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Sentencing in the Misdemeanor Courts: The Choice of Sanctions

Anthony J. Ragona
Malcolm Rich
John Paul Ryan

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I

Comparative and case studies of sentencing in felony courts have become commonplace in recent years (see, e.g., Eisenstein and Jacob, 1977; Mather, 1979; Uhlman, 1979), but the lower criminal courts are usually referred to incidentally, if at all, in such studies. Heumann, in characterizing the types of cases coming before Connecticut misdemeanor courts, notes that "'garbage,' 'junk,' 'Mickey Mouse,' 'nickel-dime' cases furnish the grist for the circuit court plea bargaining mill" (1977:38). Though these are the words of the attorneys who practice in the Connecticut lower courts, it is apparent that researchers, too, have been unmoved by the lack of glamour accompanying America's misdemeanor courts.

There have been a few general overviews of misdemeanor courts (see, e.g., Knab and Lindberg, 1977; Alfini and Doan, 1977). These have emphasized the diversity of such courts, especially between urban and rural areas. And there have been a few case studies of sentencing and related areas in a misdemeanor court. Mileski (1971) found the court she studied to be "legally lenient" in that few defendants, except repeat offenders, were incarcerated. Jaros and Mendelsohn (1967) emphasized the importance of defendant demeanor in explaining sentences in Detroit's traffic court. Grau and Kahn (1980) found defendant characteristics to be closely associated with the likelihood of receiving a sentence to community service restitution in Tacoma, Washington. Feeley (1979) and, implicitly, Lipetz (1980) found pretrial costs to be more burdensome to defendants than actual convictions and sentence in New Haven and Chicago, respectively; whereas Ryan (1980) found the sentence to be the substantial punishment in Columbus, Ohio. The development of case studies of individual misdemeanor courts is now sufficient that more explicitly comparative research can be beneficial. A number of research and policy issues have been drawn.

One issue is the varying level of punitiveness across misdemeanor courts. What accounts for these differences? Do they reflect varying caseloads, case mixes, or perhaps differences in the local legal or political cultures (Church, 1978; Ryan, 1980)? Another issue is the timing of sanctions, whether they predominantly occur for all defendants (convicted or not) prior to adjudication, or primarily after conviction. Why do some lower courts impose significant "costs" on all defendants? Is this possibly related to the economic climate of local courts and local government? A third issue relates to the adversary environment of lower courts. Why do some courts have extensive plea negotiation systems and/or routine attorney representation for defendants while other courts do not? What has been the impact of the 1972 Argersinger decision (which mandated court-appointed attorneys for indigent defendants where incarceration was a possibility) in this regard? These and other issues form the broad framework for the larger study from which this paper is drawn.[1]

The focus of this paper is a comparative study of the structure of sentencing in three misdemeanor courts. By "structure," we mean the dynamics of the sentencing process, the interrelationships among variables, and especially, the factors influencing the choice of sanctions to be imposed upon convicted defendants. This latter focus is peculiarly appropriate to the study of misdemeanor courts, for it is these courts that have the widest array of sanctions available for the typical case. In felony courts, the basic decision is probation or prison, with perhaps drug treatment, diversion, or a fine availale in a few types of cases. But in misdemeanor courts, judges can realistically consider fine, jail, probation, community service restitution, and other "treatment-oriented" sanctions for the majority of its cases. No wonder, then, that judges in minor courts often experience role ambivalence over whether they are technicians of the law or social workers.

We hypothesize, in the most general terms, that the choice of sanctions imposed is a function of characteristics internal to courts (e.g., type of offense, number of

charges, presence of defense attorney, mode of disposition, judge at sentencing, and defendant background/demographics), and of characteristics external to courts (e.g., the economic and political climate surrounding the court's role in generating revenue from fines, court costs, and fees). We explore these hypotheses in a comparative framework for three lower courts, located in the counties surrounding Austin, Texas; Tacoma, Washington; and Mankato, Minnesota.

II. METHODS AND DATA BASES

We have a blend of quantitative and qualitative data to report. The quantitative analysis rests upon case file data collected during 1979.[2] These data represent cases filed and disposed during 1977 in Austin and Tacoma, and the 1978-79 period in Mankato. In all sites, the samples are of cases that proceeded beyond arraignment.[3] In Mankato, the sample is of all cases disposed during a twelve-month period; in Austin and Tacoma, the sample is a random draw of cases disposed over a twelve month period.[4] We collected data across a relatively broad range of variables for each case, but the availability of types of data varied by site. We have most of the key charge-related and processing characteristics of cases in all sites. We have only sketchy information on defendant characteristics, which varies by site. For the most part, we utilize only variables available in all three sites for the analyses presented in this paper.

These quantitative data are supplemented by a substantial (and growing) qualitative base of interviews and observations. Arraignment courts have been extensively observed in all sites. Interviews have been conducted with most of the judges sitting on the three misdemeanor court benches at the time of our case file data. Additional interviews have been conducted with prosecuting and defense attorneys, court administrators, probation services, and other court-related services in the sites. These

interviews typically have been tape recorded to facilitate comprehensiveness and accuracy. Although the observations and interviews are being conducted in 1981, we have made every effort to connect the present in these sites with the "recent past" that is represented by our case file data (1977-78). We have done this both by interviewing officials no longer in the key positions they occupied in that period, and by directing interviewees to the recent past in our inquiries. In some instances, significant changes have occurred in the intervening three or four years, and we note these in the appropriate places.

