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ABSTRACT

There is less geographic variation in the commitment rate of juvenile offenders than is commonly assumed. Apparently, judges across the country develop a similar standard of what percentage of youths they face should be committed. This standard may be similar across the country because it represents broadly shared ideals. However, there is much larger variation among courts in the rate of informal handling of cases involving juvenile offenders, and the indications are that the informal rate is largely determined by the way contiguous courts handle these cases, rather than reflecting rational strategies. These data indicate that elaborate mechanisms for controlling commitment rates might not prove useful, since juvenile courts are only slightly influenced by rational organization forms. More blunt approaches that acknowledge the existing reality of the institutions must be used. (Author/WP)

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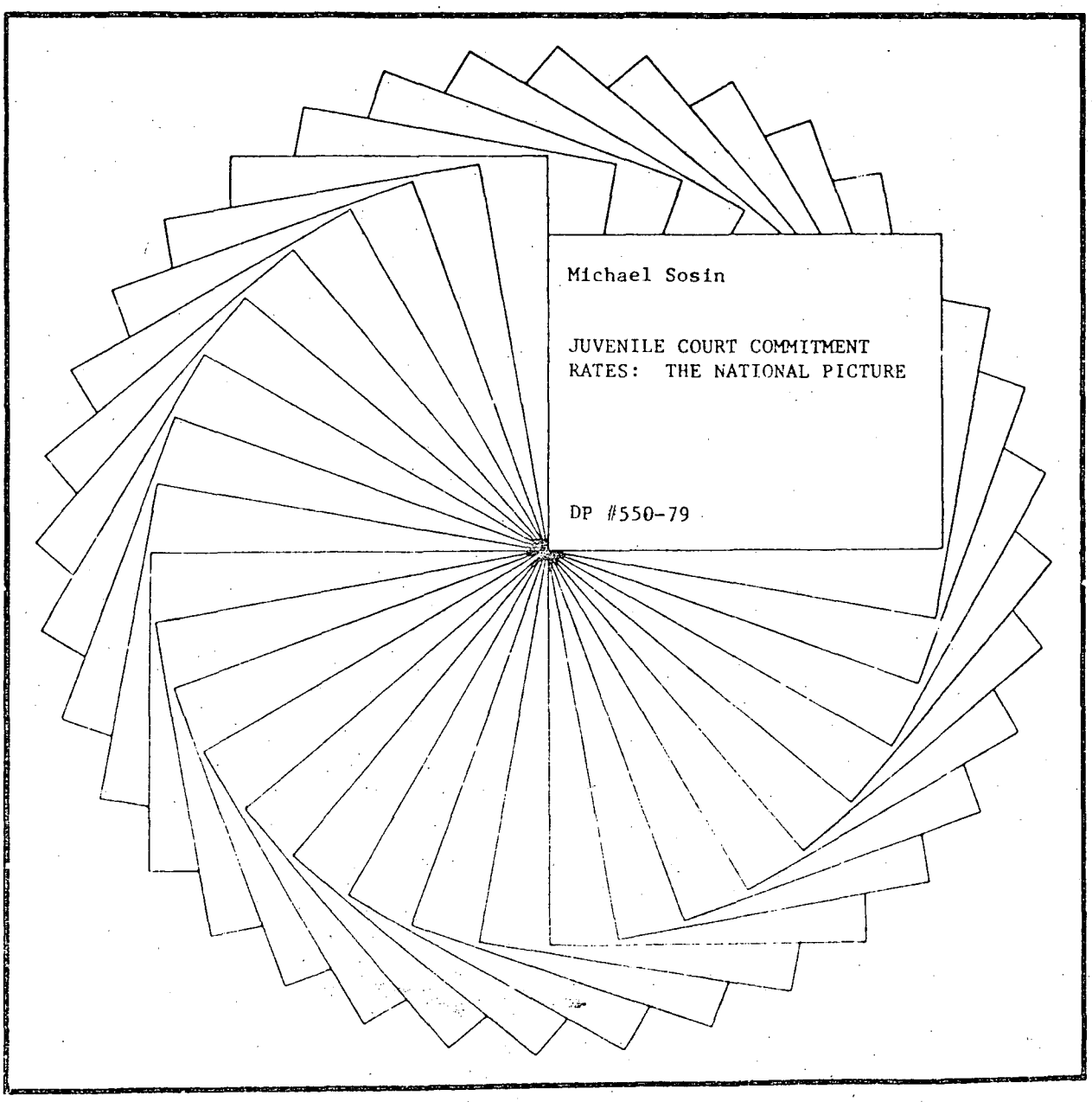

