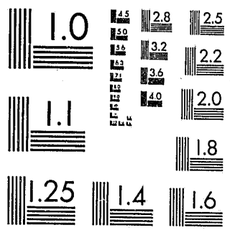

FINAL REPORT

SENTENCING AS A SOCIOPOLITICAL PROCESS: ENVIRONMENTAL, CONTEXTUAL, AND INDIVIDUAL LEVEL DIMENSIONS

VOLUME ONE

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Chapters 1-5

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EXECUTIVE SUMMARY

Introduction

This summary describes the results of an intensive analysis of sentencing in nine middle-sized criminal courts located in three states. It represents our first major substantive analysis of a formidable body of data on each of the nine courts' operations. The research was supported by a grant from the National Institute of Justice to allow the co-principal investigators to continue research supported by an initial grant. A full description of the research project, its methodology, and its preliminary findings appears in a separate final report entitled "Explaining and Assessing Criminal Case Disposition: A Criminal Study of Nine Counties" submitted to NIJ in August 1982.

The initial Request for Proposal called for research analyzing practices and behavior that affect the operation of the criminal process with an eye to improving the efficiency, fairness, and consistency of criminal courts. We concluded that such an enterprise required a research design that would permit the operationalization and integration of three discrete approaches to criminal courts utilized in previous research. "Individual" level approaches examined the attitudes and role perceptions of critical decision makers in the criminal process. "Contextual" level approaches focused on the organizational setting in which individuals made decisions (including "courtroom workgroups" and "sponsoring organizations"). "Environmental" level approaches looked at political, legal, economic, and

social characteristics of the community and the structure of its institutions.

The first report referred to above provided a general description of the nine courts' criminal justice systems, including broad portraits of the principal characteristics of case outcomes. But it did not engage in intensive and intricate analysis and integration of the data gathered.

This report focuses upon sentencing as a means to explore our theoretical conceptions and test our ability to integrate the three approaches. As the introductory chapter argues, sentences constitute the bottom line of an important social process in a society that reveres the bottom line as a measure of performance. To defendants, their families, and in many instances their victims, encounters with the criminal justice system are assessed predominantly on the basis of the sentence imposed. To judges, prosecutors, defense attorneys, and others who live and work in the courthouse, sentences provide the most visible and frequent measure of accomplishment and performance, since relatively few felony defendants who survive preliminary screening receive an acquittal or dismissal on all charges. Furthermore, how courthouse regulars are seen by the community elites (politicians, the legal community, the press) often hinges on the sentencing-related activities of the former group. Their evaluations are important because they can affect a practitioner's career prospects, standing, and self-esteem. Finally, criminal sentences have become the object of increasingly persistent efforts at reform. The focus on sentencing consequently carries with it considerable potential for practical applications.

A Summary of the Research Methodology

The description of the research design and methodology that follows provides an abbreviated version of more detailed presentations in the first report and in Chapters One and Two of this report. It is offered to provide readers of this summary with a brief introduction.

Our assessment of earlier criminal court studies, as well as the objectives of the research, dictated extensive empirical research in a number of jurisdictions. At the same time, budgetary constraints and other considerations limited us to the home states of the principal investigators (Illinois, Michigan, and Pennsylvania). We focused on larger counties, since smaller ones would not produce the number of cases or the variety of personnel to meet the needs of our research design. We did not, however, want to study the largest counties (Cook, Wayne, Philadelphia) since large jurisdictions had been the focus of almost all prior research and because the cost of studying them would have sharply reduced the number of counties. We decided, therefore, to select nine counties with populations between 100,000 and 1,000,000 and in which there was more than one trial judge hearing criminal cases. To facilitate our comparative analysis, we tried to "match" the counties in each state with their "twins" in the other states to create three different sets of triplets, one member of each set in each state.

There were several criteria for selecting the nine counties. First, we decided to select one set of jurisdictions that suffered from the social ills of a declining industrial base, social cleavages,

low to moderate average incomes, and financial problems. We also wanted prosperous counties with fairly homogeneous populations and relatively high income levels. Finally, we wanted counties in which the courts' level of political insulation differed. Obvious problems were encountered in trying to maximize variation in the three sets of jurisdictions along these dimensions. Our solution consisted of selecting one set of suburban "ring" counties (DuPage, Oakland, and Montgomery), one set of "autonomous" counties (Peoria, Kalamazoo, and Dauphin), and one set of "declining" counties (St. Clair, Saginaw, and Erie). Figures 1-1, 1-2, and 1-3 show the location of the research sites in each of the three states. Suburban ring counties, adjacent to each state's major metropolitan area, doubled as both the prosperous and politically insulated sites. The declining counties, of course, were the poorer sites, beset by the various social ills noted above. The autonomous counties were economically between these extremes but tended to have court systems that were less politically insulated than the ring counties.

We relied upon a complicated and comprehensive framework in designing the research. The general conceptual scheme utilized appears in Figure 2-1. It seeks to combine variables from the environment with variables describing the organizational context and the individual characteristics of decision makers and criminal cases. Because this framework encompasses a variety of variables from three levels of analysis, seeks to examine linkages between the levels, and pays particular attention to interactions, it cannot be usefully summarized in a few paragraphs. Readers of this Executive Summary

interested in a description of the framework should consult pages 2-2 to 2-7.

Open-ended interviews with over 300 major participants in the nine counties' criminal processes provided the major source of qualitative data. The typed transcripts of these interviews provided a rich source of information about the operation of the prosecutor's and public defender's office, judicial administration and interaction, the defense bar, the procedures used to calendar cases and assign personnel to them, and the major features of the case disposition process, including plea bargaining and sentencing.

More systematic and quantitative data were generated by several questionnaires (one on participants' background and career, one on attitudes toward criminal justice issues and procedures, along with a personality measure (Machiavellianism), and one examining local legal culture), and by a Q-sort procedure designed to capture major participants' evaluations of each other. In the Q-sort, each respondent was given eight identical sets of cards with the names of the occupants of "other" roles (e.g., judges received cards with the names of defense attorneys and prosecutors) and asked to rank each with respect to a series of eight work-related attributes (e.g., trial competence).

We managed to obtain fairly complete information on most of the judges, prosecutors, and public defenders who handled criminal cases, along with a handful of the most prominent private defense attorneys on these quantitative measures. The extensive preliminary analysis of these data that led to the calculation of the principal individual level variables used in the analysis is described in the appendices to the report. They include three measures of attitude based on factor

analysis of the attitude questionnaire: belief in punishment; regard for due process; and concern for efficiency. We computed a "Machiavellianism" score based on the questions drawn from previous research on Machiavellianism. "Hi Machs" are thought to be more able to manipulate others to obtain their ends than "Lo Machs," providing us with a measure of tendencies to act forcefully when interacting with other participants in the criminal process. Analysis of the Q-sort data produced measures of "interaction styles." For example, we measure judges' "involvement," that is, their inclination to deviate from the role of a passive, neutral arbiter and their "responsiveness" by combining the evaluations made by attorneys. Prosecutor, judge, and defense attorney responses to the Q-sort provided the basis for measures of attorney "responsiveness" and "trial competence."

Finally, we gathered extensive data on the cases of 7,457 defendants. In addition to variables commonly used in quantitative analysis of case outcomes (defendant's age, race, sex, prior record; measures of evidence; time elapsed between arrest and major decision points; and outcome), we computed an interval-level measure of case seriousness derived from the mean sentences imposed for conviction on the same (most serious) charge for each of the nine jurisdictions. For a substantial proportion of the defendants among the sample of 7,475 cases, we had information on the attitudes, backgrounds, and interaction styles of the judge, prosecutor, and defense attorney who handled the case. The matching of individual level data with case data provided a principal means of integrating information for the data analysis.

The Sociopolitical Nature of Sentencing

Our conceptual framework guided the selection of the major topics treated in the five substantive analysis chapters of the report.

Chapter Three begins the substantive analysis by examining the characteristics of the environment of each of the nine courts, including socioeconomic features, political structure, patterns of crime, the nature and capacity of the local jail, and the nature of linkages between the criminal court and the larger community. The sampling design introduced certain similarities. Like the entire Northeast and Midwest, population remained relatively stable or even declined somewhat between 1970 and 1980 in the nine counties. All range from 200,000 to 1,000,000, but the six nonsuburban counties all fall between 200,000 and 280,000.

But the selection of the research sites sought to produce variation on important sociopolitical measures, and Chapter Three reflects our success in achieving it. In five, blacks constituted less than 5 percent of the population in 1980. Three ranged between 7 and 16 percent, and one exceeded 25 percent. Per capita money income (1979) ranged from $6,550 to $10,675. The proportion of the population living in the county's major city ranged from 5 percent to 62 percent. While seven counties can be classified as generally Republican in political orientation, two leaned towards the Democratic Party. A classification of political ideology derived from election results and representatives' roll call behavior identified three

conservative, four moderate, and two moderately liberal counties. Examination of crime rates found meaningful differences both in personal and property offenses across the nine counties; the counties also displayed differences in the trend in personal and property crime for the five years up to and including our field research. The capacity of the jail per 100,000 and the date of its construction also varied.

Finally, we attempted to judge the nature of links between the court community and the political system generally by looking at the number of mass media covering each county's courts, the content of that coverage, the level of political competition in elections, and the involvement of court community members in general membership organizations. This analysis suggested differences both in the expected level of community concern (based primarily on crime rates) and expected level of political scrutiny of the courts.

We also examined differences in sentencing codes, prison systems, and sentence severity among the three states. Michigan ranked first in severity of the punishment in its criminal code, prison capacity per 1,000,000 and proportion of capacity utilized, and incarceration rate per 100,000 of population. Illinois and Pennsylvania differed little in severity of the sentencing code, but Pennsylvania possessed less prison capacity and incarcerated fewer per 100,000.

The detailed descriptions of the general environment of the nine courts provided the foundation upon which the more narrowly focused analysis of sentencing in the later chapters rests. The nine jurisdictions resembled one another enough to permit comparison, but

displayed sufficient differences to make possible inferences about the effect of general environment on sentencing.

Chapter Four's descriptions of the nine jurisdictions focus more narrowly on the immediate context in which sentences emerge. The principal metaphor relied upon in describing this context is the "courthouse community." The "community" consists of a fairly small core of attorneys, judges, and court administrative personnel who know one another fairly well, who learn of events, decisions, and policies through a very active grapevine, and whose careers are intertwined. Older members of the community pass on its traditions, procedures, and rules of thumb to newcomers. The resulting "culture" of the courthouse community consequently changes only slowly, despite more rapid turnover in the particular role a resident performs. At any given time, one, two, or perhaps a handful of strong individuals may play a dominant role in shaping the community's behavior. The courthouse community appears to share expectations about the "going rates" for particular combinations of crimes and defendants' prior records. It also possesses mechanisms for encouraging members of the community to be guided by going rates and to adhere to shared norms about how participants interact with one another.

Chapter Four also describes the principal features of the recruitment mechanisms and policies for judges, the prosecutor's and the public defender's offices, and the private bar. Among the many elements of these descriptions, several warrant mention in this summary. The degree of integration between the lower and trial courts determines judges' ability to shape early decisions on probable cause, bail, and screening out of weak cases. The particular combination of

calendar arrangements for scheduling civil and criminal cases and case assignment policies produces distinctive work structures that have important consequences for case disposition generally and sentences in particular. Work structures depend on the following: whether judges' dockets consist of <u>both</u> civil and criminal cases, or just one; whether trials are conducted continuously or only during specified "trial terms;" whether each judge has an individual docket of cases or receives them from a court-wide master calendar; and whether cases are assigned to judges randomly, by a designated individual, or on a sequential "next case ready" basis. Prosecutor's offices differ in the degree to which the chief acts as a strong policymaker who exerts centralized control over many decisions in the disposition process as opposed to a less directive "first among equals" leadership style. The defense bar can be classified along two dimensions: the degree of concentration of criminal work among a handful of attorneys; and the proportion of defendants represented by publicly versus privately compensated attorneys.

Chapter Four also examines the attitude structure of members of the bench, D.A.'s and P.D.'s office, and private bar in each county. This analysis reveals important differences among attitudes of occupants of the same position in different counties. Prosecutors in St. Clair County, for example, rank lowest in belief in punishment; their upstate counterparts in DuPage rank highest on this measure among the nine counties, and the absolute difference is well over one standard score. Finally, Chapter Four illustrates how workgroups' structure can be classified by comparing their members' attitudes, personalities, and trial competence scores.

This brief summary of Chapter Four's extensive descriptions of the context of sentencing provides at best an imperfect understanding. But it should reinforce a principal argument of the entire report--that sentences cannot be understood without a thorough knowledge of the immediate work context from which they emerge.

Chapter Five begins the quantitative analysis and addresses macro-level aspects of sentencing. We summarize the general characteristics of sentences across the nine counties, examining several measures of severity and looking at the impact of a number of factors that might explain the patterns found (for example, the relative effect of interstate factors like the criminal code and prison capacity versus intrastate differences among the three counties). We also address the question of internal consistency in sentences in each of the nine counties.

We identified the following variables as relevant to the severity of a jurisdiction's sentences: the strength of "belief in punishment," the availability of opportunities to "route" plea bargains to particular judges; the extent to which the D.A. centralized plea bargaining and screened poor cases early; the severity of strains in the social fabric of the community; political ideology; seriousness of the crime problem; local jail capacity; severity of the state criminal code; state penitentiary capacity; and the state's rank in overall sentence severity. By ranking each county on each of these factors, we predicted whether sentences would tend to be lenient or punitive.

Generally, these predictions failed to predict sentence severity in any consistent fashion. Some counties predicted to be severe on the

basis of their "belief in punishment," for example, were. But others equally committed to punishment were lenient. In part, these inconclusive results stem from the simplistic nature of the predictions. The ability to "route" pleas can lead to more severe sentences rather than more lenient ones <u>if</u> the prosecutor controls routing and if some judges sentence harshly. Centralized plea bargaining may not lead to harsher sentences as predicted if case pressure forces the prosecutor to move the docket. Another reason for poor predictions stems from the possible interaction of the factors examined. The capacity of local and state detention facilities appears to be particularly important in shaping how other factors affect sentences. Where capacity is higher, characteristics that lead to longer sentences have "room" to affect sentences in those cases that remain after the most obvious prison and jail candidates are sentenced.

The analysis of severity clarified the complex nature of the effect county-level characteristics have on sentences. Despite the lack of clear and confirmed hypotheses, an unsurprising result given the complexity and number of variables and the very limited size of our sample, the data provide clear and striking confirmation that significant differences in severity do exist. All of the Michigan counties ranked considerably higher in minimum months of confinement; furthermore, the differences among them were greater than those found either in Illinois or Pennsylvania. The latter two states differed little overall from one another, and within-state differences were noticeable, but small.

Our examination of consistency focused on the extent to which disparities in sentences within each county emerged. To simplify its

measurement and avoid the thorny normative judgments required to decide which factors are legitimate bases for differential sentencing and which are not, we looked only at the proportion of variance attributable to offense seriousness and criminal record, the two least controversial bases for determining sentences. As with severity, we found substantial variation in this measure of consistency. In three countries these two variables explained about 20 percent or less of variance in sentence length; in two the figure was 45 percent and 51 percent.

We identified four factors we expected to shape consistency: the extent to which a few judges spent full time on criminal work; consistency in assignment of the same prosecutors and defense attorneys to cases; degree of centralization in plea bargaining; and the size and diffuseness of the court community. The small size of our sample precludes a definitive test of hypotheses about the factors that produce consistency. However, the analysis suggests several likely candidates. Large, diffuse court communities appear to produce low levels of consistency, even when other features might nudge them toward consistency. But the smaller, more concentrated court communities do not necessarily achieve high consistency. In these counties, the other hypothesized factors appear necessary. Peoria, which achieved the highest consistency, is small, has specialized criminal dockets, assigns prosecutors and public defenders to individual judges, and has a degree of centralized prosecutor control over plea bargaining.