III. THE THREE COURTS AND THEIR COMMUNITIES

Austin, Tacoma, and Mankato are three different types of communities, but they are not so different that they cannot be compared. None are large metropolitan areas, for example; likewise, none are exceedingly poor or very wealthy. In fact, they probably represent much of the range of American life — geographically, economically, and racially — outside of the large metropolis.

Austin is the most urban of the three communities, having a population well in excess of 300,000[5] in a county only slightly more populous. It is the most racially diverse, having an 11% black population and a sizeable hispanic community. It is the home of the primary campus of the University of Texas, a large student body whose members are nevertheless dwarfed by the growing population of the city of Austin.

Tacoma is a smaller city (population: 150,000) in a rather sprawling and populous northwest county. It comprises barely one-third of the county's population, which is significantly smaller town and rural. It has a small black population (5%), and no other sizeable minority group. The county does include two large military bases, which like the university in Austin (and Mankato) provide a constant source of defendants for the lower court.

Mankato is a small town (population: 29,000) in a lush midwestern agricultural community. It comprises more than half of the county's population, which spreads many miles. This area's affluence can be highlighted by noting that, despite a rural character, its median family income (in 1970) was slightly higher than that of Austin. The number of blacks or other minorities is miniscule. The local university, by contrast, has a student body about one-third the population of the city of Mankato.

The courts in these three communities are structurally rather similar. They are all small with respect to the number of judges (3 in Mankato, 4 in Austin, 5 in Tacoma); each handles both minor criminal and minor civil matters; and each has a court administrator, in fact, if not in name.

These similarities give way to differences in post-arraignment caseload, frequency of defendant representation by counsel, methods of case disposition, and likelihood of conviction. In the mix of post-arraignment cases, Tacoma and Mankato are comparable; both hear predominantly (75%) traffic cases, of which about one-third are the more serious drunk driving (DWI) cases. Austin, by contrast, hears an even higher percentage of DWI cases (one-third), but relatively few other traffic offenses. Its minor criminal caseload is substantial and quite varied; theft is the most common offense.

In the frequency of defendant representation by counsel, Tacoma and Mankato again are more comparable to one another than to Austin. In the latter court, fully 93% of defendants are represented by counsel, though only a handful of these (7%) are indigent appointments by the court. This plethora of privately-retained attorneys seems to be accomplished by a court whose judges define indigency narrowly while at the same time admonishing defendants at first appearance to acquire an attorney. (Defendants unrepresented at the next appearance are again reminded to acquire an attorney). By contrast, in Tacoma only slightly more than half (53%) of defendants have counsel, and in Mankato only 32%. Both of these courts are willing to take guilty

pleas from unrepresented defendants at first appearance (unlike Austin), and neither court actively encourages attorney representation through coercion or liberal indigency interpretations.[6]

The methods of case disposition vary widely across the courts. Each court dismisses a share of cases - roughly one-fourth in Austin and Tacoma, and somewhat less in Mankato. But the methods of obtaining convictions reflect peculiar local customs. In Austin, most defendants enter a "no-contest" plea. In Tacoma, a majority of defendants have an abbreviated form of a bench trial, locally known as "reading on the record," in which all testimony, except any by the defendant, is submitted as a written record. In Mankato, most defendants plead guilty, usually to the original charge but occasionally (in DWI cases) to a reduced charge. Why these local customs differ is not yet clear. In all three courts, though, jury trials are rare, comprising less than 3% of the cases.[7]

The likelihood of conviction, too, varies across the sites. Defendants are most likely to be convicted in Mankato, where court participants estimate "60-70%" of cases are pled at first appearance, and where 80% of the remaining cases result in conviction sometime later. By contrast, only slightly more than half (55%) are convicted after arraignment in Tacoma, though again court participants estimate up to three-fourths of the docket is disposed at first appearance. The Austin rate of conviction (75%) appears less substantial, when one considers that virtually no guilty pleas are taken at arraignment.

The caseload, casemix, and working environment of these three courts generally reflect the differences among courts in urban, less urban, and rural communities reported earlier. The more urban the community, the more likely that cases will be disposed after first appearance, with the assistance of a defense attorney (Alfini and Doan, 1977:430).

IV. SENTENCING AND THE CHOICE OF SANCTIONS

Each of the three courts relies heavily on five types, or mixes, of sentences involving the sanctions of fine, jail, and probation.[8] These five sentences — fines, jail terms, probation, fines and probation, and fines and jail terms — account for 99% of all the sentences imposed in Austin, for 94% of all sentences in Tacoma, and for 91% of all sentences in Mankato (see Table 1 below).[9] The three courts, however, differ sharply in the distribution of these sentences. As before, Tacoma and Mankato are quite comparable. In both courts, roughly 70% of the sentences are fines alone; roughly 10% are jail terms alone; and about 5% are probation terms alone. The remaining few cases are mixed sentences, involving some combination of fine, jail, probation or community service restitution. In Austin, the pattern is strikingly different. Fines are rarely imposed without the additional sanctions of probation and, quite often, even jail. Probation alone is also used much more frequently in Austin than in Tacoma, where cutbacks in the probation office are currently taking place, or in Mankato where the probation office has struggled in recent years to hold its own. Though we do not look at the issue of sentence severity in this paper, it is clear that in Austin defendants are at least more frequently exposed to the full force of the law.