Juvenile Court Commitment Rates:

The National Picture

Michael Sosin

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ABSTRACT

Discussions of the incarceration of juveniles by courts seldom include comparative statistics about the national commitment picture and thus can only speculate on the importance of many of the debated issues. This paper uses national data in an attempt to rectify this situation. It shows that there is less geographical variance in the commitment rate than many persons might assume and that the few courts with extremely high or low commitment rates have very unusual structures. However, it notes large differences in the use of informal handling--differences that significantly affect commitment patterns. It is argued that these results, when combined with data from other studies, question policy proposals based on the assumption that there is wide variation in judicial behavior that laws can control. Rather, proposals must deal with a variety of social forces that affect the commitment practices of most contemporary juvenile courts.

Juvenile Court Commitment Rates: The National Picture

Commitment to an institution is the harshest disposition a juvenile court may impose, and it is often a central subject in discussions of juvenile justice policy. Most such discussions consider whether incarceration should be kept to a minimum to avoid branding juvenile offenders as criminals (Schur 1973), whether it should be more certain to deter crime (Wilson 1975), or whether some categories of juveniles, such as status offenders, should not be incarcerated at all (President's Commission on Law Enforcement and the Administration of Justice 1967).

There are other aspects of the commitment problem on which there is more consensus and less debate. Since the Supreme Court[1] warned of the lack of legal controls in juvenile courts, it has become particularly common to assume that rates of incarceration vary widely from court to court, since they are largely the product of the disparate attidudes and goals of both judges and local communities. One author concluded:

> What may determine the mode of operations in juvenile courts is the interaction between the belief system of the judges and his representatives, and the sensitivity to political sentiments in the community. The combination of these factors generates a system of juvenile justice that is particularistic, idiosyncratic, and frequently arbitrary. [Pabon 1978:27]

Indeed, proponents of alternate commitment policies share the assumption concerning wide, locally caused variation. As a result, most believe that new legal standards restraining judicial discretion are necessary and sufficient to bring about changes in rates of incarceration.

Given the wide acceptance of this position, one might expect it to be reflected in national statistics that demonstrate how rates of incarceration

vary across the country with the nature of judges and local communities, and how such patterns may be controlled. However, such nationwide data is rarely presented or discussed. Rather, only indirect evidence is presented, such as discussions of philosophical underpinnings of the theoretical discretion judges have (Allen 1964; Platt 1969), descriptions of abuses and legal interventions in specific cases (Forer 1970; Murphy 1974), or case studies of factors used in judicial decision-making in individual courts (Terry 1967; Scarpitti and Stephenson 1970; Cohen and Kluegel 1978). The existence and control of discretion nationwide cannot be proven from these studies, since detailed evidence on a national scale is required, and such information is not normally presented.

This paper tries to fill that gap by providing a national picture of the use of commitment in juvenile courts. First, using a random sample, it examines how commitment rates differ nationwide. Second, it uses other studies to determine whether local attitudes or goals help explain patterns of incarceration. Finally, it uses the results to suggest some new directions for controlling courts, based on a redefinition of the discretion issue.

COMMITMENT RATES

The national data used in this analysis come from a mail survey of United States juvenile court judges and administrators conducted by the National Assessment of Juvenile Corrections in 1974. The survey is a random representation of juvenile courts in counties with over 50,000 people.[2] Using information from the administrator questionnaire, three rates are calculated to characterize the incarceration pattern: the overall commitment rate, the formal commitment rate, and the informal rate.

