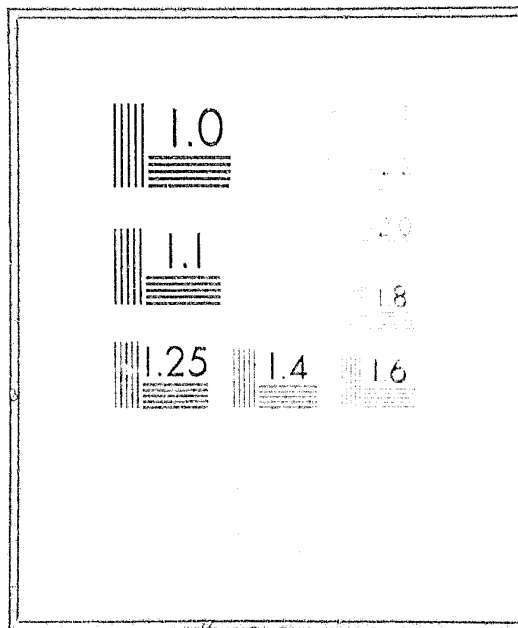


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W. Lyday, 1975

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STATE LEGISLATOR PERCEPTIONS OF
CRIMINAL JUSTICE ISSUES

Presented in Partial Fulfillment of the
Requirements for the Degree Doctor of
Philosophy in the Graduate School of
The Ohio State University

By
Winifred Margarete Lyday, B.A., M.A.

* * * * *

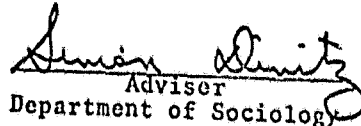
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- "Comprehensive Criminal Justice Data Systems: Participation by State Supreme Courts (A Preliminary Report)." Paper presented at the annual meeting of the American Society of Criminology, Chicago, Ill., November 1974.
- "Law, Discretion, and Prison Management." Paper presented at the annual meeting of the Pacific Sociological Association, Scottsdale, Ariz., May 1973.
- "Offender Classification and the Law." Paper presented at the annual meeting of the North Central Sociological Association, Cincinnati, Ohio, May 1973.

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CHAPTER I

CRIMINAL JUSTICE AND LEGAL SYSTEMS

Criminal justice is the product of a legal process involving all branches and levels of government. As a barometer of society, the legal process not only distinguishes acceptable behavioral boundaries, but it also clarifies, constrains and directs the activities of the state. Legal prohibitions function as legitimized norms, encoding the expectations of at least some reasonably powerful segment of society during some preceding period of time. The legal process is indicative of society at large in that the formal procedural elements provide behavioral scientists with an opportunity to study the manner in which decisions are made and changes are induced on both the formal and informal levels.

Law and the Legal Process

The legal process revolves around the concept of law. Every society, from the most primitive to the most complex, has developed a series of norms which function to maintain social order through the establishment of rights and obligations. These norms

prescribe expected patterns of behavior. Observable violations of these expected behavior patterns will elicit sanctions which vary in intensity according to the importance placed upon the specific norm. In an effort to provide a universal denominator for reliable cross-cultural comparisons through the observation of operational norms and sanctions, anthropologists have tended to distinguish as laws those norms whose infraction is regularly sanctioned by parties who are outside the immediate interaction and are socially authorized to respond.¹ Laws and norms have thus been differentiated by the injection of a mediator into the interaction. Support for this contention has been provided by Schwartz and Miller. Their evaluation of the legal characteristics of fifty-one societies indicated that only the very simplest of societies lack a legal process involving mediation, the absence of mediation corresponding inevitably with an absence of both a symbolic means of exchange (writing) and a substantial degree of specialization.²

Although the anthropological approach may be necessary for the comparison of primitive and complex societies, the concept of law is generally used with an inferred reference to a highly differentiated society. In this context, social and legal scholars have postulated that a decrease in social solidarity

produces a corresponding reliance upon law as a formal means of control. The role of the mediator thereby expands as a specialized position or agency. Weber adhered to this principle, as indicated in his commentary:

Law exists when there is a probability that an order will be upheld by a specific staff of men who will use physical or psychical compulsion with the intention of obtaining conformity with the order, or of inflicting sanctions for the infringement of it.³

Research involving developing communities and nations has confirmed the principle that a decrease in social solidarity gives rise to the institutionalization of law characterized by the presence of a specialized legal staff. For instance, in comparing the semi-private property moshav settlement with the collective kvutza settlement, Schwartz concluded that the social orientation and primary group interaction fostered within the kvutza facilitated the use of public opinion as an effective means of social control whereas the segregated housing arrangement and family (rather than community) emphasis fostered within the moshav promoted the development of a specialized judicial agency.⁴ As illustrated by the moshav, increased differentiation produces specialization of

legal functionaries which frequently includes legal counselors and legislative councils as well as judicial agencies and enforcement staff.

Expectation of uniform norms for the standardization of select behavior in a diverse society promotes state assumption of authority for judicial agencies and other legal functionaries. With this assumption, violations of law involving wrongs against a person are considered to be transgressions against the state, with the state maintaining the sole right of punishment.⁵ While other organizations occasionally usurp parts of this function (as with the Church during the Inquisition), state institutionalization of law is necessary for the preservation of the polity because of the power of law as a means for social control.

Although law may inherently operate as a vehicle for social control, the character of law inevitably reflects the social structure of the society. Thus, in the preindustrial city operating in a feudal order, the promulgation of new law was limited to an infrequent enactment by a sovereign or a few other select officials. Since change was slow and reinterpretation of existing precepts was usually sufficient to cover the new cases which arose, the number of laws were kept at a minimum.⁶ Increased division of labor,

compartmentalism of relationships and the impersonality of bureaucracies provide the anonymity necessary for the coexistence of a variety of lifestyles. Coterminous with this social multiformity is a corresponding promulgation of new law. Durkheim maintained that the number of diverse relations sustained by members of a society is proportional to the number of judicial rules which determine the relationships such that the law reflects all the essential varieties of social solidarity.⁷ If these postulations are accurate, an increase in the differentiation within a society will produce a corresponding increase in the quantity of law, the scope of law, and the rapidity by which law is promulgated or amended.

Expansion of the scope of law effects a diffusion of legal function. In comparing the impact of mechanical versus organic solidarity, Durkheim postulated that increased division of social labor results in a governing of relations through the use of cooperative law with restitutive rather than repressive sanctions.⁸ Restitutive law is distinct from repressive law in that it consists of "the return of things as they were" through the enhancement of the process of social interaction.⁹ Although restitutive law may include an implied sanction, it may also be merely procedural (e.g., the variable requirements

for exhausting state remedies before appealing for relief to a court with federal jurisdiction), definitive (e.g., the specification of characteristics distinguishing the class of individuals eligible for welfare benefits), or administrative (e.g., the authorization of the establishment of an agency for the licensing and regulation of liquor distribution). The concept of restitutive law implies that, in a complex society, law becomes a facilitating mechanism for social maintenance and interaction in addition to being a vehicle for social control. In this context, law can assume any of the following functions:

1. PROTOTYPE. . . Law may be used to establish behavioral ideals or to vouchsafe morality without necessarily demanding compliance
2. POLICY Law may act as a guide by selecting an option, an interpretation or a definition from among a variety of alternatives
3. PACIFICATION . Law may maintain order through the settlement of disputes between parties, each of whom may be presenting a valid claim
4. PROTECTION . . Law may safeguard certain rights as inalienable to individuals
5. PROHIBITION. . Law may proscribe certain activities as unacceptable and forbidden
6. PUNISHMENT . . Law may reinforce prohibitions by linking them with punitive measures designed to rehabilitate, penalize, or neutralize offending parties
7. PROCTORSHIP. . Law may establish an organizational structure for management or regulation

8. PROCEDURE. . . Law may specify preferred methods of operation or practice
9. PROVISION. . . Law may allocate resources for the distribution of services
10. PROCUREMENT. . Law may establish methods for the obtainment of resources

As these various functions of law indicate, law may be involved in every facet of interaction and organization as a substitute for informal coordination lost through specialization, compartmentalism and anomie. Conceptualization of law as a repressor ignores its true scope. Although law frequently serves as a repressive mechanism, its punitive role must not be allowed to obscure its actual functional diversity.

Recognizing that the comprehensive nature of law tends to defy concise definition, law will be regarded herein to refer to explicit rules of conduct legitimized through formal action by a governing body or individual. The delimitation of law to rules formally created by governing units follows a precedent established by Quinney as a pragmatic guide for understanding law as a social institution.¹⁰ Included as law would be any rule established through judicial, legislative or administrative action. This definition specifically avoids any mention of the sanctioning process since restitutive law may be observed because of its authority as law rather than because of its

direct or indirect linkage to a specific sanction. Although the manner in which individual laws are operationally defined may effect selected enforcement, the effort herein is to study law as promulgated by governing bodies. Selective enforcement and its implications will thus only be considered as they affect legal change.

Criminal Law and the Criminal Justice System

Law has conceptually been subdivided into substantive types, the most overtly repressive of which is criminal law. Wechsler has defined criminal law to be

the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy.¹¹

Similarly, a proposed draft of the Model Penal Code defined the purpose of criminal law to be "to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests."¹² Both these approaches attempt to differentiate criminal law by defining it as law involving (1) the deterrence (2) of serious harm or injury (3) inflicted upon either an individual or an

institution (4) by a third party. This legal definition, however, does not adequately distinguish criminal law from other types of law, as clearly evinced by the close correspondence between criminal law and tort law.

Criminal law and tort law, both of which originated in common law as devices designed to keep the peace between individuals by the provision of a substitute for private vengeance, similarly contain the elements considered above.¹³ In both instances, statutory and common law evolution has expanded the scope of the law to include the sanctioned enforcement of moral ideals through the levying of punitive damages or fines. Both types of law also relate culpability to the degree of harm inflicted and the level of responsibility indicated by constructive proof of intention or negligence. These two types of law even consider the same substantive topics, including wrongful death, assault, theft and fraud, frequently resulting in instances wherein cases based on the same facts are litigated simultaneously in civil and criminal courts.¹⁴ Since different jurisdictions may not consider the same conduct as injurious, substantive comparison of tort and criminal law within the same

jurisdiction may reveal more similarities than cross-jurisdictional comparisons limited to either criminal or tort law.

Since criminal and tort law are clearly similar in substance, their distinctions must lie in the relative role taken by the state. In a tort action, the plaintiff is usually a private party suing for compensation and damages for injuries suffered through the intentional or negligent conduct of another private party. Although the state can be a party to a tort action as either the plaintiff or defendant, litigation of the latter type may well require the consent of the state. Regardless of the composition of the parties involved in the litigation, the remedy primarily consists of direct monetary or injunctive relief for the plaintiff. In a criminal prosecution, the state is the sole plaintiff. Although most prosecutions are based on complaints filed by private parties, the state may exercise its option to pursue conviction even when the party presumably harmed is a willing participant in the proscribed activity. Conviction invokes specific sentence alternatives established by statute and linked to the offense. Sanctions may involve capital punishment, institutional confinement, probation surveillance or monetary fines. Monetary payments are made to the state

and provide no direct relief for the complaining party. If restitution or compensation is available subsequent to criminal prosecution, it is a consequence of the conditions of sentencing or the assumption by the state of damages suffered by the individual due to the state's admitted inability to fulfill its responsibility of maintaining law and order, rather than a direct product of the litigational process. Only the state has the authority to order and administer the destruction of human life, the imprisonment of an individual or the limitation of personal liberty. These sanctions are applied primarily as a consequence of a criminal conviction and constitute the state's power of destruction as noted by Wechsler.

Extrapolating from the comparison of criminal law with tort law, criminal law is distinctive because of the unique enforcement role played by the state with regard to these particular rules of conduct. The state is obligated to represent the public interest by determining that a violation of the rules has occurred, by bringing this matter to the attention of the courts, and by administering punishment involving the curtailment of individual liberties. The individual involved must "pay a debt to society" rather than to the individual directly harmed. Accordingly,

criminal law will herein refer to specialized rules of conduct which contain provisions for enforcement and punishment to be administered by the state in the name of the society upon substantiation of their violation.¹⁵

The emphasis placed on enforcement and punishment in the above definition attest to the importance of criminal procedure as a part of criminal law. Criminal procedure defines the methods or standards designed to facilitate the activities, but limit the arbitrariness, of societal institutions charged with the execution of criminal law. Its express purpose is the protection of individual liberty through the limitation of legal jurisdiction, the restriction of investigatory and police agency powers, the guarantee of a fair trial and the securance of humane treatment.¹⁶ Since criminal procedure affects all agencies engaged in the administration of criminal law, changes in procedural requirements can induce significant institutional modification. Police still contend that the Escobedo and Miranda decisions¹⁷ hamper the effectiveness of law enforcement.¹⁸ Correctional personnel recoiled in fear that due process requirements for fair hearings applied to probation and parole by the Morrissey and Gagnon decisions¹⁹ would be extended to prison disciplinary hearings; they subsequently have

had to change their practices in order to bring them into accordance with the slightly less stringent requirements specified in Wolff.²⁰ Just the reinterpretation of a state law setting time limits for bringing defendants to trial raises the spectre that, unless funds are found to finance more courtrooms, judges and prosecutors, prosecutors will be forced to free countless defendants.²¹

Illustrations of the institutional effects of change in criminal procedure reveal the interactive bonds connecting societal institutions charged with the execution of criminal law. These bonds are derivative of the interdependent, but diffused responsibilities of agencies involved in criminal case processing. Recognition of these interrelationships has led to the acceptance of a concept of a total system of criminal justice. The National Advisory Commission on Criminal Justice Standards and Goals has defined the criminal justice system to at least include

The enforcement, prosecution, defense, adjudication, punishment, and rehabilitation functions carried out governmentally with respect to penal sanctions.²²

Although the above definition encompasses those agencies which overtly process criminal cases, the Commission would also include as part of the criminal

justice system all public and private agencies and citizens involved in reducing and preventing crime.²³ This more expansive definition implies that everyone performing a peripheral or adjunct function related to the manner in which criminal cases are processed should be included as part of the criminal justice system. Contained within this category would be the legislators who enact criminal law statutes, the supreme court justices who promulgate rules of superintendence and the court administrators who supervise operational organization and record maintenance for the judiciary.

Even though the concept of a criminal justice system is popularly accepted, its identification as a "system" is a misnomer if this "system" is conceived as being a harmonious network or organization serving a common purpose. The criminal justice system is fragmented. The various agencies engaged in criminal case processing are independent units separated by function and jurisdiction. No single organizational body is responsible for all the agencies involved. Not only are the agencies located in all three branches of government, but their authority is also derived from all three levels of government. Overlapping jurisdictions lead to duplication of efforts and

contradictions in approach.²⁴ Agencies have failed to reach a consensus on common goals and priorities and tend to blame each other for the resultant lack of coordination and inefficient functioning.²⁵ Most changes within the system are reactive responses to specific jarring incidents rather than the solicitous product of comprehensive system planning. Where formal procedures have failed, informal methods have arisen to take their place.²⁶ Recognition of these dysfunctional factors implies that the various agencies engaged in the development and execution of criminal law and criminal procedure should be identified as forming a criminal justice system only in the generic sense of an interdependent group performing interrelated functions.

Just as the criminal justice system is a "system" only in a specialized sense, the "justice" which is embodied in this nominal description only exists in the ideal. The exemplary role played by the concept of "justice" is personified in the assessment of the objectives of the criminal justice system contained in The Challenge of Crime in a Free Society, namely that

Fair treatment of every individual--fair in fact and also perceived to be fair by those affected--is an essential element of justice and a principal objective of the American criminal justice system.²⁷

However, it is virtually impossible for any system to operate in a manner which is perceived to be fair by all affected parties. Decisions which are completely equitable and impartial risk being condemned as unreasonable on the grounds that they disregard exigencies relating to individual circumstances. Conversely, consideration of individual circumstances can evoke charges of arbitrariness and discrimination. Selznick attempted to resolve this dilemma by suggesting that justice can be both consistent and flexible if it involves selective classification of factual events and subsequent application of those rules or rule sets which will do justice in that special class of situations.²⁸ This solution presumes that administrative or judicial personnel will make classification decisions which are perceived to be fair by all affected parties. This circuitous logic illustrates that no single approach can fulfill the conflicting expectations of all the various interested groups and parties involved in criminal case processing, making the objective of justice as elusive as myth.

Although the criminal justice system probably never will be universally acclaimed as fair, it serves as an excellent example of an interdependent group of institutions forced to balance conflicting expectations. The criminal justice system establishes,

sustains and enforces rules of conduct by maintaining a compromise between individual interests in personal liberty and state and public interests in behavior management.²⁹ The degree to which this compromise is weighted in either direction is dependent upon sources of power, strength of support and means of access, as mediated by the changing perception of time.

Social Theory and the Legal Order

Consensus Approach

The legal order is more than a complex combination of rules, procedures and institutions. Beyond the balancing compromises continually developed within the criminal justice system, the legal order must exhibit a correspondence to societal values if it is to retain the consensual support of the governed. Although not a legal theoretician, Talcott Parsons provided a theoretical framework for investigating this relationship between societal consensus and the legal order. Parsons proposed that every society rests upon the consensus of its members whose societal demands reflect a basic consensus of values.³⁰ If the legal order is a product of cultural value consensus, then it must reflect the same cultural characteristics as other institutions in the same society. Since each

institution would bear the distinctive cultural mark of its parent society, societies could be differentiated through a comparison of their legal orders. After a cross-cultural investigation of this theory, Pitirim Sorokin concluded that a society's legal system is one cultural sector "logico-meaningfully integrated" with all other cultural sectors. Sorokin further asserted that the criminal law expresses the underlying, but dominant, values and beliefs of a society, and lawmakers are the instruments through which the cultural mentality spells out its implications in specific legal rules.³¹ Sorokin's theoretical formulation was sustained in case-specific historical research performed by Hall. In his analysis of the legal history of theft law, Hall explored the dynamic process by which values coalesce into a consensus transmitted to lawmakers, who ultimately incorporate the prevalent public opinion into law. Hall demonstrated that, contrary to prevalent law, the public of the early nineteenth century gradually revolted against the prescribed sentencing of capital punishment in cases involving nonviolent crimes against property. Farmers and tradesmen increasingly refrained from bringing charges, police magistrates failed to prosecute, grand juries refrained from indicting, and jurors avoided verdicts when conviction

would mandate the capital penalty. Individual reaction expanded into group support sufficiently widespread to attract the attention of lawmakers who responded by appointing committees empowered to investigate the effect of public opinion on the administration of property theft law. As a result, almost two hundred capital penalties for property offenses committed without violence were eliminated in a span of forty years.³² The value consensus approach employed by Sorokin pertained to the general character of the body of laws that prevail in a society at any given point in time and to the periodic change of this character.³³ Hall expanded this approach by showing that the character of substantive law reflects the value consensus of a society, despite the fact that legal change may lag behind social needs.³⁴

The cultural lag exhibited between substantive law and applied law gave rise to the legal philosophy known as sociological jurisprudence.³⁵ Philosophers from this school of thought proposed to determine the meaning of law and justice by studying law in action as a social institution. According to Eugen Ehrlich, the founder of sociological jurisprudence, substantive law is effective to the degree that it is grounded in the cultural patterns of society. Substantive law

provides a means for control only when it reflects accepted social rules and regulations.³⁶ Sociological jurisprudence became a major force in American legal thought through the efforts of its principal figure, Roscoe Pound. Pound not only accepted the proposition that effective law must reflect the value consensus of a society, but also stipulated that values should be synthesized into a serial order used to respond to the demand priorities of those to whom the law applies. Pound's theory of the "jurisprudence of interest" held that an essential element of law is to satisfy as many claims or demands of as many people as possible.³⁷ By satisfying these interests, law represents the consciousness of the total society. For Pound, interests could be classified as individual, public or social. This pluralistic approach recognized that law must reconcile conflicting interests by restraining individual actions, settling disputes and adjusting demands. By so doing, law controls variant interests according to the requirements of the social order and generates a hortative code regulating group life for the good of the society.³⁸ According to Pound, a primary vehicle by which this adjustment of demands is operationalized exists in the application of legal techniques by judges whose legal training inculcates a resistance to powerful economic or political groups.

By following juridical tradition, judges theoretically make legal decisions which coincide with the taught standards of value consensus and social ideals.³⁹

Although Pound maintained that law remains inexorably tied to the cultural patterns and values of society, he did not consider it to be a solely passive or reactive force. By adjustment of demands, law should embody changing public values and sentiment. Since law produces a sense of right, law can function as a positive instrument of promoting social change. Society possesses the power to change itself through rational and conscious manipulation.⁴⁰ This process of social engineering can prospectively satisfy social demands by employing law as an instrument for social reform and the improvement of the social order.

The social engineering philosophy expounded by Pound reflects some of the basic shortcomings of the value consensus approach. Although proponents of value consensus advocate social realism, their theories are very philosophical in nature. As in the instance of social engineering, there is a tendency to advocate "what should be" rather than "what is." In theory, society can institute social reform through law since acceptance of law conveys a legitimacy which encourages public conformity. However, there is no

indication that social reform law reflects the consensus of societal values at the particular point in time that the decision or enactment is made. Furthermore, "society" cannot directly create law since law is produced only through formal action by state institutions.

Law must correspond to public values, but only to the degree that it is not questioned or challenged sufficiently to be repealed. Proportionately few laws are generally understood and countenanced by the general public--before, during or after enactment. The laws which are most likely to reflect value consensus are the ones perceived by the general public as protection against incidents which would threaten their personal security. Of prime consideration are laws intended to control acts threatening physical violence. The crimes of murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault and burglary are considered to be offenses which threaten the existence of a humane and civilized society and foster fear and mistrust among a large proportion of citizenry.⁴¹ The public generally agrees that such acts should be proscribed by law.

Although very few individuals in any society would challenge the general value consensus that murder, for instance, should be a crime, disagreement exists as to what acts constitute murder and what circumstances excuse a murderer.⁴² Questions arise as to whether the removal of life support systems from malformed infants, disabled adults or bedridden aged comprise the intentional causation of unnecessary death.⁴³ Conflict is currently raging about the particular stage of pregnancy during which an abortion agreed to by a potential mother and her personal physician should be considered by the state and by individual juries to be murder. These instances of uncertainty and dispute with respect to murder are magnified in cases involving less violent offenses, indicating a series of value priorities and exceptions related to law.

Since consensus does not necessarily exist with respect to specific legal dictates at any particular point in time, value consensus as presented by Sorokin cannot account for substantive law except as it indicates general predispositions or boundaries of public acceptability. Only certain activities are generally considered to be within the realm subject to legal regulation. Although Sorokin provides some indication of how this realm and its boundaries might

be characterized in an esoteric sense, he cannot prove the thesis that laws enacted with respect to these activities are supported in specific by value consensus. Laws relating to a limited number of activities, as in the case of murder, are based upon a foundation of popular support which may be construed as value consensus, but even this support can be shaken when circumstances promote conflicting outcome expectations. In addition, a complex society requires an increasing number of laws for the day-to-day governing of relations. Due to societal complexity, many of these laws are resolutions of complicated technical disputes, understood and debated by a select number of individuals who are directly involved in the issue and who have acquired the prerequisite expertise for participation in the debate. Many individuals live and die without realizing that specific laws of this nature have ever affected their existence. For instance, both the states and the federal government have enacted laws governing merger or consolidation of corporations. Although mergers of large corporations affect the national economy, thus influencing the lives of the general public, most individuals are not aware of the limitations and regulations which legally govern this action. Laws are created, altered and

removed without the majority of the adult population learning or caring about their presence. As a society becomes more complicated, proportionately more of the laws governing relations must necessarily be of this nonconsensual form.