Our purpose in the balance of this section is to provide a comparative analysis of which of the five sentences will be imposed under what circumstances. Discriminant function analysis was utilized to examine the factors influencing sentencing decisions in the three courts. This form of statistical analysis is appropriate where, as in this instance, the dependent variable is a multi-category, nominal-level variable.

In each court, cases were grouped according to the type of sentence imposed. Since five sentences accounted for the overwhelming majority of sentences imposed in each court, the analyses were restricted to these five sentences. This procedure provides a standardized frame of reference and eliminates groups having only a

Table 1. Distribution of Sanctions across Three Lower Courts

	Austin	Tacoma	Mankato
Probation	15.0%	5.0%	4.4%
Jail	6.7	8.2	11.6
Fine	6.8	71.4	68.4
Fine & Probation	48.9	5.5	4.4
Fine & Jail	22.3	4.1	2.1
Other	.3	5.8	9.1
N	(1215)	(437)	(731)

handful of cases. Sentencing groups were defined in terms of the actual, or net, sentence received, once suspended sentences were taken into account (refer to note 9).

Independent variables included those discussed earlier -- type of offense, presence of defense attorney, judge at sentencing, mode of disposition, and the number of charges and convictions.[10] Dummy variables were created for type of offense (DWI, other traffic, theft), for the presence or absence of a defense attorney, for the identity of the judge at sentencing, and for mode of disposition (whether the case resulted in a guilty plea of some sort or a trial of some sort). The number of charges and convictions was reflected by the corresponding interval number.

Austin: The Choice of Sanctions

Four discriminant functions emerged from the analysis of Austin, accounting for approximately 60% of the variance in the choice of sanctions. The first two functions were, by far, the most powerful, and the first function alone explained fully 41% of the variation (see Table 2 below).

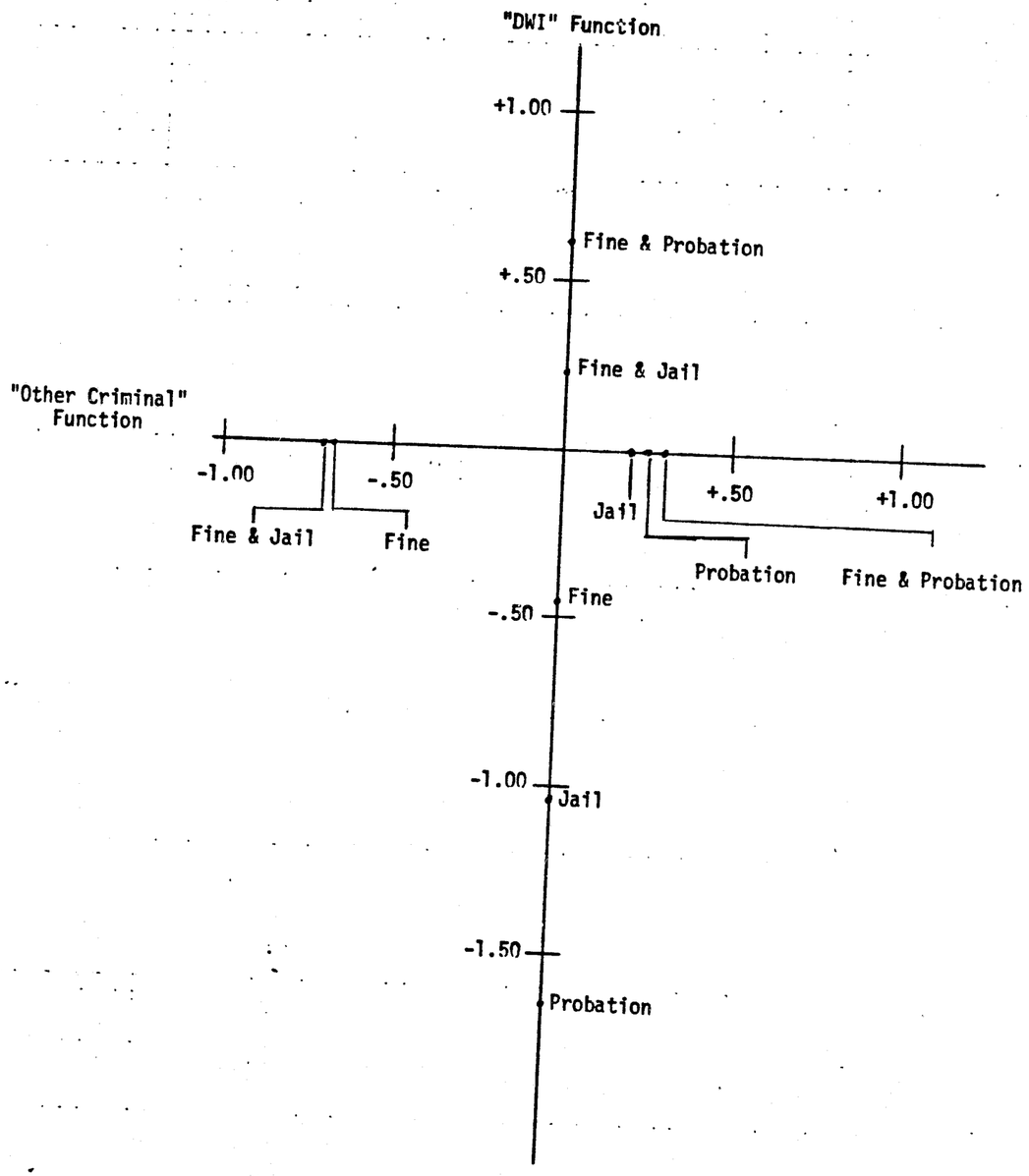
The most important factor affecting sentencing choice in Austin is the type of case brought before the court. As Table 2 indicates, the first and most powerful function is dominated by DWI cases, with additional high loadings for traffic and theft cases. The second function, which accounts for 17% of the variance, is dominated by (the absence of) traffic cases — i.e., in this instance, other criminal offenses. The third and fourth functions, though statistically significant, accounted for only 2% and 1% of the explained variance respectively. It is important to note that neither the sentencing judge nor the mode of disposition (plea or trial) showed any significant loading on the first two functions.[11]