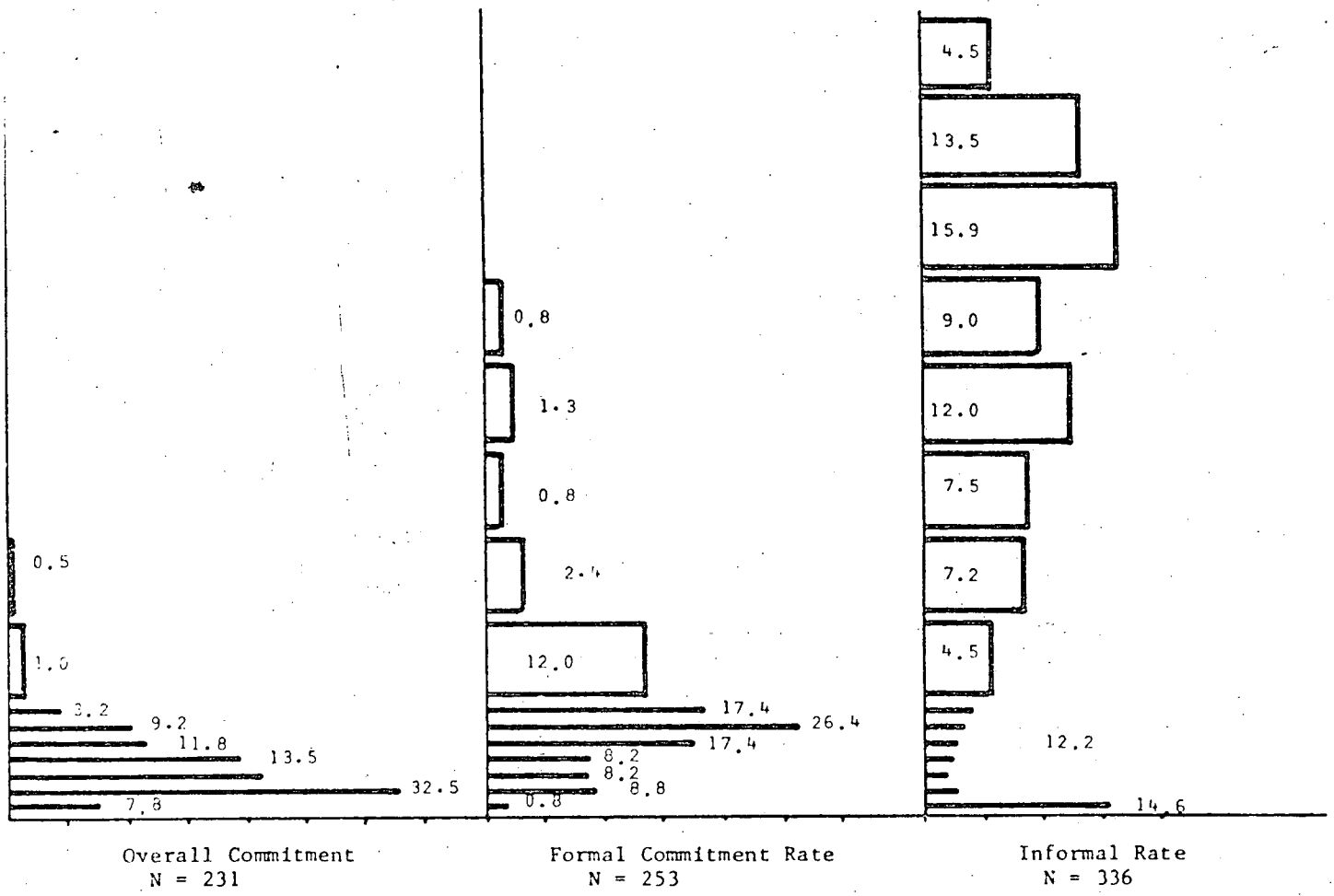

Figure 1

Commitment rates and rates of informal handling in juvenile courts. Rates are for percentage ranges.

The overall commitment rate is defined as the percentage of all cases referred to court that are committed either to a state institution or to the local youth authority (the two types of actions are alternate means of incarcerating youth used by different states). The formal commitment rate is defined as the percentage of those cases heard in a formal hearing that result in incarceration. The informal rate is defined as the percentage of cases handled without a hearing at all. The first rate summarizes the national commitment picture. The other two rates are reported because they are components of the overall commitment rate: while judges may commit youths to an institution at a formal hearing, they can only do so if the youths are not handled informally by an intake worker. In other words, commitment is a two-step process. One step is a hearing at which a judge may decide to commit a child, but this decision is preceded by an intake stage, at which a case may be dismissed so that commitment is not even a possibility. Indeed, about one-half of the cases are handled informally in the average court, and, as will be demonstrated below, the pattern of informal handling affects the commitment rate and helps specify the discretion issue.