Chapter Six constitutes the first of two chapters presenting a micro-level analysis of sentencing that integrates contextual and

individual-level factors. It begins by laying out a general theoretical model of sentencing, one much more fully developed than the general notions which guided the macro-level analysis in Chapter Five. The model, depicted in Diagrams 6-1 through 6-5, is based explicitly upon our understanding of the contextual, participant, and case specific characteristics that shape outcomes. We start our partial test of this model in Chapter Six using a pooled set of cases from all nine counties.

Three types of variables are utilized: attributes of the case such as seriousness and evidence (see Table 6-1 for a complete list); defendant attributes such as prior record, age, and sex (see Table 6-2); and features of the case's progress through the system such as the filing of motions, modifications in charges, and elapsed time (see Table 6-3). The "Grand Equation" incorporating all three types of variables, which appears on page 6-32, accounts for 61 percent of the variance in the minimum jail or prison sentence imposed.

The discussion of this equation in the following pages interprets and discusses the complex relationships between the equation's variables and sentences. Just a few of the most notable ones will be mentioned here. First, measures of offense seriousness provide the single most important variables. Indeed, the most serious charge alone accounted for almost half (48 percent) of the variance in sentence. Second, offense seriousness interacts with a number of other variables. Consequently, whether other variables have much effect on sentence or not is conditional, and the principal condition is offense seriousness. For example, the presence of a weapon affects sentencing in serious cases. Other variables whose effects depend on

offense seriousness include whether the case went to trial, the defendant's criminal record, whether the defendant made bail, whether motions were filed in the case, combinations of motions and going to trial, and delays and going to trial.

The second major statistical analysis in Chapter Six examines the model in an equation calculated for the samples of defendants from each of the nine counties. Many of the relationships depicted in Equation 6-1 using the pooled sample did not emerge in the county regression analyses. The smaller number of cases available, particularly serious cases, reduced the likelihood that statistically significant relationships (especially those depending on interaction between offense seriousness and other measures) would emerge. The small number of counties makes the task of ferreting out the impact of environmental and contextual differences' impact on sentencing problematic.

Interaction terms involving the TRIAL variable (which indicated whether the defendant went to trial or pled guilty) suggested that a "penalty" in the form of a longer sentence is not uniformly imposed on those going to trial. Rather, such penalties appear to be reserved for certain types of cases, probably those which the court community believes should have been disposed of without a trial. Finally, the fact that variables which reflect defendants' social status (race, sex, bail status, and so forth) have a detectable (though relatively small) effect on sentence suggests the operation of social bias in sentencing. Since many of their effects emerge only in serious cases, their relatively slight contribution to explaining all sentences in part reflects the relative paucity of serious cases, not a lack of

significance in terms of assessing the extent to which social biases shape outcomes.

Chapter Seven presents the results of our principal effort to integrate data about decision makers with case characteristics. Specifically, it examines how measures pertaining to the judge, prosecutor, and defense counsel combine with offense seriousness and criminal record to predict sentence length. The measures used include: Machiavellianism; trial competence; operating styles (judge's involvement and responsiveness, attorney's responsiveness); and belief in punishment and regard for due process. By comparing the "score" of each of the three decision makers on any of these items, we can derive a measure of the "structure" of the triad. For example, we can compare sentences of workgroups whose members all share a common and high belief in punishment score with those that display wide disagreement.

This analysis required merging data from questionnaires and Q-sorts with case data. Thus, if we had an attitude questionnaire from the judge who handled a defendant's case, we merged his belief in punishment and regard for due process score with all of the case variables (offense seriousness, defendant's race, length of sentence, and so forth). Since the analysis required data from questionnaires and Q-sorts on all three decision makers, the number of cases available dropped to about 2,000. We excluded all trials because the propositions we sought to test pertained to bargaining positions, strengths, and strategies which play little role in trials. Finally, we included only cases handled by triads that worked together on at least five cases to increases the likelihood that each participant in

the bargaining process had a well-grounded understanding and appreciation of the strengths, weaknesses, views, and operating styles of the other participants.

We ended up with a sample of about 800 cases drawn from five counties handled by 102 distinct workgroups. Consequently, we present what should be considered a "best case" analysis of the impact of decision-maker characteristics on sentences. The 800 cases do not represent a sample of a larger universe. They are a pool of cases that exhibit a particular trait--they were negotiated to a plea by a judge, prosecutor, and defense attorney who work with one another frequently. But comparison of this group of cases' mean offense seriousness and criminal record score with all cases from these five counties showed little difference; the correlation between seriousness and record on the one hand, and sentence on the other was virtually identical to those computed for all cases from the five counties. Multivariate regression analysis of these cases provides a unique opportunity to test the effect of the personal characteristics of judge, prosecutor, and defense attorney on sentences.

The analysis of these data proved to be extremely complex, and the presentation of our results in Chapter Seven reflects this complexity. The step-by-step description of this analysis contained in Chapter Seven cannot be summarized succinctly. But we can report here the principal conclusions we draw.

First, the data analyses suggest that the decision makers involved in handling a case have an important impact upon the sentence. While a regression model containing only case seriousness and a measure of the defendant's criminal record explains 48 percent of the

variance in our pool of cases, the final model (Equation 7-4) explained 64 percent. This represents a one-third improvement in explanatory power. The precise effect depends upon the presence of and interaction with a number of variables.

Equally important is the finding that we cannot understand the role of individual level influences without integrating them with contextual factors into a more comprehensive model of the sentencing process. The analysis demonstrated that by focusing solely on the judge--using a linear, bivariate model--one cannot produce a meaningful picture of the decision-making process. We had to incorporate the attributes of all three decision makers and utilize them in conjunction with information on cases. While offense seriousness was, by far, the most important contextual factor, the failure to include the attributes of all three decision makers would have yielded an incomplete and inaccurate picture of the decision-making process. Likewise, the inclusion of the data on structural constraints and workgroup configurations made theoretical contributions far beyond their relatively meager contribution to the R^2 (.06). These contributions justify their inclusion in Equation 7-4 despite the complexities that they impose.

The contribution to the explanatory power of three-way interaction terms is limited by the number of cases in extreme categories (i.e., attitudinal deviants handling serious cases who are "Hi Machs"). The theoretical insights generated by the inclusion of these variables is not so bounded. These findings demonstrate that it may not be sufficient to consider only the attributes of all three decision makers. It is also important to know how these attributes

are arrayed among the judge, prosecutor, and defense attorney, as well as the constraints that operate upon the discretion of one or more of them. While such observations may seem almost commonsensical, they have all too frequently been neglected in decision-making studies. The consequence, of course, has been sterile models of the decision-making process, which are spurned by observers and practitioners familiar with the complexities of reality.

Conclusions

The final chapter begins by moving beyond the focus on sentencing to describe briefly the general accomplishments of the research endeavor as a whole. They include: the breaking of new methodological ground, both in the measurement of key variables and in the techniques employed to integrate and analyze data from the individual, contextual, and environmental levels; the enhancing of our understanding of the nature and relevance of environmental variables in the criminal process; and the progress made in improving our theoretical understanding of courts by incorporating in a single model attitudes and personal characteristics of key decision makers, contextual variables, and environmental factors and by describing some of the complex interactions that take place within and among them.

The major portion of the chapter distills our principal thoughts on the nature of the dynamics of sentencing. We reiterate our understanding of sentencing as a social and political process, elaborate on the utility of using the concept of "going rates" as a starting point in thinking about sentencing, and discuss the com-

plexity of the process which modifies going rates in individual cases. Offense seriousness' central role in shaping how these modifications occur is emphasized. It interacts with the social characteristics of the defendant, the personal characteristics of the triad members, the structure of the workgroup, and the policies of sponsoring organizations. We also restate our understanding of the importance of a court's "work structure" and environment, and summarize our thoughts on the utility of the distinction between legitimate and illegitimate trials in thinking about the imposition of sentence penalties on defendants electing to go to a jury.

We next turn to consider two normative questions--the consistency and fairness of sentencing. Consistency is defined as identical treatment of identical cases. Several factors contribute to shaping the degree of consistency. One is a court's work structure. It affects which judges hear criminal cases and how frequently their identity changes. Case assignment procedures determine whether, if inconsistency exists, it is distributed randomly or purposively. The diffuseness of the court community and the strength of its consensus on going rates also affect consistency.

Fairness or equity is defined as treating "like" cases alike, with specification of those characteristics that should be considered in determining similarity. Because such judgments depend on the evaluator's values, definitive conclusions about our nine courts' fairness cannot be drawn. However, the fact that race, sex, and pretrial confinement status (usually interacting with offense seriousness) shape sentences suggests many people would raise questions about fairness. Although the seriousness of such inequities (and

indeed, whether they represent no more than what we must expect in an imperfect world) cannot be assessed, the fact that they exist presents a far different policy situation than if we had found such factors had absolutely no impact.

The research revealed serious methodological difficulties in measuring both consistency and fairness, difficulties that call for recognition of the limits to research. We identify several such difficulties in Chapter Eight. Flux in courts' work structures and environment, coupled with delays inherent in even the best research projects, makes timely assessments of a jurisdiction's performance difficult. By the time analysis is complete, the system may have undergone significant change. Statistical detection of unfairness faces an additional obstacle. In all but the largest jurisdictions, too few cases exhibiting pertinent features (for example, a serious crime with a black defendant and white victim) may arise to reveal statistically significant differences even though these features lead to differential sentences.

Chapter Eight concludes with some sober assessments of the possibilities for further development of comprehensive theories of criminal courts and for efforts to reform sentencing. The complexity of courts as functioning social institutions imposes limits on the knowledge we can gain about them. They exhibit significant differences depending on their size. They employ a rich variety of work structures which shape outcomes. They operate in a variety of environments, which themselves undergo change over time. Decisions in cases arise from interactions among three individuals--judge, prosecutor, and defense attorney, each of whose characteristics and

attitudes can, under some circumstances, affect outcomes. Specifying just what these circumstances are itself poses a formidable challenge. Case characteristics (especially seriousness), contextual factors (for example, sponsoring organizations' policies), environmental factors (for example, jail capacity), and other workgroup members' attributes (workgroup structure) all interact in a variety of ways to produce such circumstances.

This complexity produces significant methodological, institutional, and human limits to the researchers' ability to understand courts, limits which our research has clarified. It is important that we recognize and learn to live with them while at the same time benefiting from the useful knowledge that research efforts such as ours can produce.

Our discussion of the prospects for reform, we hope, illustrates this last point. We identify for would-be reformers several possible changes that can be instituted fairly quickly and relatively easily at the local level. The work structure (case assignment and calendar), the degree to which plea bargaining is centralized in the hands of a single individual or unit in the prosecutor's office, procedures for routing pleas to judges, and the imposition of other policies limiting discretion in sentencing (for example, Erie's judicial prohibition on pretrial diversion in shoplifting cases) constitute the most prominent examples of such changes.

Other changes possible within a jurisdiction present greater obstacles to implementation and take longer. Enlarging the capacity of the local jail provides perhaps the most powerful possible change. The incentives surrounding providing defense counsel to indigents can,

in some states at least, be altered. Recruitment and retention procedures and criteria, and consequently the characteristics of key decision makers, also possess the potential to induce significant changes over time.

Finally, several changes at the state level offer the prospect (but not a guarantee) of affecting sentences. They include increasing the capacity of the state prison system, altering the state criminal code (especially provisions relating to sentencing), and changing the recruitment procedures and incentive structures (especially funding mechanisms) of the principal courtroom decision makers.

We draw eight lessons concerning the reform of sentencing that we believe increase the realism of reform efforts and help avert costly failures and counterproductive outcomes. Our summary concludes with a restatement (but without the accompanying discussion) of these lessons.

Lesson 1: Don't expect too much.

Lesson 2: Reforms just focusing on judges or the control of judicial behavior will often fail to have their intended effect.

Lesson 3: Reforms ought not to focus exclusively on serious cases.

Lesson 4: Many reforms supported by some relevant participants in sentencing process will be unpopular with others.

Lesson 5: Changes confined to a single jurisdiction require considerable cooperation and probably some luck to succeed. Those that do succeed may not necessarily be able to be implemented successfully elsewhere. Changes imposed at the state level pose problems for consistency among jurisdictions within the state since their impact upon implementation will often differ.

Lesson 6: Changes in the work structure can affect consistency.

Lesson 7: Sentences can be increased across the board only if there is excess prison capacity available or if capacity is expanded. Efforts to increase sentences for certain crimes will lead to lower sentences or earlier release for others in the absence of additional prison capacity.

Lesson 8: Even successful efforts to change sentencing carry with them significant risks and paradoxes. Enhancing attainment of one goal may reduce achievement of others.

Chapter One

SENTENCING: THE BOTTOM LINE

Introduction

In recent years candidates for public office as well as the media have stressed two themes in their growing criticism of America's criminal justice system: the rise in crime, especially violent crime, is a rapidly increasing danger to law-abiding citizens; when perpetrators do get caught, they get off too easily, particularly because sentences are not harsh enough. These themes, increasingly seem to control the agenda of public debate and thinking about crime and justice in our society.

Students of criminal justice recognize the dangers of such over-simplification. Policymakers who have thought about and want to "do something" about the problem of crime must look at the larger picture. They cannot ignore such things as police command decisions about allocating resources and personnel, prosecutors' screening of arrestees for further prosecution, the bail process, or the intricate interactions that determine the pace of dispositions, the frequency of conviction, and the mode (trial, plea) of conviction.[1]

Recognizing the necessity of examining these and other components of the criminal process, however, carries the risk of missing an obvious and significant truth: sentencing, in and of itself, is crucial. The emphasis placed on it in the public realm can be applauded or decried; but its importance remains a fact. Blindness to that

fact can only weaken efforts to advance our knowledge and implement intelligent reforms. Sentences constitute the "bottom line" of an important social process in a society that reveres the bottom line as a measure of performance. To defendants, their families, and in many instances their victims, encounters with the criminal justice system are assessed predominantly on the basis of the sentence imposed (Casper, 1972). To judges, prosecutors, defense attorneys, and others who live and work in the courthouse, sentences provide the most visible and frequent measure of accomplishment and performance, since relatively few felony defendants who survive preliminary screening receive an acquittal or dismissal on all charges. Furthermore, how courthouse regulars are seen by the community elites (politicians, the legal community, the press) often hinges on the sentencing related activities of the former group. Their evaluations are important because they can affect a practitioner's career prospects, standing, and self-esteem. For all these reasons, research that does not speak to the question of sentencing will be less likely to attract the attention of decision-makers and opinion molders.

Today a study of sentencing carries the potential for substantial policy implications. As one recent review of sentencing studies (Sutton, 1978) put it, "The process of criminal sentencing, like so many other aspects of the criminal justice system, is ripe for reform." In the last few years many state legislatures have in fact reduced discretion in sentencing and increased the length of prison terms. But enactment of mandatory sentencing laws, sentencing guidelines, and prohibitions against plea bargaining do not guarantee that sentencing changes will result, or that the changes that do result are

those that were intended. We believe extant research on sentencing fails even to begin to provide adequate information concerning which changes in sentencing are desirable, which are possible, the conditions under which they can be instituted, and the effects we can expect them to have.

The present report is based upon a larger more inclusive study of criminal courts.[2] The above considerations led us to concentrate upon sentencing. It provides us with an opportunity to examine our theoretical conceptions and to apply them to an important area of criminal justice policy. Moreover, the sentencing decision lends itself well to social science research, making it a good area in which to test some of our ideas. In all but the smallest jurisdictions, enough sentences are imposed so that we can apply quantitative research techniques. In addition, they can be measured in a straightforward and substantively meaningful way. Most state prison systems exhibit a high consistency in the proportion of sentences imposed to those actually served.