Figure 1 below illustrates the directional relationship between the independent variables utilized in the discriminant analysis and the choice of sanctions. The two

Table 2. Discriminant Function Analysis: The Choice of Sanctions in Austin

	Function 1	Function 2
DWI	1.27	.04
Traffic	.55	-.95
Theft	.68	.16
Judge A	.00	.05
Judge B	.05	.12
Plea Disposition	.00	-.06
Canonical Correlation	.64	.41
% of Variance Explained[12]	41%	17%

Figure 1. Discriminant Functions and the Choice of Sanctions in Austin



most important discriminant functions are mapped at their group means (centroids). The first function — the one dominated by DWI cases — effectively discriminates between mixed sentences (positive loadings) and unmixed sentences (negative loadings). Cases resulting in a fine and probation or a fine and jail are disproportionately DWI cases. Cases resulting in a pure sentence of probation, jail, or fine are, in descending order, disproportionately not DWI cases. This suggests that the court imposes multiple sanctions most often in DWI cases, usually a fine in concert with a jail or probation term. The second function — the one dominated by "other criminal" offenses —again discriminates most of the "economic" sanctions (fines) from jail and probation. With one exception, sanctions involving fines have negative loadings, whereas jail and probation have positive loadings. This suggests that the Austin court often "chooses" between jail and probation for (relatively poor?) defendants who cannot realistically be expected to find the money to pay a substantial fine.[13]

In general, these findings suggest that sentencing decisions in Austin tend to be quite routinized and that the major factor affecting the choice of sanction is the type of offense. Other variables such as the sentencing judge or mode of disposition (or, for that matter, presence of defense attorney) play at best a minimal role in that decision. The fundamental priority of the type of case is clearly evidenced by the high loadings of the casetype variables on both of the statistically powerful functions.

Mankato: The Choice of Sanctions

Three discriminant functions emerged from the analysis of Mankato. These functions accounted for approximately 32% of the variance in the choice of sanctions, considerably lower than the 60% explained in Austin. The first two functions together accounted for 30%, and the first function alone explained fully 24% (see Table 3 below).

Table 3. Discriminant Function Analysis: The Choice of Sanctions in Mankato

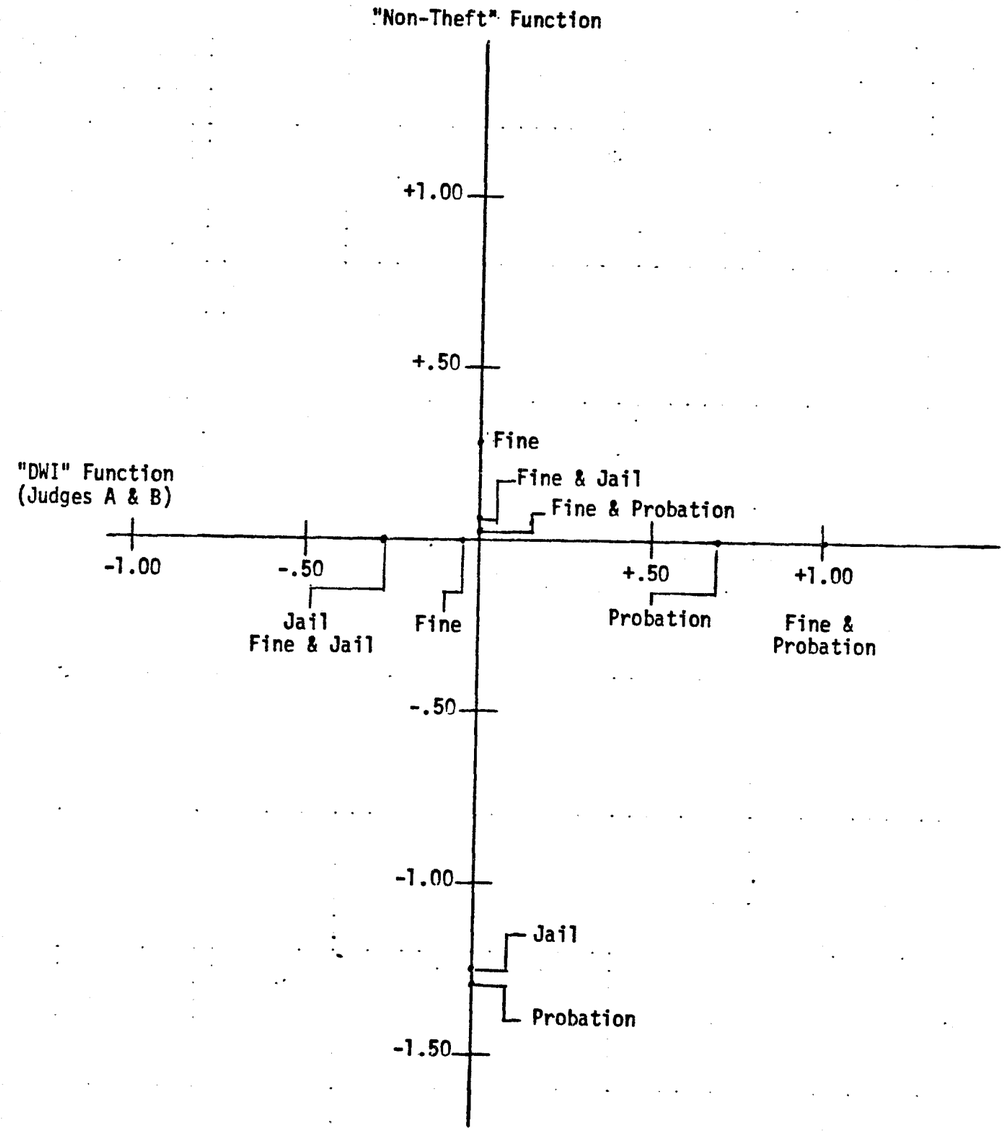
	Function 1	Function 2
DWI	.43	.58
Traffic	.45	-.35
Theft	-.77	.00
Judge A	.04	.29
Judge B	.07	.31
Plea	-.14	.11
Defense Attorney Presence	.09	-.13
Number of Charges	-.12	.30
Number of Convictions	.06	-.34
Canonical Correlation	.50	.28
% of Variance Explained	24%	6%