One assumption of most observers of juvenile courts is that rates of incarceration vary dramatically. Figure 1, which presents the distribution of the three rates across the sample of courts, demonstrates that the overall commitment rate contains less variance across the country than is generally presumed. To be sure, the range of commitments is quite large, as some courts commit up to 32% of all cases, while some commit less than 1%. However, courts are not evenly distributed within this range. The average commitment rate is about 5% of all cases, and many courts are clustered near this average. One-half the courts commit less than 4% of all cases, two-thirds commit less than 6%, while 95% of the courts commit less than

13% of their cases. Only three courts commit more than 20% of referred cases, and two of these courts hear fewer than 200 cases a year, so that a few extra commitments in a given year can greatly affect the rates.

While the figures are approximately doubled because about half of the cases are handled informally in an average court, the general picture painted by the overall commitment rate is mirrored by the formal commitment rate. Thus, while the range is from less than 1% to 64%, most courts are found in the lower part of the range. The average formal commitment rate is about 13.5%, and many courts cluster near this average. One-half of the courts commit less than 11% of all cases handled formally, two-thirds commit less than 15%, while 95% commit less than 29% of formally-handled cases.

But there is much larger variation among courts in the rates of informal handling. The informal rate ranges from zero to 96% of all cases. In addition, although the mean stands at about 48.3%, courts are not clustered around the mean. About 14.6% of the courts have virtually no informal handling, and, while there are few other courts that use this disposition less than 30% of the time, there is nearly an even distribution of informal rates from 30% to about 90%. A range in informal handling of about 40% is required in order to capture half of the courts, a range of about 60% is needed to capture two-thirds of the courts, while virtually the entire range of informal handling is required to capture 95% of the courts.

In short, the three rates are not distributed in accordance with the common perceptions concerning local differences. The wide variance one might expect in commitment rates does not materialize, while variation is more likely to be expressed in rates of informal handling.

EXPLAINING COURT DIFFERENCES

A second common assumption is that rates of handling youth depend heavily on local attitudes, goals, and community sentiments. However, previous work using the same data (Sosin 1979; Sosin 1978a) questions this assumption as well. There are no simple relations between attitudes, beliefs, and goals of judges and any of the three commitment rates, though there are complicated interactions that explain small percentages of the variance. Further, community perceptions of crime, crime rate, regional differences, or even community size do not explain the rates. Thus the claim that rates are a simple product of local ideologies and crime rates, central to typical arguments concerning discretion, is not supported.

However, other factors that would not be predicted to influence rates of disposition seem to play a role. At the intake stage most influential factors appear to be the jurisdictional pressures surrounding the intake workers. Put simply, juvenile court workers appear to use rates of informal handling which mirror the practices of other courts in the same building. For example, small civil courts handle most cases formally, and the informal rate is lower among juvenile courts attached to small civil courts; misdemeanor courts handle many cases without a trial, and so do juvenile courts attached to these courts. Other local pressures, such as the influence of the police, play a secondary role.

The commitment rate is explained most fully by this variation in the informal rate. As noted in Figure 2, the rate of informal handling bears a strong, direct relation to the overall commitment rate (r=-.48), a relation that is not reduced by other statistical controls. This apparently occurs because judges do not counteract intake discretion.