The Search for a Research Design

The research design employed in this study sought as a principal goal the refinement of a comprehensive, theoretical approach to the study of criminal courts that would permit us to place all significant decisions in the criminal process into a larger context. While students of criminal justice have focused upon sentencing for several decades, most have ignored this question of the larger context. Since others have provided detailed critical summaries of this earlier

research, (Sutton, 1978; Gibson, 1983; Hagan, 1974), we need not repeat the exercise. But a general assessment of its many shortcomings and the large gaps in knowledge it leaves provides a necessary background for the presentation of our own approach.

L. Paul Sutton succinctly identifies many limitations of previous sentencing research in the introduction to his review of the literature:

> First, many focused on a single offense or on similar offenses. Second, a large number failed to explore systematically beyond the zero- or first-order correlation the significance of the relationship between a particular offender characteristic (e.g. sex, race, prior record) and sentence. A third constraint was the relatively small scope limited in number of cases, in regional analysis, and in time span. The fourth limitation was earlier studies' failure to differentiate between type of sentence (i.e., incarceration or some other sentence) and length of incarceration sentence (Sutton, 1978, p. xi).

James Gibson's forthcoming review (1983) of published studies in the field of judicial behavior (which encompasses sentencing) identifies a fundamental problem that also applies to the sentencing literature. He notes that "the study of judicial behavior has been relatively balkanized, with some advances within particular theoretical contexts, but with little successful effort at integrating different approaches within a comprehensive theory."

Several attributes of previous research contribute to such balkanization and lack of comprehensiveness. With a partial exception (Levin, 1972), none has sought to integrate data from different levels of analysis. Systematic generation of measures at the individual or micro level (for example, a judge's attitudes) rarely accompany

an empirical study of macro level characteristics (local legal culture, policies toward plea bargaining, jail capacity, the structure of courtroom workgroups). Nor do we have comparative empirical studies of courts that operate under different statutes and rules of procedure, something that will have to be done if we are to assess how such differences shape sentences.[3] Finally, with few exceptions, sentencing studies are "judge-centric;" they assume that the decision to sentence rests solely with the judge whose discretion is unfettered by contextual factors.[4]

Thus, limitations in the data base of previous studies preclude major advances in understanding sentencing. At best they offer a fragmented glimpse of some aspects of sentencing for some offenses in some jurisdictions. They do not permit the cumulation of findings. In large part, these weaknesses in the data base rest upon inadequate conceptualization.

All of this suggests an obvious recipe for the design of a better study, a study that can speak more usefully to the question of reform. Research that seeks to overcome the shortcomings identified will need to exhibit three characteristics. First, it will need an explicit but complex and comprehensive theoretical approach to guide its design. As Gibson (1983) notes, "in order to understand decision-making, not only are multivariate models necessary, but the models must be capable of incorporating effects operating at varying levels of analysis." Second, it will require massive data collection and analysis efforts. Third, the theoretical explanations cannot be simplistic.[5]

The research on which this report is based conforms to the three characteristics just described. A brief description of its theoretical framework, data collection techniques, and modes of analysis, presented in Chapter 2, will lay the foundation for the elaboration of our complex explanations of sentencing, which form the bulk of this report. First, however, we will briefly introduce the research sites from which our data are drawn.

An Introduction to the Research Sites

Our assessment of earlier criminal court studies, as well as the objectives of the research, dictated extensive empirical research in a number of jurisdictions. At the same time, budgetary constraints and other considerations limited us to the home states of the principal investigators (Illinois, Michigan, and Pennsylvania). We focused on larger counties, since smaller ones would not produce the number of cases or the variety of personnel to meet the needs of our research design. We did not, however, want to study the largest counties (Cook, Wayne, Philadelphia) since large jurisdictions had been the focus of almost all prior research and because the cost of studying them would have sharply reduced the number of counties. We decided, therefore, to select nine counties with populations between 100,000 and 1,000,000 and in which there was more than one trial judge hearing criminal cases. To facilitate our comparative analysis, we tried to "match" the counties in each state with their "twins" in the other states to create three different sets of triplets, one member of each set in each state.

There were several criteria for selecting the nine counties. First, we decided to select one set of jurisdictions that suffered from the social ills of a declining industrial base, social cleavages, low to moderate average incomes, and financial problems. We also wanted prosperous counties with fairly homogeneous populations and relatively high income levels. Finally, we wanted counties in which the courts' level of political insulation differed. Obvious problems were encountered in trying to maximize variation in the three sets of jurisdictions along these dimensions. This was handled by selecting one set of suburban "ring" counties (DuPage, Oakland, and Montgomery), one set of "autonomous" counties (Peoria, Kalamazoo, and Dauphin), and one set of "declining" counties (St. Clair, Saginaw, and Erie). Figures 1-1, 1-2, and 1-3 show the location of the research sites in each of the three states. Suburban ring counties, adjacent to each state's major metropolitan area, doubled as both the prosperous and politically insulated sites. The declining counties, of course, were the poorer sites, beset by the various social ills noted above. The autonomous counties were economically between these extremes but tended to have court systems that were less politically insulated than the ring counties. A more detailed description of the characteristics of the counties is presented in Chapter 3.

Objectives and Organization of This Report

The principal object of this report can be stated directly and simply. We want to enhance our fundamental understanding of the sentencing decision, and the context in which it occurs, so that

Figure 1-1

ILLINOIS

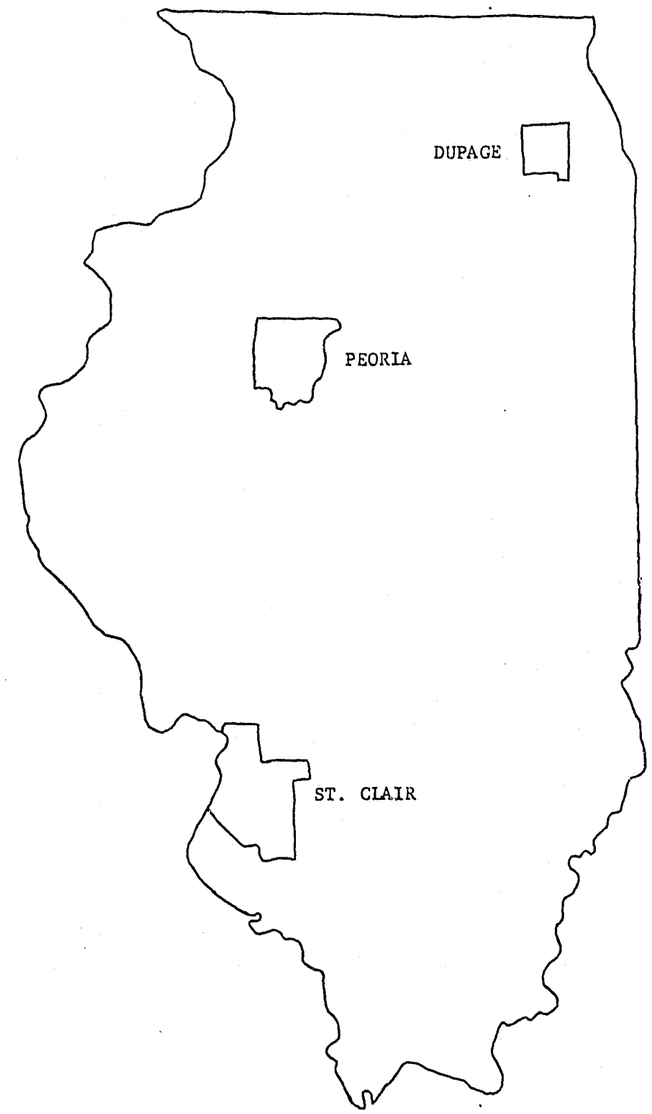
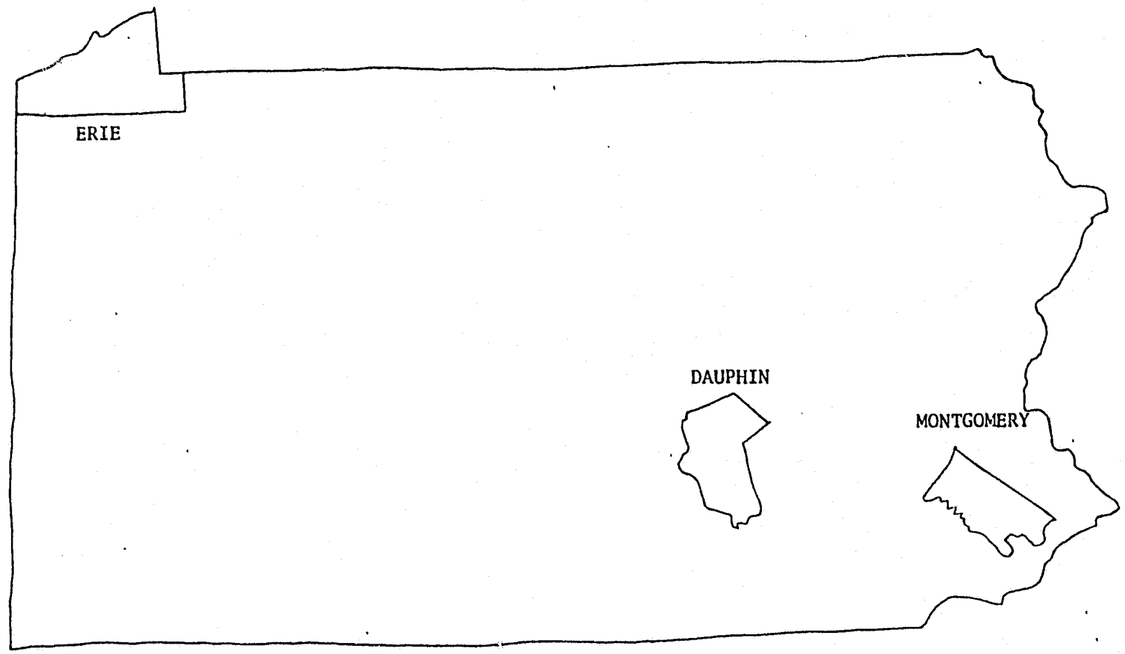


Figure 1-2

MICHIGAN

Figure 1-3

PENNSYLVANIA



rational efforts at reform can be made. Whether specific reforms enhance or diminish fairness, efficiency, and consistency depends not only on how these value-laden terms are defined, but also on the actual effects they have on the criminal justice systems into which they are introduced. Put another way, this study seeks to advance our understanding of sentencing and thereby to guide efforts at reforms that will accomplish what their proponents intend.

Chapter Two lays the foundation for the empirical analyses of sentencing that comprise the major portion of this research. It discusses our rationale for emphasizing the task of identifying and integrating concepts from three distinct levels of analysis--the environmental, the contextual, and the individual. It presents a summary of our theoretical model, describes the data collected and the procedures used to gather them, and examines the techniques used to create the principal individual level variables used in the analysis.

Chapter Three begins the substantive analysis by examining the characteristics of the environment of each of the nine courts, including socioeconomic features, political structure, patterns of crime, the nature and capacity of the local jail, and the nature of linkages between the criminal court and the larger community. In addition, it addresses state level features of the court's environment. Chapter Four delves into what we call the "context" in which cases are decided. We examine the notion of the "courthouse community," the policies, structure, and operating characteristics of key components of the court system (the prosecutor's office, the defense bar, the bench) and the principal techniques used to schedule and assign cases to courtrooms and judges.

Chapter Five begins the quantitative analysis and addresses macro level aspects of sentencing. We summarize the general characteristics of sentences across the nine counties, examining several measures of severity and looking at the impact of a number of factors that might explain the patterns found (for example, the relative effect of inter-state factors like the criminal code and prison capacity versus intra-state differences among the three counties). We also address the question of internal consistency in sentences in each of the nine countries.

Chapters Six and Seven report on a micro-level analysis of sentencing, one which integrates contextual and individual-level factors. We first lay out and develop a theoretical model of sentencing. This model is much more fully developed than the general notions used to guide the macro-level analysis in Chapter Five. The reason for the higher level of sophistication is simply that we know much more about the micro-level aspects of sentencing, largely because of prior research. After this model is discussed we use a pooled set of cases from all nine counties to assess its utility in explaining the sentencing process. The assessment is not complete because not all aspects of the model could be operationalized. Moreover, for methodological reasons we had to analyze the role of individual decision-makers separately (Chapter Seven). After assessing the impact upon sentencing of three types of factors (case attributes, defendant attributes, intermediate actions and occurrences) in the pooled set of cases, we extend the statistical model to the nine county samples. The comparison of the county specific analyses with the pooled analyses yields insights which are important for sentencing research.

In Chapter Seven we examine those aspects of the model that pertain to the role of decision-makers. Under ideal methodological conditions the analyses in Chapters Six and Seven would have been integrated, but because we are working with a much smaller set of cases, we had to address this issue separately. As in the analyses described in Chapter Six, we use an interactive multivariate approach in Chapter Seven. Because we are dealing with a highly complex model, we report the analyses in four separate phases. This presentation facilitates an understanding of the results and demonstrates the value of our approach.

In Chapter Eight we present our conclusions and discuss their implications. We summarize our basic findings, discuss them in relation to future inquiries into sentencing, and grapple with several questions that go to the heart of the question of reforms in the area of sentencing and the policy implications for such reform efforts.

References

Casper, Jonathan (1972). American Criminal Justice: The Defendant's Perspective. Englewood Cliffs, New Jersey: Prentice-Hall.

Eisenstein, James and Herbert Jacob (1977). Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little, Brown.

Eisenstein, James, Peter Nardulli, and Roy B. Flemming (1982). "Final Report: Explaining and Assessing Criminal Case Disposition: A Comparative Study of Nine Counties," unpublished report submitted to the National Institute of Justice.

Gibson, James L. (1978). "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," 72 American Political Science Review: 911-924.

Gibson, James L. (1983). "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior," Vol. 5, no. 2 Political Behavior: .

Hagen, John (1974). "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint, 8 Law and Society Review: 357-384. 8:357-384.

Hogarth, John (1971). Sentencing as a Human Process. Toronto: University of Toronto Press.

Levin, Martin A. (1972). "Urban Politics and Judicial Behavior," 1 Journal of Legal Studies:193-211.

Sutton, L. Paul (1978). Federal Criminal Sentencing: Perspectives of Analysis and a Design for Research. Washington, D.C.: National Criminal Justice Information and Statistics Service.

1 We recognize, of course, that the problems associated with crime and justice in the United States ultimately cannot be separated from more general considerations, like the social and economic conditions that contribute to crime.

2 The research project on which the present report is based looked at the criminal process in nine medium-sized counties. For a full description of that project see James Eisenstein, Peter Nardulli, and Roy B. Flemming, "Final Report: Explaining and Assessing Criminal Case Disposition: A Comparative Study of Nine Counties" (unpublished report submitted to the National Institute of Justice, August 31, 1982), especially Chapters 1, 2, the appendices, and the Executive Summary. Subsequent analysis of these data will explore other aspects of the counties' criminal justice systems.

3 James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown, 1977), looks at one jurisdiction in each of three states, which means the authors cannot differentiate between state-related and city-specific sources of variation.

4 Even the best research on the effect of attitudes on sentencing exhibits "judge-centrism;" see, for instance, John Hogarth's Sentencing as a Human Process (Toronto: University of Toronto Press, 1971).

5 Gibson (1983), notes that "simplicity is the dominant attribute of theory in the field. And while simplicity is frequently said to be a desirable attribute of a theory, simplicity need not imply parsimony and understanding of basic laws of political behavior."

Chapter Two

Conceptual Foundations, Research Design, and Operationalization

A primary aim of this report is to examine the sentencing decision from a number of perspectives. This reflects our belief that the major theoretical problem confronting criminal court researchers today is the identification and integration of certain key concepts at three distinct levels of analysis--the environmental, contextual, and individual. To accomplish this we must examine a number of factors at each level and focus on the linkages that connect those levels. Focusing on linkages, we believe, will make us more sensitive to the conditions under which, and the degree to which, each factor will influence other factors and its effect on the system as a whole. We also believe that this focus will facilitate the integration of concepts across levels.