As in Austin, the single most important factor affecting sentencing is the type of case brought before the court. As Table 3 indicates, the first and most powerful function is dominated by non-theft offenses, with additional positive loadings for DWI and traffic offenses. No other variables load significantly on this function. The second function, which accounts for only 6% of the variance, is dominated by DWI offenses, but also reflects the role of other case characteristics. This function has modest loadings for the absence of traffic offenses and for single charge cases. Essentially, this function represents the "pure" DWI case, unencumbered by other lesser traffic violations.[14] But the positive loadings for Judges A and B on this second function do reflect a modest difference in sentencing practice in DWI cases between these two judges, on the one hand, and Judge C.

Figure 2 below illustrates for Mankato how the first two functions discriminate among the choice of sanctions. The first function — the "non-theft" function —sharply discriminates between defendants receiving an economic sanction and those receiving jail or probation. Defendants in theft cases in Mankato are rarely fined; rather, they receive either a (short) jail term or probation. This is precisely what Figure 2 pictorially demonstrates. This funtion parallels quite closely the "other criminal" function in Austin (refer to Figure 1). The second function — the "DWI" function — discriminates primarily between jail sanctions and other sanctions. Jail sanctions are not likely to occur in DWI cases; the use of probation alone and in concert with a fine are most likely to occur in DWI cases. These patterns, however, hold true only for Judges A and B. For Judge C, the pattern is quite different; he more often utilizes jail sentences in all types of cases, and especially in DWI cases.

In general, the findings in Mankato likewise suggest the importance of type of offense in structuring the court's choice of sanctions. Casetype variables exclusively comprise the most powerful discriminant function, and they play a substantial part in the second function. There is, however, some evidence to indicate less routinization in

Figure 2. Discriminant Functions and the Choice of Sanctions in Mankato



this area of decision-making in Mankato when compared with Austin. The amount of variance explained by the statistically significant functions in Mankato is quite a bit less (32% versus 60%), suggesting variations perhaps by defendant characteristics[15] or of a random nature. Furthermore, the role of the sentencing judge in Mankato is an identifiable if modest one, at least in the sanctioning of DWI defendants.

Tacoma: The Choice of Sanctions

Two discriminant funtions emerged from the analysis of Tacoma. These functions together accounted for 31% of the variance in the choice of sanctions, a figure comparable to Mankato but much lower than for Austin. Unlike in the other courts, the two functions are about equally powerful in discriminating among sanctions. The first function accounts for 18% of the variance, the second function for 13% (see Table 4 below).

Type of offense is an important, but not dominant, factor in structuring the choice of sanctions in Tacoma. Whereas other case processing characteristics were of virtually no import in Austin and only slight import in Mankato, they assume a much greater role in Tacoma. As Table 4 indicates the first function reflects a mixture of casetype and case processing variables. It is, first, a non-traffic function, evidenced by the substantial negative loadings of DWI and traffic cases. But a wide array of case characteristics also load moderately to substantially, including the number of charges, the number of convictions, the presence of a defense attorne , and the mode of disposition. Also, three judges — A, B, and especially C — load on this function. The processing variables suggest the cases represented by this funtion to be of a more serious character — e.g., defense attorney present, and a trial disposition. The presence of some of the judge variables, in differing magnitude, suggests sentencing differences among the court's judges as to the choice of sanctions in non-traffic cases.