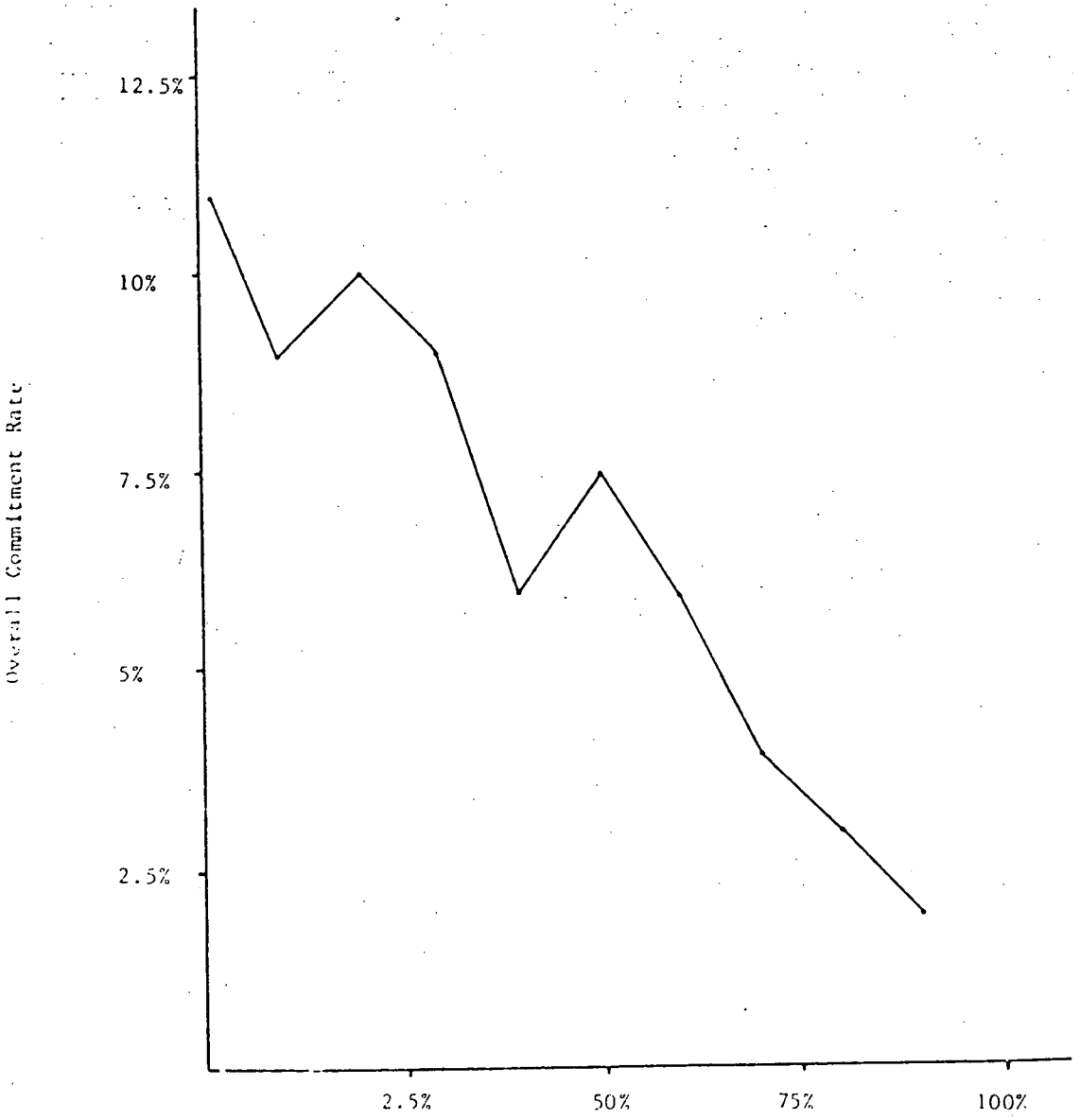

Figure 2. Relationship between rate of informal handling and overall commitment rate in juvenile courts. Figures represent mean percentage of cases committed in each 10% range of cases informally handled.

Thus, while one might expect judges to commit a smaller percentage of those youth who are formally tried when there is less pre-trial screening, and to commit higher proportions when pre-trial screening eliminates the less serious offenders, there are only small tendencies in this direction. Indeed, the rate of informal handling and the formal commitment rate are not highly correlated (r=.21). Almost mechanically, judges commit a similar percent of youth who come before them, regardless of the actions of intake workers, so that the lower the informal screening, the higher the overall commitment rate. Further, when added to the fact that the crime rate also does not affect any of the rates--which implies that the level of intake screening does not vary with how serious offenses are--these relations apparently indicate that local standards in intake decisions (standards developed partly on the basis of the jurisdictional environment of intake workers) affect commitment rates indepen-dently of offense patterns.

THE STANDARDIZATION OF DISCRETION

The limited variation in the commitment rate, the importance of intake decisions, and the nature of correlates to dispositions rates indicate that the commonly assumed local differences in commitment rates, caused by disparities among local attitudes and goals, do not characterize courts. Rather, apparently, judges across the country develop some similar standard of what <u>percentage</u> of youths they face should be committed, and they commit this percentage, regardless of the range of cases presented to them. This standard may not be a product or specific attitudes or goals and may be similar across the country because it represents broadly shared ideals. For example, it may represent a compromise between the need to protect the community and the desirability of treating juveniles, and the incarceration

of a similar percentage of referred cases might reflect the similarities nationwide in the compromises reached.