This chapter will explain how we organized our research and operationalized important concepts.[1] First, however, it is necessary to describe briefly the conceptual foundation of the research. More involved theoretical analyses will be presented in the data analysis chapters (Chapters 5-7); the following discussion simply outlines the more general notions that guided the early phases of the research. This discussion will be followed by an overview of our data collection procedures. Finally, the approach used to operationalize some of the

important individual level concepts will be described. Environmental and contextual features of the counties will be detailed in Chapters Three and Four.

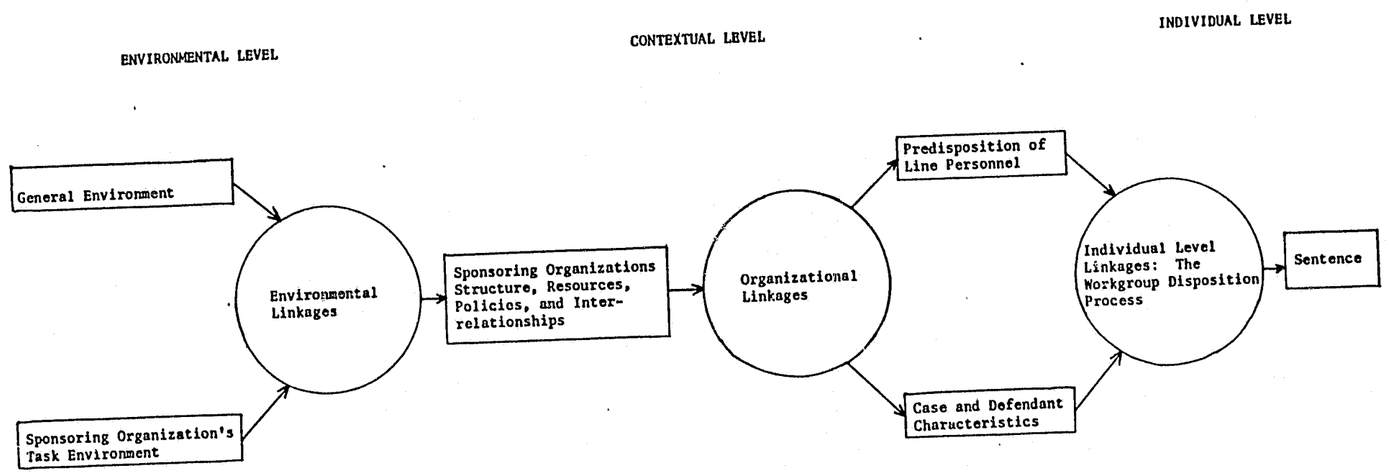
Conceptual Foundations

Figure 2-1 is a rough embodiment of the very general model with which we began our research. The ultimate focus of the present analysis--defendant sentences--appears at the far right. The model suggests that three types of factors must be considered at the individual level if we wish to understand sentencing decisions. These include the characteristics of the cases and the defendants; the role perceptions, values, and attitudes of the courtroom elite (judge, prosecutor, defense attorney); and the characteristics of the workgroup disposition process. We need not spend much time on defendant and case characteristics. It is well known that case seriousness and a defendant's criminal record, for instance, often define the parameters of what can be done with a specific case. The treatment of similar cases may vary across jurisdictions, but within a given jurisdiction these traits often provide cues to line personnel, who may, in turn, simply apply statutory mandates or office policies to each case. Also relevant here may be the defendant's social characteristics (sex, age, race) and the nature of the defendant's prior relationship with the victim, if any.

The personal views of the principal decision makers are more complex. How do they feel about the responsibility of individuals for their own actions? Is community safety a priority concern? And what do they see as the primary causes of crime? Views on specific matters

Figure 2-1

General Conceptual Scheme of Factors
Affecting Sentences in
Criminal Cases



such as the rehabilitative potential of incarceration, its deterrent force, and its symbolic value would also be relevant. Background characteristics of the decision makers may also affect the sentencing decision. Long-time judges may be both more severe and consistent in their sentencing, than new recruits to the bench who may have less distinctive ideas on appropriate punishments. Sex and party affiliation could also be relevant.

The effect that these individual-level influences have upon sentences cannot be understood without some notion of the linkages between them and case outcomes, i.e., the workgroup disposition process. The most important characteristic of this process is that it involves a triad of individuals (the judge, prosecutor, defense counsel) who rely largely upon collegial, non-adversary interactions to dispose of cases. This has several implications for how individual-level influences may affect case outcomes. In particular the structure of this process makes it highly unlikely that any direct or straightforward causal paths will emerge. It would be overly simplistic to hypothesize direct effects because the sentencing decision especially in negotiated dispositions, is largely a joint effort. Individuals with potentially diverse views and backgrounds have negotiated in the context of a given factual matrix and have reached a mutually satisfactory outcome. Thus, the impact of personal views may vary with personality traits (forcefulness, manipulativeness, cunning, etc.) Their operating style--the way they relate to coworkers, their approach to (or competence in) the performance of formal tasks--may also affect their effectiveness in negotiations. More will be said of this in Chapter Six.

Contextual influences hold a central position in our conceptual scheme. Such influences emanate from different components of the court community, or its structure (diffuseness, size), and are probably less important for sentencing than are other aspects of courtroom operations. They certainly have a less direct effect upon sentences than do individual level influences. Nonetheless, several contextual factors affect not only the manner in which individual level influences affect sentences, but also the structure of the workgroup disposition process; for these reasons they should be noted here. Perhaps the most important is the prosecutor's policies on sentences in plea bargain cases. Some offices have explicit policies concerning minimum offers for at least some offenses, others simply refuse to agree to probation in cases involving certain types of offenses. These policies are important not only because they may have an impact upon "going rates" within a county, but also because they may restrict the impact that individual prosecutors have upon sentences. All other things being equal, where explicit prosecutor policies and effective enforcement procedures exist, the views of individual prosecutors are expected to play a lesser role in sentencing. Sentences, therefore, may be both more consistent and more severe in counties with centralized plea systems.

The case processing practices adopted by judges can also have an indirect influence upon sentencing. For example, the use of individual dockets as opposed to master dockets could lead judges to become more involved in plea negotiations since they know they will ultimately be responsible for a case's disposition. This greater involvement could mean that their individual views would play a larger

role in sentences than would otherwise be the case. Also, systems that have personalized case assignment systems, as opposed to "blind draw" or random assignment systems, may produce systematically different sentencing outcomes. In at least some personalized assignment systems, politically sensitive or newsworthy cases can be routed to the "proper" judge. Finally, where pleas can be "routed" to a particular judge, the operating style and bargaining skills of the attorneys may play a larger role in sentences. Where the judge is set at an early stage in the proceeding, there may be real limits as to what a wily defense attorney can do. Where plea routing is available but requires the prosecutor's approval, different tradeoffs may be called for than in systems where such prosecutorial approval is not required.

Of the three levels of influence diagrammed in Figure 2-1, the environmental level is clearly the most amorphous and indirect. To understand its potential impact upon sentencing, we must differentiate between the sponsoring organization's task environment and the general environment; we must also understand the linkages between each and the various components of the court system. The task environment includes organizations, regulations, and public events that have a bearing on how tasks under the jurisdiction of the various components of the court community are performed. These influences may not always determine sponsoring organization policies or practices but they may set the parameters for such practices or establish "givens" which must be considered in policy formation. For example, the capacity of the county jail, as well as the availability and quality of diversion programs, juvenile detention facilities, and probation staff, could

affect how judges and prosecutors view their sentencing options. The capacity, quality, and orientation of the state penitentiary system are equally important. The prevailing sentencing code could also play a role in establishing "going rates" for a county and also affect relative bargaining positions. In other words, decision makers will have more power if the discretion vested in them by the criminal code is increased. Thus, if the code includes many offenses with substantial minimum sentences the influence of the prosecutor, who controls charging, is enhanced. Conversely, determinate sentencing codes with small ranges reduce the impact of individual decision makers. Stipulations that a particular sentence will be "presumed" unless other enumerated considerations are present may also reduce the discretion available to them.

Influences emanating from the general environment are expected to have a diffuse impact upon sentences. Thus it is reasonable to suppose that the gravity of the crime problem and the overall ideological views of the county will have an impact upon "going rates." The wealth of the community, if it affects the availability of local detention and probation services, could also indirectly affect sentences, as could the level of social heterogeneity.

The linkages between the various components of a court system and its environment, especially in the case of more general environmental influences, must also be considered. Many individual decisions made by line personnel (or even office heads) are of low visibility. They are usually important only in their cumulative impact. This low visibility, coupled with the legal shroud that covers much courtroom activity, can make the court system unresponsive to its environment.

Moreover, if crime is not a high priority item in the public's mind and there is little political competition in the court arena, then the system will be isolated from its environment. However, where the crime issue is salient and political competition is high, the actions of courtroom personnel can become more visible and vulnerable to public sentiment. A resourceful and active media can also affect responsiveness as can the formal procedures for selection and retention of various courtroom personnel. By the same token, such factors as civil service and merit selection can lead to greater political insulation.

Available Data and Data Collection Procedures

To achieve our desired objectives and to operationalize the more specific concepts implicit in Figure 2-1, we had to collect comparable data on a variety of phenomena in each of the nine counties. We collected qualitative and quantitative data using such varied techniques as personal interviewing, questionnaires, a Q-Sort procedure, and analysis of case files. Much of this information is summarized in Table 2-1. Table 2-2 reports, by county, the number of interviews successfully obtained as well as the number of defendants sampled (see Eisenstein, Nardulli, and Flemming, 1982, for a more complete description of research procedures).

Open Ended Interviews

While some information on environmental and contextual factors was derived from organization charts, census and voting data, scholarly works on the counties, and from local media stories, most of it came from personal interviews. Over 300 interviews were conducted;

Table 2-1

Summary of Data, Sources, and Research Techniques Used in Study

	Environmental Influences	Environmental Linkages	Contextual Influences	Contextual Linkages	Individual Influences	Individual Linkages	Case Outcomes
Nature of Data	Qualitative/ Quantitative	Qualitative/ Quantitative	Qualitative/ Quantitative	Qualitative	Quantitative	Quantitative	Quantitative
Source of Data	Personal interviews, census data, voting data, local newspapers, available scholarly works on characteristics of research sites	Personal interviews, voting data, local newspapers	Personal interviews, organization charts, manpower reports, "Local Legal Culture Questionnaire"	Personal interviews	"Attitudes and views on criminal Justice Questionnaire" Background and Career Questionnaire" Personnel Evaluations Prosecutor and clerk files	Machiavellian Scale, Personnel Evaluations, Prosecutor and clerk files	Prosecutor and clerk files
Research Techniques or Strategies	Development of open ended interview check sheets; selection of personnel to be interviewed; scheduling and conduct of interviews; transcription of recorded interviews; identification of relevant works and data; subscription to and limited content analysis of local newspapers	Same as for Environmental Influences	Scheduling and conduct of interviews; identification and collection of relevant "in house" documents	Same as for Contextual Influences	Selection of personnel to be questioned and/ or evaluated; development, pretesting, and administration of questionnaires and Q-Sort evaluation procedure; sampling of cases; transcription of relevant data onto common data collection instrument	Same as for Individual Influences	Sampling of cases; transcription of relevant data onto common data collection instrument

Table 2-2

Summary of Data Gathered by County

	Open-Ended Interviews			Attitude, Background and Legal Culture, Questionnaires			Q-Sorts			Defendant
County	Judge	Prosecution	Defense	Judge	Prosecution	Defense	Judge	Prosecution	Defense	Case Files
DuPage	7	16	23	6	16	23	6	16	22	908
Peoria	3	7	13	2	7	13	2	7	12	1,042
St. Clair	4	7	19	4	7	17	3	7	17	1,162
Oakland	8	18	19	6	18	19	6	7	19	915
Kalamazoo	4	13	12	3	12	10	3	10	10	719
Saginaw	4	12	13	4	12	13	4	8	12	682
Montgomery	7	12	24	7	11	20	8	12	21	687
Dauphin	6	9	16	4	7	16	5	8	13	766
Erie	5	9	16	5	10	19	5	10	18	594
TOTAL	48	103	155	41	100	150	42	85	144	7,475

they ranged from 20 minutes to 3 hours in length, with an hour being the norm. Virtually all were tape recorded, which produced in excess of 10,000 pages of transcripts.[2] The interviews were conducted primarily by the three principal investigators, although a few line personnel were interviewed by experienced graduate assistants. Whenever possible, some interviewing in each county was conducted by two or all three principals. This enabled us to obtain first-hand impressions of one another's "home" jurisdictions. In addition, it provided us with the opportunity to meet at the end of the day to exchange observations from our day's experiences as well as to draw comparisons with other counties.

The aim of the interviews was to obtain as much relevant information as possible on each court system's environment and component units, in addition to gaining insights into organizational and personal inter-relationships. Toward this end, we first interviewed all organization leaders--the head prosecutor, the chief judge, and where applicable the head of the public defender's office. We then scheduled interviews with line personnel--judges, prosecutors, public defenders, and private attorneys who were regularly involved in their county's felony court system. Only a handful of these individuals--all defense attorneys or public defenders--declined to be interviewed, and virtually everyone agreed to be taped. Most were refreshingly candid, and informal followup contacts were made with many individuals. Finally, in most counties formal, taped interviews were held with people outside the court system. These included sheriffs, police chiefs, newspaper reporters, county board members, and members of local criminal justice commissions.

All of the interviews were semi-structured. For each role we developed a checklist of items about such things as case flows, assignment procedures, hiring or selection procedures, office or system structures and policies, and various aspects of the court's environment. Most of these items became routine midway through the interview schedule in each county. In later interviews we tried to probe into various points made during earlier discussions. It should also be pointed out that, despite the common checklist, we never hesitated to pursue other interesting topics as they arose. Many individuals used the interview to vent their anger or frustration toward various aspects of the system; this produced a number of ideas that were pursued later. We also used the interviews to challenge certain explanations of events and to offer our own interpretations, thereby generating other topics for discussion. Thus, while a common format was planned, much of what transpired in individual interviews was unique to the county, the interviewer, and the respondent.

Questionnaires and Q-Sorts

While these open ended interviews provided us with much information about the court community and its environment, they produced very little systematic information on the interviewee (i.e., the practitioner). Such information was crucial for an examination of the role that the individual decision-maker played within the system. We needed to know something about the background, attitudes, and personality of the decision-makers as well as their operating style. To obtain these data we asked respondents to give us information about themselves (Appendix I: Background and Career Questionnaire; Appendix

II: Attitudes and Views on Criminal Justice Questionnaire) as well as to provide information on the work styles of others (Q-Sort procedure).

The purpose of the "Background and Career Questionnaire" was to inventory respondents' social and political characteristics, as well as to ascertain their professional backgrounds. Questions dealt with such things as basic demographic traits, political activities, and career patterns and characteristics. The function of the "Attitudes and Views on Criminal Justice Questionnaire" was to elicit information on the respondents' views toward important facets of, or issues in, the criminal justice process. More specifically, we wanted to tap their views regarding such matters as the purposes of bail, due process, concern for efficiency, plea bargaining, and punishment. This questionnaire also contained two versions of a personality test that is generally recognized as a means of tapping a respondent's feelings about whether other people can be manipulated--Machiavellianism.[3] "Hi Machs" are thought to be more apt to manipulate others to obtain desired objectives than "Lo Machs." These questions were included because we felt it was important to obtain a measure of the practitioners' tendencies to assert or act on their beliefs forcefully when encountering those with different beliefs or goals. This was considered crucial given the context within which most criminal court decisions are made.