Table 4. Discriminant Function Analysis: The Choice of Sanctions in Tacoma

	Function 1	Function 2
DWI	-.47	.80
Traffic	-.63	-.12
Theft	.14	-.10
Judge A	.30	.23
Judge B	.33	.25
Judge C	.54	-.29
Judge D	.00	.00
Plea	-.27	-.15
Defense Attorney Presence	.36	.24
Number of Charges	-.59	-.28
Number of Convictions	.38	-.06
Canonical Correlation	.45	.40
% of Variance Explained	18%	13%

The second function is predominantly a "DWI" function; DWI cases alone load at a substantial value. However, the loadings for the individual judges - though small — indicate that there are also some sentencing differences in DWI cases, particularly between Judges A and B on the one hand and Judge C.

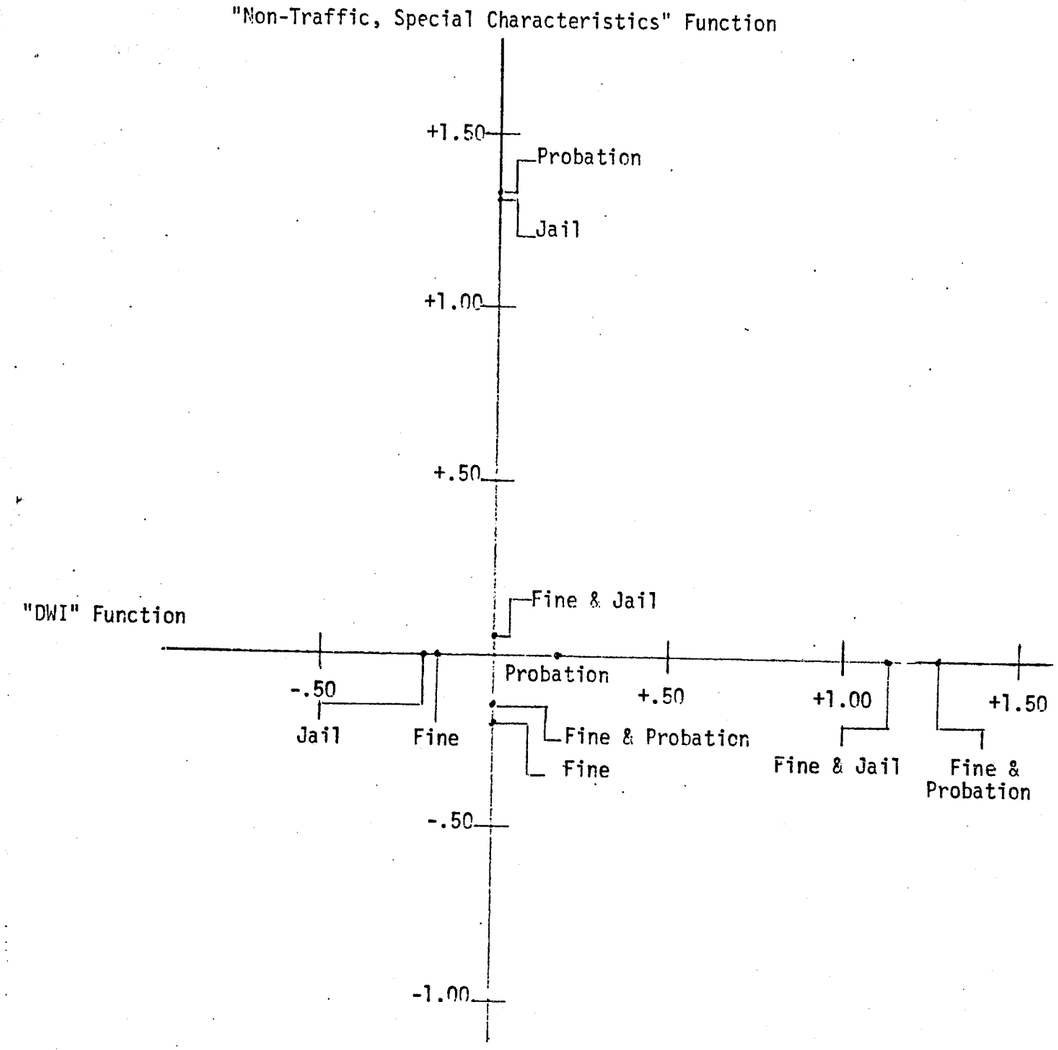
Figure 3 below illustrates for Tacoma how the two functions discriminate among the choice of sanctions. The first function — the "non-traffic, special characteristics" function — discriminates sharply between economic sanctions involving fines and jail or probation. Defendants in criminal cases are much more likely, than in traffic cases, to receive jail or probation, rather than a fine. This parallels, very closely, the theft/non-theft function in Mankato (refer to Figure 2), where economic sanctions were also far removed in space from jail and probation sentences. The second function — the DWI function — discriminates between mixed and unmixed sentences, much as the Austin "DWI" function does (refer to Figure 1). In Tacoma, too, defendants in DWI cases are more likely, than other defendants, to receive a multiple sanction involving some fine — either fine and jail, or fine and probation.

In general, the findings in Tacoma suggest a blending of the importance of type of case with other case characteristics, such as the presence of a defense attorney and whether the case pled or went to trial. In addition, the individual influence of the judges in Tacoma is unmistakable, bearing upon both the "non-traffic..." and the "DWI" functions.

Summary

The discriminant function analysis provides a relatively powerful model of the choice of sanctions in the three courts. The model is strongest in Austin, where a large 60% of the variation is explained. But in each of the courts, the discriminant functions facilitated much more accurate prediction of sentences than what would be

Figure 3. Discriminant Functions and the Choice of Sanctions in Tacoma



possible by chance. Using the functions derived in Tacoma and Mankato, 49% of the cases could be correctly classified as to the choice of sanction imposed. In Austin, 58% of the cases could be correctly classified. In each instance, this is far greater than the 20% or so we would expect, by chance, for a five-category classification.