Recognizing that the general public may not actively support the creation or maintenance of a large segment of substantive law implies that the value consensus approach only explains law which the majority of the population perceives as consistent with their values and interests. In a complex society, public interest and legal regulation are not necessarily coterminous. This divergence is compounded by the fact that formulation of law involves the operationalization of exceptions and priorities, since agreement as to the content and applicability of the legal derivation decreases as value concepts are narrowed to provide acceptable legal specifications. In addressing these issues, Chambliss presented a series of arguments which summarize deficiencies he believes to be inherent in the value consensus, public interest approach:

1. The range of questions considered by lawmaking agencies and the state is largely outside the scope of the generalized objectives of public interests

2. Even in instances of public interest, the problematic nature of actual conditions requires resolution by complex solutions rather than application of simple value statements
3. The most minimal conceptualization of public interests would not necessarily be unanimously accepted
4. Public interest, as indicated by majority support in any period of history, does not remain constant
5. Value consensus frequently does not assign relative weights of importance to conflicting public interests⁴⁴

Values are generalized beliefs which can be accepted in the abstract despite conflicting assumptions or implications. Since laws are explicit rules specifying concrete prescriptions, the process of translating values into law demands the determination of value priorities as applied to specific combinations of actual events. When value priorities are not readily determinable, the formulation of law must embody some mode of interest accommodation.

The value consensus approach presupposes that the interest accommodation embodied in the formulation of law is the product of a process which remains neutral while it incorporates prevalent public opinion into formalized rules of behavior. If this is an accurate description of the legal order, then three assumptions must implicitly be accepted:

1. State administrators must be value neutral
2. State structure must be value neutral

3. Value consensus must be ascertainable

A study of state institutions would not support these assumptions. At a recent meeting, the Midwestern Attorneys General and their staffs discussed these issues, dwelling on the difficulties of representing the public interest. Contrary to the assumption that state officials are value neutral administrators who act in accordance with the public interest, attorneys general are frequently required by law to support the policies of state agencies and boards, even if the defense of these positions results in deprivation sustained by the general public.⁴⁵ The state structure cannot remain value neutral as long as it predominately consists of agencies and boards which are staffed by members of regulated groups rather than representatives of the general public.⁴⁶ Even if the state administrative structure were value neutral, it would be at a definite disadvantage if it were to attempt to rationally derive value constructs from public sentiment. A problem exists in trying to determine the degree to which public interests should be incorporated within the state structure, but

A more difficult issue is trying to determine what constitutes the public and public interest which must be represented. There are many publics, including business interests, labor unions, average employees, consumer groups and environmentalists. Most of these groups have direct

interests, but lack the support or funding to hire a lawyer, and these interests frequently conflict with one another. It is deceptive to talk about "the public interest" because public interest is a multi-faceted phenomenon.⁴⁷

Any consensus of values must reflect this pluralistic composition of public interests. In relatively few instances will these variant interests show united support for a particular issue orientation, and even the pledged support of all active interest groups cannot accurately be considered an actual indicator of value consensus among the general populace.

Conflict Approach

The difficulties involved in ascertaining a value consensus from the beliefs held by a general populace are predicated in the diversity, compartmentalism and impersonality of a complex society. The American experience has compounded the effect of these factors by adhering to a heritage which welcomes an influx of immigrants and migrants (Puerto Ricans) who transport their own customs, lifestyles and expectations to their new country. These individuals and groups find different pleasures, cope with different problems and implement different solutions in adapting to their environment.⁴⁸ This cultural infusion amplifies the institutional diversity normally present in any complex society. Aggregate population segments

sharing characteristics such as age, status, race or sex address mutual needs. Ecological proximity creates shared reactions to environmental concerns. Similarities in lifestyles or living options promote common interests. Each of these groupings develop particular orientations to political, economic, religious, kinship, educational and public institutions.⁴⁹ Although many groupings may never consciously exploit their commonalities, others organize, produce spokesmen and actively solicit formal acceptance of their positions. These interest groups purposefully promote their own interests and vie for representation in policy decisions.

The most pervasive type of policy decision making is the formulation of law since laws are rules by which all members of a society are expected to abide. The translation of a policy decision into law confers both the power of legitimacy and the support of the state onto its adherents, who are thereby better able to maintain their position in protecting their interests. Since law must make specific statements about the viability of one option over another, law necessarily must favor one group over another, providing benefits for some while depriving others of expected advantages.⁵⁰ While some groups strive to

perpetuate advantages already attained, opponent groups struggle for legal acceptance of their separate interests. Since law reflects the valuation of those interests most able to successfully represent their views to the policy decision makers, access to decision makers is crucial to interest groups. Although access is facilitated if decisions are made by personal representatives of the groups seeking interest recognition, it also is dependent upon the physical and socio-economic characteristics of the groups involved, the willingness of group membership to commit themselves to the cause, and the extent of resources available for donation to the effort. Marshalling their forces, interest groups vie in the legal arena for power and influence. Groups which are better organized and have greater resources are more likely to win future advantages established in law.

The conceptualization of law as the product of conflict in the quest for power is the antithesis of the value consensus approach. Conflict supersedes consensus and coercion enforces values as interest groups compete for the power of control through law. Quinney, a major proponent of this value conflict approach, contends that law is created by dominant segments of society which use their preferential

position of power to gain acceptance for their special interests in a milieu of diversity, coercion and change.⁵¹ Moreover, Quinney maintains that criminal law consists of definitions describing behaviors that conflict with the interests of the dominant segments of society. Since these dominant societal segments have the power to shape the enforcement and administration of criminal law, intervention by legal agents will vary to the extent which the behaviors of the powerless conflict with the interests of the power segments.⁵²

Radical Approach

In later articles, Quinney expanded this perspective by deemphasizing the concept of conflict except as it reflects the control exercised by dominant economic class interests. Quinney advocated that the dominant economic class uses the state and the legal system to preserve its interests by coercively controlling the rest of the population. Criminal law aids in this effort by maintaining domestic order and preventing any challenge to the moral and economic structure.⁵³ This approach, referred to as the radical or "critical" theory of criminal law, is based on six premises as listed by Quinney:

1. American society is based on an advanced capitalist economy.

2. The state is organized to serve the interests of the dominant economic class, the capitalist ruling class.
3. Criminal law is an instrument of the state and ruling class to maintain and perpetuate the existing social and economic order.
4. Crime control in capitalist society is accomplished through a variety of institutions and agencies established and administered by a government elite, representing ruling class interests, for the purpose of establishing domestic order.
5. The contradictions of advance capitalism--the disjunction between existence and essence--require that the subordinate classes remain oppressed by whatever means necessary, especially through the coercion and violence of the legal system.
6. Only with the collapse of capitalist society and the creation of a new society, based on socialist principles, will there be a solution to the crime problem.⁵⁴

This "critical" theory asserts that criminal law and crime control are primary protectors of the interests of an American capitalist ruling class, violently subduing all challenges to existing economic and social arrangements.⁵⁵

In a similar vein, Schur noted that control over criminal law determines the nature and extent of crime. Just as Quinney faults the capitalist structure of the United States for developing legal definitions which define actions that challenge the dominant order as criminal and subject to repressive sanction, Schur condemns America itself for being a criminal

society which condones prevalent inequality, discrepant value expectations and overcriminalization (abortion, drugs, homosexuality).⁵⁶ Since the legal order has failed to invalidate the present social and structural arrangements, it inevitably supports the existing stratification system. If the approaches taken by Quinney and Schur are accurate conceptualizations, then the amelioration of crime would require a basic restructuring of the American society, its criminal justice system and its rules of criminal law and procedure.

Law has a dual nature. On one hand, it can function as a powerful tool for the suppression of individual freedom while, on the other hand, it can serve as the primary device for securing and expanding individual rights. In any society, the meaning of law and the legal order is dependent upon the uses to which it is put.⁵⁷ The necessity for a legal and structural metamorphosis is dependent upon whether conflict theory and radical criminology accurately describe actual conditions. Neither Quinney nor Schur (nor anyone else, here or abroad) has shown that the rules of criminal law are perceived as unjust or oppressive by a majority of the United States population. Furthermore, differential enforcement of criminal law does not necessarily imply coercive dominance

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by a ruling class. Although such a class may exist in fact, a reasonable connection must be demonstrated before such societal segments can be held responsible for structural and behavioral control through law. This is not to deny the presence of powerful interest groups in American society. Even proponents of the value consensus approach agree that the state must almost always decide between competing interests. Underlying the research of Hall was the implicit recognition that alteration of theft penalties found support among entrepreneurs but remained an issue of conflict for nearly half a century. Recognition of conflicting interests only raises the question of whether specific interest groups are sufficiently united and powerful to effectively force acceptance of their dictates.

Control of state institutions and domination by coercive power can only exist if the manipulating interests have sufficient resources to establish and maintain their positions. When, as is most frequently the case, these requisite resources are not totally available, control is dependent upon the consent or acquiescence of the governed.⁵⁸ Although legal actions by the state may be weighted in favor of the status quo, a majority of the population must not perceive these activities as exceeding the limits of

legitimacy. By concentrating on the role of powerful or dominant interests as the sole determinators of the legal and social order, conflict theorists and radical criminologists portray citizens as merely reactors to external circumstances. This pathological view denies that individuals can act or react to rules generally regarded as illegitimate.⁵⁹ This view also denies the possibility that individuals can organize sufficiently to countermand the rules of the dominant segments of society.

Implicit in conflict theory and radical criminology is the notion that a value consensus characterizes the dominant elite. Little consideration is given to the possibility that the "ruling class" may be composed of conflicting interest groups. Even if class solidarity does exist at a particular point in time, the fluid nature of interaction constantly injects the possibility of realignment into social relationships. The interest groups of today may be unrecognizable tomorrow and groups currently in conflict can become the staunchest of allies.

Accommodation Approach

If change is the constant in society, then perhaps the most pervasive social force is the continual reestablishment of stability and

predictability. Conflict and coercion sever social relationships. Parties in close social proximity must weigh the import of forcing a conflict situation versus the preservation of an established mode of interaction. The latter is the usual means of operation. In a study of the contractual arrangements between businessmen, Macaulay discovered that in routine transactions, businessmen ignore the legal requirements for contracts and allow considerable leeway beyond expected performance before they will consider invoking legal action which will effectively terminate further intercourse.⁶⁰ Similar processes develop in total communities. In an analysis of the "Culture of Civility" characteristic of San Francisco, Becker and Horowitz observed that conflicting desires can produce a temporarily stable working arrangement when the parties involved prize peace and stability enough to make informal bargaining concessions.⁶¹ Both these examples involve accommodation through arbitration, compromise and adjustment. Mutual accommodation involves the avoidance of overt conflict; it favors the modification of relationships over the termination of communications. If the preservation of a workable relationship is perceived as more valuable than the assertion of conflicting interests, then accommodation will occur.

Although by nature conflicting interest groups will always be an inherent part of the legal order, the degree to which the criminal justice system reflects accommodation rather than coercion depends upon the degree to which the parties to the system are forced to remain in continuing relationships, despite conflicting interests. The criminal justice system consists of many types of functionaries whose frequently conflicting roles must be balanced against their legal responsibility to establish and maintain an operational alliance. When these functionaries must continually interact with a separately antagonistic, but relatively stable population (police versus prostitutes), a tenuous reciprocity can develop based on mutual benefits for all interdependent parties.

Law Enforcement and the Justice System

The administration of law requires the accommodation of many competing interests. Some groups demand strict enforcement of all criminal law. Other groups place greater emphasis on particular laws and believe that law enforcement should be structured according to this hierarchical ranking, even though preferences expressed by separate groups may differ significantly. Law enforcement must compete with

other governmental services for allocation of resources. Since funds are limited, operational constraints preclude a total enforcement effort and mandate allocation by priority. The potentially coercive nature of law in a society unwilling to commit sufficient resources for total control or enforcement necessitates that significant consideration be given to the expressed concerns of interested parties such that conformity is maximized and support is comprehensive enough to permit the system to function. According to Cressey, criminal law, criminal procedure and the criminal justice system are mechanisms for establishing and maintaining the consent of the governed.⁶² This consent is possible only if actions taken by administrators are generally considered suitable or just. For this to happen,

There must be flexibility, change, common sense, adjustment, and compromise in the criminal code itself, and in the administration of the code in specific cases.

Because of this need for flexibility, criminal justice administrators are more than law-enforcement officers. They are, above all, diplomats who must constantly balance the demands and claims of various interest groups. They must help establish unwritten and sometimes unspoken agreements and understandings among various segments of society, which means that they must be negotiators and arbitrators. It is this diplomatic functioning of criminal justice administrators that serves to maintain the consent of the governed in a society.⁶³

In order to accommodate conflicting interests, criminal justice administrators must function as diplomats, forced to strike balances between antagonistic groups. Under the pressure of operational constraints, legal regulations and group leverage, they must establish and preside over a negotiated social order. To negotiate this order, criminal justice administrators are granted a considerable degree of discretionary power.

Intervention and Enforcement

Discretion pervades all aspects of criminal justice administration. The police stand at the vortex of this discretionary force since they have to make the initial decision as to whether the statements of criminal law apply to the reality of observed behavior. Not only must they decide if an act has been committed in violation of the law, but they must also determine who perpetrated the act. These determinations occur in a social context fraught with procedural constraints and operational demands. Some violations of criminal law are difficult to observe and other violations involve little or no harm to the parties involved. In these instances, legal evidence is difficult to obtain. Public values change without immediate adoption by law and police find little popular support for strict enforcement. In choosing

enforcement strategies, policemen must decide when intervention is merited and what type of intervention is required by the situational circumstances. In the daily encounters calling for discretionary judgments, police responses are influenced not only by pressures from external interests, but also by their personal and shared interests as individuals mutually engaged in a specific, hazardous, demanding and frequently unpopular occupation.

As an occupation, law enforcement is unusual in the sense that the greatest amount of discretion is exercised by those individuals occupying the lowest rungs of the organizational hierarchy. Policemen work alone or in pairs and the ability of police administrators to control the discretion of their subordinates is limited.⁶⁴ Given this freedom, police behavior is dependent upon individual evaluation of the costs and benefits of various kinds of action. In most instances, especially when less serious offenses are involved, police actions derive from considerations of utility.⁶⁵ Although laws are absolute directives, police interpret them as a matter of administrative discretion, since uniform application would cost them vital means of exchange.⁶⁶ In this exchange, police are willing to bargain on arrest,

confinement and charge for recognition as competent craftsmen and maintenance of public order.⁶⁷ This process of exchange and accommodation is evident in the interaction between gang members and police, as researched by Werthman and Piliavin. Police are willing to make concessions to gang members by refraining from raiding hangouts, thereby exhibiting a discretionary tolerance of drinking and gambling in return for a show of deference and a continuation of order.⁶⁸ In deciding how to process offenders, police use criteria which extend beyond proof that a crime has been committed by a specific individual. Propensity to charge depends, in varying degrees, upon: (1) the magnitude of the offense, (2) the number of previous contacts with the police, (3) the type and quality of parental control, (4) the attitude displayed by the offender, (5) the physical or material attributes displayed by the offender, and (6) the discreet indicators of guilt shown by the offender in response to the presence of the police.⁶⁹ These criteria balance the potential threat to public order against interpersonal displays of deferential respect. In negotiating for peace, police operationally recognize the utility of accommodating their activities and expectations to the interests of the

individuals or groups with whom they interact, even if this precludes strict adherence to law and compromises prescribed application of procedure.

If street negotiation fails to produce a product acceptable to the parties immediately involved in the interaction, police may arrest individuals without formally charging them with the commission of a specific offense. Police arrests for purposes of investigation, suspicion or harassment carry the threat of establishing an administrative record of arrest (booking) in order to increase the pressure on the parties involved to negotiate an informal agreement. Booking the charge and pressing for prosecution are the ultimate legally prescribed weapons police can legitimately bring to bear in forcing cooperation, but these options are expensive in the sense that they entail a loss of police control over the case. This transfer may result in prosecutorial demands for additional investigatory work and concomitant court appearances, frequently involving the involuntary contribution of off-duty police time.

Courts and Prosecution

Although the police exercise discretion in initiating the criminal justice process, the prosecutor controls case channeling throughout the entire

period of adjudication. Of primary importance is the prosecutor's role in reviewing case reports and determining initial charges. After receiving jurisdiction over the case, the prosecutor must evaluate the degree to which recorded statements and physical evidence provide reasonable evidence for charging the defendant with the specific offense cited by the arresting officer. This evaluation process involves not only a conclusion regarding the likelihood that the defendant might reasonably be presumed guilty, but also an estimation of the strength of evidence which could practically be presented at trial. Procedural constraints limit the types of evidence which are legally admissible. Court decisions prevent the submission of confessions, statements or affidavits which are improperly obtained. Although the prosecutor may personally be convinced of the defendant's guilt, it may not be feasible to establish this assumption of guilt at trial. Furthermore, even if legally admissible evidence is available, the prosecutor may experience difficulties in developing and coordinating the case for presentation. Not only may the police exhibit a reluctance to devote additional time to investigatory work and trial appearance, but the witnesses and complainants may also express a reticence to testify in court. Community members, including

those directly involved, are frequently unwilling to expose their names and reputations to publicity or bear the added inconveniences of appearing in court. Court compensation rarely covers the expenses of transportation and the loss of pay. Cases may be repeatedly continued, ultimately fostering an ambivalence which precipitates a consistently high attrition rate among individuals expected to give testimony.

In addition to contending with the reluctant cooperation of police, complainants and witnesses, the prosecutor must confront the expressed or implicit concerns of the defense counsel. Representing the accused, the defense counsel strives for the dismissal of all charges. Barring this possibility, the defendant's attorney presses for charge reductions in order to either minimize the probability that the defendant will receive a jail or prison sentence or to reduce the term that the defendant must spend in incarceration. To accomplish this feat, the defense counsel can utilize numerous tactics, including requests for continuances, registering of objections, submission of motions and filing of appeals. The prosecutor must respond to each of these actions, reallocating his schedule accordingly.

Both the prosecuting attorney and the defense counsel must consider the pivotal role played by the judiciary in criminal litigation. In the adjudication process, the judge makes determinations of guilt, decisions on sentencing and rulings on motions. Since judges tend to display individual predilections, judicial assignment is a factor in whether charges are pursued or dropped. In order to gain a strategic advantage, attorneys for both the defense and prosecution are inclined to capitalize on known tendencies of this nature by judge shopping.⁷⁰

Besides being responsible for case adjudication, judges are accountable for court administration. Court resources are taxed to capacity or more, frequently creating criminal case backlogs which leave judges vulnerable to public and judicial censure. State supreme courts have intensified this pressure by adopting rules establishing time limitations for the initiation of criminal trial proceedings. Not only do attorneys for the defense and prosecution face similar strains on their operational capabilities, but they also must be sensitive to judicial interests in accelerating the time required for processing criminal cases.

Responding to their individual role requirements, criminal justice functionaries involved in the adjudication process have evolved informal methods for accommodating their respective interests. The most notorious of these methods is the widespread practice of plea bargaining. Criminal cases which are settled through a plea of guilty require a smaller investment of time and resources for the judge, the defense counsel and the prosecuting attorney, and individuals who plead guilty are rewarded with more lenient sentences than those who tax the resources of the judicial process by insisting on a full trial.⁷¹ Consequently, more than 90 percent of criminal convictions are the product of guilty pleas rather than jury verdicts or judicial decisions. A large percentage of these pleas result from express agreements between defendants and prosecutors "in which the charge and the sentence are negotiated in a process of mutual advantage-taking."⁷² Through the negotiation of a plea bargain, the defendant assures himself of a minimal sentence, and the defense counsel performs his service by facilitating this agreement to the best advantage of his client. By negotiating pleas, the prosecutor can produce a high conviction rate for public review while avoiding the risks of taking cases to

court, and the judge can continue to operate his courtroom without being inundated with an unmanageable number of trials.⁷³ The plea bargaining process enables all parties immediately involved in criminal case adjudication to establish a continuing relationship pattern which replaces conflict and uncertainty with accommodation and predictability. Although none of these parties may achieve their highest expectations from this informal arrangement, each can depend upon a satisfactory share of the accrued benefits.

Since the parties to the interaction remain relatively stable over time, none are likely to disturb or terminate the established alliance which permits the system to function despite overwhelming operational impediments.

While the pressures experienced by the judiciary at the trial level tend to be operational in nature, judges at the appellate level are structurally vulnerable to sustained advances by determined interest groups. Not only does the constitutional authority conferred on appellate courts grant them considerable license to effectuate redistribution of power and legitimization of behavior, but the entry requirements specified by law are also sufficiently liberal as to provide ready access to groups which

could not ordinarily muster legislative or administrative action.⁷⁴ Minority groups, including the convicted and the imprisoned, have been especially cognizant of the role appellate courts can play in the procurement of prospective governmental action.

Although some of these groups press their interests by litigating matters of special concern to their constituency, other groups promote their interests by providing financial backing and psychological support to litigants.⁷⁵ This selective support is indicative of a conscious effort to develop alliances which will facilitate legal change through the employment of tactical maneuvers.

Contrary to popular belief, appellant action usually develops as a part of a planned strategy to secure rulings on broad principles rather than devoting resources to obtaining limited decisions in miscellaneous cases.⁷⁶ The major device used in this strategic assault is the filing of *amicus curiae* briefs. Originally hailed as an important aid to the court in eliciting critical points which might otherwise be overlooked in adversary debate, the *amicus curiae* brief has degenerated to its present status as a position paper voicing partisan advocacy arguments in support of a particular litigational stance.⁷⁷ In some instances, the bench itself has entered the fray

by requesting particular parties to pursue and defend a specific position as an agent of the court and a champion of the court's point of view.⁷⁸ By overtly enlisting the assistance of outside parties, the court can interject sufficient evidence to justify its impending decision, but it sacrifices the traditional respect granted to an impartial arbitrator.

Reliance on amicus curiae briefs serves as only part of the arsenal of standard pressure tactics which groups can bring to bear on courts. Letter, petition and telegram campaigns are likely to be directed at judges presiding over particularly controversial trials or hearings.⁷⁹ Law review articles, agency reports, textbooks and general periodicals have been decried as persuasive communications systematically generated by groups who choose this indirect means of judicial access as a prelude to initiating litigation.⁸⁰ Radio, television and press coverage not only increases the difficulty of impaneling an impartial jury, but also exposes community members to the facts of the case in a biased manner. This effect is significant, since even the Supreme Court has recoiled and recanted as a result of unfavorable onslaughts from an angry press.⁸¹

As already attested by the fact that judges have been known to actively solicit briefs in support of their personal legal predilections, the judiciary cannot be dismissed as neutral arbitrators impartially reigning over a process of dispute settlement. Contrary to Pound's assertion that legal education insulates judges from personal biases and group pressures, judges are people who, after all procedural requirements have been exhausted, must decide in favor of one of two or more differing points of view. Personalities, philosophies, socialization and personal biases all combine to affect the manner in which judges approach the decision-making process and allow past experiences to guide their discretion.⁸²

The judiciary comprises an essential part of the criminal justice system. When the tenuous relationships of accommodation and negotiation dissolve, the responsibility remains with the judiciary to seek a solution which will enhance future efforts at conciliation. Appellate decisions generate national policy which is

the outcome of conflict, bargaining and agreement among minorities; the process is neither minority rule nor majority rule but what might better be called minorities rule, where one aggregation of minorities achieves policies opposed by another aggregation.⁸³

This constant accommodation to the interests of minorities serves to maintain the consent of the governed. By remaining flexible and balancing various demands (including personal claims), the judiciary joins the ranks of criminal justice administrators who diplomatically negotiate social order.

Legal Change and the Legislative Approach

The flexibility enjoyed by criminal justice administrators in negotiating the social order is largely a product of the manner in which legislators have traditionally approached criminal justice issues. Although they are solely responsible for the statutory content of the criminal code, legislators routinely enact criminal laws which fail to clearly enunciate the elements essential to criminal liability. In neglecting to substantively clarify their intent, legislators implicitly invite criminal justice administrators to fill the void created by legal ambiguity with their own operational definitions. In considering this relationship between the legislature and law enforcement functionaries, Remington and Rosenblum concluded that

Where the substantive law is ambiguous there is an opportunity, indeed a necessity, for the exercise of discretion by enforcement agencies and courts as to what conduct ought to be subjected to the criminal process. When the substantive

criminal law is characterized by great ambiguity, the enforcement agencies may play a major role in determining what conduct is in fact to be treated as criminal.⁸⁴

Some statutory ambiguity is inescapable in the sense that it is virtually impossible to draft legislation which encompasses every contingency which may develop, but legislators compound this situation by exhibiting a widespread inclination to concern themselves with the formulation of general policies to the disregard of specific details. Although this policy emphasis may be a consequence of such practical constraints as the enormous number of bills which must be considered each legislative session, it more likely reflects the accepted practice of delegating discretionary authority to the administrative agency considered expert in the matter.⁸⁵ State legislatures have not made a concerted effort to strengthen procedural safeguards, initiate organizational changes or appropriate substantial resources for law enforcement. This apparent hesitancy to initiate criminal justice legislation indicates that state legislatures are not greatly dissatisfied with the manner in which discretion is practically applied by criminal justice administrators.

