stage of the system is largely political. That is, legislators, together with police administrators, make the decision of who has how much discretion within the system. Over time, the relative discretion of some actors has increased, while the discretion of others has decreased. For example, judges today

have considerably less discretion than in earlier times (more on this later).

The decision to arrest: The actors with arguably the greatest amount of discretion are law enforcement officials -- particularly local police officers. The decision to arrest or not to arrest is perhaps the most important decision within the entire process, because this is the point of entry into the criminal justice system.



Police discretion is greatest in certain types of situations. Some of the areas that scholars have identified as key areas of police discretion include:

- when the offense is minor
- when the victim will not assist the government, and thus diminishes the likelihood of a successful prosecution
- situations in which the victim is also involved in the illegal act

The decision of whether or not to arrest is complex. Of course, if an officer witnessed an assault, he or she would make an immediate arrest if possible. But most crime is not that clear cut. In addition to the ambiguities surrounding whether or not certain actions actually constitute a crime, there are simply not enough resources for police to fully enforce every law. And so, discretion becomes imperative.

Summary punishment: Punishment inflicted immediately without the usual formal procedures	The decision to arrest is profoundly important because of its impact on the person arrested. In one sense, just the act of arrest constitutes a sort of summary punishment . Even if the arrested individual is released at his or her first court appearance, that person has already been punished by the system. Arrests cause tangible and intangible harm. Tangible harm could include the loss of pay while incarcerated, or even loss of a job. Intangible harms include damage to one's reputation and psychological or emotional stress.
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STYLES OF POLICING

Some of an officer's discretion is based on the law. It will also vary from one officer to the next because of personality. But perhaps the most important influence on an officer's level of discretion is his or her department's style of policing. A department's policing style represents the overall philosophy of the department, and helps to explain and predict police behavior within a particular department.

The first models of policing style were developed by political scientist James Q. Wilson in 1968, in his book *Varieties of Policing Behavior*. He identified three primary models of policing styles:

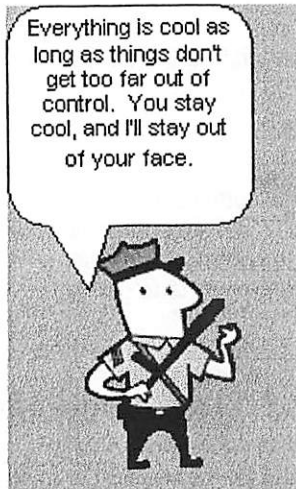
- **legalistic style**
- **watchman style**
- **service style**

Legalistic style: In the legalistic-style department, police officers are supposed to

vigorously and formally enforce all laws at all times. In other words, they do things "by the book," in a no-nonsense manner. This means that the individual officer has far less discretion.



An example of a legalistic approach occurred in the New York Police Department in 1998, when then-mayor Rudolph Giuliani ordered officers to enforce the city's jaywalking law. It is believed by some that the legalistic style reduced overall crime levels. Proponents of this view would argue that by enforcing the seemingly insignificant laws, this has the effect of reducing the number of more serious crimes.



Watchman style: This style of policing emphasizes public order over general law enforcement, and officers are encouraged to overlook minor offenses and concentrate instead of keeping things safe and orderly.

Sometimes the watchman style of policing is referred to as a "buddy style." That is, there's an unspoken understanding between the community and the police officer. Members of the community know that officers are likely to turn their head away from petty crimes so long as a certain level of order and safety are maintained.

Individual officers in this environment have much more discretion than in a legalistic-style department. However, they are encouraged to make the decisions that will emphasize order over other values, which limits their discretion somewhat.

Service style: This style of policing views the primary role of the police as service providers to the community. Members of the community are viewed more like clients. Special efforts are taken to keep individuals out of the formal criminal justice system by liberal use of cautions. The importance of public relations is emphasized.

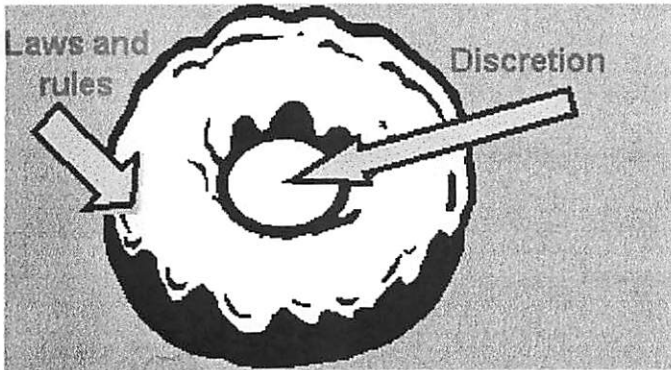
Officers in a service-style department are encouraged to go on speaking engagements, such as at schools, where they can explain the role of the police to children. They will take every call to the police seriously, even if the efforts of the police are not likely to be productive. For example, in a service-style department, the police will respond to a call that someone's car stereo was stolen – even though there is very little chance that such a visit will result in the finding or arrest of the criminal. The assumption in this type of department is that such visits are important because it makes the members of the community feel safer. The cliché of a police officer responding to a call to help someone get their kitten out of a tree would be an example of police service.



DEFINING DISCRETION

As it turns out, even defining discretion is a difficult task.

Discretion as choice: Some definitions define discretion as making choices among various options. But this theory assumes that the formal laws -- or at least custom and tradition -- provides enough alternatives to choose from.



Doughnut theory of discretion: Other theories of discretion, such as one offered by legal scholar Ronald Dworkin, describe discretion as the decisions made when the rules run out. In other words, certain situations are covered by rules and laws, and these rules and laws are represented by a doughnut. The space where there are no rules and choices is like the hole in the doughnut. Coming up with decisions in the hole of the doughnut is discretion, according to Dworkin.