Substantively, casetype is an important factor influencing the choice of sanction in all three courts. It is the totally dominant feature in Austin, a predominant force in Mankato, and an important (but not overriding) characteristic in Tacoma. The DWI case is the single best discriminating variable among the type of cases coming before these courts. It dominates the most powerful discriminating function in Austin, and the second most powerful one in Tacoma and Mankato. The distinctiveness with which drunk driving cases are handled is not unique to these three misdemeanor courts (see also Ryan, 1980; Neubauer, 1974).

Individualized justice, to suit the individual judge and defendant, appears far less common in misdemeanor courts than either general studies of criminal justice discretion or previous research on misdemeanor courts might suggest. The sentencing judge has no discernible impact in Austin, and but slight impact in Mankato. Only in Tacoma does there appear to be systematic variation, or philosophies, among the judges with respect to which kinds of sanction are appropriate under what circumstances. The lack of available data on defendant characteristics across the three courts necessitates an important qualification on this point. Nevertheless, it is unlikely that such characteristics as a defendant's age, gender, race, or even prior record are as influential in the courts we studied as the type of offense.[16]

From a different perspective, though, the type of offense can be viewed as a rough surrogate for social class. Marxist critics of America's criminal justice system argue that the entire pattern of arrests, indeed even the definition of crimes, is class-based (Turk, 1969; Quinney, 1973). We need not go that far here, but we can at least impressionistically suggest a pattern between the particular offense borought to a

lower court and the clientele, or targets, for those offenses. DWI offenders tend largely, but not exclusively, to be drawn from the ranks of the middle class and local student populations. Theft draws upon a mixture of both middle-class "shoplifters" and people struggling to get by. Disorderly conduct attracts a combination of skid-row men with no place to go and young men choosing to be rowdy in a particular place. The point is that there may be significant class overtones to the enforcement of minor offenses, and therefore indirectly to the sanctioning of defendants in the coummunities we are studying. This issue requires further exploration.

Finally, in each court there is a pattern of segregation of the economic sanction (fines) from other — seemingly both more and less severe — sanctions (jail and probation). It might initially seem startling to think that courts veer all the way from a jail term to a "slap on the wrist" (probation) for cases where fines are somehow inappropriate. Yet the underlying rationale seems clear. Where defendants visibly have sufficient resources to pay, they will be fined. Where defendants lack such resources, they will be given probation, sent to jail for a (short) term, or (increasingly in recent years) sentenced to community service restitution (see also, Grau and Kahn, 1980). The role of fines and other economic sanctions in the fiscal solvency of misdemeanor courts is the subject of the concluding section.

V. THE INFLUENCE OF THE LOCAL ECONOMIC ENVIRONMENT ON THE CHOICE OF SANCTIONS

The judicial system is asked to resolve issues ranging from traffic infractions to social policy concerns. The courts are regarded as "the cornerstone of a society that prizes individual justice" (Slack, 1979:10). Yet as with any govenmental body, the structural characteristics and decisions of the courts are partly the result of financial considerations. The question, "How much should we charge for justice?" is becoming a popular one (Senate Select Task Force, 1978). It is also an important one in

misdemeanor courts which, like the three we are studying, use fines or fines in combination with other sanctions as the prevalent mode of punishment.

The amount and allocation of budgetary resources help determine such critical factors as the number of judges in a given court and the availability of personnel to process the constant flow of paperwork. In addition, financing can alter the sentencing alternatives available to judges. The jail sanction requires the existence of facilities that are paid for by taxpayers. Adequate numbers of probation officers are necessary before supervised probation can be effective, and the ability of courts to provide alternative forms of sentencing (such as community service restitution) is influenced by its own resources or those of a probation department.

The financing question is a unique one for misdemeanor courts. Because these courts generate large quantities of revenue through fines, court costs, and bail forfeiture penalties, they are expected to contribute substantially to their own operating costs. They are expected by some to be financially self-sufficient. In responding to a question concerning whether the misdemeanor court in Tacoma is looked upon as a revenue generator, one county budget official responded:

> They're supposed to give justice but they're supposed to be self-sustaining, too.

His response illustrates a dilemma facing local communities. He is aware of the higher purpose of the courts — to dispense justice, but part of his job is to ensure fiscal responsibility. Continuing in his response to the inquiry involving the courts as revenue generators, he asked:

> What's the price of justice...how do you put a dollar value on it?

But he also states:

> Any time I get more money to pay (court) expenses, I'll go for it.

One Mankato judge sounded much the same theme of ambivalance:

> The court should not be looked upon as a revenue raiser, it should be a place to dispense justice, and if revenue is raised as a side, so much the better...

Financing the courts raises a conflict between the administering of due process and the price of justice (Saari, 1967). Misdemeanor courts generate enough revenue to offset much of their expenses,[17] but what happens when "not enough" revenue is produced? This has become a political phenomenon as judges, court administrators, and government officials struggle with rationing justice as the cost of justice, and government generally, skyrockets.