Legislative inaction in the field of criminal justice will continue to exist as long as legislators fail to perceive issues relating to the control of crime, the processing of defendants and the incarceration of offenders to be matters of great significance. This lack of active concern pervades legislative chambers nationwide. As a matter of policy, legislators assign low priorities to issues of crime, courts and corrections. In his study of legislative issues, Francis asked legislators to voluntarily list matters which they considered to be important in their home legislatures. After these responses were classified, less than 2 percent of the issues mentioned could be categorized as relating to crime, courts or corrections (see table 1).⁸⁶ Interest in criminal justice matters also wanes when legislators are appointed to interstate committees handling justice and law enforcement matters. At regional (twelve-state) committee meetings sponsored by the Midwestern Office of the Council of State Governments, legislators comprising the Justice and Law Enforcement Committee consistently compile lower attendance records than do legislators assigned to other interstate committees (see table 2). This low attendance rate reinforces the impression that legislators are experiencing no immediate pressures to debate major revisions of the

criminal justice system. This minor interest exhibited by state legislators with respect to criminal justice issues probably can be attributed to legislative acceptance of crime and perceived impotency to institute ameliorative action. While legislators may disagree as to the details of programs, the costs of facilities, or the objectives of procedures, criminal justice is basically not a divisive matter. State legislators are unlikely to publicly assert that crime does not constitute a problem, nor that efforts to rehabilitate offenders should be terminated. Despite these facts, legislators are not convinced that any action which they might initiate would yield an ultimate reduction in crime.

If legislators are not personally committed to pursuing a legislative matter, then the impetus must come from nonlegislative factions. The public, while expressing a heightened interest in crime control, has not insisted on legislative action.⁸⁷ The public vocalizes its fear of crime by clamoring for improved law enforcement rather than by petitioning for new public law. Although agreement may not be unanimous on all elements of the codes of criminal law and procedure, considerable consensus exists as to their generalized contents and objectives.⁸⁸ While conflict

TABLE 1
ISSUE DISTRIBUTION BY LEGISLATIVE POLICY AREA

Policy Area	Number of Issue Mentions	Percentage of Total Number of Issue Mentions ^a
Taxation	624	21.3
Apportionment	472	16.1
Education	447	15.2
Finance	206	7.0
Labor	206	7.0
Health	147	5.0
Business	124	4.2
Civil Rights	109	3.7
Highways - Transportation	103	3.5
Administration	89	3.0
Local Government	55	1.9
Social Welfare	53	1.8
Courts - Penal - Crime	51	1.7
Liquor	51	1.7
Gambling	48	1.6
Land	43	1.5
Elections - Primaries - Conventions	33	1.1
Constitutional Revision	30	1.0
Water Resources	23	0.8
Agriculture	18	0.6
Total	2,932 ^b	99.7 ^c

SOURCE: Wayne L. Francis, Legislative Issues in the Fifty States: A Comparative Analysis, ed. Aaron Wildavsky, American Politics Research Series (Chicago: Rand McNally & Co., 1967), p. 11.

^aPercentages were developed by using figures contained in original source.

^bOriginal source states that the total should be "2,927," but figures contained in the same source add to "2,932."

^cPercentages do not total to 100.0 due to rounding errors.

theorists may claim that this consensus dissolves when the specifics of law are considered, the public has not generally voiced an overriding motivation to involve itself in the details of criminal law formulation or removal.

TABLE 2
PERCENTAGE OF MEMBERSHIP ATTENDANCE AT INTERSTATE
LEGISLATIVE COMMITTEE MEETINGS HELD DURING
FISCAL YEARS 1973-1974 AND 1974-1975

Interstate Legislative Committee	Percentage
Human Resources	36.2
Transportation and Regional Development (Transportation and Commerce)	33.6
Agriculture	32.0
Education (Education and Public Employees)	29.2
Justice and Law Enforcement	24.2

SOURCE: Council of State Governments, Midwestern Office, "Cumulative Record of Attendance of Members at Midwestern Conference Committee Meetings," Chicago, March 1975. (Typewritten.)

If the public does not provide the incentive for major criminal justice legislation, then interest group activity becomes an important factor. Theoreticians have assumed that the interest group conflict characteristic of many areas of legislative action

also dictates the content of criminal justice legislation. Noting that conflict increases the importance of a legislative issue, Francis developed an indicator of the intensity of various types of conflict as they relate to specific legislative policy areas. Included in his analysis were measures of pressure group, factional, regional and partisan conflict as indicators of pressure group interests.⁸⁹ Only two policy areas, "health" and "courts-penal-crime," exhibited below average ratings on all indicators of interest and conflict (see table 3). These results dramatize the fact that pressure groups are not sufficiently well organized or active to exert much of an influence in the area of criminal justice legislation. Although some groups hope to obtain this status, their base of support is far too small to influence policy. Prisoners and ex-offenders, for example, have made a strong move to change laws which affect their daily lives. Since this group comprises such a small percent of the population and is further handicapped by disenfranchisement, legislators have paid little heed to the effort except to accommodate court decisions which group members have individually won.

Since legislator involvement, group pressure or public demands are not primary considerations in criminal justice legislation, other factors must

TABLE 3
INTEREST AND CONFLICT IN LEGISLATIVE POLICY AREAS

Policy Area	Interest	Conflict			
	Pressure Group	Pressure Group	Factional	Regional	Partisan
Social Welfare	X	X		X	X
Civil Rights	X	X		X	
Gambling	X	X	X	X	
Taxation	X	X	X		
Business	X	X	X		X
Agriculture	X	X	X		
Liquor	X	X	X		
Labor	X	X			
Water Resources	X	X			X
Land	X				X
Education	X				
Apportionment			X	X	X
Constitutional Revision			X	X	
Highways - Transportation			X		
Local Government				X	
Elections - Primaries - Conventions					X
Administration					X
Finance					X
Courts - Penal - Crime					
Health					

SOURCE: Wayne L. Francis, Legislative Issues in the Fifty States: A Comparative Analysis, ed. Aaron Wildavsky, American Politics Research Series (Chicago: Rand McNally & Co., 1967), pp. 22, 23, 26, 29.

NOTE: The markings "X" indicate that the Issue Respondex Value (IRV) for a particular item is greater than or equal to the mean IRV for the related interest or conflict category. The IRV is calculated by dividing the number of legislative responses that selected a specific policy area as a state legislative issue and matched this policy area with an interest or conflict category by the number of legislative responses that selected a specific policy area as a state legislative issue, regardless of whether this policy area was matched with any interest or conflict category. This table was developed by combining, reordering and abstracting the figures contained in several tables in the original source.

interact to provide the momentum for change. These factors can be subsumed under the five major areas of precedent, procedure, practice, practicality and politics. The legislator is charged with the responsibility of making, changing and removing laws.

Although the procedure for enacting, amending or deleting statutes is basically the same, the establishment of precedent can affect the manner in which a new bill will be received. The easiest procedure involves the minor amendment of established law to maintain consistency with other laws or to improve compatibility with new conditions. If law is in a state of flux (the death penalty) or no law exists (handgun control), legislators must justify its enactment, convincing important committees and legislative majorities that the legislation legitimately answers urgent needs. The removal of law is usually more difficult to accomplish because of the inherent legitimacy surrounding an established legal tradition. Legislators aligning themselves in favor of removing a law risk the wrath of a constituency who easily may interpret the vote as favoring the prohibited conduct (homosexuality), confusing the known procedure (court administration) or wrecking the established organization (correctional industries). The strength of

this response and legislator reaction depends upon current practice. Plea bargaining, for example, is a customary practice which functions without authorization of law. Although this activity will be hampered by a law prohibiting its continued existence, the advantages of plea bargaining to all parties involved are so great that the practice probably could not be eradicated by law in the near future.

Certain nonenforcement practices are the product of the practicality of attempting to administer laws (prohibiting adultery, for example) which are inherently difficult to implement because of complications involving discovery, jurisdiction and evidence. Legislators must determine if legal restrictions (search and seizure) will unduly hamper police and if harsh penalties (drug pushing) will increase the dangerousness of suspects to such a degree that police will lose the initiative to enforce the law. Other practical considerations involve projecting the immediate and ongoing costs of programs (community projects) and facilities (correctional facilities), evaluating the comparative effectiveness of various approaches, assigning the responsibilities for administration and predetermining the direct and indirect impact of change. In so doing, legislators

must always be aware of the politics inherent in their actions. In considering issues, legislators try to predict the reaction of their constituency and the benefits that the home district might enjoy. If the constituency is not likely to favor a particular action, legislators must determine whether persuasive efforts would surmount attempts to resurrect the topic during critical elections.' The projected reaction of the constituency must be weighed against factors measuring the security of the legislators, including such factors as the number of terms spent in office and the size of the plurality in past elections. In addition to the constituency, legislators need to be cognizant of the positions held by other legislators and legislative leaders with whom they must interact on a daily basis. The legislator needs to be acutely aware of politics, just as he or she must be able to resolve the issues of procedure, precedent, practice and practicality into a personal position on each legislative vote. This compromise in its practical form requires trading and adjustment of interests.

Especially in matters concerning criminal justice legislation, legislators do not receive the brunt of high pressure group tactics or vociferous public demands. Their individualized decisions are part of a

process of integrating and accommodating the various responsibilities and interests accompanying the legislative position. Although research relating to the ongoing process by which legislators enact criminal justice legislation is important, the criminal justice community is attempting to respond to new pressures in the form of national standards and goals irrevocably intertwined with allocations of federal funds. While these funds contribute only a pittance of the criminal justice monies spent annually on the state and local level, their infusion is intended to act as a catalyst for the improvement of state criminal justice systems through statewide acceptance of standards and goals. Crucial to the implementation of these recommendations is the performance expected from state legislators who must decide on pivotal criminal justice legislation. Although constitutional authority grants state legislatures the power to enact bills which could potentially facilitate or virtually curtail any modification of the criminal justice system, criminal justice administrators have traditionally ignored state legislators, dismissing as inconsequential their role in the criminal justice process. However, if criminal justice administrators are expected to systematically plan for future change, they need to learn

how state legislators might approach these ultimate decisions. This purview can only be obtained by determining state legislative perception of selected criminal justice issues.

FOOTNOTES

¹Cf. Bronislaw Malinowski, Crime and Custom in Savage Society (London: Routledge & Kegan Paul, 1926), p. 55; E. Adamson Hoebel, The Law of Primitive Man (Cambridge: Harvard University Press, 1954), p. 28; and Ronald L. Akers, "Toward a Comparative Definition of the Law," Journal of Criminal Law, Criminology and Police Science 56 (September 1965): 306.

²Richard D. Schwartz and James S. Miller, "Legal Evolution and Societal Complexity," American Journal of Sociology 70 (September 1964): 159-69.

³Max Weber, Wirtschaft und Gesellschaft, pt. 3, pp. 613-40, in From Max Weber: Essays in Sociology, trans., ed., and with an Introduction by H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946; A Galaxy Book, 1958), p. 180.

⁴Richard D. Schwartz, "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements," Yale Law Journal 63 (February 1954): 471-91.

⁵See discussion of the derivation of Anglo-American law as contained in William J. Chambliss, Crime and the Legal Process (New York: McGraw-Hill Book Co., 1969), pp. 2-32.

⁶Gideon Sjoberg, The Preindustrial City: Past and Present (New York: Free Press, 1960; paperback edition, 1965), p. 247.

⁷Emile Durkheim, The Division of Labor in Society, trans. George Simpson (New York: Macmillan Co., 1933; Free Press, 1966), pp. 64-65.

⁸*Ibid.*, p. 127.

⁹*Ibid.*, p. 69.

¹⁰Richard Quinney, The Problem of Crime (New York: Dodd, Mead & Co., 1970), pp. 13-14.

¹¹Herbert Wechsler, "The Challenge of a Model Penal Code," Harvard Law Review 65 (May 1952): 1098.

¹²"Model Penal Code, Proposed Official Draft, May 4, 1962," in Frank J. Remington, Cases and Materials on Criminal Law and its Procedures (Mundelein, Ill.: Callaghan & Co., 1969), p. 2.

¹³For additional historical information, see William L. Prosser and Young B. Smith, Cases and Materials on Torts, 4th ed. (Brooklyn: Foundation Press, 1967), pp. 1-3; and Clarence Ray Jeffery, "The Development of Crime in Early English Society," Journal of Criminal Law, Criminology and Police Science 47 (March-April 1957): 647-66, in Chambliss, Crime and the Legal Process, pp. 19-25.

¹⁴Morris R. Cohen, "The Light of Reason," in Gresham M. Sykes and Thomas E. Drabek, Law and the Lawless: A Reader in Criminology (New York: Random House, 1969), p. 93.

¹⁵This definition is an edited version of the definition developed by Quinney as a foundation for the analysis of crime contained in Quinney, The Problem of Crime, p. 16.

¹⁶p. J. Fitzgerald, Criminal Law and Punishment, Clarendon Law Series (London: Oxford University Press, 1962), p. 146.

¹⁷Escobedo v. Illinois, 378 U.S. 478, 84 Sup. Ct. 1758, 12 L. Ed. 2d 977 (1964); and Miranda v. Arizona, 384 U.S. 436, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694 (1966).

¹⁸Winifred M. Levy, "Justice: The Theoretical, the Practical and the Particular (An Historical and Impact Analysis of the Escobedo Decision)" (M.A. paper, Northwestern University, 1968).

¹⁹Morrissey v. Brewer, 408 U.S. 471, 92 Sup. Ct. 2593, 33 L. Ed. 2d 484 (1972); and Gagnon v. Scarpelli, 411 U.S. 778, 93 Sup. Ct. 1756, 36 L. Ed. 2d 656 (1973).

²⁰Wolff v. McDonnell, 418 U.S. 539, 94 Sup. Ct. 2963, 41 L. Ed. 2d 935 (1974).

²¹William Juneau, "Carey Sees Jail Doors Opening from Court's Quick Trial Ruling," Chicago Tribune, 1 February 1975, sec. 1, p. 11.

²²National Advisory Commission on Criminal Justice Standards and Goals, Criminal Justice System (Washington, D.C.: Government Printing Office, 1973), p. 257.

²³*Ibid.*, p. 1.

²⁴Lawrence P. Tiffany, "Introduction," in Sykes and Drabek, Law and the Lawless: A Reader in Criminology, p. 4.

²⁵National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), pp. 31-32.

²⁶For instance, because of mounting pressures due to caseload and insufficient staff on prosecutors, defense attorneys and judges, the informal procedure of plea bargaining has been institutionalized as an acceptable method for accelerating criminal case disposition.

²⁷President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: Government Printing Office, February 1967), p. viii.

²⁸Philip Selznick, "The Ideal of Legality," in Richard D. Schwartz and Jerome H. Skolnick, eds., Society and the Legal Order: Cases and Materials in the Sociology of Law (New York: Basic Books, 1970), p. 21.

²⁹Packer identifies a similar dichotomy in his discussion of the polar tension separating due process values from crime control values in Herbert Packer, "Crime Control and Due Process," The Limits of the Criminal Sanction (Stanford: Stanford University Press, 1968), pp. 154-173, in John Kaplan, Criminal Justice: Introductory Cases and Materials (Mincola, N. Y.: Foundation Press, 1973), pp. 79-87.

³⁰The principal assumptions which form the substructure of the social theory advanced by Talcott Parsons are discussed in relationship to the value consensus model in William J. Chambliss and Robert B. Seidman, Law, Order, and Power (Reading, Mass.: Addison-Wesley Publishing Co., 1971), p. 18.

³¹Pitirin A. Sorokin and N. S. Timasheff, "Fluctuation of Ethicojuridical Mentality in Criminal Law," Social and Cultural Dynamics, vol. 2, chap. 15 (New York: American Book, 1937), as discussed in Albert K. Cohen, Deviance and Control, ed. Alex Inkeles, Foundations of Modern Sociology Series (Englewood Cliffs, N. J.: Prentice-Hall, 1966), pp. 33, 35.

³²Jerome Hall, Theft, Law and Society, 2d ed. (n.p.: By the Author, 1935; Indianapolis: Bobbs-Merrill Co., 1952), pp. 133-39.

³³Cohen, Deviance and Control, p. 35.

³⁴Hall, Theft, Law and Society, pp. 133-39.

³⁵For an in depth analysis of sociological jurisprudence, see Edwin M. Schur, Law and Society: A Sociological View, ed. Charles H. Page, Studies in Sociology (New York: Random House, 1968), pp. 17-67.

³⁶Eugen Ehrlich, The Fundamental Principles of the Sociology of Law, trans. W. Moll (Cambridge: Harvard University Press, 1936) as discussed in Schur, Law and Society: A Sociological View, p. 37.

³⁷Chambliss and Seidman, Law, Order, and Power, p. 140.

³⁸Roscoe Pound, An Introduction to the Philosophy of Law (New Haven: Yale University Press, 1922), pp. 98-99; Roscoe Pound, "A Survey of Social Interests," Harvard Law Review 57 (October 1943): 1-39; and Roscoe Pound, Social Control Through Law (New Haven: Yale University Press, 1942), pp. 53-80 as discussed in Richard Quinney, The Social Reality of Crime (Boston: Little, Brown & Co., 1970), pp. 32-35.

³⁹Chambliss and Seidman, Law, Order and Power, pp. 173-74.

⁴⁰Ibid., pp. 9, 50.

⁴¹National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, pp. 7-8.

⁴²For examples of circumstances which are perceived as mitigating with respect to the offense of first degree murder, see Norman St. John-Stevias, "The Thalidomide Tragedy" and "The Queen v. Dudley and Stephens," in Schwartz and Skolnick, Society and the Legal Order: Cases and Materials in the Sociology of Law, pp. 94-99.

⁴³CBS, "Sixty Minutes," 2 March 1975, "To Live or to Let Die," produced by Joseph Wershbo.

⁴⁴Chambliss, Crime and the Legal Process, pp. 56-58.

⁴⁵Stephan M. Sherman and James B. Crenshaw, panelists, "Public Interests' Representation Before State Agencies," Summary of the Proceedings: Midwestern Conference of Attorneys General (Chicago: Midwestern Office, Council of State Governments, August 1974), pp. 13-16.

⁴⁶Solomon Bienenfeld, panelist, "Anti-Trust and Regulation: The Attorney General's Dilemma," Summary of the Proceedings: Midwestern Conference of Attorneys General, p. 10.

⁴⁷Richard Vodra, panelist, "Public Interests' Representation Before State Agencies," Summary of the Proceedings: Midwestern Conference of Attorneys General, p. 12.

⁴⁸Chambliss, Crime and the Legal Process, p. 62.

⁴⁹Quinney, The Social Reality of Crime, p. 38.

⁵⁰Chambliss, Crime and the Legal Process, pp. 59, 73.

⁵¹Quinney, The Social Reality of Crime, pp. 35, 39.

⁵²Ibid., pp. 16-19.

⁵³Richard Quinney, ed., Criminal Justice in America: A Critical Understanding (Boston: Little, Brown & Co., 1974), pp. 18-21.

⁵⁴Ibid., p. 24.

⁵⁵For other perspectives in radical criminology, see Herman Schwendinger and Julia Schwendinger, "Defenders of Order or Guardians of Human Rights?" Issues in Criminology 5 (April 1965): 132-42; Anthony Platt, The Politics of Riot Commissions, 1917-1970 (New York: Macmillan, 1971); and Anthony Platt, The Child-Savers: The Invention of Delinquency (Chicago: University of Chicago Press, 1969).

⁵⁶Edwin M. Schur, Our Criminal Society: The Social and Legal Sources of Crime in America (Englewood Cliffs, N. J.: Prentice-Hall, 1969) pp. 11-21.

⁵⁷Schur, Law and Society: A Sociological View, pp. 12, 88-89.

⁵⁸Chambliss, Crime and the Legal Process, p. 53.

⁵⁹Ian Taylor, Paul Walton, and Jock Young, The New Criminology: For a Social Theory of Deviance, with a Foreword by Alvin W. Gouldner, Harper Torchbooks (New York: Harper & Row, 1974), p. 267.

⁶⁰Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," American Sociological Review 28 (February 1963): 55-67.

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⁶³Ibid., pp. 6-7.

⁶⁴James Q. Wilson, Varieties of Police Behavior: The Management of Law and Order in Eight Communities (Cambridge: Harvard University Press, 1968), pp. 7, 227.

⁶⁵*Ibid.*, pp. 83-84.

⁶⁶Jerome H. Skolnick, Justice Without Trial: Law Enforcement in Democratic Society, Science Editions (New York: John Wiley & Sons, 1966), pp. 108-9.

⁶⁷*Ibid.*, pp. 90, 111.

⁶⁸Carl Werthman and Irving Piliavin, "Gang Members and the Police," in Leon Radzinowicz and Marvin W. Wolfgang, eds., Crime and Justice, vol. 2: The Criminal in the Arms of the Law, 3 vols. (New York: Basic Books, 1971), pp. 238, 241.

⁶⁹*Ibid.*, pp. 246-49.

⁷⁰President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (Washington, D.C.: Government Printing Office, 1967), pp. 11, 65.

⁷¹Robert O. Dawson, Sentencing: The Decision as to Type, Length, and Conditions of Sentence, ed. Frank J. Remington, Administration of Criminal Justice Series (Boston: Little, Brown & Co., 1969), p. 94.

⁷²National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, p. 146.

⁷³For an extensive analysis of the plea bargaining process, see Donald J. Newman, Conviction: The Determination of Guilt or Innocence Without Trial, ed. Frank J. Remington, Administration of Criminal Justice Series (Boston: Little, Brown & Co., 1966).

⁷⁴Herbert Jacob, Justice in America: Courts, Lawyers, and the Judicial Process, 2d ed. (Boston: Little, Brown & Co., 1972), pp. 9, 134.

⁷⁵*Ibid.*, p. 133.

⁷⁶Clement E. Vose, "Litigation as a Form of Pressure Group Activity," in Walter F. Murphy and C. Herman Pritchett, Courts, Judges, and Politics: An Introduction to the Judicial Process (New York: Random House, 1961), p. 284.

⁷⁷Fowler V. Harper and Edwin D. Etherington, "Lobbyists Before the Court," in Murphy and Pritchett, Courts, Judges, and Politics: An Introduction to the Judicial Process, pp. 290-94.

⁷⁸Samuel Krislov, "The Amicus Curiae Brief: From Friendship to Advocacy," in Schwartz and Skolnick, Society and the Legal Order: Cases and Materials in the Sociology of Law, p. 234.

⁷⁹Ibid., p. 230.

⁸⁰Wright Patman, "Lobbying Through Law Reviews," in Murphy and Pritchett, Courts, Judges, and Politics: An Introduction to the Judicial Process, pp. 308-11.

⁸¹Jacob, Justice in America: Courts, Lawyers, and the Judicial Process, pp. 135-41.

⁸²Murphy and Pritchett, Courts, Judges, and Politics: An Introduction to the Judicial Process, pp. 275, 278.

⁸³Robert A. Dahl, "The Supreme Court as a National Policy Maker," in Schwartz and Skolnick, Society and the Legal Order: Cases and Materials in the Sociology of Law, p. 247.

⁸⁴Frank J. Remington and Victor G. Rosenblum, "The Criminal Law and the Legislative Process," University of Illinois Law Forum 1960 (Winter 1960): 481-99, in Remington, Cases and Materials on Criminal Law and its Procedures, p. 30.

⁸⁵Ibid., pp. 35-36.

⁸⁶For details as to methodology, see Wayne L. Francis, Legislative Issues in the Fifty States: A Comparative Analysis, ed. Aaron Wildavsky, American Politics Research Series (Chicago: Rand McNally & Co., 1967), pp. 8-11.

⁸⁷Remington and Rosenblum, "The Criminal Law and the Legislative Process," pp. 481-99, in Remington, Cases and Materials on Criminal Law and its Procedures, pp. 31-32.