Because the notion of operating style relates to how practitioners perform work-related tasks and how they relate to coworkers, we decided to ask the practitioners to evaluate one another--instead of themselves. To do this we used a Q-Sort procedure. In this

procedure a respondent is given a set of cards or objects and is asked to sort or categorize them with respect to certain criteria or rules. We presented evaluators with sets of cards containing the names of "other role" occupants (i. e., defense attorneys evaluated prosecutors and judges; judges evaluated prosecutors and defense attorneys, etc.). Each set of cards corresponded to a question relating to a particular work-related attribute (trial competence, docket concern, accommodativeness, reasonableness etc.). The questions differed for judges and attorneys (see Appendix III). For each question the evaluator was asked to rank each person, and these rankings constituted the raw data on operating characteristics.[4]

The "Background and Career Questionnaire" and the "Attitudes and Views on Criminal Justice Questionnaire" were normally administered immediately after the conclusion of the open-ended interview. In some instances these documents were completed in the presence of the interviewer, in other cases they were completed later and either picked up by or mailed to the interviewer. Virtually everyone who was asked to complete the questionnaires complied, although some respondents did not answer all questions or failed to fill out the form correctly. The Q-Sort procedure in which the practitioners were asked to evaluate one another was administered on a second, follow-up interview. (At this time respondents were also asked to complete a second questionnaire: "Attitudes and Views on the Local Criminal Court System," Appendix V, which provided some information on local court community norms.)

The determination of who was to be interviewed and evaluated caused some logistical problems. The dilemma was resolved by including all judges, prosecutors, and public defenders who had handled felony cases during the period in which court cases were sampled from the prosecutor or court files. If, for example, case file data were collected on all cases disposed of during 1979 and 1980, an attempt was made to identify and interview all public practitioners who had played a regular role in the felony process during that time. This information was readily available from various office heads or their aides. Greater difficulties were encountered with respect to private defense attorneys and appointed counsel. In some counties hundreds of attorneys represented at least one defendant during the sampling frame. As it was neither budgetarily possible nor practicable to interview each one, a decision was made to examine court records and/or disposition lists to determine the identity of these attorneys. In some instances we obtained their names from the judges and prosecutors. Subsequent checks with the case data confirmed that virtually all those private attorneys who had represented a large number of defendants had been interviewed.

Case File Data

While the information on environmental and contextual characteristics is extremely important, as is that on decision-maker traits, it would be of limited value without extensive information on case processing and case disposition. The characteristics of the crime (seriousness, evidence) and the defendant (social traits, criminal record) are also important because they may limit (or dictate) how a

case can (or must) be handled. To collect this information we turned to the files of the prosecutors' and clerks' offices. To ensure that we obtained comparable data and to facilitate the analysis of these data, a common data collection sheet was developed (see Appendix V). The form captured data on case and defendant attributes, intermediate processing characteristics, and case outcomes. While most of this information is fairly standard, its real promise lies in the fact that the data are available from a number of very different jurisdictions and exist in conjunction with data on the characteristics of those responsible for the case's disposition.

A problem as difficult as deciding what data to collect was the problem of how it should be collected. We wanted to collect data on comparable samples in each jurisdiction. In addition, in each county we wanted to sample a large number of cases during a time in which the practitioners we interviewed handled a large number of cases. These requirements presented a number of problems. Illinois, for example, has a unified court system with information readily available on lower court and trial court proceedings. Michigan and Pennsylvania have separate systems with separate record-keeping systems. Moreover, in some counties recent elections had led to large-scale personnel turnovers in the prosecutor's office. This required us to pursue a different sampling frame than we would have used if the office had been more stable. It also reduced the number of available cases meeting our needs.

Table 2-3 summarizes some of the characteristics of the case samples in each county. Systemwide samples were available only in the Illinois counties. In the other states all of the sample cases were

Table 2-3

Overview of Sampling Procedures Used in Selected Counties

	DuPage	Peoria	St. Clair	Oakland	Kalamazoo	Saginaw	Montgomery	Dauphin	Erie
Sample type	Felony system sample (includes felonies disposed of at both preliminary hearing and trial court level)	Felony system sample (includes felonies disposed of at both preliminary hearing and trial court level)	Felony system sample (includes felonies disposed of at both preliminary hearing and trial court level)	Felony trial court sample	Felony trial court sample	Felony trial court sample	Felony trial court sample	Felony trial court sample	Felony trial court sample
Selection criteria	All felony cases disposed of between 1-78 and 5-80	The last 1042 cases disposed of before 5-80	The last 1162 case disposed of before 5-80	All trial court cases disposed of by one of 7 judges, in "Division 1," between 7-79 and and 6-80	All trial court cases disposed of between 7-79 and 6-80	All trial court cases arraingned and bound over in District Court between 1-79 and 6-80	All trial court cases disposed of between 1-80 and 10-80; even other case selected	All trial court cases disposed of between 1-80 and 10-80; except ARD cases. Every third ARD case was selected.	All trial court cases disposed of between 1-80 and 10-80
Status of case when sampled	Closed	Closed	Closed	Closed	Closed	Open	Closed	Closed	Closed
Source of information used to identify eligible cases	Clerk's listing of all cases were initiated between 1-78 and 5-80	Prosecutor files of completed cases were sequentially ordered	Prosecutor files of completed cases were sequentially ordered	Printout of closed quarterly reports of assigned defense attorneys	PROMIS list of closed cases	District Court preliminary hearing schedule, schedule, prosecutor	Prosecutor's office's list of completed cases	Trial list, miscellaneous court list (guilty plea cases) ARD List	Trial list arraignment list
Missing Case Problem	Yes	No	No	No	Yes	No	No	Yes, some diversion (ARD) cases were destroyed	Yes, some diversion (ARD) cases were inaccessible
Procedure used to check for other pending indictments	Information contained in memo prepared by assistant prosecutor in each case	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by clerk	Alphabetical file of defendant's local criminal history kept by prosecutor	Alphabetical file of defendant's local criminal history kept by prosecu-

disposed of by the trial courts; those disposed of at the lower court level were not included. This will require some adjustment when certain statistical comparisons are made. As indicated by the selection criteria in Table 2-3, the universe of cases disposed of during a designated period was the sampling frame in most counties. In Oakland County the universe of cases disposed of by one division of the circuit judges was selected, while in Montgomery County every other case for a nine-month period was selected. In Dauphin County every other ARD (diversion) case was selected which meant that a weighting scheme had to be used to obtain the proper representation of cases. In every county but Saginaw the only cases selected were those that were ultimately disposed of. In Saginaw all cases bound over by the lower court were selected, which meant that some cases remained open at the completion of our field work.

In Michigan and Pennsylvania the determination of which cases met the selection criteria was made on the basis of a list produced by the clerk or prosecutor's office. In Peoria and St. Clair completed cases were sequentially filed in separate files for each year. Coders simply worked backwards through the files for the designated time period. In DuPage workers had to use a list of all cases introduced into the system at the preliminary hearing level. The files of many of the cases on that list could not be found, indicating that the cases were still in the system or that the files were lost. A similar problem was encountered in Kalamazoo. The impact of these missing data upon the representativeness of the sample is not known , but the types of offenses involved suggest that it was a fairly random

occurrence. In Dauphin and Erie, access problems were encountered with respect to some ARD cases, which means that they are somewhat underrepresented in the sample.

The last row in Table 2-3 refers to the procedure used to determine whether a defendant had any other pending indictments--resulting from independent arrest encounters--at the time the sampled case was disposed of. To determine systematically the existence of other pending indictments, coders in each jurisdiction checked the defendant's name in an alphabetical file used to record the local criminal history of all defendants recently processed within the county. DuPage County had no such file but this information was contained in a memo prepared for each case by the prosecutor.

A final point should be stressed regarding the sampling procedure. Defendants were sampled, not cases. If defendants were indicted separately on a string of charges arising from the same incident, these were simply treated as additional charges, not as additional cases. This was done to maintain comparability across jurisdictions since charging practices vary considerably across prosecutors. This procedure was also necessary if we were to obtain a realistic measure of what happened to a defendant. Dismissals of "string indictments" are not very meaningful if the defendants also plead guilty to a single charge.

Operationalization of Key Individual Level Concepts

Measures of Decision-Maker Traits

Before the considerable amount of raw data on decision-maker attributes could be effectively utilized, it had to be organized into theoretically meaningful categories and reduced into a more manageable number of relevant measures. The general categories were fairly clear at an early stage in the research. We wanted indicators of background characteristics and personality traits, as well as measures of relevant attitudes and various dimensions of operating styles. The reduction process within some categories was fairly straightforward; in others it caused considerable analytical and theoretical difficulties. For example, the data from the personality test included in the "Beliefs and Attitudes Questionnaire" were easily combined into a single measure of Machiavellianism by simply using the scoring instructions relevant to the version of the test employed.[5] The derivation of a set of background characteristics (social, political, professional) was fairly straightforward; they are outlined later (see Table 2-7) and are self explanatory. Less routine and straightforward was the definition and derivation of measures of attitudes and operating style. They require extended discussion.

Attitudinal Measures. The derivation of attitudinal variables presented problems because the relevant dimensions were not self evident. Earlier works did not provide much guidance, with Hogarth (1971) being a partial exception. Our research required--at a minimum--that we tap decision-makers attitudes toward some fairly specific facets of (or tasks within) the criminal process as well as some fairly broad concepts relevant to the processing of defendants. Thus we developed thirty attitudinal items which tapped respondents' views toward sentencing, plea bargaining, and bail as well as the more general notions of due process and administrative efficiency.

Table 2-4 reports the items used in each of the preliminary categories. After the data on these various questions were assembled, the next step was to reduce the various sets of variables into a single more reliable and manageable measure. Factor analysis was used to analyze each set of variables to determine if they hung together in the intended manner. The results were mixed. Three composite measures were produced. These were labeled "Belief in Punishment," "Regard for Due Process," and "Concern for Efficiency." The items in Table 2-4 which loaded on the these various factors are marked (P), (DP), and (E), respectively. A more detailed derivation and discussion of each is presented in Appendix VI. The analysis was considered only partially successful because none of the bail or plea bargaining items hung together in the intended manner, although two of the bail items were very highly correlated with the punishment factor. It is not clear whether this failure was due to conceptual ambiguities, clumsily constructed questions, or inadequate variance in views on these subjects. In any event, the option remains to use individual items in lieu of a composite measure in these areas.

The fact that the bail and plea bargaining measures failed to materialize should not obscure the fact that three composite measures of attitudes toward important aspects of the criminal process were produced. Each has a straightforward interpretation and promises to play an important role in unraveling the relationship between deci-

Table 2-4

Attitudinal Items Employed to Tap Various Dimensions of Processual Attitudes

Sentencing Items	Bail Items
Most people charged with serious crimes should be punished whether or not the punishment benefits the criminal. (P)	Most people charged with serious crimes should be kept in jail until their trial, even if they have strong ties to the community. (P)
It is important to sentence each offender on the basis of his individual needs and not on the basis of the crime he has committed. (P)	Even with a prior record, most people with strong community ties should not be detained prior to trial. (P)
The frequent use of probation is wrong because it has the effect of minimizing the gravity of the offense committed. (P)	Bail should not be used to give defendants a "taste of jail."
Prisons should be places of punishment. (P)	**Due Process Items**
The failure to punish crime amounts to giving a license to commit it. (P)	Existing Supreme Court decisions protecting the rights of defendants which jeopardize the safety of the community should be curtailed. (DP)
Most people are deterred from crime by the threat of heavy penalities.	It is better to let 10 guilty persons go free than to convict one innocent person. (DP)
Most criminal behavior is the result of forces largely beyond the control of the offender.	The Supreme Court's decisions of the past 20 years expanding the rights of the defendants are basically sound. (DP)
Our present treatment of criminals is too harsh. (P)	**Administrative Efficiency Items**
The most important single consideration in determining the sentence to impose should be the nature and gravity of the offense.	Programs designed to speed up the pace of criminal litigation inevitably produce unjust and improperly hurried resolutions of criminal cases. (E)
Plea Bargaining Items	Most criminal court practices which interfere with the expeditious processing of criminal cases should be modified. (E)
In practice, plea bargains produce more just outcomes than jury trials.	Handling the administrative challenges involved in my criminal court work is as satisfying as handling the legal challenges.
Defendants who save the state the expense of a trial by pleading guilty should get a break.	The criminal court should be run like a business. (E)
Jury trials more accurately determine guilt and innocence than plea bargaining.	In the handling of criminal cases efficiency is important as an end in itself. (E)
Plea bargaining subverts the right of defendants.	

Key =

P denotes item used in "Belief in Punishment" scale.
DP denotes item used in "Regard for Due Process" scale.
E denotes item used in "Concern for Efficiency" scale.

sion-maker attributes and decisions in criminal courts. Individuals scoring high on the "Belief in Punishment" scale evidence a strong belief in the appropriateness of punishment, particularly incarceration, as a tool for dealing with criminal defendants. Those scoring low on this scale do not. This measure could be particularly valuable in the analysis of sentencing and bail decisions. Those scoring high on the "Regard for Due Process" scale appear to be more concerned with defendants' rights than with any threat they may pose to the community. This measure may be as important in understanding the general climate within a court community as it is in explaining any given pattern of outcomes (probability of a plea, for example). The "Concern for Efficiency" measure taps respondents' views on the importance of efficiency and expeditiousness in the processing of cases. It may be relevant in analyses of delay as well as in the attainment of non-trial dispositions.

Operating Styles. The problems encountered in deriving measures of important aspects of practitioners' operating styles were similar to those we faced on attitudes. We had little a priori guidance as to the relevant dimensions or means of tapping these dimensions. We knew we needed to include their approach to formal tasks as well as the manner in which they related to coworkers in informal settings. The latter was particularly important given the role of negotiations and interpersonal relations in the dispositional process. We also knew that the items used to measure these various traits had to differ for judges and attorneys.

Tables 2-5 and 2-6 list the questions asked about judges and attorney's, respectively. These questions were used in conjunction with the Q-Sort procedure described earlier. Using that procedure the occupants of each role (judge, prosecutor, defense attorney) in a given county evaluated the occupants of other roles, using the appropriate set of questions. This procedure produced a wealth of raw data on each evaluatee--each was given a score for each question by each evaluator. It also produced a plethora of problems relating to how the raw data could be used to "say something" about the operating styles of practitioners. The options included using raw, unaggregated scores, standardized unaggregated scores, general aggregated scores (standardized or unstandardized), or role specific aggregated scores (standardized or unstandardized).[6] Several of these options were explored and compared, and the analyses and comparisons are explored in some detail in Appendix VII, "Derivation of the Operating Style Composites."

For the sake of simplicity, and because the analyses reported in Appendix VII suggested a good deal of comparability across approaches, we chose to proceed with an unstandardized aggregated approach to the derivation of operating style measures.[7] That approach required several steps. First, for each practitioner a mean of raw scores (rankings of 1 through 5) was computed for each question. This resulted in two new data bases--a judge data base and an attorney data base. The practitioner was the unit of analysis in each data base, and the data were that practitioner's mean score for each of the evaluation questions.

Table 2-5

Evaluation Questions
Asked About Judges

Question	Descriptive Qualities
1. Please indicate how familiar you are with the local judge's style and behavior in handling a criminal case.	Familiarity
2. Is it easy or difficult to talk to this judge informally with opposing counsel about the disposition of cases?	Informality (I, R)
3. How active a role does this judge play in seeking to affect whether a case will be tried, dismissed, or pled?	Active (I)
4. Without direct information from him, how well can you predict what this judge's sentence will be in a case, merely from the offense, evidence, and defendant's characteristics?	Predictability
5. Does this judge dislike, and try to avoid trials in every case, or does he seem to enjoy them?	Trial Preference (I)
6. What is your opinion of this judge's willingness to be accommodating, and to help you deal with problems and pressures you face?	Accommodativeness (R)
7. To what degree can this judge be pursuaded to change a decision or to accept an argument initially rejected?	Reasonableness (R)
8. If I were a judge, I would handle cases much the way this individual does.	Overall Assessment
9. Does this judge seem to worry about whether his docket is current, or does he seem unconcerned?	Docket Concern (D)

Key=

R denotes item used in Judge's Responsiveness scale.
I denotes item used in Judge's Involvement scale.
D denotes item used in Judge's Docket Concern scale.