Some might claim that the assumption of a relatively standard percentage is questioned by the existence of a few courts with unusually low and unusually high commitment rates. In order to analyze this issue more thoroughly, a comparison between the ten courts with the lowest overall commitment rates (averaging 0.5%) with those ten with the highest commitment rates (averaging 22%) was conducted (those courts that also display high and low formal commitment rates overlap considerably with these courts). The comparison reveals little difference with respect to attitudes of judges, goals, region or state, or jurisdictional structure. However, as Table 1 demonstrates, some interesting differences develop on a few variables. The ten courts with low commitment rates hear an average of 1,883 cases a year, while the ten high-commitment courts arrange 759 cases a year. Moreover, judges in low-commitment courts spend 59% of their time on juvenile matters, while those in high-commitment courts spend 23% of their time on these activities. In addition, the relationship between caseload and juvenile specialization varies between the two groups. In the courts with low commitment rates there is a strong, positive relationship between caseload size and the time a judge devotes to juvenile matters (the correlation is .86). However, in those with high commitment rates there is no correspondence. Judges in this group spend 10% to 40% of their time on juvenile matters regardless of the size of the caseload; the correlation between the two variables is quite low ($r = .07$).

Apparently courts with high and low commitment rates are exceptions because they have peculiar structures in which the typical compromises are least likely to be expressed. The courts with high commitment rates include

Table 1

Comparisons of Courts with
High and Low Commitment rates

	Average Number Of Cases	Average Percent Of Judge's Time Spent On Juvenile Matters	Correlation of Caseload And Time Spent On Juvenile Matters	Average Commitment Rate
High Commitment Rate Courts	759	23%	.07	22%
Low Commitment Rate Courts	1883	59%	.86	0.5%

NOTE: There are ten courts in each sample.

either very small units, or units in which judges spend a very small proportion of their time on juvenile matters, so perhaps there are too few cases, or too little concern, for the common standard to develop in these courts. In the courts with low commitment rates, judges spend large percentages of their time on juvenile matters compared to the number of cases heard. Perhaps in these communities judges believe that, given their familiarity with the juveniles, treatment and control can be accomplished in the community. Special circumstances that would mitigate against the development of the common percentage are evident on both extremes. Therefore, the existence of the outliers does not disprove the basic point concerning similarities among more typical courts.

A NEW VERSION OF DISCRETION

The existence of a standard based more on a percentage than on the actual range of behavior has some correspondence to classical sociological theory. Durkheim (1938), especially as interpreted by Erikson (1966), argues that a community tends to develop a definition of deviance that helps set boundaries for what kind of behavior is appropriate. This implies that a certain percentage of all behavior outside these boundaries is labeled as deviant and deserving of punishment, regardless of how far the behavior deviates from the norm. The percentage so labeled differs only with varying degrees of desire for order, and in the United States there may be only limited local variation (Angell 1974). Thus, similar commitment rates may be a product of a shared boundary maintenance standard at the court level of analysis.

However, the existence of this common standard in commitment rates does not discount the issue of discretion, if properly phrased. For example, the few courts with unusually high or low commitment rates certainly demonstrate variance from the norm. Apparently discretion in the traditional sense occurs in courts that are insulated from the common standard.

In addition, because there are no clear models on how much variation in the commitment rate is too much, it might still be argued that the existing differences in commitment rates among the majority of courts are quite important. For example, the fact that two-thirds of the courts commit less than 6% of those youths referred to them may imply great variation to some observers, who may point out that the proportion of referred youths who are committed differs by a factor of six within this range. Of course, the counter-argument is that between 94% and 99% of youth are not committed in these courts, and the differences seem small when presented in this manner.

More important, the existence of only moderate variation does not imply that the use of incarceration is always appropriate or reasonable in individual cases. The national data do not contain enough detail to determine if juveniles are committed for similar offenses across courts, and it is possible that different judges commit juveniles on the basis of different offense criteria, even though the overall commitment rates are similar. Indeed, it has been noted that the rate of commitment does not correlate strongly with the crime rate of a community, and this seems to indicate that the commitment standard does not reflect differences in offense patterns. Therefore, at best, it appears that juvenile courts incarcerate a standard percentage of those youths who are viewed as the most serious offenders, even though these offenders may have committed violent acts or vandalism, depending on the community. On an absolute scale, commitment criteria apparently vary considerably.