⁸⁸Herbert L. Packer, "The Model Penal Code and Beyond," Columbia Law Review 63 (April 1963): 604-5.

⁸⁹Francis, Legislative Issues in the Fifty States: A Comparative Analysis, pp. 20-29.

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⁸⁸Herbert L. Packer, "The Model Penal Code and Beyond," Columbia Law Review 63 (April 1963): 604-5.

⁸⁹Francis, Legislative Issues in the Fifty States: A Comparative Analysis, pp. 20-29.

CHAPTER II

RESEARCH METHODOLOGY AND DATA ANALYSIS

As noted in chapter 1, the operation of the criminal justice system is dependent upon the functioning of state legislatures. Police, courts and corrections apply law to individual offenders, but the legislature can alter the character of this process by exercising its power in developing general policy, formulating procedural rules, enacting substantive law, authorizing new programs, approving administrative structure and budgeting state appropriations. In developing recommendations for major system improvements, the National Advisory Commission on Criminal Justice Standards and Goals conceded that many of its proposals require various forms of legislative action for implementation. In order to accelerate and direct this initiative, the Commission urged the criminal justice community to press for legislative action by "encouraging and supporting legislative hearings, debate and legislation, particularly on those standards requiring legislative action."¹ If this

recommendation is to be implemented as suggested, then the criminal justice community in each state should be cognizant of state legislator attitudes toward specific issues which influence their realm of operation. Even if criminal justice administrators have not generally attained this awareness, this information should be in the possession of the local criminal justice state planning agencies since these offices are charged with the responsibility of developing a comprehensive plan for the improvement of the criminal justice system within each state. Although the criminal justice state planning agencies are empowered to allocate federal funds in accordance with their comprehensive plans, legislative approval is necessary for the required appropriation of state matching funds. Since legislative cooperation is necessary for the endorsement or financing of most items contained in their comprehensive plans, criminal justice state planning agencies must at least have information pertaining to aggregate legislative positions relating to criminal justice if they are to effectively achieve their goals.

Recognizing the pivotal role of state legislators in implementing criminal justice standards and goals, one criminal justice state planning agency

director strongly suggested that the Council of State Governments undertake a national study to research legislative attitudes toward an array of criminal justice issues. Contrary to expectations, a subsequent search revealed no attitudinal information in this field. Even the National Criminal Justice Reference Service could not provide a lead as to where materials of this nature might be located.² Since the information was not immediately available from any known source, the Council of State Governments agreed to undertake the project, utilizing the distinct access mechanisms granted to an organization chartered to provide services to state government officials.

Participant Observation

Before embarking on the development of the questionnaire, the author devoted almost one year to the participant observation of state legislative involvement in the field of criminal justice. Although not elected to a legislative position, Ms. Lyday has served as a special assistant for criminal justice for the Council of State Governments. In this capacity she has made field trips to twelve Midwestern states wherein she visited judiciary chairmen, legislative leaders and other legislators interested in criminal justice. Her duties also have included

the personal staffing of the Justice and Law Enforcement Committee of the Midwestern Conference of the Council of State Governments, an interstate legislative committee created for mutual consideration, information exchange and policy development with respect to criminal justice issues. In conjunction with these activities, Ms. Lyday has given presentations concerning specific criminal justice topics to various state legislative groups and has personally coordinated two national symposiums, "Issues in Corrections" and "Issues in Courts," for state officials at the behest of state legislators.

Through this close association with state legislators and criminal justice matters on an interstate level, the author has developed a familiarity not only with the criminal justice issues which have attracted the greatest attention in state legislative chambers, but also with the specific legislation which law enforcement officials, court personnel, correctional officers and other criminal justice functionaries are urging state legislators to enact for the improvement of the criminal justice system. Using this practical experience as an operational guide, the project of determining state legislative attitudes

toward criminal justice issues could be reduced to a manageable scope within the context of a larger perspective.

Questionnaire Construction

Because of the nature of the original request, the decision was made at the outset of the study to concentrate on a maximum number of criminal justice issues even though this meant favoring a range of items over a depth of analysis. State legislators are exceptionally busy individuals. Since compensation for legislative office remains low, most state legislators are engaged in separate, full-time nongovernmental occupations or professions. The short time spent in session in the average state places additional pressure on legislators to consider an enormous number of bills each day. Because legislators are accustomed to operating under these time constraints, they are unlikely to participate in a study that requires a sizable commitment of their time and energy. Past experience indicated that state legislators are most likely to respond to questionnaire instruments of a simple format and minimal length. The resulting questionnaire was designed in two sections (see appendix 1).

The first section of the questionnaire consisted of six items designed to describe the legislative respondents. Two questions specifically investigated the position of the legislator in his or her respective state legislature. The legislators were asked to state the types of standing committees on which they served and also to specify any and all leadership positions they held in their respective houses. A question on committee membership was included in the questionnaire as an indicator of the knowledge, information and skills which a legislator might apply in answering the various items, especially if this legislative assignment is in an area which delves into criminal justice. Fifteen of the most common types of standing committees were specifically listed in addition to a general listing for the inclusion of committees not enumerated. Since legislative leaders play an important role in facilitating the enactment of legislation, their opinions may have a weighted effect on the ultimate destiny of a bill. For this reason, one questionnaire item asked legislators to indicate if they served on one or more of the leadership positions varying from committee chairman to president of the senate and speaker of the house or assembly. Because leadership positions differ

significantly between states, an additional listing was included for open-ended responses.

Also contained in the first section of the questionnaire were three additional items relating to political background. Political affiliation is traditionally considered to be a major predictor of attitudes. The urbanization of a district is also reflected in the attitudes of its populace and elected representatives. Not only do these variables delineate attitudes, but they also can be used as indicators in determining partisan and factional differences. While one item on the questionnaire asked respondents to declare their personal political affiliation, another item requested information as to whether the legislative district represented a large metropolitan, urban, suburban or rural population area. Although responses to this latter questionnaire item do not reflect actual population density, they do provide a measure of perceived urbanization. Legislative opinion may also be affected by factors such as political security, political experience and peer group socialization. In order that these factors might be determined in the general sense, the third item relating to politics specifically requested that legislators indicate the number of years they had

served in the legislature of their state. Just as legislative opinions reflect political background, they also mirror nonlegislative experiences and predictions. These factors are closely related to an individual's socio-economic status. Since the socio-economic variables of education, occupation and income tend to intercorrelate, only one open-ended item relating to occupation was included in the first section of the questionnaire.

The six items contained in the first section of the questionnaire do not exhaust the variables which conceivably might influence legislative opinions toward criminal justice issues, but they do measure a number of variables which expectedly might delineate response categories. Although other items could justifiably have been included, a concerted effort was made to limit to approximately five the number of questions relating to the personal characteristics of legislators. The criteria for this selection were threefold. First, items were eliminated if their predictive value appeared to be minimal. Race and sex, for example, would not be significant because the overwhelming preponderance of respondents were already known to be Caucasian males. Second, items were eliminated if they decreased the

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probability that potential respondents would complete the questionnaire. Legislators are not likely to answer questionnaires containing items which they consider to be overly sensitive or personal. For instance, legislators are liable to be sensitive to questions investigating their personal relationship with interest groups, membership in voluntary groups and income from nongovernmental sources. Although a legislator's personal experiences in the arms of the law might prove interesting, it is doubtful that he or she would willingly proffer this information. If there is any indication that the information contained in the questionnaire will identify the respondent, either specifically or by elimination, with statements that could be construed as embarrassing, the questionnaire would probably be ignored. Third, items were eliminated if they would not evoke an immediate response or genuine interest. Legislators are more likely to respond to questions which single them out as elected representatives and political successes. Since governmental officials comprise one of the major audiences to which this study is addressed, it is also important to include variables with which they can relate in the final reports in preference to variables for which they would have little practical use.

The second section of the questionnaire consisted of thirty-five multiple choice items designed to stimulate legislative reaction toward controversial statements about issues in the field of criminal justice. In constructing these statements, an effort was made to select only those items which:

1. Related to issues legislators are most likely to confront in terms of pending legislation
2. Derived directly or indirectly from recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals
3. Required state rather than local or interstate action
4. Involved major policy changes rather than minor operational adjustments
5. Approximated a representative spread of issues

Two questions were included even though they deviated from these preestablished criteria. The first question elicited opinions as to whether society should assume the responsibility of alleviating losses suffered by a victim as a consequence of a crime.

Although the National Advisory Commission for Criminal Justice Standards and Goals did not specifically consider this matter, the Law Enforcement Assistance Administration has embarked on a policy of commending efforts which do not exclude victims by forcing them to individually assume the burdens of being the forgotten participants in the criminal justice process.

Following the example set by a few jurisdictions, many states are currently considering victim compensation and victim restitution legislation. Because this appears to be an important criminal justice trend relating to state assumption of new responsibilities, the decision was made to include this item in the questionnaire. The last question elicited opinions as to whether the preservation of public safety is more important than the protection of individual rights. This item was included in the questionnaire solely as an indicator of legislative attitudes which could be used during the data analysis as a discriminating variable. The remaining thirty-three Likert questions all related, directly or indirectly, to the Commission's recommendations (see appendix 2).

The final questionnaire approximated a relatively representative spread of issues. Seven questions involved statutory prohibitions and penalties, five of which dealt with status offenses and victimless crimes such as gambling, vagrancy, prostitution and sexual conduct. The two remaining questions dealt with the penalties for the nonprescribed sale of addictive drugs and the possession of marijuana. Since crime prevention and law enforcement are primarily local functions, many of the Commission's

recommendations regarding these areas did not fit the criteria previously established. The questionnaire did, however, include nine questions relating to crime deterrence and police functions. The two deterrent items considered the preventive effectiveness of controlling cheap handguns and utilizing the death penalty. Although two questions related to police departments recruiting minorities and court decisions hampering police, the remaining five items involved the maintenance and availability of offender records and the gathering and exchange of intelligence information. In the area of prosecution, regional systems and plea bargaining are important topics. In the area of courts, judicial sentencing, selection and review have caused considerably commotion, as have the unification of court systems and the merger of probation and parole services. Nine items on the questionnaire incorporate these topics relating to courts and prosecution. The remaining eight items considered correctional philosophy, inmate rights and rehabilitation programs.

In attaining its final form, the questionnaire progressed through eight generations of rewriting and revision. After each generation was typed, the resulting questionnaire was distributed to various

individuals at the Council of State Governments for comments and criticism. While many of the resulting suggestions involved spelling errors and word changes, others concerned changes in nomenclature for legislative positions and committees. After the instrument was finally in a form satisfactory to the reviewers at the Council of State Governments, copies of the questionnaire were mailed to legislative leaders in the Midwest for their appraisal and advice. The one response received from this mailing was delayed so long that it arrived after the questionnaire had already been delivered to the printer.

In revising the questionnaire, great care was devoted to the wording contained on the cover letter. The importance of criminal justice as a legislative issue was discussed, and the study was identified as an official project of the Council of State Governments. This identification implicitly provided assurances that the data collected would not be used in any manner which would embarrass or threaten the respondents. Furthermore, the cover letter explicitly stated that individual answers would remain completely confidential, assuring respondents that the results were only going to be used in their aggregate form. Although a space was provided for respondents to

identify themselves by name and state, the inclusion of the bold-typed word "OPTIONAL" clearly expressed the message that legislators were not obligated to make a personal declaration. The cover letter also provided a blank area for the inclusion of impromptu legislative comments.

Sampling Procedure

For distributing the questionnaire, three options were available, all of which have had certain sampling implications. First, the questionnaire could have been hand delivered to legislators across the country during staff field trips. Although this method would likely increase the percentage of returns, it also involves large expenditures of time and money. Second, the questionnaire could have been mailed to state legislators at either their home address or legislative office. Considering the response from legislative leaders who received a model copy of the questionnaire, returns from a mailing were likely to be very low. Third, the questionnaire could be distributed at legislative conferences sponsored by the Council of State Governments. Distribution at conferences was selected because its advantages appeared to outweigh its disadvantages.

A major disadvantage of conference distribution is the difficulty in determining the representativeness of the sample. Although state legislators attending the conferences may represent all fifty states, they comprise a select group of individuals specially designated for this purpose. Usually conference attendance is overrepresented by legislative leaders or their chosen delegates, regardless of party membership. For the purposes of this study, the overrepresentativeness of state legislative leadership could be considered as much as an advantage as a disadvantage. Even though state legislative leaders exercise considerable influence over other state legislators and exert substantial control over the destiny of legislation, their busy schedules usually ensure that they will be the ones least likely to respond to a questionnaire. Distribution at legislative conferences at a national or regional level increases the probability that legislative leaders will respond to the questionnaire, improving the likelihood that the responses will be predictive of future state legislature action.

Another disadvantage of conference distribution involves the difficulty in identifying respondents. There is virtually no method for determining

which legislators completed the questionnaire. Not only does this fact limit the conclusions which can be drawn from the data, but it also precludes reinforcing the sample by later soliciting further responses. Distribution of the questionnaire at a legislative conference must necessarily be a one-shot administration.

Legislative conferences sponsored by the Council of State Governments draw a nonpartisan representation from all fifty states, including an overabundance of state legislative leaders. By distributing a questionnaire in this context, no lapse time exists between distribution and collection; the data analysis can begin immediately upon completion of the conferences. Especially during general sessions, delegates provide a captive audience which is not distracted by the immediate pressures of work. A general tendency exists to respond to materials at hand during the course of the program. This tendency can be reinforced through general explanations and personal pleas from conference leaders.

Given the difficulties inherent in all possible sampling alternatives, the most viable option appeared to be conference distribution. After obtaining the approval of conference leaders and staff

personnel, the decision was made that the final questionnaires would be distributed at each of the legislative conferences held annually in the four regions of the Council of State Governments.³ This sampling procedure, combined with the questionnaire format, was thought to provide sufficiently representative results such that conclusions could accurately be drawn not only about state legislator attitudes toward criminal justice legislation, but also about legislator traits which differentially affect the characteristics of this distribution.

Pretest Administration

As a pretest, questionnaires were distributed at two meetings sponsored by the National Legislative Conference. The delegates to both meetings represented a national cross section of state legislators. The first pretest group consisted of twenty-two state legislators attending a training session on community corrections in Iowa. During the training session legislators not only visited local projects, but also attended schoolroom presentations in the chambers of the Iowa legislature, the joint sponsor of the program. Both the training coordinator and the Iowa chairperson readily agreed to cooperate with the project. Duplicates of the questionnaire were copied

and the training coordinator made the initial presentation, actively encouraging delegate participation in the project. Sufficient time was allotted for everyone present to complete the questionnaire. After everyone appeared to be finished, the delegates were requested to make either verbal or written comments regarding the questionnaire. Most of the delegates found the questionnaire to be interesting and easy to answer. No questions were raised which related to the adequacy of the instructions. While some objections were voiced concerning the fact that such positions as "Subcommittee Chairman" and "Interim Study Committee Chairman" were not explicitly included in the list of positions, the individuals grudgingly agreed to write in the missing titles as all feasible positions could not possibly be listed. The only major criticism relating to the substantive portion of the questionnaire involved two questions. The first question inquired as to whether possession of small amounts of marijuana should be a misdemeanor instead of a felony. Several comments were made to the effect that the question should be reworded to inquire as to whether possession of small amounts of marijuana should carry the penalty of a misdemeanor or carry no penalty at all. Despite these comments, no state has legalized

the possession of marijuana, and it is unlikely that such a trend will occur in the immediate future. On the other hand, serious debate has occurred in many states related to reducing the penalty for possession of marijuana from a felony to a misdemeanor. The second question inquired as to whether the preservation of public safety is more important than the protection of individual rights. Several comments were made to the effect that this question was very difficult to answer. Since this question was intentionally included as a device to differentiate respondent orientations, the question was not expected to be easy.

The second pretest group consisted of thirteen state legislators attending an Intergovernmental Relations Committee meeting. The distribution methods were similar to those used at the training session except that different presentations were required for each of the separate meetings simultaneously in session. Many of the responses from this second group were provided by members of the Intergovernmental Task Force on Criminal Justice. In this instance, however, no one challenged the question relating to the penalties for possession of marijuana. The question on public safety and individual rights again stimulated

some debate. Since no major criticisms other than those aforementioned were discussed, the questionnaire was not altered as a consequence of its two pretests.

Questionnaire Distribution

The final questionnaire was distributed at each of the legislative conferences held annually in the four regions of the Council of State Governments. Since each of these conferences comprise an organizational affiliate to the Council of State Governments and since each conference is staffed by employees of the four corresponding regional offices of the Council of State Governments, official approval for questionnaire distribution at the individual conferences was not difficult to garner. Although the procedure for distributing the questionnaire differed slightly among regions, the basic methods remained the same. The differences occurred because the meeting schedules and the seating arrangements varied to some degree, but the general procedure followed the pattern established at the Midwestern Conference. At the Midwestern Conference the questionnaires were included in the packet of materials placed individually on the rows of tables which would become the seating positions of the delegates. After the welcoming remarks

and the chairman's commentary, the first item on the agenda of the general session was a series of presentations on correctional policies. During his introduction to the section on correctional policies, the conference chairman alluded to the study and expressed his interest in the results. Next, the chairman of the Justice and Law Enforcement Committee explained the activities of the Committee in the area of correctional policy and also commented on the importance of the questionnaire. The chairman of the Justice and Law Enforcement Committee then asked the author to explain the questionnaire to the conference delegates. After Ms. Lyday briefly explained the questionnaire, she noted that delegates could return the questionnaire by either placing them in boxes positioned next to the room exits or giving them to her personally. The delegates were given a short time to complete the questionnaire and the program then continued as scheduled. Since the boxes were placed so that they would have been tripped over if more than one person tried to go through the doorway at the same time, returns were relatively high. It was difficult to determine, however, how many of the conference delegates had not yet arrived, were standing in the corridors, or were otherwise not in attendance. To

encourage return of laggard questionnaires, the conference chairman on two separate occasions reminded delegates that they could still return the questionnaires to certain designated locations.

At the completion of all four regional conferences, the questionnaires were mailed to Chicago for coding. The questionnaires from each of the regions could easily be identified because they had been printed on different colors (blue, green, pink and yellow) of paper, contrasting with the white sheets used in the pretest samples.

Data Preparation

As the questionnaires were received from the regions, all open-ended responses in the first section were listed and the questionnaires were assigned individual numbers to the total of 234. After these lists were completed, efforts to develop a rational coding scheme were initiated.

As expected, responses provided far more legislative committees than listed on the questionnaire. Even when a committee type was explicitly listed, legislators tended to provide the official title of the committee on which they served. For example, despite the listing entitled "Corrections," some legislators volunteered "Penal and Correctional."

In one instance a legislator wrote "Interstate Cooperation" when that precise wording was already contained on the list. After combining the responses into categorical groupings, twenty-eight committee types were produced, thirteen of which were new additions (see appendix 3). The questionnaires were then coded according to numbers corresponding to the revised state legislative committee list.

Legislative position posed a situation similar to legislative committee. Again, all alternatives were listed and revised coding categories were developed (see appendix 4). Political characteristics were less difficult to code. For population areas of district, the four alternatives (large metropolitan, urban, suburban and rural) were assigned ascending numbers, allowing intervening numbers for those instances where two consecutive categories were marked. Legislative service could easily be coded by simply transcribing the number of years indicated. Party affiliation split into the four categories of "Democrat," "Republican," "Independent" and "Other." In addition to a code indicating the particular pretest or region origin of the response, another variable was developed. Since approximately one-half of the respondents signed their name to the cover sheet

of the questionnaire, a category emerged which separated senators from representatives. This legislative position category also contained codings for legislators not indicating their chamber, legislative staff, administrators and a miscellaneous "other" response.

The item requesting respondents to insert their nonlegislative occupation proved to be the most difficult coding problem. After compilation into a list format, the data defied any attempts at classification using the vehicle of established occupational indicators. As might be predicted, the occupational listings for legislators gravitated to the upper reaches of every occupational scale. Responses of "Airport Owner and Operator," "Bank Director," "Broadcast Owner and Executive" and "Treasurer of State" were typical rather than aberrant cases. To adequately distinguish between occupational types, an index tailored to the data needed to be devised. Through successive categorizations, the listed occupations were reduced into thirty-two index codes (see appendix 5). Each separate code distinguished both occupational types (agriculture, business, law, etc.) and occupational positions (consultant, executive, manager, etc.). The primary advantage of the index, however, derived from the fact that similar occupational types were coded consecutively such that the

index codings could easily be reduced into broader occupational categories for the purpose of more sophisticated analyses.

Since the thirty-five substantive items were written in typical Likert format, coding posed little difficulty. No respondent deviated from the instructions by marking more than one option. The scales for each question were reordered such that the response favoring the position advocated by the recommendations set forth by the National Advisory Commission on Criminal Justice Standards and Goals would always be assigned a lower weight than the contrary response. Given these criteria, responses for each question were coded with weights varying from one to five.

After all the questionnaires had been coded, the resultant codings were keypunched onto computer cards, generating two cards for every questionnaire. By printing the cards, a listing was produced for data verification.

Statistical Analysis

For an elementary description of the data and a benchmark for further analysis, a frequency distribution was calculated for all values of every variable. Other statistics such as means, modes, medians and standard deviations were compiled at the same

time. The distribution of responses indicated that the values of all the variables contained in the first section of the questionnaire needed collapsing in order to ensure statistical reliability. For the variable indicating sample origin, scores for the two pretest samples were merged. Although the original data separated senators, representatives, legislative staff and other supportive personnel, the final categories only distinguished between legislators and non-legislators. The twenty-eight legislative committees proved to be too finely distinguished for the purposes of the study, so the committees were classified as to whether their function bore any relationship to criminal justice. The five committees which satisfied this test were alcohol and drugs, corrections, judiciary, public safety and law enforcement, and welfare and health services. These committees were collapsed into a single criminal justice category, and the remaining committees were also combined into a single group. Leadership positions, like legislative committees, were far too numerous to provide reliable statistical results in later calculations, but some gradation of leadership was crucial to the research. Since approximately 40 percent of the respondents were committee chairmen, only committee chairmen and

committee vice chairmen were combined into a middle leadership group. The official leaders of the separate houses or parties (e.g., president of the senate, minority leader, or whip) were merged into a single high leadership group. Positions ranking from member-at-large to subcommittee chairman were collapsed into a low leadership group, and all other categories were placed together in a general administrative group. For political affiliation, Democrats were divided from Republicans and both groups were separated from a third category consisting of Independents and others. Metropolitan and urban respondents were combined to form an urban category which contrasted with the nonurban category consisting of suburban and rural respondents. Many of the occupational listings contained five or less responses, so the occupational index was reduced to six major headings: agriculture, business, government, law, professional and miscellaneous. The law heading included the index categories of law court, law enforcement, legal prosecution and defense, and legal representation. Two categories were merged into both the agriculture and the government headings, and seven categories (including medicine, research and technical sciences) were combined to form the professional heading. Almost half of the

categories were business-oriented. These headings were collapsed under the heading of business. After all the variables in the first section of the questionnaire were collapsed into their final format, a second frequency distribution was calculated for all of the variables derivable from the questionnaire.

As a test of significance, each of the eight general variables were cross tabulated with each of the thirty-five substantive issue questions, and chi square values were calculated. The data was separated into regional and pretest groups and the process of cross tabulation was repeated. After generating a factor analysis with four factors which had limited applicability in terms of their relationship with the substantive issue questions, a second factor analysis was calculated with the maximum number of factors limited to two. Since these factors appeared to be meaningful, they were used to calculate two scales wherein individual respondents were scored in relationship to each factor.⁴ After the individual scores were calculated, the factor scales were cross tabulated and correlated with the variables contained in the first section of the questionnaire.

FOOTNOTES

¹National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime, p. 150.