Table 2-6

Evaluation Question
Asked About Attorneys

Question	Descriptive Qualities
1. For this set of attorneys, please indicate how familiar you are with their style and behavior in handling a criminal case.	Familiarity
2. What is your opinion of each individual's ability to try a case before a jury?	Trial Competence (T)
3. What is your opinion of the reliability of information about cases each gives you, and their record in keeping verbal commitments?	Trustworthiness (R)
4. What is your opinion of their willingness to be accommodating, and to help you deal with problems and pressures you face?	Accommodativeness (R)
5. How well can you predict what each will do in handling a case?	Predictability (R)
6. How comfortable are you in discussing cases fully and frankly with an eye to a plea or other nontrial disposition with this attorney?	Informality (R)
7. My job would be much more difficult if I developed very bad personal relations with this attorney	Importance
8. If I were an attorney, I would handle my cases and clients pretty much like this attorney does.	Overall Assessment

Key

R denotes item used in Attorney Responsiveness scale.
T denotes item used in Attorney Trial Competence.

The next step was to determine if the various mean scores could be reduced to a smaller number of more general dimensions. Factor analysis was used in conjunction with both data sets, and we were successful in deriving a smaller number of more general, composite variables. (The structure of the factor analyses was extremely similar for all approaches utilized, as pointed out in Appendix VII.) The nine questions asked about judges were reduced to three dimensions. Two are composite variables which have been labeled Judge's Responsiveness and Judge's Involvement. A third, labeled Docket Concern, derives from the Docket Concern question used in the Q-Sort. The factor analysis showed it to be largely independent of the other variables; its substantive importance requires that it be used despite the fact that it is not a composite. The variables used in the various measures are identified in Table 2-5 with an R, I, or D. The eight questions asked about attorneys were reduced to two measures--Attorney Responsiveness, a composite variable, and Trial Competence, which is based on the question concerning the trial skills of the attorney. The variables used in Table 2-6 are designated with an R or T.

The Judge's Responsiveness measure is composed of the Informality, Accommodativeness, and Reasonableness questions reported in Table 2-5. The factor analysis showed that the qualities of informality, accommodativeness, and reasonableness hung together quite tightly. Judges ranked high (or low) on one, tend to rank high (or low) on the others. This composite was labeled Judge's Responsiveness because judges perceived as exhibiting the three traits comprising that category can be regarded as responsive to the needs and norms of the

courthouse community; they are viewed by others as displaying flexibility and reason in their day-to-day transactions. Moreover, more responsive judges can probably be relied upon to help dispose of cases in a manner satisfactory to all members of the courtroom workgroup, thus reducing uncertainty and the unnecessary expenditure of personal and system resources.

The Judge's Involvement scale was composed of the Active, Informality, and Trial Preference questions. It is labeled Judge's Involvement because it taps a judge's inclination to deviate from the textbook role model of the judge as a passive, neutral arbiter. The most significant component of the Involvement composite is the Active variable. Judges who are evaluated as very active in affecting, or attempting to affect, the disposition of a case will score very high on the Involvement scale. Informality plays a part in this concept because a judge could not maintain highly formal relations with the other participants and still become integrally involved in shaping the outcomes of cases. A more formal judge would either simply react to proposed pleas or dispositions, or prefer to supervise the conduct of trials. The role of the Trial Preference variable in the composite is not as clearcut. It may be that judges who dislike trials believe they can have a greater impact, or at least a more meaningful impact, upon a case in a more informal setting. However, the causal relationship may in fact be the other way around: these judges may dislike trials so much that they have come to rely on the informal setting. Whichever is the case, the question cannot be definitively resolved with the available data. Suffice it to say, more "involved" judges prefer to work in an informal setting.

The Attorney Responsiveness scale is composed of the Informality, Accommodativeness, Trustworthiness, and Predictability questions. The Informality and Accommodativeness questions are important because they also appeared in the construction of the Judge Responsiveness scale. This, of course, reinforces the interpretation of responsive participants as those who structure their behavior in such a way that they meet or accommodate the social and personal needs of coworkers. Trustworthiness and Predictability are simply other facets of being a responsive coworker. Trustworthiness, or keeping one's word, is an integral part of this general trait because so much of the formal work done in courts depends on whether the participants' can rely on the word of coworkers. Trustworthiness facilitates work because participants often must "go out on a limb" in having a particular plea approved, setting a particular bail, or persuading a client to plead guilty. If a participant cannot rely upon the veracity of a coworker, numerous problems, some potentially embarrassing, and much additional work is created. Predictability, although it is less important than the others, is relevant because it deals with the notion of uncertainty. It reduces the need to worry about the antics or strategems of coworkers.

Table 2-7 presents a summary of the individual level measures available for the decision-makers included in this study. These individual level measures have been "matched" with the cases they handled in the various county samples. That is, if Judge X handled y cases in a county, Judge X's individual attributes were added to the other case data (offense, disposition, defense race, etc.) for those y

Table 2-7

Summary of Individual Level Measures

Social Characteristics	Political Characteristics	Career Information				Personality Type	Attitudes Towards Criminal Justice	Operating Style	
		General	Judges	Public Attorneys	Private Attorneys			Judges	Prosecutors and Defense Attorneys
Age Sex Race Percent of life in county Organizational membership	Strength of Partisan affillation Number of times elected to public office (excluding present office) Number of times appointed to public office Ever held an office in local political party?	Law School Date of graduation Number and types of bar memberships	Length of time on bench Manner of initial selection (elected or appointed)) Nature and length of prior professional experiences	Length of time with office Type of position (full or part-time) Was this first job after law school? Nature and length of prior professional experiences, if any. Contemplates a legal career in local public sector?	Length of time in local private practice Number of lawyers in firm Percent of practice devoted to local felony cases Ever a prosecutor? Ever a public defender?	Machiavellianism	Belief in punishment Regard for Due Process Concern for Efficiency	Judge's Responsiveness* Judge's Involvement* Judge's Docket* Concern	Attorney's Reposiveness* Attorney's trial* competence

*General and Role Specific versions available.

cases in a data file with the defendant as the unit of analysis. This will make it possible to examine the decision-makers' impact on the handling of individual cases.

Measures of Case and Defendant Attributes

As was the case with decision-makers we have a plethora of information on case and defendant characteristics. Moreover, we have the same problem with respect to data reduction: some measures are fairly straightforward while others require more involved derivations. The more basic measures are reported in Table 2-8. Most of these measures simply involved "cleaning" the raw data or making minor alterations (collapsing categories, combining information from two or more different variables). Others are dummy variables (availability of a statement or a weapon, existence of a prior relationship between the defendant and victim, filing of a motion to suppress) which were constructed from categorical variables. Of the variables reported in Table 2-8, it was most difficult to derive the common charge variables. But the difficulty here was primarily administrative--relating statutory citation to specific offenses and insuring comparability of categories across the three states.

Two variables of particular importance which required more involved derivation were the seriousness of the defendant's criminal record and the seriousness of the offense. The defendant's criminal record is extremely important in some jurisdictions and for some offenses because it can make the difference between probation, a marginal sentence, or a trip to the state penitentiary; it also affects other aspects of how a case is handled. However, our efforts

Table 2-8

Basic Variables Relating to Case and Defendant Characteristics

Case Characteristics	Defendant Characteristics	Intermediate Process Characteristics	Case Outcome Variables
Charge Common Code for each stage of proceedings	Social Age, race, sex, marital status*, occupation*, education*, employment status*	Case Processing Time Total and intermediate	Bail Outcomes type, amount, size and direction of any bail change, pretrial release status
Seriousness Type and use of weapon, nature of injury, amount of stolen/damaged property, amount of drugs involved	Criminal History Number of prior arrests, convictions, jail or penitentiary commitments; present probation or parole status; number of other pending indictments	Legal Motions Number, type, outcome	Type of Disposition Dismissal, trial, guilty plea, etc.
Evidence Availability of statement, proceeds, polygraph results, weapon, etc.		Prosecutor's initial plea offer* Type of plea, sentence offered	
Victim Characteristics Type of victim, age*, sex*, race*, existence of prior relationship with defendant*		Identity of Judge, Prosecutor, Defense Attorney At bail, lower court disposition*, trial court disposition, sentence	Sentence Type, length, amount of costs, etc.

*Indicates that this information was not available in every jurisdiction.

to examine the impact of this factor were hampered because our four criminal record variables--number of prior arrests, number of prior convictions, number of jail commitments, and number of penitentiary commitments--were highly intercorrelated. This problem was resolved by employing factor analysis. The analysis resulted in a very strong single factor solution which produced a composite criminal record variable.[8]

Perhaps the single most important variable for examining case outcomes, sentencing in particular, is the seriousness of the charge for which the defendant was convicted. The derivation of offense seriousness is always challenging because statutorily defined measures are usually too crude; moreover, they seldom correspond to the "going rates" which actually prevail in most county court systems. The problems here are compounded by the existence of three different criminal codes, nine different sets of "going rates," and the need for one measure of offense seriousness across all offenses and counties. To overcome this problem, a set of dummy offense variables was constructed for each offense that was represented in an appreciable number of cases. The dummy variables for the most serious offense at the sentencing stage were then entered into a regression equation for each county (using all sentenced defendants in that county) with minimum jail time (non-jail sentences coded as 0) as the dependent variable. The results of these nine equations (A + B1 * DUMMY1 + B2 * DUMMY2 +.....+ Bn * DUMMYn) were then used in conjunction with the case's county to assign an offense seriousness score for each case. The score assigned to each offense is equivalent to the mean score

accorded defendants convicted on that offense in a given county. It may be loosely interpreted as the "going rate" for a given offense in that county.

A few comments should be made regarding this procedure. First, while some may view it as "circular" to predict sentences using a variable containing mean sentences for a given offense, the results of this procedure are identical (by definition) to using a dummy offense variable approach--which is considered entirely legitimate and "noncircular." This procedure (like the traditional dummy variable approach) allows us to control for the effect of offense so that the effects of other, more theoretically interesting variables can be confidently examined. At the same time, this approach is more economical and flexible than the dummy variable approach. It permits us to capture or control for offense seriousness with a single variable. This is important because it permits us to use offense serious in an interactive statistical model and to economically control for the seriousness of second and third offenses, where relevant.[9] Finally, with respect to the analysis of sentencing, this approach is very advantageous because it is extremely conservative. It permits offense to explain as much variance as possible before other, theoretically more interesting, variables are permitted to enter the multivariate analysis.

REFERENCES

Eisenstein, James, Peter F. Nardulli, and Roy B. Flemming (1982). Explaining and Assessing Criminal Case Disposition: A Comparative Study of Nine Counties. (Vol. 1-6)

[1] Although this report focuses solely on sentencing, our overall effort also encompasses analyses of disposition and delay. Thus, while some of the measures to be described here may not be as relevant to sentencing as others, they are reported here for the sake of completeness. The disposition and delay analyses will be reported in Nardulli, Eisenstein, and Flemming (forthcoming, 1984).

[2] This work will deal only tangentially and in summary fashion with the extensive amount of interview data collected. Chapter Three, and, especially Chapter Four will summarize some of the observations contained in these field notes. For very detailed, county by county analysis of these data see Eisenstein, Nardulli, and Flemming (1982, Volumes II, III, IV).

[3] For more information on Machiavellianism see Christie and Geis (1970). There are several versions of the Machiavellian scale available and two were used here. First, eight items from the full "Mach IV" scale were chosen on the basis of their patterns of correlation in prior studies. These are contained in Part II of the "ATTITUDES AND VIEWS ON CRIMINAL JUSTICE" questionnaire included in Appendix I. In addition, six sets of questions were chosen from the "MACH V" version of the scale to compromise Part III. It is different in format from the "MACH IV" in that it presents respondents with a triadic choice in which they must choose between socially undesirable alternatives. It is hoped that this will mititgate the bias toward socially desirable alternatives. It has been termed a "Machiavellian" Mach scale.

[4] The actual procedure used here was as follows: Each of the questions reported in Appendix III was printed on a colored sheet of

paper. The sheet of paper also had a scale from 1-5 on it, with directions as to what characteristics were to be given high scores and which low scores. Each sheet of paper was presented to each evaluator, one at a time. The evaluator was also given a set of color coded index cards which matched the color of the paper on which the question was printed. On each index card the name of an evaluatee appeared. The evaluator was then asked to rank each individual on the dimension in question by dropping the color coded index card with the individuals name on it into a slotted "ballot box." The slots were marked from 1 to 5. In addition there was one "Don't Know" slot. The evaluator was given a separate set of colored index cards for each of the questions asked. The responses were then coded with the evaluator as the unit of analysis. The variables for each respondent corresponded to that evaluator's assessment of each evaluatee on each of 8 or 9 questions.

5 The "Mini Mach V" measure of Machiavellianism was the measure we chose to employ in our later analyses. Any reference to Machiavellianism refers to this measure, unless otherwise specified.

6 A standardized score in this context means one that is adjusted for a individual evaluator's internal scale. For example, some evaluators may rank their colleagues close to the middle (between 2 and 4) while others may utilize the entire range of variation (1-5). To make the scores comparable across evaluators in a county it may be necessary to standardize rankings by evaluator.

7 Other versions of the operating style measures which are discussed in Appendix VII are available (role specific, aggregated measures; general standardized measures), but unless otherwise specified the general unstandardized versions are utilized in the later discussions and analyses.

8 The results of the factor analysis used to compute the "Criminal Record" variable are reported below. They show a strong, simple factor solution which yields a straightforward interpretation. The factor score for a given case is computed by summing its scores on the weighted standardized variables (weights = factor loadings) used in the factor analysis.

Results of Factor Analyses
for Criminal Record Variable

Variable	Factor Loading
Prior Arrests	.68
Prior Penitentiary Commitments	.64
Prior Convictions	.93
Prior Jail Commitments	.76
Eigenvalue	2.3

9 The effects of other offenses can be analyzed because the same equation that was used to assign a seriousness score for the most serious offense at conviction in a county was used to assign seriousness scores for up to three offenses charged at each of four stages of the process. Thus, for each case we have a measure of offense seriousness for three charges at the arrest, preliminary hearing, trial court arraignment, and sentencing stage. This availability of

information on the "flow" of charge seriousness through a case's history as well as a simple way of aggregating and examining the seriousness of charges at any given stage will prove useful at different points in the analysis. It further demonstrates the flexibility and value of this approach.

Chapter 3

THE ENVIRONMENT OF THE SENTENCING DECISION

Most sentencing decisions are the result of complex interactions among individuals who have different views, abilities, and work styles but who also have many things in common. Judges, prosecutors and defense counsel are normally drawn from different sectors within a local court community. Yet many of them may have had various contacts over the course of many years, and some are aware that their paths will cross with others in the years ahead. The structure and orientation of this court community varies from county to county over time; this too can have an important impact upon the nature and conduct of interactions. More will be said of these contextual influences in Chapter Four. Further removed from such day-to-day interactions among courtroom actors are environmental factors, which provide completely different insights into the sentencing decision.

An understanding of a county's sociceconomic structure, for example, can help explain the political implications of sentencing. If a court's clientele comprises members of middle and working-class families, the sentences may be quite different than if the defendants are primarily drawn from a decaying county seat, long since deserted by middle-class residents. These socioeconomic factors, in conjunction with the prevailing political sentiment of the county on law and order issues, may affect the severity of sentencing norms in the court community.

The level of crime in a county may also affect sentencing norms. Continually high rates of serious crime may increase pressure on courtroom practitioners to mete out more severe sentences. Two factors may affect how these influences are "played out" within the court community. One is the linkages between the county and the court community. The court community is expected to be more responsive where linkages are tighter. The other factor encompasses structural and legal phenomena. Thus, for instance, where the jails are already full, the ability of the court community to respond to external pressure by imposing more severe sentences is limited. The sentencing code is the most important legal factor shaping sentencing, although other legal influences (appellate court decisions) may also be relevant.