Another discretion issue is implied by the high relation between the informal rate and the overall commitment rate, combined with the small relation between the informal rate and the formal commitment rate. Apparently, because the percentage of youths that judges commit is only mildy affected by the range of offenses brought to them, the rates of informal handling are quite important for the chances a youth may have of being committed. Within a certain range, crucial decisions are thus made by intake workers--individuals who generally are not public figures at all. Further, the informal rate is determined to a large extent by the manner in which contiguous courts handle their cases, so that it may not reflect rational strategies for the treatment of young lawbreakers. Indeed, if one believes that any court intervention might be damaging in juvenile cases (Schur 1973), the large variance in informal handling is especially important. The chances of

a hearing vary dramatically from community to community, and such differences reflect local standards that are unrelated to crime patterns, or even to any particular system of attitudes and goals.

This analysis does not discount the discretion issue, but it implies that the key type of discretion is different than is often assumed. Most critics imply that courts are guilty of "rational" discretion, which occurs when individuals have the ability to apply different standards, and do so in order to match results to their own beliefs, attitudes, and values. The results indicate little rational discretion, as has been noted. However, apparently more prevalent is "social" discretion, which occurs when varying practices develop that reflect the social world in which individuals are located. Thus, commitment rates reflect a shared social standard about the appropriate uses of incarceration, and they are also affected by the patterns of intake decisions. Intake, in turn, is affected by the varying social environments (jurisdictional situations) individual intake units face.

Some may be surprised that courts rely so heavily on social factors, but this observation is consistent with some well-known facts about courts. As Platt (1969) notes, juvenile courts, because they successfully claim special knowledge and power over juveniles, are relatively immune from external pressures that might force them to react to more specific guidelines. Indeed, even national trends in juvenile court philosophy are often ambiguous. In light of this immunity, courts have little need to approach their

tasks with high degrees of rationality. Thus, the social world of court employees is particularly important because other factors that might lead to more rational accountability lack potency.

POLICY IMPLICATIONS

The existence of social discretion in commitment practices has some implications for policy. In particular, it calls into question the common assumption that judicial reforms which tighten up commitment criteria can greatly alter commitment rates. Such judicial reforms (including due process) are based on the assumption that developing standards of proof or procedure will alter perceptions of individual cases, which in a cumulative manner will alter the percentage of youths who are viewed as deserving commitment. However, if judges actually commit a relatively constant percentage of youth for social reasons, standards would not affect the overall commitment rate; judges would continue to view a standard percentage of the youth they face as requiring incarceration, no matter what procedures are used.[3] Even altering the types of offenses for which commitment is possible might not change the overall commitment rate, as judges might respond to such controls by committing larger proportions of those youth for whose offenses commitment is legally possible. To be sure, these legal changes may be important on an individual level of analysis, and this paper does not quarrel with the observation that procedural reforms can alter which referred juveniles are committed to

institutions. The argument here is that the reforms appear to be ineffective at the broader policy level represented by commitment rates.

Many of those who favor lower commitment rates, in particular, might still claim that reforms aimed at standardizing intake would be useful in meeting their aims, given the broad discretion at this stage, the lack of legal controls, and the importance of intake decisions in the commitment rate. However, reducing discretion at this stage may not produce the desired effects. As has been noted with respect to adult justice (Zimring 1976), the use of informal screening actually reduces the penetration of individuals into the system by providing more exit routes. In the case of juvenile courts, the large, direct relation between the informal rate and the overall commitment rate implies that if discretion were abandoned at the intake stage, the average overall commitment rate would nearly double. In other words, while some complain that informal handling is problematic because it is not controlled by law (Krisberg and Austin 1978:97), at present there is a trade-off between the use of formal public hearings and the desire to minimize penetration into the justice system.

Other policy changes seem more compatible with the data. First, there are a small number of courts with unusually high or low commitment rates, and for those on the high end, especially, the data suggest that the outliers can be handled with some judicial reform. For example, combining jurisdictions so that the percentage of time devoted to juvenile matters is sufficient for judges to develop typical standards concerning commitment might help eliminate the highest commitment rates. Less can be said about courts with very low commitment rates, though perhaps less needs to be said if the interpretation offered for these rates is correct; apparently courts at this extreme use informal means

of social control to limit community problems, so that higher commitment rates are not necessary.