²In an effort to locate supporting studies, the National Criminal Justice Reference Service agreed to perform a search of their available references. When the first effort produced no reference to any study or article vaguely connecting legislators (state or national) with criminal justice issues, a second effort was initiated to research public attitudes in general. These two searches produced eighty-two pages of annotated bibliographies referencing books, articles and projects dating back to 1962. The references almost unanimously avoided the issues considered in this study. One foreign source contained in a Norwegian journal, A. Havelin, "Public Attitudes Towards Homosexuals and Homosexuality," Tidsskrift for Samfunnsforskning 9 (1968): 42-74, surveyed political attitudes toward homosexuality. Another article, L. Harris, "Changing Public Attitudes Toward Crime and Corrections," Federal Probation 32 (December 1968): 9-16, discussed the general ambivalence of public attitudes toward courts, probation and ex-offenders. This dearth of information cannot be attributed to the procedures adopted by the National Criminal Justice Reference Service. A search of Sociological Abstracts for the years 1970 through 1974 produced the same singular absence of materials directly or even closely related to the specific criminal justice issues contained in this study. Perhaps this conspicuous void results from the fact that the President's Commission on Law Enforcement and Administration of Justice did not publish its findings until 1967 and the National Advisory Commission on Criminal Justice Standards and Goals did not release its standards until 1973, but more likely this situation illustrates a preferential trend toward other types of research and publications in the field of criminal justice.

³The state composition of the four regions of the Council of State Governments is as follows:

<u>Eastern</u>	<u>Midwestern</u>	<u>Southern</u>	<u>Western</u>
Connecticut	Illinois	Alabama	Alaska
Delaware	Indiana	Arkansas	Arizona
Maine	Iowa	Florida	California
Massachusetts	Kansas	Georgia	Colorado
New Hampshire	Michigan	Kentucky	Hawaii
New Jersey	Minnesota	Louisiana	Idaho
New York	Missouri	Maryland	Montana
Pennsylvania	Nebraska	Mississippi	Nevada
Rhode Island	North Dakota	North Carolina	New Mexico
Vermont	Ohio	Oklahoma	Oregon
	South Dakota	South Carolina	Utah
	Wisconsin	Tennessee	Washington
		Texas	Wyoming
		Virginia	
		West Virginia	

⁴Two factor scores were calculated for each respondent using the formula:

$$r = \sum_{i=1}^n \frac{(x_i - \bar{x}_i)}{s_i} f_i$$

where

r = single factor score for respondent

n = total number of substantive questionnaire items loading heavily on factor

x_i = respondent value for single substantive questionnaire item

\bar{x}_i = mean value for single substantive questionnaire item

s_i = standard deviation value for single substantive questionnaire item

f_i = factor value for single substantive questionnaire item

CHAPTER III

LEGISLATOR PROFILE AND ISSUE ORIENTATION

Since state legislators perform a direct, rather than auxiliary, role in the operational mode of the criminal justice system, criminal justice planning depends, to a great extent, upon future action of state legislative bodies. While the apparent lack of legislative interest in criminal justice matters conceivably derives from legislative willingness to accommodate executive agencies by delegating responsibilities to criminal justice professionals, criminal justice planning will continue to occur in a vacuum unless some criteria are developed for forecasting future state legislative action. Not only must criminal justice personnel learn whether legislative action might be taken with respect to specific issues, but they also must determine what factors affect legislator propensity to act. Since state legislators differ among themselves, these determinations must be predicated upon an

understanding of the socio-demographic factors which may be used to identify state legislators in conjunction with their attitudes toward criminal justice issues.

State Legislator Distribution by
Socio-Demographic Categories

The national representation of respondents to the questionnaire not only provided a reasonable indication of the types of legislators who attend national or regional conferences but also probably depicted the socio-demographic characteristics of state legislators in general. Despite efforts to protect the anonymity of responding state legislators, approximately one-half (49.2 percent) of the questionnaires were signed. State legislators signing the questionnaire represented thirty-seven states, but willingness to sign the questionnaire varied by region. Individuals attending the Eastern and Midwestern conferences exhibited a greater propensity to identify themselves than did individuals attending the Southern and Western conferences. Although these results contradict the general expectation that Westerners are "open," Midwesterners are "traditional" and Easterners are "reserved," this pattern is only the first of several indicators that legislators in the East and

Midwest will more readily identify themselves as being in favor of criminal justice change. The greatest number of respondents were from the Midwest, followed by the East, South and West (see table 4).

TABLE 4
PERCENTAGE DISTRIBUTION OF STATE LEGISLATOR
RESPONDENTS BY REGION

Region	Percentage of States Known to be Represented in Sample by Region	Percentage of Total Number of Respondents in Sample by Region ^a
Pretest . .	. . .	15.0
Eastern . .	90.0	19.7
Midwestern	83.3	31.2
Southern .	66.7	19.2
Western . .	61.5	15.0

^aPercentages do not total to 100.0 due to rounding errors.

Of the total number of respondents, 86.8 percent were legislators. The remaining respondents were primarily legislative staff attending the conferences in support capacities. The respondents were almost evenly divided in the range of years spent in the legislatures of their states. Over half (50.4 percent) of the respondents had served more than five years as legislators. The party affiliation of

the sample was more Republican (45.7 percent) than Democrat (39.7 percent), but a sizable proportion (14.5 percent) of the sample either indicated that they considered themselves to be Independents or refused to answer this question. By occupation, respondents heavily represented the fields of business and law (see table 5). Although this occupational distribution appears to support the contention of the radical theoreticians that the legislature is an instrument of vested economic interests, the occupations listed (farmer, business executive, carpenter, lawyer, housewife, etc.) seem more to indicate that state legislators tend to represent those occupations which are not constrained by rigid work schedules. Over one-half of the respondents (57.3 percent) represented nonurban districts, but farmers represented less than one-half of the rural districts.

TABLE 5
PERCENTAGE DISTRIBUTION OF STATE LEGISLATOR
RESPONDENTS BY OCCUPATION

Occupation	Percentage of Total Number of Respondents
Agriculture	12.0
Business	28.6
Government	7.3
Law	22.2
Professional	12.0
Unemployed, Other . .	17.9

Since the method of sampling provided little clue as to whether the data actually reflect the socio-demographic composition of state legislatures, the state of Wisconsin was randomly selected as a comparison state.¹ Although information relating to legislators in the Wisconsin Assembly was collected by the Wisconsin Legislative Reference Bureau and is not completely comparable to the socio-demographic variables tapped in this study, several classifications were comparable (see table 6). For the years 1973 through 1974, the Wisconsin Assembly was 62.6 percent Democratic and 37.4 percent Republican. Although these figures are significantly different from the party affiliation figures indicated above (39.7 percent Democratic and 45.7 percent Republican), the composition of various state legislatures can be expected to vary drastically with respect to party affiliation. For other comparable variables, the differences were relatively small. While one person in Wisconsin was serving his twenty-sixth year in the legislature, one respondent in this study was serving his twenty-eighth year in the legislature. Whereas 71.7 percent of the Wisconsin Assembly had served during prior sessions, 76.8 percent of the respondents to the questionnaire had served three or more years in their state legislatures. The Wisconsin figure of

19.2 percent attorneys was extremely close to the 20.9 percent found in this study. Similarly, 12.1 percent of the Wisconsin Assembly were farmers, and 12.0 percent of the respondents were farmers.² Although these striking similarities are not conclusive evidence that the data contained in this study are completely representative of state legislators from every one of the fifty states, they do underscore the claim that the socio-demographic characteristics of the legislator respondents did not differ markedly by state or area. Since the comparison showed no indication that the questionnaire produced unusual socio-demographic information, it would be reasonable to assume that substantive information on criminal justice issues would also be generally representative of state legislator attitudes.

For the entire sample, 44.0 percent of the respondents indicated that they served on one of the committees related to criminal justice (alcohol and drugs, corrections, judiciary, public safety and law enforcement, and welfare and health services). If legislative leadership is considered to include the positions of president, speaker, president pro tem, majority leader, minority leader, majority floor leader or whip, minority floor leader or whip,

TABLE 6
PROFILE OF THE WISCONSIN ASSEMBLY

	Percentage of Total Number of Legislators
Party	
Democrat	62.6
Republican	37.4
Prior Term of Service	71.7
Occupation	
Attorney	19.2
Farmer	12.1
Other	64.6
Retired	4.0
Education	
Not Beyond High School	18.2
Business or Technical School	9.1
Attended College	75.8
Academic Degree	52.5
Higher Degree	31.3
Age	
18-25	7.1
26-35	29.3
36-45	31.3
46-55	16.2
56-65	14.1
65+	2.0
Marital Status	
Single	17.2
Married	79.8
Widowed	3.0
Veterans	40.4
Women	7.1

SOURCE: Wisconsin Legislative Reference Bureau, "Profile of the 1975 Wisconsin Legislature," Wisconsin Briefs 75 (February 1975): 4.

NOTE: Percentages may not total to 100.0 due to rounding errors.

committee chairman or committee vice chairman, then 62.6 percent of the respondents could be classified as legislative leadership (see table 7). The majority of these leaders were committee chairmen and vice chairmen. Although this leadership representation is exceedingly high, it would climb even higher if the responsible positions relating to subcommittees and interim committees were included in the leadership calculations. The high proportion of leaders at conferences is predictable since legislatures are more likely to send legislators with leadership responsibilities to conferences where specific matters are discussed on an interstate basis.

TABLE 7
PERCENTAGE DISTRIBUTION OF STATE LEGISLATOR
RESPONDENTS BY LEADERSHIP RANKING

Ranking	Percentage of Total Number of Legislators
High	14.8
Medium	47.8
Low	37.4

Although the sample represents an unusually high proportion of state legislative leaders, it exhibits a reasonable distribution of other

socio-demographic and political variables. Since legislative leaders play an important role in determining the fate of criminal justice legislation, their overrepresentation in this sample could only serve to improve the predictive accuracy of state legislator attitudes toward specific criminal justice issues.

State Legislator Distribution by
Criminal Justice Issues

State legislator responses to the criminal justice issues contained in the questionnaire support the proposition that most criminal justice topics are not matters of great interest or high priority to state legislators in general. In almost half of the instances investigated, legislative opinion had not sufficiently coalesced to the point whereby support (or dissent) toward an issue was expressed by a majority of the respondents.³ Depending on the issue, the plurality varied from 39.4 percent to 83.4 percent with a mean value of 51.3 percent, and the neutral figure ranged from 7.3 percent to 26.9 percent with a mean value of 17.7 percent (see table 8). These results may stem from the fact that many criminal justice issues have not surfaced to the extent that legislators feel obligated to actively investigate their merits. Legislators not involved in the field

of criminal justice by occupational area, committee membership or general interest may not be sufficiently concerned with particular questions to react strongly one way or another. Not only may legislators be willing to delegate some of these issues to administrative professionals, but they also might prefer not to take a positive stance in instances wherein the issues are complex and the ramifications are not fully understood.

All other factors held constant, state legislators are more likely to accept the positions recommended by the National Advisory Commission on Criminal Justice Standards and Goals than they are to accept countervailing options (see table 9). Fifteen questions (42.9 percent) prompted a majority response and eight questions (22.9 percent) prompted a plurality response in favor of the Commission recommendations. These results would indicate that state legislators would tend to support changes in the criminal justice system generally in accordance with advisory proposals. While the general trend might be described as supportive, varying trends develop when the issues are subdivided into substantive areas.

TABLE 8
PERCENTAGE DISTRIBUTION OF STATE LEGISLATOR RESPONSES TO
QUESTIONNAIRE ITEMS BY SUBSTANTIVE CATEGORY

Questionnaire Items in Substantive Categories	Percentage Expressing Agreement	Percentage Remaining Neutral	Percentage Expressing Disagreement
Prohibitions and Penalties			
Sexual conduct laws should be retained	39.7	17.1	43.1
Vagrancy laws are necessary for public order	46.1	16.7	37.2
Court supervision should not include status offenders	46.6	15.8	37.6
Gambling should not be legalized	44.5	16.7	38.9
Prostitution should be legalized	32.5	20.9	46.5
Narcotic sales should warrant life sentences	72.2	8.5	19.3
Marijuana possession should be a misdemeanor	75.2	8.1	16.6
Prevention and Assistance			
Society should alleviate victim loss	61.5	19.2	19.2
Cheap handguns should be controlled	67.9	8.1	23.9
Death penalty is deterrent to violent crime	49.2	7.3	43.6
Police should recruit minorities	55.2	15.0	29.9
Public safety should outweigh individual rights	39.3	20.5	40.2
Courts and Prosecution			
Regional prosecution should be instituted	57.3	24.4	18.4
Plea bargaining is necessary for court functioning	50.4	23.9	25.6
Court decisions are impediments to police	46.1	10.7	43.7
Judges should decide indeterminate sentences	47.3	12.4	39.7
Judges are lenient in sentencing	45.7	22.6	31.6
Sentence disparities should be reduced	82.1	11.1	6.8
Judges should be elected	42.8	12.8	44.4
Commissions should review judicial competency	51.3	16.7	32.0
Judicial systems should be unified	46.2	17.9	35.8

TABLE 8-Continued

Questionnaire Items in Substantive Categories	Percentage Expressing Agreement	Percentage Remaining Neutral	Percentage Expressing Disagreement
Corrections and Parole			
Punishment is prime function of corrections	12.0	13.7	74.3
Inmates should have due process	49.2	16.7	34.2
Inmate communications is a privilege	56.0	12.8	31.2
Institutions should establish prison industries	78.2	12.8	9.0
Community programs should supersede prison facilities	83.4	9.0	7.7
Community programs should not admit nonparolable inmates	39.4	21.4	39.4
Probation and parole should be unified	54.8	26.9	16.2
Noncriminal actions should not revoke parole	41.4	24.8	33.4
Offender licensing restrictions should be eliminated	77.3	13.2	9.4
Security and Privacy			
Arrest records should be kept	30.8	13.2	56.0
Intelligence files should be restricted	61.5	11.5	26.9
Wiretapping should not be controlled	35.0	8.5	56.4
Record access should be limited	76.5	11.1	12.4
Offender records should be expunged	36.7	19.2	44.0

NOTE: Percentages may not total to 100.0 due to rounding errors.

TABLE 9
PERCENTAGE DISTRIBUTION OF STATE LEGISLATOR RESPONSES TO
PROPOSED RECOMMENDATIONS BY SUBSTANTIVE CATEGORY

Substantive Categories	Majority For Proposed Position	Plurality For Proposed Position	Plurality For Proposed Position	Majority Against Proposed Position	Plurality Against Proposed Position	Plurality Against Proposed Position
Prohibitions and Penalties .	14.3	28.6	42.9	14.3	42.9	57.1
Prevention and Assistance .	60.0	20.0	80.0	0.0	20.0	20.0
Courts and Prosecution . . .	22.2	22.2	44.4	22.2	33.3	55.6
Corrections and Parole . . .	55.6	33.3	88.9	11.1	0.0	11.1
Security and Privacy	80.0	0.0	80.0	0.0	20.0	20.0
Total Sample	42.9	22.9	65.7	11.4	22.9	34.3

NOTE: Majority and plurality figures may not total to plurality figures due to rounding errors.

Prohibitions and Penalties

In revising their criminal codes, state legislatures have discovered that some areas of law proscribing behavior are more controversial than others. It appears that legislators are more likely to confront the more controversial issues, usually taking the position supported by popular opinion. When an issue is not currently in public debate, state legislators tend to favor the status quo. Questions relating to drug legislation have received considerable attention, due partially to the continued arrests of college students and other middle class youths for drug offenses. Reflecting the public view, state legislators expressed strong support for the revision of drug laws, with 75.2 percent of the respondents agreeing that penalties for possession of small amounts of marijuana should at least be reduced to misdemeanor status and 72.2 percent asserting that the nonprescribed sale of hard drugs (heroin, cocaine, and morphine) should be severely sanctioned by penalties such as lengthy sentences or mandatory life imprisonment.

Most victimless crimes remain in the statutes as a matter of morals. Legislators believe that individual efforts to repeal existing legislation would convince their constituency that the

legislators themselves supported the types of behavior prohibited by law. Many legislators also question the value of legally sanctioning victimless behavior. The results of this study manifest this dilemma. None of the four questions relating to victimless crimes elicited a majority either in favor of retention or removal of the statutes in question. In three instances, a plurality of respondents favored the retention of statutes in the criminal code. State legislators rejected the proposition that prostitution, licensed and controlled, should be legalized. Similarly, state legislators also maintained that vagrancy, loitering and public intoxication statutes are necessary to maintain public order and that prohibitions on gambling should be retained in the criminal code. In contrast, state legislators favored the removal of laws prohibiting certain types of sexual conduct, such as adultery and homosexuality, from the criminal statutes. With respect to juveniles, an area related to victimless crimes, a plurality of respondents agreed that juveniles should not be placed under court supervision for actions which, if committed by adults, would not be considered criminal in nature.

State legislators regard matters relating to prohibitions and penalties as within their legislative domain. Responses indicated that efforts to remove

victimless crime statutes will meet with considerable legislative opposition, although this opposition may not be as united as might be expected. Although state legislators support the retention of statutes related to victimless crimes, the support does not represent a majority of respondents, and 15.8 to 20.9 percent of the responses were neutral. Although state legislators are not currently in favor of the recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals, these results indicate that significant support exists for the decriminalization of victimless crimes.

Prevention and Assistance

State legislators live in the districts which they represent and are, of course, interested in matters of community concern. Public dissatisfaction with the high crime rate and the continuing increase of violent crimes appears to have been reflected in state legislator responses to issues involving prevention and assistance. A majority of state legislators concurred with the recommendation that the sale and possession of cheap handguns (Saturday night specials) should be controlled. A plurality of legislators also supported the reinstatement of the death penalty as a necessary deterrent in the reduction of violent

crimes, an endorsement which may reflect the fact that many states have reenacted death penalty legislation. This concern with the safety of the community has not necessarily outweighed the interest in protecting constitutional rights. State legislators were about equally divided in their responses as to whether, in fighting crime, the preservation of public safety is more important than protecting individual rights. The emphasis on public safety probably reflects concern on the part of state legislators that stringent requirements relating to individual rights have hampered law enforcement efforts and accelerated the already spiraling crime rate.

Despite efforts to reduce the incidence of violent crimes, victims of crime and their families frequently suffer grievous losses in terms of hospitalization costs, permanent damage and loss of life. These damages can rarely be recovered from the perpetrators of the crimes who are either incarcerated or who have not yet been apprehended. In response to victim pleas, many states have assumed the responsibility of alleviating the burden placed on victims and their families by enacting victim compensation laws. Responses to the questionnaire indicated that

a majority of state legislators agreed that if society does not protect the individual by preventing crime, it should at least assume the responsibility of alleviating the victim's loss.

State legislators are concerned not only with the plight of the victim but also with the response of the community to law enforcement agencies. Partly because of this concern and partly because of federal guidelines, a majority of state legislators concurred with the questionnaire statement that a police department should be required to recruit minority personnel if its staff does not reflect the population composition of the local community.

In general, state legislators tended to support the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals in relation to crime prevention, victim assistance and community participation. Only with respect to the death penalty did the plurality of state legislator respondents differ from the recommendations made by the Commission.

Courts and Prosecution

In an effort to improve court management and case processing, many states have unified their court systems through either legislative enactment or rules

of superintendence. A plurality of respondents agreed that the supreme court should have rule-making and management authority over all state and local courts. A majority of state legislators also favored the proposition that a regional or statewide prosecution system should be instituted to eliminate the need for part-time prosecutors, indicating that support for unification extends beyond the limited area of court structure.

While changes in the structure of courts and prosecution may have gained popular support from state legislators, procedural changes relating to judicial selection and review have not generally met with acceptance. In contrast to the recommendations generated by the National Advisory Commission on Criminal Justice Standards and Goals, a plurality of state legislators asserted that judges should be elected by open popular vote rather than appointment by a governor or a judicial qualification commission. Similarly, respondents disagreed with the recommendations of the Commission when a majority stated that the competency of judges should be reviewed by an independent commission rather than by a popular vote of retention.

Commission recommendations relating to the processes of conviction and sentencing also do not appear to have found a willing audience on the part of state legislators. In direct contrast to Commission recommendations, a majority of state legislators maintain that the plea bargaining process is necessary for the effective functioning of criminal courts.

Although a plurality of respondents agreed that judges are too lenient in sentencing criminal offenders and that court decisions relating to search and seizure, arrest and interrogation have unduly hampered the ability of law enforcement authorities to fight crime, state legislators still agreed that, in instances of indeterminate sentences (statutory range of sentences), the judge rather than parole authorities or institutional case workers should determine the amount of time to be served. While a plurality of state legislators do not want to interfere with the sentencing powers of the judge, a large majority of the respondents (82.1 percent) expressed the opinion that procedures should be established to reduce sentence disparities for similar offenses.

State legislator responses indicated a reticence to become involved in the internal housekeeping affairs of the courts. Only in the areas of regional

prosecution and sentence disparities did a majority of the respondents agree with the Commission recommendations. Prosecution, though related to the courts, remains an executive function, and the reduction of sentence disparities might be considered a generally accepted principle of American justice. State legislators tend to dislike judicial sentencing trends, but they exhibit an unwillingness to transfer sentencing powers to other agencies. Even the issue of court unification did not elicit majority support. This hesitancy on the part of state legislators to take a strong position with respect to issues involving the judiciary could be a consequence of legislative unwillingness to bridge constitutional separation of powers by investigating matters usually proposed by supreme courts or judicial commissions, or it could be regarded as an indication that state legislators, despite some misgivings, retain sufficient confidence in the judiciary not to challenge its current structures, policies and procedures.

Corrections and Parole

Of all the criminal justice issues contained in the questionnaire, state legislators were most receptive to reforms in the areas of corrections and parole. A majority of respondents supported the

suggestion that correctional industries should be permitted to set up prison industries in conjunction with private businesses. Similarly, 83.4 percent of the individuals participating in the study agreed that community programs (work release, educational release, furloughs, etc.) instead of prison facilities should be used for the rehabilitation of nonviolent offenders. This enthusiasm, however, did not extend to nonparolable offenders. The respondents were divided as to whether nonparolable offenders such as convicted murderers should be allowed to participate in community correctional programs.

Recent court cases have expanded considerably the number of rights afforded prisoners under the Constitution. A plurality of state legislators agreed that inmates should have the right of due process (including notification, hearings and representation) before changes in confinement are implemented. However, a majority also asserted that inmate access to the press, visitors and mail is a privilege rather than a right.

In the area of rehabilitation and release, a plurality of state legislators agreed with the proposition that parole should not be revoked for activities which are noncriminal in nature. Respondents

also exhibited strong support (77.3 percent) in favor of eliminating all licensing restrictions prohibiting ex-offenders from engaging in such certified occupations as physical therapy and barbering. In addition to matters restricting the freedom of parolees and ex-offenders, state legislators also supported recommendations relating to the structure of release programs, as indicated by the majority of respondents who agreed with the suggestion that probation and parole services should be unified instead of maintaining a system wherein probation services are administered by the local court system.

State legislator responses supported with at least a plurality all recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals relating to corrections and parole contained in the questionnaire, except for the release of nonparolable offenders to community corrections programs. This response reaffirms the majority disagreement with the statement that punishment rather than rehabilitation is the primary function of the correctional system. The reactions of state legislators with regard to correctional and parole programs indicate that they have become convinced that rehabilitation provides the best alternative for processing offenders. This general acceptance of

correctional philosophy probably reflects the relatively close liaison most departments of correction maintain with their state legislatures. Departments of correction frequently assign staff members the responsibility of drafting correctional legislation, explaining the contents to individual legislators and lobbying for its enactment. This approach differs drastically from the position taken by state courts, and the differential results are manifest in the attitudes and reactions of state legislators.

Security and Privacy

One of the most recent issues to emerge in state legislatures revolves around the accumulation, storage and distribution of criminal justice information. Proposed federal legislation and the promulgation of the Law Enforcement Assistance Administration guidelines are forcing states to reexamine their policies toward the security and privacy of sophisticated, often computerized, criminal information systems.⁴ While the collection of criminal data has been defended as a deterrent to crime, recent governmental abuses of individual rights of privacy have dramatized the dangers inherent in unrestricted data gathering. Responses to the questionnaire indicate that state legislators recognize the need for some

degree of restraint. A majority of respondents agreed that law enforcement agencies should not be allowed to compile intelligence and information files free from administrative, statutory or judicial restrictions. Similarly, a majority of state legislators also supported the restriction of wiretapping in instances involving the investigation and prosecution of organized crime.