In all three courts — Austin, Tacoma, and Mankato — the county board or commission debates the budget recommendations submitted by the court administrators. The proceedings are open to the public, as the county officials consider and modify the recommendations after hearing from anyone wishing to comment. Revenue from the courts is projected in each budget, and the courts are expected by the counties to meet those projections. If they do not, the government must subsidize the difference — a clearly undesirable outcome from the viewpoint of county officials. To date, there has not been a formal pronouncement of this expectation, but the judges in our sites are aware that misdemeanor courts are viewed as revenue generators. In the words of one Mankato judge,

> "It's just a big factor, we're not talking nickles and dimes; we're talking a lot of money."

Judges are involved in the budgeting process, have their opinions solicited by the local court administrator, and often testify in county budget proceedings. The amount of input provided by the judges varies by court (and by judge), but in each instance they are a part of the budgeting procedure.

Beyond the underlying understanding that misdemeanor courts — like it or not — are revenue generators, the politics of budgeting affects, indeed may constrain, judicial discretion. For example, the judges in Tacoma sentence misdemeanants in light of a critical shortage of jail facilities that has plagued the county for years. Austin faces a similar, albeit less critical, dilemma. A lack of jail facilities can preclude this sentencing alternative no matter what the sentencing philosophy of the judges.

The ability of a county to provide supervised probation raises another question of economics. When a misdemeanor court fails to produce enough revenue to support itself, the probation department is one option for cut-backs. The Austin court has addressed this problem by requiring a $15 per month fee to be paid by those defendants placed on probation. By contrast, there have been substantial reductions in the Tacoma probation department staff. The situation there serves to raise the possibility that probation will not be a viable sentencing alternative for misdemeanor courts in the future.

The issue of how much due process is enough for misdemeanor courts (e.g, Pound, 1930; Enker, 1970; Alfini, 1980) has been a serious topic in the literature. But as Proposition 13 fever sweeps the country, the answer to this question includes both jurisprudential and economic concerns. The lower courts are revenue producers, but their primary duty is to administer justice. The conflict raised by these roles produces a trade-off between judicial and fiscal discretion.

VI. CONCLUDING THOUGHTS

Our analysis of sentencing in the misdemeanor courts, which is only in the most preliminary of stages, raises as many questions as it answers. Is the choice of sanctions, for example, a fundamentally different kind of decision from the severity of sanctions? Judicial variation may be more prominent in the length of a jail term or the amount of a fine than the choice of one or the other. The choice may depend not only on the type of offense but, as we have tentatively illustrated in the last section, on the local economic environment surrounding the misdemeanor court. Most or all lower courts are under some kind of pressure to continue the flow of dollars from the police — who write tickets and more serious traffic violations —to the county and local municipalities who receive a share of court-imposed economic sanctions. But the

amount, nature and manifestations of these pressures probably vary from community to community. This variation, and its sources, as well as the ultimate impact will be subjects of our further inquiry. Likewise, we hypothesize that citizen values and public opinion — a part of the local political culture — probably influence the choice, and perhaps especially the severity, of sanctions. This, too, will be the subject of further study.

NOTES

[1]The study is supported by a grant from the National Institute of Justice, Grant # 81-IJCX0006 to the American Judicature Society.

[2]These data were collected as part of a study funded by the National Institute of Law Enforcement and Criminal Justice (LEAA), Grant # 78-NIAX0072, to the American Judicature Society.

[3]In Tacoma and Mankato (but not Austin), a substantial, but unknown, percentage of cases are disposed at arraignment.

[4]The slightly different sampling procedures are a function of the different purposes (other than sentencing analysis) for which the data were originally collected. These differences should pose few problems of analysis for our purposes here.

[5]Population figures represent 1975; other figures, 1970. See County and City Data Book.

[6]In Mankato, judges sometimes encourage defendants to consult with an attorney before entering a guilty plea, if the defendant indicates uncertainty or confusion in court at the arraignment.

[7]Not all cases are eligible for jury trials, however. In Minnesota, "petty misdemeanors" (e.g., minor traffic offense) may only be tried before a judge.

[8]Since the time of our case file data, community service restitution has become more frequent in each of the courts. We have no reason to believe that the structure of sentencing has otherwise changed.

[9]These are "net" sentences. That is, where a defendant's jail term, for example, was entirely suspended, he/she was not considered to have been sentenced to jail; fines and probation were treated similarly.

[10]These were used as "control" variables in Tacoma and Mankato, for in Austin each charge filed leads to a separate case.

[11]The "presence of attorney" variable was so highly skewed in Austin (93% - 7%) that the discriminant function program treated it as a constant.

[12]The statistic is Omega $(\omega)^2$, which can be interpreted analogously to R^2.

[13]The presence of the "fine and probation" sentence at the positive end of the second function indicates that, in some types of minor criminal offense, this is not true. We are presently exploring this issue further.

[14]In fact, most DWI cases in Mankato are single charge cases, reflecting some discretion by the local police in not charging defendants for lesser traffic violations that bring the drunk driver to the attention of the officer.

[15]Further exploratory analysis utilizing some of the defendant characteristics such as age and gender, which are available in Mankato, suggests that the presence of young, male (probably repeat) offenders is modestly correlated to the choice of sanctions.

[16]Of course, "individualized justice" could be more apparent in an analysis of the severity of sentences imposed, an area we have not examined in this paper.

[17]In some courts, though, (e.g., Mankato) local actors take into account the costs of police and prosecution in viewing the issue of "offset." Furthermore, these agencies, especially the police, see themselves as the "producers" of the revenue.

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