The scheme used to select the counties studied here (laid out in Chapter One) was designed, in part, as a convenient measure to maximize intra-state variance on important aspects of the criminal court's environment. A more sophisticated design was not possible for a number of reasons. First, our "population of counties" within a given state was limited by our need to study larger jurisdictions. Thus we could only choose from among nine counties in Illinois, sixteen counties in Michigan, and twenty-four counties in Pennsylvania. A second problem was that we had very little a priori understanding of which aspects of a criminal court environment were the most important (i.e., we were not sure which criteria ought to form the basis for selection). This is why we decided to use the

ring-autonomous-declining distinction. These categories seemed to be socially and politically different enough to produce counties which varied in ways important to the operations of the court systems.

This chapter lays out in more specific detail the nature of the differences across the nine counties; Chapter Five will discuss the implications of these differences for sentencing decisions. Here we will be concerned with differences at two levels--county level and state level. At the county level we will be concerned with two very general sets of factors (socioeconomic and political) and two more specific sets (crime levels and local jail capacity). In addition, we will discuss linkages between the county and the court community. At the state level we will be dealing with legal factors (severity of the state sentencing code), structural factors (capacity and nature of the state penal system), and cultural factors (sentencing norms).

County Level Differences in the Court Community's Environment

Socioeconomic Characteristics

One important component of a county's social makeup is simply the size and racial composition of its population, and the changes in each over time. Table 3-1 reports some data on these matters. Oakland is, by far, the biggest of the counties, followed by the other two suburban ring counties, Montgomery and DuPage. The others range from a low of 200,000 (Peoria) to a high of almost 280,000 (Erie). DuPage has grown the most rapidly over the past two decades, while St. Clair grew the least quickly and, indeed, lost population between 1970 and 1980. None of the counties-- except DuPage-- experienced much growth

Table 3-1

Basic Population and Population Change Data

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Population (1980)	658,835	200,466	267,531	1,011,793	212,378	228,059	643,621	232,317	279,780
Population Changes									
1960-1970	4.4%	0.3%	0.8%	2.7%	1.7%	1.7%	1.9%	0.2%	0.5%
1970-1980	3.0%	0.3%	-0.7%	1.1%	0.5%	0.3%	0.3%	0.4%	0.6%
Percent Black									
1960	.10%	5.07%	17.89%	2.28%	2.7%	8.2%	2.93%	9.1%	2.50%
1970	.25%	7.41%	23.74%	2.81%	4.5%	11.80%	3.51%	11.3%	3.20%
1980	1.19%	10.73%	27.53%	4.74%	7.46%	15.7%	4.80%	13.46%	4.44%
Percent Change in Black Population (as a percent of total Population) 1960-1980	1.09%	5.66%	9.64%	4.46%	4.76%	7.5%	1.87%	4.36%	1.94%

Source: Data sheets provided by the U.S. Census Bureau. Delays due to budget cutbacks prevented us from using published sources reporting 1980 census data.

in the 1970s. Table 3-1 also reports trends in the black population. St. Clair has the largest proportion of blacks, more than double the next highest counties (Saginaw, Dauphin). DuPage has virtually no black population while three others are less than five percent black (Oakland, Montgomery, Erie).

Table 3-2 reports some data on different measures of economic well-being. With respect to income, the ring counties are the wealthiest in each state, followed by the autonomous counties, as would be expected. DuPage and Oakland have somewhat higher incomes than Montgomery, while Peoria is higher than the other two autonomous counties. St. Clair and Erie clearly have the lowest income levels. A similar pattern emerges with respect to AFDC recipients per 100,000 population. Although the ring-autonomous-declining ranking holds with respect to AFDC recipients, some dramatic differences emerge. St. Clair and Saginaw have by far the highest incidence of recipients--17 and 13 times higher than DuPage, respectively, and considerably higher than their corresponding autonomous county. Erie, the other declining county, has a relatively moderate AFDC rate, not much different from Dauphin. What the extremely high AFDC rates in St. Clair and Saginaw suggest, of course, is that a significant "underclass" exists in each county, undoubtedly residing in their core city (East St. Louis, Saginaw). This is not to suggest that significant pockets of an "underclass" do not exist in the other counties, simply that they are probably not as politically salient as in St. Clair and Saginaw.

One last measure of well-being is the unemployment rate. While more volatile than the other measures, it is an important measure of an area's economic viability. Overall the Michigan figures are

Table 3-2

Selected Measure of Economic Well-Being

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Per Capita Money Income 1979	$10,495	$8,388	$6,550	$10,675	$7,776	$7,263	$9,764	$7,581	$6,680
Public Assistance Recipients (per 100,000 population) Feb. 1980	713	4,689	12,409	3,202	5,838	9,778	1,569	5,165	5,361
Unemployment Rate									
1979	3.5%	5.6%	7.0%	5.7%	5.2%	7.6%	6.0%	5.3%	7.2%
1980	5.6%	8.6%	9.5%	10.9%	7.9%	14.5%	6.3%	6.0%	9.1%

Source: Data sheets provided by the U.S. Census Bureau. Delays due to budget cutbacks prevented us from using published sources reporting 1980 census data.

higher, due to the currently depressed state of the auto industry and the statewide repercussions of that situation. Here again the declining counties have regularly higher unemployment rates, with Saginaw's being the highest. It should be noted that in Michigan and Pennsylvania the unemployment rate in the ring county is higher than that in the autonomous county.

Another interesting aspect of middle-sized counties such as these is the nature and prominence of the core city, if there is one. Some counties of this size have a single city which dominates most aspects of a county's social and political life because the city is, in effect, the county. Other counties have a core city that is not large or powerful enough to dominate the surrounding area; in such situations a city-country rivalry often develops, especially if the city houses racially or ethnically distinctive populations. Still other counties have no core city at all. We have examples of each in our study, as Table 3-3 demonstrates.

While all of the counties have a sizable number of incorporated municipalities (except Saginaw and possibly Kalamazoo), most are mere hamlets. Only DuPage and Oakland have more than twenty municipalities greater than 5,000 in population, and DuPage has the most (33). All of the other counties have 5 or fewer cities above 5,000 in population, except Peoria and Montgomery. The major cities range in size from about 33,000 (Norristown) to about 120,000 (Peoria, Erie). Most, however, are in the 50,000 to 80,000 range. Of these cities only Peoria, Kalamazoo, Saginaw, and Erie can be said to truly dominate the county. The cities of Peoria and Erie are both very large and constitute a healthy proportion of the county's population. While the cities

Table 3-3
Characteristics of the Major Cities in Each County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Total Number of Incorporated Localities	39	15	32	44	10	8	41	22	14
Incorporated Localities over 5,000 in Population	33	9	5	21	2	1	7	3	3
Major City	Wheaton	Peoria	East St. Louis	Pontiac	Kalamazoo	Saginaw	Norristown	Harrisburg	Erie
Population of Majnr City, 1980	42,772	123,591	54,966	76,270	79,568	77,384	32,891	53,113	118,964
Percentage of County's Population Residing in Major City	6.5	62	21	7.6	37.5	34	5	23	42.6
Percentage of County's Black Population Residing in Major City	13.7	96	72	59.5	78.5	77	25	74.2	93.2

Source: Data Sheets provided by the U.S. Census Bureau. Delays due to budgetary cutbacks prevented us from using published sources which reported 1980 census data.

of Kalamazoo and Saginaw are smaller and constitute less than 40 percent of the county's population, there are simply no other cities of any magnitude in the county. No city in the ring counties has more than 10 percent of the county population. East St. Louis is not considered to be the dominant city simply because of competition from Belleville. Belleville, while smaller, is really the hub of much county activity.

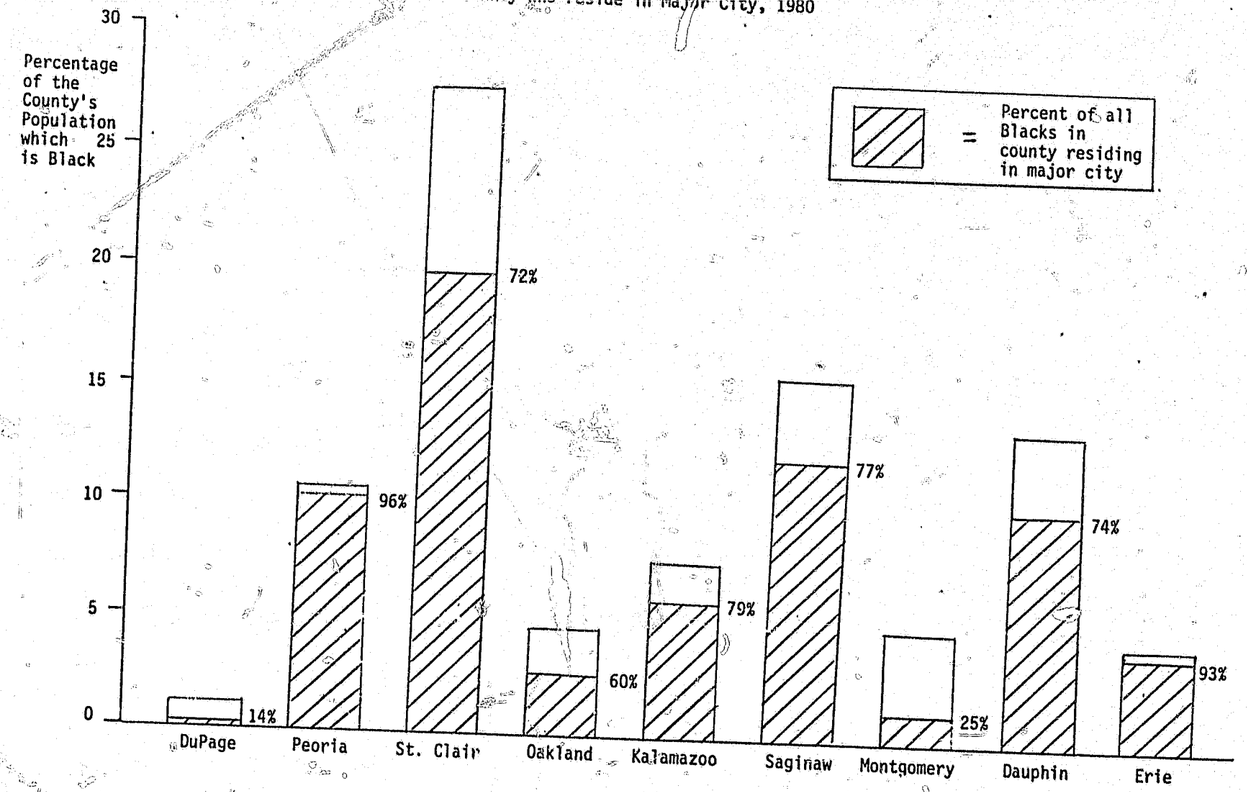
While Table 3-3 shows the proportion of each county's black population residing in its major city the figure may be somewhat misleading. While all of the major cities but Wheaton and Norristown house the majority of the black population, the size of their population varies considerably from county to county. Figure 3-1 puts these figures in proportion. The shaded area indicates the proportion of the counties black population residing in the major city, while the bar indicates the percentage of the county that is black. Only a handful of counties (St. Clair, Peoria, Kalamazoo, Saginaw) have a sizable black population, and in each case it is heavily concentrated in the major city.

Political Charecteristics

Another important aspect of a court community's environment is the county residents' political affiliations and preferences. Accurate measures of these political factors, however, are difficult to obtain. Consider, for example, political affiliation. While it seems a rather straightforward concept, counties do not normally make available information on party registration. Only the Pennsylvania counties had such data available here, and it can be volatile in any event.

Figure 3-1

The Proportion of all Blacks in County who reside in Major City, 1980



Moreover, elections in which personalities or local issues are not a confounding factor are rare, difficult to identify, and would introduce comparison problems. Therefore, our measure of political orientation derived from voting data on a variety of elections (county executive officers, state legislative races, federal legislative and executive contests) and, where possible, over a span of several terms. The hope is that idiosyncratic factors will, on balance, cancel one another out, allowing an accurate picture of political affiliation.

These data are reported in Table 3-4. Most of the counties range from "strong Republican" to "Republican"; i.e., they almost always vote in favor of the Republican candidate in a local, state, or federal election. Only St. Clair is a clearly Democratic county. We categorize Erie as Democratic, but it is, in fact, only marginally Democratic.

One should be very careful in drawing conclusions about political ideology on the basis of affiliation data. A very strong Democratic county may well have leaders who are fairly conservative on many matters, including the so-called "moral issues." A county's Republican leaders may be well entrenched simply because of their moderate views. Therefore, a separate measure of political ideology must be constructed--a task which is far more challenging than measuring party affiliation. Here again several pieces of data were melded into two independent (and admittedly imperfect) measures of political ideology.

The first approach utilizes data on liberal and conservative rankings of the voting records of the U.S. representative for each county in Congress, for the congressional sessions between 1971 and

Table 3-4
Party Affiliation Measures
by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Percent of Elected County Executive Officers Who Were Republican, 1977*	100	66	22	83	100	50	86	86	44
Percent of Time That County Voters Cast a Majority of Votes for the Republican Candidate in State Representative Elections) (last 3 elections)*	97	66	64	75	100	75	85	83	46
Percent of Time County Voters Cast a Majority of Votes for the Republican Candidate in Federal Elections (1972-80)**	100	91	18	75	64	64	100	82	64
Overall Categorization	Strong Republican	Republican	Democratic	Republican	Republican	Republican	Strong Republican	Strong Republican	Weak Democratic

* These data were derived from official reports of vote results in the various states.
** These data were derived from American Votes, volumes 10-14, compiled and edited by Richard M. Scammon and Alice V. McGillivray (Washington: Congressional Quarterly, 1973, 1975, 1977, 1979, 1981)

1980 (92nd through the 96th Congress). Using a procedure outlined in Appendix VIII, two ideological rankings (ACA, ADA) were used to compute a raw conservativism measure for each county. These raw measures were weighted by the percent of the vote given to the representative in the county. This was necessary because counties are not necessarily coterminous with congressional districts, a problem that is discussed in more detail in Appendix VIII. The second measure of county ideology was the average support given to conservative candidates in ideological elections (Goldwater in 1964; Nixon and Wallace in 1968; Nixon in 1972; Reagan 1980).

Table 3-5 shows data on the average support given conservative presidential candidates in ideological elections and the more involved weighted conservatism scores. The unweighted conservatism scores are also reported, but only for purposes of comparison. The voting totals and the conservativism scores were fairly similar as indicated by the rank orderings for each measure (rows 4, 5). These were used to produce an overall categorization (row 6).

St. Clair and Erie both have the lowest average vote and weighted conservatism scores. They are ranked as only moderately liberal because neither set of scores is exceptionally low. The unweighted conservatism scores, which range from -100 to +100, are in the second quadrant and neither's average conservative vote totals drop below 40 percent. The three Michigan counties are coded moderate: their weighted and unweighted conservativism scores are in the middle range, and their conservative vote totals hover around 50 percent. But one point should be made about Oakland. Unlike the other eight counties, Oakland is almost evenly divided into two

Table 3-5
Political Conservativism Scores
by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Weighted Conservativism score (weighted by proportion of vote received in county in election following the session for which voting was ranked)*	38.7	47	-31	13.6	10.3	-2.6	47.6	18.3	-16.5
Unweighted Conservativism score*	(52.6)	(78.3)	(-42.2)	(23.1)	(20.7)	(-6.8)	(72.5)	(32.5)	(-29.4)
Averaged vote for conservative presidential candidate(s) in "ideological" elections (1980, 1972, 1968, 1964)*	68%	55%	43%	53%	53%	51%	56%	60%	46%
Rank of county based on weighted Roll Call measure	3	2	9	5	6	7	1	4	8
Rank of county based on voting measure	1	4	9	5 (tie)	5 (tie)	7	3	2	8
Overall categorization	Con-serva-tive	Con-serva-tive	Moder-ately Liberal	Moder-ate	Moder-ate	Moder-ate	Con-serva-tive	Moder-ate	Moder-ately Liberal

* See Appendix VIII for derivation and source of this measure.
** Source: American Votes, compiled and edited by Richard Scammon and Alice McGillivray (Washington: Congressional Quarterly)

congressional districts. One is fairly conservative; the other is fairly liberal. To get Oakland's final score we simply averaged the scores from the two districts. This is important to note because it reveals that two very distinct political forces are at work within the county, each with an independent, geographically distinct, power base.