The accumulation of criminal data can be especially harmful to an individual when the information contained in a file is inaccurate or incomplete. Law enforcement agencies frequently maintain records of arrest even if the charges are dismissed or no disposition has been registered. Since records are exchanged between law enforcement agencies and the federal government, an individual may be plagued by a criminal record even though he or she has been adjudged innocent. The dissemination of such records to agencies outside the criminal justice system not only affects an individual's employment opportunities and credit rating but also increases the probability that the individual will be drawn into the criminal justice network again. These effects are magnified for an ex-offender trying to reassimilate into the community.

State legislators tend to be protective of individual rights to privacy, unless they believe that restrictions will unduly hamper law enforcement efforts. A majority of state legislators disagreed with the statement that law enforcement agencies should maintain records of arrest even if the charges are dismissed or no disposition has been registered. Similarly, a large majority of respondents (76.5 percent) agreed that access to criminal offender records should be limited to law enforcement agencies on a need-to-know basis. However, a plurality of state legislators opposed the suggestion that records of arrest and conviction should be expunged at some point in time after the individual has completed his or her sentence. State legislators supported four out of five of the major recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals with respect to the privacy and security of criminal justice information. Although respondents asserted that criminal records should not be expunged at any point in time after conviction, this view is in accordance with the fact that this information is generally considered to be a matter of public record.

When the issues in the criminal justice area were subdivided into substantive areas, the results discussed above indicated that recommendations

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relating to separate categories would encounter different legislative receptions. Recommendations relating to corrections and parole would receive the greatest acceptance, followed by the areas of security and privacy and prevention and assistance. In all three of these instances, a plurality of 80.0 percent or more of the state legislators polled favor change in accordance with the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals. For the categories of courts and prosecution and prohibitions and penalties, the plurality response rejected the Commission recommendations. These trends suggest that, unless a concerted effort is undertaken to convince state legislators that code revision and court reform are necessary for the improved functioning of the criminal justice system, the increased efficiency of law enforcement and the superior protection of public safety, state legislators will remain indifferent to these crucial criminal justice issues.

FOOTNOTES

¹Since the greatest number of responses were elicited from the twelve-state Midwestern Region, the sample state was selected from among the Midwest states. Wisconsin appeared to be representative of the states in its area, since it contains two major urban centers surrounded by nonurban, farming communities.

²Wisconsin Legislative Reference Bureau, "Profile of the 1975 Wisconsin Legislature," Wisconsin Briefs 75 (February 1975): 4.

³For purposes of analysis in this study, "majority" is defined as a number constituting more than half of the total base figure. "Plurality" is defined as a number greater than all other numbers in the same series, but not more than half of the total base figure. "Plujority" is defined as a number greater than all other numbers in the same series. According to this definitional set, a plujority is equal to the greatest number of the series, spanning the range covered by both the majority and the plurality.

⁴The Law Enforcement Assistance Administration released its Criminal Justice Information Systems - Proposed Regulation (39 Fed. Reg. 5636) in February 1974. Since that date six hearings have been held (four in Washington, D.C. and two in San Francisco) and this information is currently being incorporated into a second draft of the guidelines.

CHAPTER IV

RESPONSE VARIATION AND RELATED FACTORS

On the national level, state legislator responses display a marked indifference to many criminal justice issues. Although this national perspective is relevant to the development of interstate policy, a more crucial project involves isolating the factors which affect this general trend. If criminal justice administrators plan to actively solicit support for the alteration of various aspects of the criminal justice system, their effectiveness would be enhanced if efforts could be directed toward those state legislators who would most likely be (1) predisposed toward certain types of criminal justice legislation and (2) situated in positions crucial to the enactment of legislation. Before such an endeavor can be contemplated, criminal justice administrators and scholars must ascertain whether variables commonly characteristic of state legislators differentially affect legislator perception of types or categories of criminal justice issues requiring legislative involvement.

Socio-Demographic and
Issue Correlations

Across the nation, state legislators can be distinguished by their legislative position and seniority, their party affiliation and their committee memberships. On an ecological scale, state legislators must represent a district located in a state integrated into a region. Furthermore, most state legislators are dependent upon nonlegislative occupations for financial support. Cross-tabulation of these socio-demographic variables of committee membership, leadership status, legislative stay, home district, regional area, political party and nonlegislative occupation with attitudinal responses toward selected criminal justice issues produced significant variations with respect to the general trends discussed in chapter 3.¹

The factors which significantly affected the greatest number of items and all substantive issue categories were nonlegislative occupation, political party and home district (see table 10). All four of the remaining variables influenced issues relating to prohibitions and penalties. Items relating to courts and prosecution were most strongly affected by regional variation, and security and privacy issues

were most responsive to committee membership. Socio-demographic variables, however, did not significantly distinguish response distribution with respect to seven of the thirty-five attitudinal questions (20 percent) derived from recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals. Each of these items represented issues generally accepted or currently debated in a large proportion of state legislatures. For instance, in the field of corrections, most legislators would not publicly advocate punishment as the prime function of corrections. Similarly, most legislators support the development of prison industries and the elimination of occupational licensing restrictions for offenders. Because of the acceptance of state lotteries, state legislators are less militant about maintaining statutory prohibitions against gambling, and national controversy relating to security and privacy has blurred traditional demarcations with respect to intelligence files, record access and record expungement. With the exception of these items, socio-demographic variables provide meaningful insights for explaining the patterns amalgamated in state legislator responses to selected criminal justice issues.

TABLE 10
CHI SQUARE SIGNIFICANCE LEVEL DISTRIBUTION OF STATE
LEGISLATOR RESPONSES BY SOCIO-DEMOGRAPHIC FACTORS

Questionnaire Items in Substantive Categories	Committee Membership	Leadership Status	Legislative Stay	Home District	Regional Area	Political Party	Nonlegislative Occupation
Prohibitions and Penalties							
Sexual conduct laws should be retained . . . . .	..	.0307	.0001	.0180	.0364	.0222	.0293
Vagrancy laws are necessary for public order . . . . .	..	..	.0086	..	..	.0037	.0312
Court supervision should not include status offenders . . . . .	..	.0005	..	..	..	..	..
Gambling should not be legalized . . . . .	..	..	..	..	..	..	..
Prostitution should be legalized . . . . .	..	.0010	..	.0209	..	.0070	.0022
Narcotic sales should warrant life sentences . . . . .	.0044	..	..	.0041	..	..	.0015
Marijuana possession should be a misdemeanor . . . . .	..	..	..	..	.0125	..	.0030
Prevention and Assistance							
Society should alleviate victim loss . . . . .	..	.0333	..	..	.0036	..	.0003
Cheap handguns should be controlled . . . . .	..	..	..	..	.0429	..	.0115
Death penalty is deterrent to violent crime . . . . .	.0385	..	.0107	.0015	..	.0009	.0002
Police should recruit minorities . . . . .	..	..	..	.0091	..	..	..
Public safety should outweigh individual rights . . . . .	..	..	.0101	..	..	.0018	.0020
Courts and Prosecution							
Regional prosecution should be instituted . . . . .	..	..	..	..	..	..	.0477
Plea bargaining is necessary for court functioning . . . . .	..	..	..	..	..	..	.0034
Court decisions are impediments to police . . . . .	.0035	.0015	.0002	.0005	..	.0003	.0000
Judges should decide indeterminate sentences . . . . .	..	..	..	..	..	..	..
Judges are lenient in sentencing . . . . .	..	..	.0448	..	..	.0451	.0004
Sentence disparities should be reduced . . . . .	..	..	..	..	..	.0124	..
Judges should be elected . . . . .	..	..	..	..	.0029	..	.0000
Commissions should review judicial competency . . . . .	..	..	..	..	.0470	..	..
Judicial systems should be unified . . . . .	..	..	..	..	.0035	..	.0435

TABLE 10-Continued

Questionnaire Items in Substantive Categories	Committee Membership	Leadership Status	Legislative Stay	Home District	Regional Area	Political Party	Nonlegislative Occupation
Corrections and Parole							
Punishment is prime function of corrections0028	.0166	..	..
Inmates should have due process0016	..	..	.0011	.0087
Inmate communications is a privilege
Institutions should establish prison industries0005	..	..
Community programs should supersede prison facilities0489	.0242
Community programs should not admit nonparolable inmates
Probation and parole should be unified0238	..	.0027	.0085
Noncriminal actions should not revoke parole
Offender licensing restrictions should be eliminated
Security and Privacy							
Arrest records should be kept0458	..	..	..
Intelligence files should be restricted
Wiretapping should not be controlled . . . . .	.0055	..	..	..	..	.0151	.0012
Record access should be limited
Offender records should be expunged

NOTE: Values are listed only in instances where the chi square figure is significant for at least the .05 level of significance. For complete table of values, see appendix 6.

Committee Membership

Legislative committees such as corrections, judiciary, welfare and health services, alcohol and drugs, and public safety and law enforcement must cope with criminal justice matters on an ongoing basis. Since membership in a committee usually indicates active interest and involvement by legislators in the topical areas considered by the committee and since association with a committee usually generates a deeper and more comprehensive knowledge of the effects and implications of specialized legislation in the particular realm allotted to the committee, state legislators who are members of committees related to the field of criminal justice expectedly would differ from their colleagues with respect to technical matters regarding crime, corrections and the criminal code.

As a variable, state legislator membership in a criminal justice committee significantly affected only four of the thirty-five questions (11 percent). Two of the questions related to sentence severity. In accordance with the position enumerated by the National Advisory Commission on Criminal Justice Standards and Goals, state legislators who professed membership in criminal justice committees were less apt

to recommend life sentences or the death penalty for the sale of addictive drugs or the commission of violent crimes. Similarly, state legislators on criminal justice committees differed from their peers in that a majority of criminal justice committee members not only challenged the statement that court decisions relating to search and seizure, arrest and interrogation have unduly hampered the ability of law enforcement authorities to fight crime but also agreed that governmental investigatory activities such as wiretapping should be restricted. With respect to each of these items, state legislators on criminal justice committees were uniformly more likely to adopt the positions recommended by the National Advisory Commission on Criminal Justice Standards and Goals. This general trend could be attributed to an informed evaluation of emotional issues according to pragmatic criteria. Since each of these items tends to evoke an immediate reaction favoring harsher penalties and unrestricted enforcement corresponding to the views expressed by "law and order" factions prevalent in the general populace and reflected in the state legislature, only those individuals sufficiently removed can counteract this perspective and argue that public safety is not directly dependent upon unrestricted enforcement or extended sentencing.

Leadership Status

State legislator leaders can usually exercise sufficient power to materially affect the destiny of legislation. Assumption of a leadership position implies the establishment of a base of support which state legislators ordinarily achieve through an extended internship in which they must demonstrate their ability to reconcile opposing factions and their willingness to conform to party expectations. This selection procedure tends to produce leaders who appear to be slightly more conservative than their legislative peers. In addition to being more conservative, legislative leaders are also more likely to be politically astute in the sense that they must necessarily consider the pitfalls which any legislation might encounter in order to determine its chances of success.

In five of the thirty-five questions (14 percent), leadership status significantly affected response distribution. As expected, state legislators who occupied the positions of president, speaker, speaker pro tem, majority leader, minority leader, majority floor leader or whip and minority floor leader or whip consistently exhibited the greatest resistance to recommendations made by the National Advisory Commission on Criminal Justice Standards and

Goals. In three instances, a majority of legislators in these ranking positions exceeded their compatriots in maintaining that statutes criminalizing victimless behavior such as sexual conduct between consenting adults, prostitution and juvenile status offenses should be retained in the criminal code. Ranking legislators also asserted that court decisions relating to search and seizure, arrest, and interrogation have unduly hampered law enforcement efforts. In each of these instances, state legislators occupying the lower ranking positions of committee chairman and vice chairman assumed a more due process stance, surpassed only in the position taken by the general membership. Responses deviated from this general trend only with respect to victim compensation, wherein strongest support was evinced by lower leadership, followed by general membership and ranking leadership. The correlation between status of legislative leadership and opposition to innovative criminal justice legislation could be a derivative of the inherent inertia in resisting attempts to extensively revise or completely delete existing legislation. The more legislators have invested in achieving leadership status, the less likely will they be to gamble their positions on unpopular legislation representing a radical departure from the status quo.

Legislative Stay

State legislators with legislative seniority tend to be older, more established and, like legislative leaders, more conservative. Freshman legislators are usually fired with enthusiasm, ready to support more drastic changes in legislative programs and to challenge established leadership policy. Not only have senior legislators undergone peer group socialization, but their perspective is a product of more lengthy political experience. The greater the effect of these factors, the more legislators enjoy political security, and the less likely will they be to risk the expressed displeasure of their peers or constituents.

As might be expected, novice legislators with five or less years of seniority uniformly were more enthusiastic in their support of recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals. The number of years a state legislator has been in legislative office significantly differentiated the positions expressed on seven of the thirty-five questions (20 percent). Six of these items involved techniques of maintaining public order. Legislators with seniority consistently favored stricter enforcement, even at the sacrifice of individual rights. Their support of the death penalty as a deterrent for violent crimes and of vagrancy

statutes as a mechanism for maintaining public order reflects a general tendency to consider public safety to be more important than individual rights. Consistent with this philosophy, a majority of legislators with more than five years of service not only regarded inmate communications to be privileges rather than rights, but also condemned judicial sentencing as too lenient and judicial decisions as too impeditive of law enforcement. With respect to criminal statutes, legislators with seniority would retain established prohibitions, including those relating to sexual conduct between consenting adults. Legislative stay increases the probability that legislators will resist alteration of laws which they have supported, explicitly or implicitly, over an extended period of time. Public safety considerations override individual rights, reinforcing the tendency to delegate enforcement authority to police and correctional personnel without judicial or legislative review.

Home District

Because of the election requirements for state legislative office, legislators must respond to the expectations of their home district constituents. The urbanization of a district is reflected in the attitudes of its populace and elected representatives.

The greater the population density, the greater the anonymity and tolerance of deviant behavior. Extended coexistence of divergent lifestyles may not promote approval of criminal activity but it does encourage a tacit acceptance of both normative and legal violations. Similarly, the reduction of social solidarity concomitant with high population density forces residents into a greater dependence on legally enumerated procedural safeguards protecting individual and group rights.

In accordance with traditional conceptions regarding the propensity of urbanization to foster liberalism, legislators representing urban districts were uniformly more inclined to support recommendations proposed by the National Advisory Commission on Criminal Justice Standards and Goals than were legislators representing nonurban constituencies. This distinction figured significantly in the responses to nine of the thirty-five questions (26 percent) relating to the acceptance of deviance and the granting of rights. A greater percentage of state legislators from urban districts considered the deletions of such victimless crimes as sexual conduct between consenting adults and prostitution to be far more acceptable than did state legislators from nonurban districts. Urban legislators were also

significantly less inclined to demand harsh sentences or the death penalty for narcotics sales or violent crimes. With respect to individual rights, a majority of state legislators from urban districts supported the proposition that police departments should reflect the population composition of the local community through the recruitment of minorities. In contrast with nonurban legislators, urban legislators challenged the statement that court decisions relating to arrest procedures have hampered law enforcement and supported the position that inmates should have the rights of due process. Similarly, a majority of urban legislators would eliminate the current practice of revoking parole for noncriminal activities and abolish the accepted procedure of retaining records for dismissed charges. As these results indicate, the effect of urbanization and population density significantly differentiated legislators, predisposing state legislators from urban districts to tolerate deviant behavior and to favor more stringent safeguards of individual rights.

Regional Area

Region, like district, influences attitudes through the effect of proximity, exchange and interaction. Ideas tend to spread from state to bordering

state, a transfer which is facilitated in the state government sphere by the presence of regional groups created to encourage interstate communication and mutual problem solving. Since states tend to identify with a particular region and since regions tend to be individually characterized, it is logical to expect that regional variations would extend to matters of criminal justice.

As expected, nine of the thirty-five questions (26 percent) reflected the effect of regional variation. As a general trend, state legislators from the East were most likely to express an overall pattern of adherence to the recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals, followed (in order) by the Midwest, the West and the South. This sequence, however, varied by categorical area. Legislators from the South, as traditionally characterized, consistently resisted suggestions for change. Legislators from the Midwest were most receptive to suggestions relating to judicial selection, review and unification. Respondents from the East and West outranked other respondents in their support for code changes and prevention measures. While legislators from the East and the West were about evenly matched in their willingness to

remove laws prohibiting certain types of sexual conduct between consenting adults, legislators from the East were far more liberal than those from the West about reclassifying possession of marijuana from a felony to a misdemeanor. With respect to prevention and assistance, legislators from the East expressed the strongest support for handgun control, while legislators from the West were the strongest proponents of victim compensation. Only in the area of corrections, including community programs and inmate rights, were the East, Midwest and West almost equally favorable to the recommendations expressed by the Commission. As a general trend, the resistance prevalent in the South to measures relating to criminal justice change conforms with popular conceptions, and the relatively high ranking of the Midwest indicates that ideas do not necessarily spread inland from the Pacific and Atlantic coastal regions. Because of the nature of state government, the exchange of ideas and approaches relating to criminal justice areas occurs easily between states to be selectively applied in accordance to the needs and expectations of the respective states and regions.

Political Party

Political affiliation has traditionally been considered a major predictor of attitudes. Democrats are expected to be liberal, espousing support for the working class individual, while Republicans are expected to be conservative, providing representation for the more affluent. Consistent with these conceptions, Democrats were uniformly more amenable to the recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals than were Republicans. In twelve of the thirty-five questions (34 percent), the variable of party affiliation significantly affected the responses. Nine of the questions contained some element of concern for the individual offender in juxtaposition to public safety. Democrats were more likely than Republicans to choose individual rights over public safety, even if this meant impeding law enforcement through court decisions affecting arrest procedures or legislative restrictions limiting wiretapping. Similarly, Democrats were more likely than Republicans to repudiate harsh penalties, including the death penalty. This relative distribution also prevailed with respect to reduction of sentence disparities and leniency in judicial sentencing. Interest in the individual offender also

extended to the correctional environment. A greater percentage of Democrats responded in favor of admitting nonparolable offenders into community programs, allowing inmate communications as a right, and halting parole revocation for noncriminal activities. In conjunction with this dichotomy, Democrats were also more tolerant than Republicans of victimless crime activities, including prostitution, vagrancy and sexual conduct between consenting adults.

The popular beliefs regarding the demarcation between members of the Democratic and Republican parties appear to be valid with respect to state legislator perceptions of criminal justice issues. The greater willingness on the part of Democratic state legislators to accept recommendations for change in the criminal justice system also highlighted that Republican state legislators are less likely to reject practices which reflect the thinking of police, court and correctional personnel.

Nonlegislative Occupation

Personal occupation provides information not only about career patterns, but also about individual orientations and predilections. Since occupation is closely correlated with educational attainment and socio-economic status, it has been heralded as a

reasonable predictor of attitudes. Usually, however, this measure operates in instances wherein a wide range of status rankings separates the various positions. In this particular study, most state legislators claimed occupations which clustered in the upper echelons of possible occupations. Therefore, state legislators would tend to share those attitudinal characteristics usually attributed to individuals assuming higher level occupational positions, and conclusions derived from this study would have to be generated by much finer distinctions.

Despite similarities in occupational status, occupation significantly affected nineteen of the thirty-five questions (54 percent), extending across each substantive category. Executive agency personnel and legislative staff consistently exceeded other groups in their acceptance of recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals. The groups most resistant to the suggested changes were individuals in the fields of agriculture and business, with the agricultural respondents more conservative than their business counterparts except in the instance of prevention and assistance. Since law is a professional position, the law and professional categories expectedly exhibited similar responses. While state legislators

in the professional group were slightly more favorable to Commission recommendations than were other state legislators from the law group, state legislators employed in law fields were slightly more receptive to security and privacy safeguards and criminal code revision. Since the law group was primarily composed of lawyers and since lawyers must directly contend with statutory provisions and procedural restrictions, they reasonably would be able to identify with some of the legal advantages of encouraging change in these areas.

The general trend of responses differentiated by occupation provided expected results. State legislators engaged in agriculture pursuits presumably reflect many of the same attitudes prevalent among nonurban populations while state legislators following business careers mirror traditional law and order orientations. Whereas state legislators involved in law consider legal implications, state agency personnel and legislative staff must consider the general picture. Because of the high proportion of social-related occupations (social workers, teachers, doctors, etc.) contained in the professional group, state legislators engaged in professional occupations should be especially sensitive to problems relating to the prosecutorial, judicial, correctional and parole

systems. The combination effect of occupation thereby produced the most pervasive variable for differentiating state legislator response distribution with respect to selected criminal justice issues.

Punitive and Protective Factors

In varying degrees, each of the socio-demographic and issue correlations referred directly or indirectly to a strict law enforcement approach in comparison to a more tolerant individual rights orientation. By relying on factor analysis to extract two factors from the intercorrelations, both a "punitive" and a "protective" factor emerged (see table 11). For the "punitive" factor, the highest loadings occurred on issues relating to the death penalty as a deterrent for crime reduction and court decisions as an impediment to law enforcement. There were also high loadings on leniency of judicial sentencing, prohibitions of sexual conduct and maintenance of public order. Relatively high loadings were calculated for wiretapping restrictions, marijuana possession and public safety. In each of these eight instances, the emphasis was on the preservation of public safety and the moral order through strict control using the threat of harsh penalties. Consistent with this approach is the usage of severe methods of treating

convicted offenders. The "punitive" factor had a relatively high loading on lengthy penalties for narcotic sales, no nonparolable offenders in community programs and parole revocation for noncriminal activities. Severe treatment and strict control necessarily imply preference for the rights of the state over the rights of the individual. Accordingly, moderately high loadings appeared on the compilation of intelligence files, the restriction of inmate communications, the recruitment of police minorities and the maintenance of arrest records. Other issues with moderately high loadings included judicial determination of sentence, judicial selection through elections, elimination of offender licensing restrictions, expungement of offender records, offender rights of due process, continued prohibition of prostitution, and punishment in the correctional system. Two moderate loadings were also found on the unification of probation and parole services and the unification of court systems. Although the "punitive" factor underscores strict control, harsh penalties and severe treatment, it also includes structural and procedural elements necessary for state assertion of its powers over the individual.

TABLE 11
PUNITIVE AND PROTECTIVE FACTOR LOADINGS
FOR QUESTIONNAIRE ITEMS BY
SUBSTANTIVE CATEGORY

Questionnaire Items in Substantive Categories	Punitive Factor Loading	Protective Factor Loading
Prohibitions and Penalties		
Sexual conduct laws should be retained	-0.66980	0.18536
Vagrancy laws are necessary for public order	-0.64119	0.32882
Court supervision should not include status offenders	-0.28306	-0.19284
Gambling should not be legalized	-0.26279	-0.09370
Prostitution should be legalized	-0.40941	0.12429
Narcotic sales should warrant life sentences	-0.52296	0.20052
Marijuana possession should be a misdemeanor	-0.56342	-0.12421
Prevention and Assistance		
Society should alleviate victim loss	-0.22620	-0.57242
Cheap handguns should be controlled	-0.35707	-0.51352
Death penalty is deterrent to violent crime	-0.74258	0.16611
Police should recruit minorities	-0.46455	-0.35855
Public safety should outweigh individual rights	-0.55823	0.32866
Courts and Prosecution		
Regional prosecution should be instituted	-0.28131	-0.24018
Plea bargaining is necessary for court functioning	0.12769	0.06071
Court decisions are impediments to police	-0.71320	0.30151
Judges should decide indeterminate sentences	-0.42455	0.04048
Judges are lenient in sentencing	-0.67258	0.18899
Sentence disparities should be reduced	-0.09394	-0.42767
Judges should be elected	-0.41602	-0.07438
Commissions should review judicial competency	0.13271	0.42200
Judicial systems should be unified	-0.31367	-0.30755

TABLE 11-Continued

Questionnaire Items in Substantive Categories	Punitive Factor Loading	Protective Factor Loading
Corrections and Parole		
Punishment is prime function of corrections	-0.40798	-0.17477
Inmates should have due process	-0.41120	-0.10293
Inmate communications is a privilege	-0.48447	0.16331
Institutions should establish prison industries	-0.14320	-0.38766
Community programs should supersede prison facilities	-0.42786	-0.45735
Community programs should not admit nonparolable inmates	-0.51264	0.18184
Probation and parole should be unified	-0.32814	-0.03659
Noncriminal actions should not revoke parole	-0.50868	-0.04385
Offender licensing restrictions should be eliminated	-0.41497	-0.31231
Security and Privacy		
Arrest records should be kept	-0.45354	-0.02252
Intelligence files should be restricted	-0.50269	-0.10973
Wiretapping should not be controlled	-0.58404	0.33846
Record access should be limited	0.19576	-0.35026
Offender records should be expunged	-0.41236	-0.08442

NOTE: The factor loadings were derived from codings wherein the position recommended by the National Advisory Commission on Criminal Justice Standards and Goals was always assigned the value of one (on a scale of one to five), regardless of the direction of the original question.