Attempts to control or alter rates at which youths are handled in more typical courts must deal with the social worlds of intake workers and judges. At the intake stage, the jurisdictional environment can be manipulated in order to alter, to some degree, the rates at which youths are handled formally. Because informal handling affects commitment rates, change at an early decision-making point will help control rates of incarceration. It is a bit more difficult to deal directly with the commitment rate, given the lack of correlation between this rate and many other factors. Perhaps the social world of judges must be altered to some small degree by judicial specialization, as the data indicate that the low-commitment courts contain judges who specialize in juvenile cases.

Another policy suggestion is to examine procedures much earlier in the process. If courts commit a similar percentage of youths regardless of the range of offenses presented, a clear manner of changing the number of youths committed is to alter the referral rate to court. Courts may operate something like a mechanical sieve, handling youths in certain ways that are insensitive to the nature of the clients themselves. (Indeed, the correlations between offense and disposition presented in case studies are often low.) Therefore, altering the input in the mechanisms will affect the proportion of all youth in the community who are incarcerated.

CONCLUSION

These recommendations are incomplete and are aimed at only a small range of the issues involved, but they should help illustrate the major argument

of this paper. Many have developed quite sophisticated techniques for controlling commitment rates, such as monetary formulas to increase the incentive to handle youths in the community, procedural necessitites to make commitment more difficult, or rules to match an offense more closely to its disposition. While some of these suggestions might greatly affect the application of incarceration in an ideal world, the data compiled here indicate that these elaborate mechanisms might not prove useful in light of the nature of discretion in contemporary juvenile courts. Common policy proposals rely on creating a context in which certain commitment rates are economically or structurally more rational, yet rational court structures that could easily respond to rational contingencies do not generally exist. Rather, the existence of quite similar commitment rates, the importance of the social worlds of judges and intake workers, and the lack of impact of the crime rate or attitudes and values on the commitment rates imply that juvenile courts are socially oriented. To be sure, attempts to rationalize juvenile courts might change these organizations enough so that sophisticated policy proposals would succeed; it is possible to use a very long-term approach, first to make courts more rational (by accountability mechanisms, for example) and then to attempt to control them. But short-range approaches must accept the crude nature of juvenile courts and attempt to deal with them in more simple fashions, such as by altering the referral rate.

In short, policy proposals must be on the same level with the units that are the target of change. Juvenile courts, so slightly influenced by rational organization forms, cannot currently be managed in terms of very sensitive structuring mechanisms. They must be handled using more blunt approaches that acknowledge the existing reality of the institutions.

NOTES

[1] Kent v. United States (1966), 313 U.S. at 541; In re Gault (1967), 387 U.S. at 1; In re Winship (1971), 397 U.S. at 358.

[2] The research also culled state and local statistics to supplement responses to the questionnaires. Eighty percent of the sample courts (correcting for the original attempt to send questionnaires to all courts in the country with potential jurisdiction, though some of these courts did not actually handle juvenile cases) are represented by either an administrator questionnaire in which statistical information is sought or by statistical information found in records. The response rate for the judges questionnaire is 60%. Though the number of valid replies varies considerably by variable, the entire sample of respondents does not differ from nonrespondents in population size, region or state, urbanization, or other demographic variables (National Assessment of Juvenile Corrections 1976).

[3] To be sure, some may argue that the existence of low variation now, over ten years after the first due process decisions were promulgated by the Supreme Court, demonstrates some impact of due process. However, it must be noted that many criticisms of arbitrary court behavior were published after the court mandates were promulgated. Moreover, evidence from a number of sources suggests that the guarantees have been too narrowly implemented to have major effects on courts (Platt, Schecter, and Tiffany 1968; Lefstein, Teitelbaum, and Stapleton 1969; Besharov 1974; Sosin 1976). It is thus likely that great variance between courts has always been more a matter of myth than fact. Other observers might argue

that it is inappropriate to use so few rates to so seriously question the utility of the due process strategy and to highlight the importance of the intake stage. But it should be noted that these conclusions fit well with other studies. For example, studies of due process guarantees reveal small effects at best, on commitments that are limited to a subsample of those courts studied (Stapleton and Teitelbaum 1972; Sosin 1978); so the lack of effectiveness for due process guarantees that one would predict from the current argument is confirmed. In addition, other data support the importance of the informal hearing in the activities of juvenile courts (Sosin 1977). If due process is not particularly effective, perhaps the lack of variation, combined with the importance of intake, are the causes.

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