Unrotated factor loadings were used for this table because the two factors overlapped substantially. However, calculations of rotated values also produced punitive and protective factors with only minor variations in individual factor loadings. For rotated values, see appendix 7.

The "protective" factor is similar in purpose to the "punitive" factor but different in approach. While the "punitive" factor seems to portray public safety as achieved through punitive action, the "protective" factor had a relatively high loading on victim compensation and handgun control, indicating a recognition of the occurrence of violent crime, an effort to prevent its occurrence, and an attempt to recompense its victims. With respect to corrections, the "protective" factor favors rehabilitation with the recognition of inmate rights. Moderately high loadings appeared on the establishment of procedures to reduce sentencing disparities and the use of community programs for nonviolent offender rehabilitation. A moderately high loading also appeared on commission review of judicial competency. In accordance with the rehabilitation model, there was a moderate loading on the establishment of prison industries. A moderate loading also was found on the limitation of access to criminal offender records. While the "protective" factor indicates concern with public assistance, it also incorporates a balance of individual rights and offender interests.

The factor analysis confirmed the presence of two distinctive orientations toward criminal justice issues. While both include elements relating to public safety, one emphasizes order through control in contrast to the other which emphasizes security through assistance. To confirm the conclusions reached during the socio-demographic and issue correlations, the punitive and protective scores for each respondent were correlated with each of the socio-demographic variables (see table 12). Correlation with the "punitive" factor was significant in four instances. Members of criminal justice committees were significantly less punitive than were nonmembers, and state legislators with five or less years in the legislature were significantly less punitive than state legislators with more seniority. Legislators representing urban districts were significantly less punitive than legislators representing nonurban districts, and Democrats were significantly less punitive than Republicans. Correlation with the "protective" factor was significant in one instance, indicating that the ranking leadership was significantly less protective than state legislators in lower leadership positions. Each of these results confirms conclusions reached previously.

TABLE 12

PEARSONIAN CORRELATION COEFFICIENTS OF
SOCIO-DEMOGRAPHIC FACTORS BY
PUNITIVE AND PROTECTIVE
SCORES

Socio-Demographic Factors	Punitive Score	Protective Score
Committee Membership . . .	0.1969 s=0.001	0.0361 s=0.291
Leadership Status	-0.1013 s=0.061	-0.1580 s=0.008
Legislative Stay	0.2457 s=0.001	-0.0243 s=0.356
Home District	0.2798 s=0.001	0.0727 s=0.134
Political Party	0.2371 s=0.001	0.0117 s=0.434

NOTE: Regional Area and Nonlegislative Occupation were not included since codings for these items could not be ranked. Chi square values for similar comparisons were, however, not significant.

Although state legislators do not generally exhibit a major interest in criminal justice issues, legislators tend to profess one of two divergent orientations when forced to enumerate their positions on specifically selected items relating to criminal statutes, law enforcement and the criminal justice system. The close relationship of such recognized

variables as committee membership, leadership status, legislative stay, home district and political party with the punitive and protective orientations isolated in this study signifies a pervasive trend rather than a spurious correlation. Since almost all of the selected criminal justice issues were significantly affected by at least one of these factors, the punitive and protective orientations appeared to be directed toward the general area of criminal justice rather than just to specific criminal justice topics or areas.

FOOTNOTES

¹The words "significant" and "significantly" are used herein to connote at least a .05 level of significance.

CHAPTER V

MAJOR IMPLICATIONS AND GENERAL CONCLUSIONS

The specialization and diversification of law in a complex society has placed state legislators in the position of enacting laws blanketing the entire field of criminal law, criminal procedure and criminal justice administration. Although state legislators may correctly be characterized as generalists devoting only part of their time to elected office responsibilities, they must establish the guidelines for criminal justice not only with respect to statutory prohibitions and procedural constraints but also in regard to organizational structure and financial support, giving the various component parts and administrators of the criminal justice system the format, authority and means by which to operate. The responsibility placed on state legislators as an unrecognized but important part of the criminal justice system requires some understanding of the complex problems which confront the administration of justice. Very few legislators, however, have developed much

competence in this field. The criminal justice system needs complex solutions implemented in a coordinated rather than disjointed fashion, but state legislators must necessarily regard criminal justice as only one of many areas which are desperately in need of attention. To compound this problem, state legislators have not shown any inherent interest in the entire area. While disagreements arise with respect to the details of specific programs, criminal justice matters do not cause major dissension in legislative chambers since very few legislators would consider repudiating the necessity of combating the problem of crime. Without the inherent impetus of personal interest, state legislators are not confronted with overwhelming constituency demands regarding criminal justice matters. While the public is concerned with the control of violent crime, public attention tends to focus on law enforcement efforts. The clients of the criminal justice system are relatively few in number and relatively powerless in stature. Convicted felons lose their voting rights, thus becoming a disenfranchised constituency, and inmate and ex-offender groups are not sufficiently organized or funded to exert the degree of pressure required to force a majority of state legislators to take cognizance of the situation. Furthermore, state legislators have not been convinced

that any action taken on the part of the legislature will have an effect on reducing crime. Reinforcing this reticence to take action are continual court decisions overruling legislative action and interagency disputes advocating variant approaches. In response, legislators have assumed a neutral position generally supportive of the status quo, intentionally granting criminal justice administrators the discretionary powers to operationally effectuate the administration of justice through a process of accommodation.

On the national level, the National Advisory Commission on Criminal Justice Standards and Goals has formulated a comprehensive set of recommendations focusing on the improvement of the criminal justice system. Many of these recommendations for change require state legislative action for implementation. To determine state legislator perceptions of these criminal justice issues, a questionnaire containing thirty-five Likert items ($r = .91$ using a split-half method) derived from a representative sampling of specific recommendations proposed by the Commission was developed in conjunction with the Council of State Governments. After two pretests, the questionnaires were distributed at regional state legislator conferences, eliciting a national sample of 234

respondents. Reflecting the composition of the conferences, the respondents constituted a representative profile of state legislators with the exception that the sample contained a high proportion of legislative leaders. After responses to the substantive items were compared with socio-demographic variables and other legislator characteristics, univariate tests and factor analysis were utilized to determine state legislator attitudes toward criminal justice issues.

While major efforts are in process on the national level to stimulate comprehensive change in state criminal justice systems, specific recommendations received only a lukewarm reception from state legislators. The results of this study indicated that state legislators are least receptive to suggestions relating to the deletion of victimless crimes contained in criminal codes. Although legislators were divided amongst themselves, prostitution, gambling, vagrancy and sexual conduct between consenting adults appear to be sufficiently ingrained within the criminal code that a majority of state legislators will not yet support their elimination. Since state legislators must constantly consider the consequential effect of actions on the electoral approval of their constituency, many justifiably fear reprisals from voters who would consider a position in favor of repeal to be

supportive of the prohibited behavior. While state legislators favor regional prosecution and the reduction of sentence disparities, they were not generally supportive of other major changes in the area of courts and prosecution, indicating a general reluctance to involve themselves in the internal affairs of the judicial branch of government. A majority of state legislators, however, did favor recommendations related to prevention, assistance, and security and privacy. Actions which imply deterrence or victim assistance are popular with the general public as are investigation limitations and record restrictions, especially in the wake of recent national turmoil. Recommendations relating to corrections and parole received the greatest acceptance, indicating that state legislators are convinced of the propriety of the rehabilitation model and are persuaded as to the advantages of community programs. The willingness of state legislators to accept these recommendations attests to the efforts made by various correctional departments to convince legislators of the viability of these programs. In total, a majority of state legislators expressed support for positions recommended by the National Advisory Commission on Criminal Justice Standards and Goals in fifteen of the thirty-five issues (43 percent) studied herein. Plujority

support existed for a total of twenty-three issues (66 percent), indicating that major criminal justice change would be possible if criminal justice administrators and the general public would actively reinforce this moderate endorsement of reform. However, unless a concerted effort is undertaken to convince state legislators that revision and reform are necessary for the improved functioning of the criminal justice system, the increased efficiency of law enforcement and the superior protection of public safety, state legislators are likely to remain indifferent to these crucial criminal justice issues.

The willingness of state legislators to institute reform is partially dependent upon socio-demographic factors. Members of criminal justice committees, familiar with the current operational difficulties and knowledgeable about the implications of specialized legislation, were more likely than nonmembers to advocate criminal justice reform. Legislators who have accrued seniority or who have attained positions of leadership were less amenable to gambling their political security by altering established laws in the area of criminal justice than were legislators in less vulnerable positions. Democrats were more likely than Republicans to support new programs or laws, and state legislators employed in

professional and legal occupations showed a greater propensity to adopt a more liberal criminal justice approach than did individuals engaged in business or agricultural pursuits. Since urbanization generates a comparative tolerance of deviant behavior and a general inclination to safeguard individual rights, state legislators from urban districts expectedly demonstrated a stronger inclination to countenance specific recommendations relating to criminal justice than did state legislators from nonurban districts. While criminal justice information exchange is facilitated on the state level, legislators from the East and Midwest were more likely to endorse recommendations for change than were legislators from the West and South, though this trend varied by categorical area. These socio-demographic orientations toward criminal justice issues proved to be indicative of a more pervasive attitudinal trend. Members of criminal justice committees, state legislators with five or less years of seniority, Democrats and state legislators from urban districts were significantly less punitive in their response to criminal justice issues than were their counterparts. In this respect, they were less likely to advocate the preservation of public safety and moral order using methods of strict control with the threat of

harsh penalties. Similarly, ranking legislative leadership was less protective toward individuals potentially involved as victims and offenders in the criminal justice system. In this regard, they were less likely to favor efforts involving prevention, assistance, rehabilitation and individual rights. Although these punitive and protective factors correlate significantly with both socio-demographic trends and specific issues, they function as divergent orientations, characterizing dissimilar legislative approaches toward the entire field of criminal justice.

Although this study recognizes that state legislators support the judicious enactment of selected criminal justice reforms, it also is concerned with the problem of coordinated improvement on a systematic level. If some recommendations made by the National Advisory Commission on Criminal Justice Standards and Goals are instituted in the absence of others, the uneven effect could potentially disrupt rather than enhance system functioning. While state legislators possess ultimate responsibility for the development of policy, the weight of this responsibility is overwhelming. Not only must state legislators try to contend with the high cost to victims, the system and the state budget, but they are almost

powerless to harness and coordinate the mass of machinery operating in different branches of government under the auspices of a multitude of agencies. State legislators tend to perceive these problems in legal terms, discussing precedent and procedure in lieu of systematic organization and functional efficiency, and attempts to develop criminal justice policy through a legislated, consensual approach have resulted in random change, usually reactive in nature, and in disjointed coordination. These discordant features appear destined to continue unless major structural changes are implemented. Perhaps an administrative specialist rather than the legislature would be better equipped to formulate the operational and policy decisions necessary to ensure efficiency in operation, prevention of crime and preservation of rights in a total system of criminal justice. With such a system, state legislators could still exert a veto power guaranteeing that popular expectations of justice are not violated, while specialists in the field of criminal justice administration could utilize the tools of planning to enhance system performance.

Since state legislators are not likely to relinquish their criminal justice responsibilities in the near future, criminal justice administrators must

assume a less passive role in persuading state legislators of the advantages of comprehensive criminal justice reform. Rather than merely assuming that legislators recognize the importance of court, correctional and parole functions to the society and that state legislators understand the implications of various types of criminal justice legislation, criminal justice administrators must accept state legislators as part of the criminal justice system and compete in the legislative arena for additional funding and statutory change. By understanding the general predilections characteristic of various groups of state legislators, criminal justice administrators should be better equipped to actively establish claims for an improved system of criminal justice.

APPENDIX 1

QUESTIONNAIRE ON CRIMINAL JUSTICE ISSUES

In recent years criminal justice issues have become increasingly more important to general citizenry, public administration, and legislative bodies. The Council of State Governments, in the interest of learning the views of the states in matters of major concern, would like to learn how legislators perceive various criminal justice issues.

The following questionnaire contains statements relating to the areas of law, police, courts, and corrections. A basic personal information section relating to legislative duties has also been included. Individual answers will remain completely confidential. The Council is interested only in developing aggregate results.

This study is being distributed at all four regional conferences of the Council of State Governments. Please answer all questions frankly and return the questionnaire to the person or location designated during the conference. If you have any additional comments concerning this study, please do not hesitate to enclose them in the space provided below. Your participation in this study is greatly appreciated. Thank you for your time.

Comments:

Name and State - OPTIONAL

Please complete the following items as indicated.

In the following list, please check the type of standing committees on which you are currently serving:

- ☐ Agriculture
- ☐ Appropriations
- ☐ Corrections
- ☐ Commerce
- ☐ Consumer Affairs
- ☐ Environment (Natural Resources)
- ☐ Government Organization and Operation
- ☐ Interstate Cooperation
- ☐ Judiciary
- ☐ Labor
- ☐ State-Local Relations
- ☐ Transportation (Highway)
- ☐ Urban Affairs (Community Development)
- ☐ Ways and Means
- ☐ Welfare and Health Services
- ☐ Other _____

Please check any and all of the following positions which pertain to you:

- ☐ President of the Senate or Speaker of the House or Assembly
- ☐ President Pro Tem or Speaker Pro Tem
- ☐ Majority Leader
- ☐ Minority Leader

_____ Majority Floor Leader, Whip, or Caucus
Chairman

_____ Minority Floor Leader, Whip, or Caucus
Chairman

_____ Committee Chairman

_____ Other _____

How many years have you been a member of the Legisla-
ture of your state? _____

Which of the following types of population areas does
your legislative district represent?

_____ Large metropolitan

_____ Urban

_____ Suburban

_____ Rural

Please indicate your political party affiliation:

_____ Democrat

_____ Republican

_____ Independent

_____ Other _____

Please state your nonlegislative occupation or
profession:

The following items contain statements relating to the criminal justice system, with which some people agree and others disagree. There are no wrong answers. Please give us your opinion about every item.

If you STRONGLY AGREE with a statement, circle "SA."

If you AGREE with a statement, but not strongly, circle "A."

If you are NEUTRAL or UNCERTAIN about a statement, circle "N."

If you DISAGREE with a statement, but not strongly, circle "D."

If you STRONGLY DISAGREE with a statement, circle "SD."

1. If society does not protect the individual by preventing crime, it should assume the responsibility of alleviating the victim's loss.

SA A N D SD

2. The sale and possession of cheap handguns, (Saturday night specials) should be controlled.

SA A N D SD

3. Laws prohibiting certain types of sexual conduct, such as adultery and homosexuality, should be retained in criminal codes.

SA A N D SD

4. Vagrancy, loitering, and public intoxication statutes provide a necessary mechanism for maintaining public order.

SA A N D SD

5. Juveniles (under the age of 18) should not be placed under court supervision for actions which are not punishable for adults (e.g., truancy and runaways).

SA A N D SD

6. Gambling should not be legalized.

SA A N D SD

7. Prostitution, licensed and controlled, should be legalized.

SA A N D SD

8. The nonprescribed sale of addictive drugs (e.g., heroin, cocaine, morphine) should be severely sanctioned by penalties such as mandatory lengthy sentences or life imprisonment.

SA A N D SD

9. Possession of small amounts (one ounce or less) of marijuana should be a misdemeanor instead of a felony.

SA A N D SD

10. The death penalty provides a necessary deterrent for the reduction of violent (murder, kidnapping, etc.) crimes.

SA A N D SD

11. A police department should be required to recruit minority personnel if its staff does not reflect the population composition of the local community.

SA A N D SD

12. Law enforcement agencies should maintain records of arrest even if the charges are dismissed or no disposition has been registered.

SA A N D SD

13. Law enforcement agencies should not be allowed to compile intelligence and information files free from administrative, statutory, or judicial restrictions.

SA A N D SD

14. There should be no restrictions on wiretapping in instances involving the investigation and prosecution of organized crime.

SA A N D SD

15. Access to criminal offender records should be limited to law enforcement agencies on a need-to-know basis.

SA A N D SD

16. Court decisions relating to search and seizure, arrest, and interrogation have unduly hampered the ability of law enforcement authorities to fight crime.

SA A N D SD

17. A regional prosecution system (multicounty) should be instituted to eliminate the need for part-time prosecutors.

SA A N D SD

18. The plea bargaining process is necessary for the effective functioning of criminal courts.

SA A N D SD

19. In instances of indeterminate sentences (statutory range of sentence, e.g., one to five years), the judge rather than parole authorities or institutional case workers should determine amount of time to be served.

SA A N D SD

20. Judges are too lenient in sentencing criminal offenders.

SA A N D SD

21. A procedure should be created to reduce sentencing disparities for similar offenses.

SA A N D SD

22. Judges should be elected by open popular vote rather than appointed by a governor or a judicial qualification commission.

SA A N D SD

23. The competency of judges should be reviewed by an independent commission rather than a popular vote of retention.

SA A N D SD

24. The supreme court should have rule-making and management authority over all state and local courts.

SA A N D SD

25. Punishment rather than rehabilitation is the primary function of the correctional system.

SA A N D SD

26. Inmates should have the right of due process (notification, hearings, representation, etc.) before changes in confinement conditions are implemented (discipline, transfer, change in classification status).

SA A N D SD

27. Inmate access to the press, visitors, and mail is a privilege rather than a right.

SA A N D SD

28. Correctional institutions should be permitted to set up prison industries in conjunction with private businesses.

SA A N D SD

29. Community programs (work release, educational, release, furlough, etc.) instead of prison facilities should be used for the rehabilitation of nonviolent offenders.

SA A N D SD

30. Nonparolable offenders, such as convicted murderers, should not be allowed to participate in community correctional programs.

SA A N D SD

31. Parole should not be revoked for activities which are noncriminal in nature (e.g., curfew violation, drinking, etc.).

SA A N D SD

32. The licensing restrictions prohibiting ex-offenders from certified occupations (such as physical therapy and barbering), should be eliminated.

SA A N D SD

33. Probation and parole services should be unified instead of maintaining a system wherein probation services are administered by the local court system.

SA A N D SD

34. At some point in time after an individual has completed his sentence (incarceration, probation and parole), records of the arrest and conviction should be expunged.

SA A N D SD

35. In fighting crime, the preservation of public safety is more important than protecting individual rights.

SA A N D SD

CONTINUED

4 OF 5

APPENDIX 2

CRIMINAL JUSTICE ISSUES CONTAINED IN QUESTIONNAIRE RELATED TO SELECTED RECOMMENDATIONS BY THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

QUESTION 1

If society does not protect the individual by preventing crime, it should assume the responsibility of alleviating the victim's loss.

RECOMMENDATION

None

SOURCE

None

QUESTION 2

The sale and possession of cheap handguns (Saturday night specials) should be controlled.

RECOMMENDATION

The Commission urges the enactment of State legislation prohibiting the sale of handguns, their parts, and ammunition to other than law enforcement agencies or Federal or State governments for military purposes.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 144.

RECOMMENDATION

The Commission further urges the enactment of State legislation not later than January 1, 1983, prohibiting the private possession of handguns after that date.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 145.

QUESTION 3

Laws prohibiting certain types of sexual conduct, such as adultery and homosexuality, should be retained in criminal codes.

RECOMMENDATION

The Commission recommends that States reevaluate their laws on gambling, marijuana use and possession for use, pornography, prostitution, and sexual acts between consenting adults in private. Such reevaluation should determine if current laws best serve the purpose of the State and the needs of the public.

The Commission further recommends that, as a minimum, each State remove incarceration as a penalty for these offenses, except in the cases of persistent and repeated offenses by an individual, when incarceration for a limited period may be warranted.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 132.

QUESTION 4

Vagrancy, loitering, and public intoxication statutes provide a necessary mechanism for maintaining public order.

RECOMMENDATION

The Commission recommends that each State review its laws and repeal any law that proscribes the status of living in idleness without employment and having no visible means of support.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington D.C.: Government Printing Office, 1973), p. 134.

RECOMMENDATION

The Commission recommends that public drunkenness in and of itself no longer be treated as a crime. All States should give serious consideration to enacting the Uniform Alcoholism and Intoxication Act.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 133.

QUESTION 5

Juveniles (under the age of 18) should not be placed under court supervision for actions which are not punishable for adults (e.g., truancy and runaways).

RECOMMENDATION

Each State should enact legislation by 1975 limiting the delinquency jurisdiction of the courts to those juveniles who commit acts that if committed by an adult would be crimes.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 573.

QUESTION 6

Gambling should not be legalized.

RECOMMENDATION

The Commission recommends that States reevaluate their laws on gambling, marijuana use and possession for use, pornography, prostitution, and sexual acts between consenting adults in private. Such reevaluation should determine if current laws best serve the purpose of the State and the needs of the public.

The Commission further recommends that, as a minimum, each State remove incarceration as a penalty for these offenses, except in the cases of persistent and repeated offenses by an individual, when incarceration for a limited period may be warranted.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 132.

QUESTION 7

Prostitution, licensed and controlled, should be legalized.

RECOMMENDATION

The Commission recommends that States reevaluate their laws on gambling, marijuana use and possession for use, pornography, prostitution, and sexual acts between consenting adults in private. Such reevaluation should determine if current laws best serve the purpose of the State and the needs of the public.

The Commission further recommends that, as a minimum, each State remove incarceration as a penalty for these offenses, except in the cases of persistent and repeated offenses by an individual, when incarceration for a limited period may be warranted.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 132.

QUESTION 8

The nonprescribed sale of addictive drugs (e.g., heroin, cocaine, morphine) should be severely sanctioned by penalties such as mandatory lengthy sentences or life imprisonment.

RECOMMENDATION

The Commission recommends a maximum sentence of 5 years for most offenders, with no minimum sentence imposed by statute. The Commission recommends a maximum sentence not to exceed 25 years for a convicted offender who is:

1. A persistent offender;
2. A professional criminal; or
3. A dangerous offender.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 118.

QUESTION 9

Possession of small amounts (one ounce or less) of marijuana should be a misdemeanor instead of a felony.

RECOMMENDATION

The Commission recommends that States reevaluate their laws on gambling, marijuana use and possession for use, pornography, prostitution, and sexual acts between consenting adults in private. Such reevaluation should determine if current laws best serve the purpose of the State and the needs of the public.

The Commission further recommends that, as a minimum, each State remove incarceration as a penalty for these offenses, except in the cases of persistent and repeated offenses by an individual, when incarceration for a limited period may be warranted.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 132.

QUESTION 10

The death penalty provides a necessary deterrent for the reduction of violent (murder, kidnapping, etc.) crimes.

RECOMMENDATION

The Commission recommends a maximum sentence of 5 years for most offenders, with no minimum sentence imposed by statute. The Commission recommends a maximum sentence not to exceed 25 years for a convicted offender who is:

1. A persistent offender;
2. A professional criminal; or
3. A dangerous offender.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 118.

QUESTION 11

A police department should be required to recruit minority personnel if its staff does not reflect the population composition of the local community.

RECOMMENDATION

The Commission recommends that every police agency that has racial or minority groups of significant size in its jurisdiction insure that the needs of minorities are actively considered in the establishment of police policy and the delivery of police service. Affirmative action should be taken to achieve a proportion of minority group employees that approximates their proportion in the population of the area.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 75.

QUESTION 12

Law enforcement agencies should maintain records of arrest even if the charges are dismissed or no disposition has been registered.

RECOMMENDATION

All copies of information filed as a result of an arrest that is legally terminated in favor of the arrested individual should be returned to that individual within 60 days of final disposition, if a court order is presented, or upon formal notice from one criminal justice agency to another. Information includes fingerprints and photographs. Such information should not be disseminated outside criminal justice agencies.

However, files may be retained if another criminal action or proceeding is pending against the arrested individual, or if he has previously been convicted in any jurisdiction in the United States of an offense that would be deemed a crime in the State in which the record is being held.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Criminal Justice System (Washington, D.C.: Government Printing Office, 1973), p. 123.

QUESTION 13

Law enforcement agencies should not be allowed to compile intelligence and information files free from administrative, statutory, or judicial restrictions.

RECOMMENDATION

Every police agency and every State immediately should establish and maintain the capability to gather and evaluate information and to disseminate intelligence in a manner which protects every individual's right to privacy while it curtails organized crime and public disorder...

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Police (Washington, D.C.: Government Printing Office, 1973) p. 250.

QUESTION 14

There should be no restriction on wiretapping in instances involving the investigation and prosecution of organized crime.

RECOMMENDATION

The Commission recommends that each State enact legislation prohibiting private electronic surveillance and authorizing court-supervised electronic surveillance by law enforcement officers, consistent with the provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 91.

QUESTION 15

Access to criminal offender records should be limited to law enforcement agencies on a need-to-know basis.

RECOMMENDATION

Information in criminal justice files should be made available to public agencies which have both a "need to know" and a "right to know." The user agency should demonstrate, in advance, that access to such information will serve a criminal justice purpose...

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Criminal Justice System (Washington, D.C.: Government Printing Office, 1973), p. 123.

QUESTION 16

Court decisions relating to search and seizure, arrest, and interrogation have unduly hampered the ability of law enforcement authorities to fight crime.

RECOMMENDATION

The Commission urges the enactment of State legislation providing for police discretion in stop-and-frisk searches of persons and searches of automobiles for illegal handguns.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 143.

QUESTION 17

A regional prosecution system (multicounty) should be instituted to eliminate the need for part-time prosecutors.

RECOMMENDATION

The Commission recommends that the prosecutor be a full-time professional selected on the basis of demonstrated competence and personal integrity. The prosecutor's office should be provided with the necessary personnel, fiscal resources, and support services to deal effectively and fairly with all cases coming before it and to allow proper preparation of all cases at all levels of the criminal proceeding including screening and diversion.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 104.

QUESTION 18

The plea bargaining process is necessary for the effective functioning of criminal courts.

RECOMMENDATION

The Commission condemns plea negotiation and recommends that as soon as possible, but not later than 1978, negotiations between defendants and prosecutors concerning concessions to be made in return for guilty pleas be abolished.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 98.

QUESTION 19

In instances of indeterminate sentences (statutory range of sentence, e.g., one to five years), the judge rather than parole authorities or institutional case workers should determine amount of time to be served.

RECOMMENDATION

Jury sentencing should be required in all situations. The trial judge should be required to impose a sentence that, within limits imposed by statute, determines the maximum period a defendant's liberty may be restricted. Within this maximum period, other agencies may be given the power to determine the manner and extent of interference with the offender's liberty. Continuing jurisdiction in the trial court over the offender during the sentence imposed is not inconsistent with this standard.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: Government Printing Office, 1973), p. 110.

QUESTION 20

Judges are too lenient in sentencing criminal offenders.

RECOMMENDATION

The Commission recommends a maximum sentence of 5 years for most offenders, with no minimum sentence imposed by statute. The Commission recommends a maximum sentence not to exceed 25 years for a convicted offender who is:

1. A persistent offender;
2. A professional criminal; or
3. A dangerous offender.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 118.

QUESTION 21

A procedure should be created to reduce sentencing disparities for similar offenses.

RECOMMENDATION

Sentencing councils should be established, in which judges in multijudge courts would meet to discuss cases awaiting sentences in order to assist the trial judge in arriving at an appropriate sentence. Appellate review of sentencing decisions should be authorized.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 117.

QUESTION 22

Judges should be elected by open popular vote rather than appointed by a governor or a judicial qualification commission.

RECOMMENDATION

The Commission recommends that judges be nominated by a judicial commission appointed by the Governor, and that judges stand for periodic uncontested elections in which they run against their record. The judicial commission should consist of private non-lawyer citizens and members of the legal profession.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 106.

QUESTION 23

The competency of judges should be reviewed by an independent commission rather than a popular vote of retention.

RECOMMENDATION

The Commission recommends that judges be nominated by a judicial commission appointed by the Governor, and that judges stand for periodic uncontested elections in which they run against their record. The judicial commission should consist of private non-lawyer citizens and members of the legal profession.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 106.

QUESTION 24

The supreme court should have rule-making and management authority over all state and local courts.

RECOMMENDATION

The Commission recommends that each State have a State court administrator responsible for establishing policies for administration of the entire State court system, including budgets, personnel, information compilation and dissemination, fiscal operations, court system evaluation and remediation, assignment of judges, and external liaison. The court administrator should establish operational guidelines for local and regional trial court administrators.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 103.

QUESTION 25

Punishment rather than rehabilitation is the primary function of the correctional system.

RECOMMENDATION

Each correctional agency should immediately develop and implement policies, procedures, and practices to fulfill the right of offenders to rehabilitation programs. A rehabilitative purpose is or ought to be implicit in every sentence of an offender unless ordered otherwise by the sentencing court.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 43.

QUESTION 26

Inmates should have the right of due process (notification, hearings, representation, etc.) before changes in confinement conditions are implemented (discipline, transfer, change in classification status).

RECOMMENDATION

Each correctional agency should immediately promulgate written rules and regulations to prescribe the procedures for determining and changing offender status, including classification, transfers, and major changes or decisions on participation in treatment, education, and work programs within the same facility.

1. The regulations should:

- a. Specify criteria for the several classifications to which offenders may be assigned and the privileges and duties of persons in each class.
- b. Specify frequency of status reviews or the nature of events that prompt such review.
- c. Be made available to offenders who may be affected by them.
- d. Provide for notice to the offender when his status is being reviewed.
- e. Provide for participation of the offender in decisions affecting his program.

2. The offender should be permitted to make his views known regarding the classification, transfer, or program decision under consideration. The offender should have an opportunity to oppose or support proposed changes in status or to initiate a review of his status.

3. Where reviews involving substantially adverse changes in degree, type, location, or level of custody are conducted, an administrative hearing should be held, involving notice to the offender, an opportunity to be heard, and a written report by the correctional authority communicating the final outcome of the review. Where such actions, particularly transfers, must be made on an emergency basis, this procedure should be followed subsequent to the action. In the case of transfers between correctional and mental institutions, whether or not maintained by the correctional authority, such procedures should include specified procedural safeguards available for new or initial commitments to the general population of such institutions.

4. Proceedings for nondisciplinary changes of status should not be used to impose disciplinary sanctions or otherwise punish offenders for violations of rules of conduct or other misbehavior.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 54.

QUESTION 27

Inmate access to the press, visitors, and mail is a privilege rather than a right.

RECOMMENDATION

Offenders should have the right to correspond with anyone and to send and receive any material that can be lawfully mailed, without limitation on volume or frequency. Correctional authorities should have the right to inspect incoming and outgoing mail for contraband, but not to read or censor mail.

Except in emergencies such as institutional disorders, offenders should be allowed to present their views to the communications media through confidential and uncensored interviews with media representatives, uncensored letters and other communications with the media, and publication of articles and books on any subject.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 117.

QUESTION 28

Correctional institutions should be permitted to set up prison industries in conjunction with private businesses.

RECOMMENDATION

The Commission recommends that institutions plan for programs that bridge that gap between institutions and community residents. Institutions should actively develop maximum interaction between the community and the institution, involving citizens in planning and activities.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 126.

QUESTION 29

Community programs (work release, educational release, furlough, etc.) instead of prison facilities should be used for the rehabilitation of nonviolent offenders.

RECOMMENDATION

States should refrain from building any more State institutions for juveniles; States should phase out present institutions over a 5-year period.

They should also refrain from building more State institutions for adults for the next 10 years except when total system planning shows that the need for them is imperative.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 121.

QUESTION 30

Nonparolable offenders, such as convicted murderers, should not be allowed to participate in community correctional programs.

RECOMMENDATION

Correctional agencies should begin immediately to develop arrangements and procedures for offenders sentenced to correctional institutions to assume increasing individual responsibility and community contact. A variety of levels of individual choice, supervision, and community contact should be specified in these arrangements, with explicit statements as to how the transitions between levels are to be accomplished. Progress from one level to another should be based on specified behavioral criteria rather than on sentence, time served, or subjective judgments regarding attitudes...

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 244.

QUESTION 31

Parole should not be revoked for activities which are noncriminal in nature (e.g., curfew violation, drinking, etc.).

RECOMMENDATION

Each State should take immediate action to reduce parole rules to an absolute minimum, retaining only those critical in the individual case, and to provide for effective means of enforcing the conditions established...

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 433.

QUESTION 32

The licensing restrictions prohibiting ex-offenders from certified occupations (such as physical therapy and barbering), should be eliminated.

RECOMMENDATION

States should adopt legislation to repeal all mandatory provisions in law or civil service regulations that deprive ex-offenders of civil rights and opportunities for employment. Each State legislature should enact a code of offenders' rights. The sentencing court should have continuing jurisdiction over the sentenced offender during the term of his sentence.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 117.

QUESTION 33

Probation and parole services should be unified instead of maintaining a system wherein probation services are administered by the local court system.

RECOMMENDATION

By 1978, each State should enact legislation to unify within the executive branch all non-Federal correctional functions for adults and juveniles, including service for persons awaiting trial; probation supervision; institutional confinement; community-based programs, whether prior to or during institutional confinement; and parole and other after-care programs.

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (Washington, D.C.: Government Printing Office, 1973), p. 123.

QUESTION 34

At some point in time after an individual has completed his sentence (incarceration, probation and parole), records of the arrest and conviction should be expunged.

RECOMMENDATION

Every copy of criminal justice information concerning individuals convicted of a serious crime should be purged from active files 10 years after the date of release from supervision. In the case of less serious offenses the period should be 5 years. Information should be retained where the individual has been convicted of another criminal offense within the United States, where he is currently under indictment or the subject of an arrest warrant by a U.S. criminal justice agency...

SOURCE

National Advisory Commission on Criminal Justice Standards and Goals, Criminal Justice System (Washington, D.C.: Government Printing Office, 1973), p. 105.

QUESTION 35

In fighting crime, the preservation of public safety is more important than protecting individual rights.

RECOMMENDATION

None

SOURCE

None

NOTE: The recommendations cited are only representative samples of a larger number of standards which pertain to the individual questions.

APPENDIX 3

STATE LEGISLATIVE COMMITTEES

AGRICULTURE	ENVIRONMENT (NATURAL RESOURCES)
ALCOHOL AND DRUGS	Resources
Liquor Control	ETHICS
APPROPRIATIONS	Conflict of Interest
BANKING AND INSURANCE	GOVERNMENT ORGANIZATION AND OPERATION
Financial Institutions	State Affairs
Insurance	General Laws
Banking	Executive
Insurance and Banking	INTERSTATE COOPERATION
Economic Affairs	JUDICIARY
COMMERCE	Courts
CONSTITUTIONAL REVISION	Law and Criminal Justice
Constitutional Amendments	LABOR
Revision of State Constitution	LEGISLATIVE COUNCIL
CONSUMER AFFAIRS	Service Bureau
CORRECTIONS	LEGISLATIVE IMPROVEMENT
Penal and Correctional	Legislative Facilities
Public Safety and Penal Affairs	Program Analysis and Legislative Improvement
Correctional Institutions	MILITARY AFFAIRS
EDUCATION	Veteran Affairs
Higher Education	State-Federal
Finance and Education	Military Affairs
Public Education	PUBLIC SAFETY AND LAW ENFORCEMENT
ELECTIONS AND APPORTIONMENT	Law Enforcement
Reapportionment	Public Safety
Public Policy and Elections	Safety
Privileges and Elections	Police
Election Laws	Communications
Elections	
ENERGY	
Oil and Gas	

RULES

- Rules and Regulations Procedure
- Legislative Procedure
- Rules (House)
- STATE-LOCAL RELATIONS
 - Local Government
 - County Government
- TRANSPORTATION (HIGHWAY)
 - Motor Vehicle Laws
- URBAN AFFAIRS (COMMUNITY DEVELOPMENT)
 - Building Commission
- UTILITIES AND PUBLIC WORKS
 - Public Works
 - Utilities
 - Telecommunications

WAYS AND MEANS

- Taxation
- Taxation and Assessment
- Revenue and Finance

WELFARE AND HEALTH

SERVICES

- Institutions
- Benevolent Institutions
- Human Institutions
- Retirement (and Pensions)
- Developmental Services
- Mental Health

NOTE: Sublistings indicate the range of actual responses, except in instances where the responses corresponded verbatim to the general state legislative committee category.

APPENDIX 4

STATE LEGISLATIVE LEADERSHIP POSITIONS

President of the Senate or Speaker of the House or
Assembly

President Pro Tem or Speaker Pro Tem

Majority Leader

Minority Leader

Majority Floor Leader, Whip or Caucus Chairman

Minority Floor Leader, Whip or Caucus Chairman

Committee Chairman

Committee Vice Chairman

Subcommittee Chairman

Subcommittee Vice Chairman

Interim Study Committee Chairman

Interim Study Committee Vice Chairman

Member-at-Large

Legislative Staff

Executive Agency - Director

Executive Agency - Staff

Other

NOTE: Although the last four categories do not pertain to state legislators, they were included so that the respondents who were not legislators could be differentiated from the larger group.

APPENDIX 5

STATE LEGISLATOR OCCUPATIONS INDEX

AGRICULTURAL ENTERPRISES	BUSINESS MANAGEMENT
Agricultural	Business Management
Agriculture	Planning Manager
Dairy Farmer	Railroad General
Farm Manager	Manager
Farmer	Railroad Supervisor
Farmer Rancher	Accounting Supervisor
Farmer Stockman	Drug Firm Personnel
Feeder	Administrator
Fruit Grower	BUSINESS OPERATION AND
General Farming	SALES
Operations	Automobile Dealer
Livestock	Beer and Wine
Livestock Farmer	Wholesaler
Rancher	Business
Stockman (Farmer)	Farm Implement and
AGRICULTURAL TECHNICIAN	Auto Dealer
Animal Nutritionist	Industrial Equipment
BANKING	Supplier
Bank Director	Lumber Manufacturer
Banker	Merchant
(Personnel Officer)	Oil Distribution and
BUSINESS CONSULTANT	Transportation
Business Consultant	Retail Businessman
Consultant	Retail Merchant
Management Consultant	Auctioneer
Management Counsel	Grain and Feed Dealer
BUSINESS EXECUTIVE	Salesman
Airport Owner	COMMERCIAL FISHING
and Operator	Fisherman (Commercial)
Business Executive	COMMUNICATION EXECUTIVE
Corporation President	Broadcast Owner and
Electric Utility	Executive
Official	Publisher
Food Store Owner	COMMUNICATIONS
Furniture Store Owner	Editor
	Newspaper Columnist
	Writer

FUNERAL BUSINESS	LAND DEVELOPMENT
Mortician	Building Construction
GOVERNMENTAL OFFICIAL	Construction
Department of Social	Developer
Services Director	Electrical Contractor
Director of Legislative	Plumbing Contractor
Services	Real Estate Developer
Treasurer of State	LAND PLANNING
GOVERNMENTAL STAFF	Architect - Planner
Budget Examiner	Landscape Architect
Legislative Staff	LAW COURT
INSURANCE	Judge
Farmers Insurance	LAW ENFORCEMENT
Agent	Sheriff
Insurance Agent	LEGAL PROSECUTION AND
Insurance -	DEFENSE
Home Office	Assistant Attorney
Insurance Sales	General
Life Insurance	District Attorney
INVESTMENT MANAGEMENT	Public Defender -
Finance	Office Administrator
Investment and Land	LEGAL REPRESENTATION
Management	Attorney
Investment Management	Lawyer
Real Estate and	MEDICINE
Investments	Anesthesiologist M.D.
Security Sales	Physician
INVESTMENT SALES	PUBLIC RELATIONS
Board of Realtors	Public Relations
Vice President	RESEARCH
Real Estate	Research Administration
Real Estate Broker	Research Assistant
Real, Insurance and	Research Director
Investment Broker	SOCIAL WORK
Realtor	Social Work
LABOR FORCE	Social Worker
Carpenter	TEACHING
Factory Worker	Biology Teacher
Mill Warehouseman	Assistant Professor
Secretary	College Professor
LABOR NEGOTIATOR	Former Teacher
Labor Negotiator	Teacher
	School Counselor
	Educator - Ph.D.
	Administrator

TECHNICAL SCIENCES	UNEMPLOYED
Civil Engineer	Homemaker
Electronics Engineering	Housewife
Services	Mother
Engineering	Taxpayer
Chemist	Wife of State
THERAPIST	Representative
Occupational Therapist	Law Student
	Retired
	None

NOTE: Sublistings indicate the range of actual responses.

APPENDIX 6
CHI SQUARE SIGNIFICANCE LEVEL DISTRIBUTION OF STATE
LEGISLATOR RESPONSES BY SOCIO-DEMOGRAPHIC FACTORS

Questionnaire Items in Substantive Categories	Committee Membership	Leadership Status	Legislative Stay	Home District	Regional Area	Political Party	Nonlegislative Occupation
Prohibitions and Penalties							
Sexual conduct laws should be retained . . . . .	.2536	.0307	.0001	.0180	.0364	.0222	.0293
Vagrancy laws are necessary for public order . . . . .	.2072	.4652	.0086	.4187	.1054	.0037	.2312
Court supervision should not include status offenders . . . . .	.2087	.0005	.0643	.3449	.4221	.6870	.2586
Gambling should not be legalized . . . . .	.3449	.9251	.6006	.5402	.0695	.2314	.1140
Prostitution should be legalized . . . . .	.4736	.0010	.2272	.0209	.7543	.0070	.0022
Narcotic sales should warrant life sentences . . . . .	.0044	.0748	.6054	.0041	.0850	.3931	.0015
Marijuana possession should be a misdemeanor . . . . .	.3071	.5708	.0642	.3134	.0125	.2072	.0030
Prevention and Assistance							
Society should alleviate victim loss . . . . .	.9957	.0333	.8817	.7796	.0036	.1588	.0003
Cheap handguns should be controlled . . . . .	.3248	.0539	.0564	.2928	.0429	.2421	.0115
Death penalty is deterrent to violent crime . . . . .	.0385	.1932	.0107	.0015	.5577	.0009	.0002
Police should recruit minorities . . . . .	.1791	.0672	.3332	.0091	.1159	.2582	.6710
Public safety should outweigh individual rights . . . . .	.6149	.6320	.0101	.1024	.5584	.6018	.0020
Courts and Prosecution							
Regional prosecution should be instituted . . . . .	.3908	.2406	.6408	.0591	.2565	.8502	.0477
Plea bargaining is necessary for court functioning . . . . .	.2221	.5872	.1048	.2659	.2584	.5887	.0034
Court decisions are impediments to police . . . . .	.0035	.0015	.0002	.0005	.1227	.0003	.0000
Judges should decide indeterminate sentences . . . . .	.4021	.4697	.5498	.5124	.0866	.4173	.1321
Judges are lenient in sentencing . . . . .	.0683	.1400	.0448	.1983	.0669	.0451	.0004
Sentence disparities should be reduced . . . . .	.1593	.0898	.5729	.2064	.6773	.0124	.1220
Judges should be elected . . . . .	.4358	.3903	.5802	.1596	.0029	.9356	.0000
Commissions should review judicial competency . . . . .	.5791	.8918	.3202	.8704	.0470	.2661	.3720
Judicial systems should be unified . . . . .	.8892	.5946	.6398	.2260	.0035	.6243	.0435

APPENDIX 6-Continued

Questionnaire Items in Substantive Categories	Committee Membership	Leadership Status	Legislative Stay	Home District	Regional Area	Political Party	Nonlegislative Occupation
Corrections and Parole							
Punishment is prime function of corrections . . . . .	.7010	.1961	.2755	.4731	.1822	.2558	.3672
Inmates should have due process . . . . .	.4022	.7344	.3241	.0028	.0166	.0697	.0862
Inmate communications is a privilege . . . . .	.7828	.0523	.0016	.0527	.0779	.0011	.0087
Institutions should establish prison industries . . . . .	.6303	.1558	.6683	.6919	.0892	.1585	.2466
Community programs should supersede prison facilities . .	.4760	.5133	.9997	.6547	.0005	.6608	.2957
Community programs should not admit nonparolable inmates	.1001	.5309	.3948	.2042	.0562	.0489	.0242
Probation and parole should be unified . . . . .	.7156	.2621	.9449	.3737	.2346	.5815	.0602
Noncriminal actions should not revoke parole . . . . .	.3113	.4956	.2267	.0238	.1230	.0027	.0085
Offender licensing restrictions should be eliminated . .	.5394	.1789	.8264	.9562	.2101	.3685	.3242
Security and Privacy							
Arrest records should be kept . . . . .	.3589	.0669	.5411	.0458	.1007	.0902	.1349
Intelligence files should be restricted . . . . .	.8672	.2885	.1872	.6579	.6058	.2653	.1790
Wiretapping should not be controlled . . . . .	.0055	.2962	.0564	.2083	.1030	.0151	.0012
Record access should be limited . . . . .	.4790	.1137	.1145	.5625	.8212	.2980	.0878
Offender records should be expunged . . . . .	.9122	.4556	.8346	.3814	.0561	.4963	.4885

NOTE: For an abbreviated version of the above containing only the values where the chi square figure is significant for at least the .05 level of significance, see table 10.

APPENDIX 7
VARIMAX ROTATED MATRIX FOR PUNITIVE AND PROTECTIVE
FACTOR LOADINGS FOR QUESTIONNAIRE ITEMS
BY SUBSTANTIVE CATEGORY

Questionnaire Items in Substantive Categories	Punitive Factor Loading	Protective Factor Loading
<u>Prohibitions and Penalties</u>		
Sexual conduct laws should be retained	0.68389	0.12360
Vagrancy laws are necessary for public order	0.72037	-0.01807
Court supervision should not include status offenders	0.17137	0.29655
Gambling should not be legalized	0.19611	0.19843
Prostitution should be legalized	0.42280	0.06564
Narcotic sales should warrant life sentences	0.55817	0.04622
Marijuana possession should be a misdemeanor	0.45374	0.35635
<u>Prevention and Assistance</u>		
Society should alleviate victim loss	-0.04455	0.61388
Cheap handguns should be controlled	0.09892	0.61759
Death penalty is deterrent to violent crime	0.74112	0.17252
Police should recruit minorities	0.26299	0.52460
Public safety should outweigh individual rights	0.64554	-0.05393
<u>Courts and Prosecution</u>		
Regional prosecution should be instituted	0.14925	0.33845
Plea bargaining is necessary for court functioning	-0.08871	-0.11010
Court decisions are impediments to police	0.77339	0.03777
Judges should decide indeterminate sentences	0.40008	0.14772
Judges are lenient in sentencing	0.68797	0.12153
Sentence disparities should be reduced	-0.10091	0.42608
Judges should be elected	0.34255	0.24751
Commissions should review judicial competency	0.06351	-0.43779
Judicial systems should be unified	0.14918	0.41318

APPENDIX 7-Continued

Questionnaire Items in Substantive Categories	Punitive Factor Loading	Protective Factor Loading
Corrections and Parole		
Punishment is prime function of corrections	0.29175	0.33447
Inmates should have due process	0.32583	0.27114
Inmate communications is a privilege	0.50735	0.06305
Institutions should establish prison industries	-0.03917	0.41140
Community programs should supersede prison facilities	0.18706	0.59769
Community programs should not admit nonparolable inmates	0.54042	0.05930
Probation and parole should be unified	0.27109	0.19335
Noncriminal actions should not revoke parole	0.43928	0.26020
Offender licensing restrictions should be eliminated	0.23838	0.46142
Security and Privacy		
Arrest records should be kept	0.39886	0.21706
Intelligence files should be restricted	0.40548	0.31660
Wiretapping should not be controlled	0.67503	-0.05105
Record access should be limited	-0.24726	0.26971
Offender records should be expunged	0.33317	0.25857

NOTE: The factor loadings were derived from codings wherein the position recommended by the National Advisory Commission on Criminal Justice Standards and Goals was always assigned the value of one (on a scale of one to five), regardless of the direction of the original question.

Because considerable overlap existed between the punitive and protective factors, conclusions were based on results derived from unrotated factor loadings. For these values, see table 11.

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