Dauphin, is also categorized as moderate, despite the second highest voting percentage for conservative presidential candidates. This was inconsistent with the weighted and unweighted conservativism scores which were quite moderate. An examination of the trend of these scores reveals a moderate to liberal tendency after 1976. The high level of votes for conservative presidential candidates in Dauphin may be due to the existence of a strong Republican organization in Harrisburg, the Republican dominated state capitol. DuPage, Peoria, and Montgomery were all categorized as conservative. DuPage has the highest voting percentage for conservative presidential candidates and fairly high weighted and unweighted conservativism scores. Peoria and Montgomery were very high on the weighted conservativism scale but less distinctive on the presidential voting percentages.

One last facet of the courts' political environment that should be mentioned is its political culture. While this is a somewhat vague concept and often used as a residual explanatory variable (i.e., after all others have failed), several judicial scholars embraced it in earlier studies (Jacob, 1969; Grossman and Sarat, 1971; Levin, 1977; Kritzer, 1979). Moreover,the concept holds much promise for explaining variations in local politics across entities which differ in geographic locale or settlement patterns. Elazar, in his analyses

of political culture in the United States (1966, 1970), develops this notion in a manner particularly well suited to our purposes. Kritzer (1979, p. 135) summarizes Elazar's approach quite succinctly:

> Elazar has suggested three dimensions of political culture which he believes to be particularly suited for the study of the political cultures of the American states: "(1) the set of perceptions of what politics is and what can be expected from government, held by both the general public and the politicians; (2) the kinds of people who become active in government and politics, as holders of elective offices, members of the bureaucracy, and active political workers; and (3) the actual way in which the art of government is practiced by citizens, politicians, and public officials in light of their perceptions." (1966, pp. 84-85) Elazar argues that in fact American politics can be seen as rooted in two contrasting conceptions of what the American political order should be; one views the political order as a "commonwealth" in which there is something which could be labeled the "public interest" or the "common interest," while the other sees politics as a marketplace serving the self-interests of the participants. He goes on to combine his various arguments to identify three "ideal type" political cultures: the moralistic

> political culture, which sees politics as a "positive sum game" seeking to achieve the good society; the individualistic political culture, which sees politics as a "zero sum game" in which it is legitimate for individuals and groups to use politics as a means of social mobility and personal enrichment; and the traditionalistic political culture, which views politics primarily as something to be done by the elite who, in a paternalistic fashion, will seek to serve the needs of the public while maintaining the status quo.

Another benefit of Elazar's approach is that he provides an operational, although admittedly rough, means for determining the ideal type within which a particular geographic locale most closely fits. He identifies various religious bodies (Elazar, 1970, p. 475) that reflect different migrant streams closely related to the different political cultures (moralistic, individualistic, traditionalistic).[1] Johnson uses data on religious affiliation to categorize states, and his categorizations match Elazar's ~~fairly~~ closely (Johnson, 1976, p. 495-499). Johnson simply sums the proportion of religious adherents in a locale for each of the religions in a particular category. Thus, for each political culture category a locale receives a score from 0 to 100. That score reflects the relative percentage of religious adherents which Elazar associates with that category. Not all locales sum to 100 because not all

religions are categorized. Moreover the categorizations do not exhaust the locale's population because a significant proportion of the population is not affiliated with any religion.

We adopt Johnson's approach and use it in conjunction with religious affiliation by county.[2] The results are reported in Table 3-6. Clearly, there is not much variance--the individualistic culture is, by far, dominant in each county; this is also true of each of the three states. DuPage, Oakland, Saginaw, and Erie rank highest in the individualistic category, between 72 and 81 percent. The others range between 61 and 67 percent, except Dauphin which is 53 percent. The next highest distribution lies in the moralistic category, with Kalamazoo, Montgomery, and Peoria especially high. St. Clair is the only county with a sizable distribution in the traditional category.

One reason for the lack of variance lies in the obvious fact that all counties were selected from the Northeast. Thus, they may all share to a large degree certain common expectations as to the nature and role of government. Traditional cultures are found almost entirely in the South, while the few highly moralistic cultures identified by Elazar and Johnson are in the West (Idaho, Utah), where there is a high proportion of Mormons. However, we should not be too quick in assuming a high degree of similarity across counties, since the dominant religion in the nine counties studied here is Roman Catholicism. This causes problems because Catholics come from a variety of different streams--Irish, Italian, German, French, Polish, Spanish--which Elazar would categorize differently. Yet, because they are all Catholic they are all categorized as individualistic. This

Table 3-6

Percentage Distribution of Elazar's Political Culture Categories by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Moralistic	16.3	24.1	16.0	16.0	32.5	16.2	31.3	40.1	11.5
Individualistic	80.4	66.8	63.3	79.3	61.1	81.3	64.3	53.6	72.9
Traditional	.7	6.6	19.5	2.9	3.9	1.3	.5	1.0	1.5

may mean that the deviation evident in Peoria, St. Clair, Kalamazoo, and Montgomery may be more meaningful than is apparent at first glance.

Crime Rates

It is important to consider the nature of the crime problem in each of the counties not because of its implications for the court system's workload but rather because of its political import. Whatever the deficiencies of the FBI's Uniform Crime Index for measuring the magnitude of "real" crime in a given locale, it is virtually the only crime data that is widely disseminated. Community responses to these data form the basis for political pressures upon various members of the court community. An understanding of the differences in these crime rates may shed light on externally, and internally, generated demands to "do something."

An examination of crime data for the one or two years surrounding the conduct of this study is inadequate because crime rates for such small locales are volatile; moreover, they fail to reveal long term trends and pressures. Thus Graphs 3-1 and 3-2 report the rate and trend of violent personal crime and property crime for each county over a ten year period (1971-1980).[3] Two aspects of these graphs need to be looked at more closely --differences in their overall levels and differences in short term trends. Both can have implications for how members of the court community go about their business.

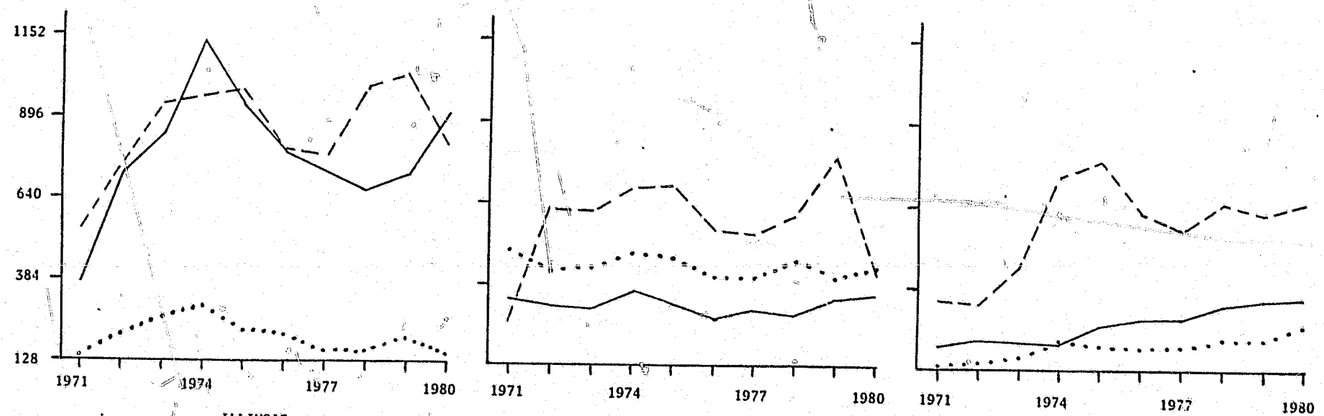
Table 3-7 categorizes the counties on the basis of their crime rates--the numbers in parentheses are means of the rates for the ten-year period. In many ways the personal crime figures are the most

Graph 3-1

Trend of Violent Personal Crime

By County -- 1971-1980

(Rate per 100,000)



Graph 3-2

Trend of Property Crime

By County -- 1971-1980

(Rate per 100,000)

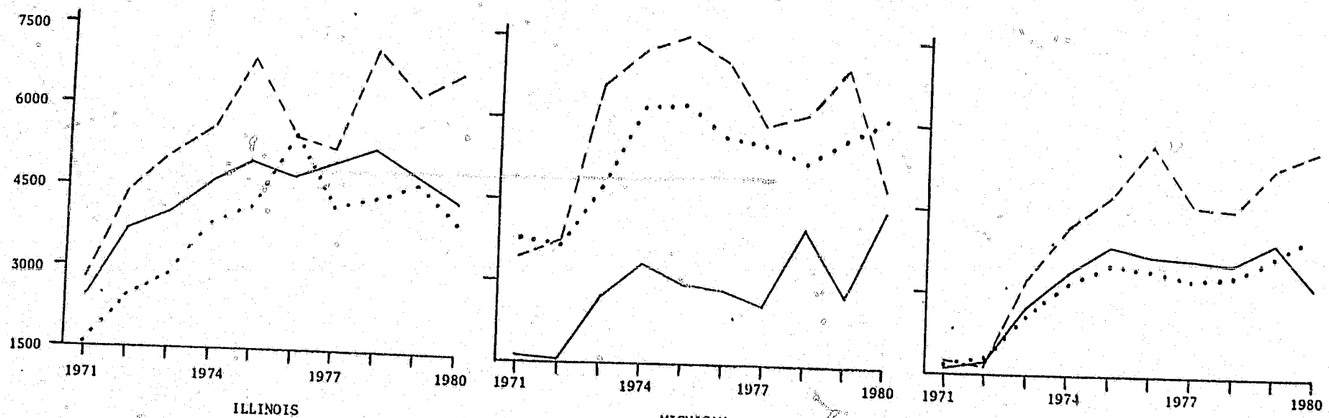


Table 3-7

Categorizations of Crime Levels

	Higher	Medium High	Medium Low	Lower
Personal Crime	Peoria (860)	Kalamazoo (582)	Oakland (442)	Erie (243)
	St. Clair (792)	Dauphin (520)	Saginaw (333)	DuPage (205)
				Montgomery (201)
Property Crime	Kalamazoo (5960)	Peoria (5392)	Dauphin (4142)	DuPage (3222)
		Oakland (5291)	St. Clair (4029)	Erie (3132)
				Montgomery (3061)
				Saginaw (2568)

important because they are for the type of crime which makes headlines and generates the most fear among the citizenry. Clear categories emerge here. Peoria and St. Clair have the highest rates; Kalamazoo and Dauphin are poor seconds. Two Michigan counties (Oakland and Saginaw) have fairly low personal offense rates, while two of the ring counties (DuPage and Montgomery) and Erie have the lowest. Property crimes are affected by different factors (affluence, extent of commercialization) and can generate different types of pressures. The rankings are somewhat different here. While Kalamazoo and Peoria are still fairly high, St. Clair drops two categories; Oakland moves up one category. Dauphin and Erie both drop one category while DuPage, Erie, and Montgomery remain in the lowest category.

Table 3-8 categorizes the short-term (1976-80) trend in crime rates. With respect to personal offenses those with the lower overall rates tend to have stable or mildly increasing rates. Those with the highest overall rates (Peoria, St. Clair, Kalamazoo) have volatile changes from year to year. Much the same can be said with respect to property crime. DuPage, Erie and St. Clair have lower rates and stable or, in the case of DuPage, decreasing trends. However, Saginaw, Montgomery and Dauphin, which also have lower rates, have increasing or volatile short-term trends. Oakland, Kalamazoo, and Peoria all have increasing or volatile rates.

One last component of the crime problem concerns city-county differences. It was noted earlier that a major city dominated each county to some degree and that city-county cleavages often existed. One way to gauge the extent to which the crime problem in a county is a "city" problem is to compare rates in the major city with those in

Table 3-8

Categorization of Short-Term Crime Trends
1976-80

	Decreasing	Stable	Mildly Increasing	Increasing	Volatile
Personal Crime		DuPage Oakland Saginaw	Montgomery Erie Dauphin		Kalamazoo Peoria St. Clair
Property Crime	DuPage	Erie St. Clair	Oakland	Dauphin Montgomery Peoria	Saginaw Kalamazoo

the county outside the city. These data are reported in Table 3-9. For violent personal crime the "problem" is focused in the major city for all but the ring counties, where the major city is not a large component of the total county population. Of the non-ring counties personal crimes are most heavily concentrated in the cities of Peoria, East St. Louis, and Kalamazoo; Saginaw has the lowest concentration. The city of Erie, however, has the lowest personal crime rate of the non-ring counties, and the second lowest overall. A very different picture emerges with respect to property crime. In the non-ring counties except Peoria the proportion of property crimes committed in the major city is not as extreme as the proportion of personal offenses.

County Jail Characteristics

One of the most important structural aspects of a criminal court's environment is the local county jail. Its quality and capacity can affect decisions concerning pretrial incarceration as well as sentencing. A decrepit jail may give a judge second thoughts about bail decisions especially in cases involving youthful offenders; a low capacity may virtually eliminate pretrial incarceration for all but the most serious cases. The lack of a local jail option may lead judges to give marginal defendants probation or a fine as opposed to a short term in the local jail. Others, however, may feel compelled to give these offenders penitentiary sentences.

Table 3-10 reports some data on the local jails in each of our counties. All of the Michigan jails were built during the 1970s; only the jails in St. Clair in Illinois and Erie in Pennsylvania were built

Table 3-9
Comparison of Crime Rates Between
County and Major City, 1980

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Violent Personal Crimes									
Rate per 100,000 in major city	67.8	1162	3322	2216	1539	1586	1380	2011	494
Rate per 100,000 in county outside of major city	166.86	245	256	293	272	415	208	257	150
Percent of all county crimes committed in the major city	2.8%	88%	77%	38%	77%	66%	26%	69.8%	70.8%
Property Crimes									
Rate per 100,000 in major city	2551	8627	6819	9238	9660	9536	7200	10830	3592
Rate per 100,000 in county outside of major city	3897	3433	3417	5752	4962	5006	3945	4067	2762
Percent of all county crimes committed in the major city	4.4%	80%	34%	11.5%	54%	50%	9%	44%	49%

Table 3-10

Characteristics of the Local County Jail

	Dupage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Date Built	1958	1915	1970	1971	1971	1972	1859	1952	1975
Detention Capacity 1980	125	150	248	450	264	220	186	222	208
Are prisoners normally housed outside the county	No	Yes	No	Yes	No	No	Yes	No	No
Have there been any court orders limiting capacity	No	Yes	No	Yes	No	No	No	No	No
Capacity per 100,000 population	19.0	74.8	93.4	44.5	124.3	96.46	28.43	95.55	74.3
Capacity per arrest for violent personal crimes plus burglary, 1980	.15	.14	.28	.18	.29	.24	.10	.16	.24

Source: Personal Interviews with County Sheriffs; arrest data was obtained from each SPA.

during that decade. DuPage and Dauphin's jails were built during the 1950s. Peoria's jail is over 65 years old, while Montgomery's is over 120 years old. Not surprisingly both Peoria and Montgomery, along with Oakland, regularly housed prisoners outside the county, at considerable cost. Peoria and Oakland were operating under limits imposed by court order; Montgomery was not. While not affecting capacity directly, the Saginaw jail also was under a court order.

Both measures of capacity rates (per capita, per arrest) showed significant variation, but they were not always consistent. For example, if capacity per 100,000 population is examined, Kalamazoo has, by far, the most capacity (124 beds per 100,000 population). St. Clair, Saginaw, and Dauphin ranked next highest with about 95 beds per 100,000 population, followed by Peoria and Erie with about 75. The three ring counties had the lowest rates with DuPage and Montgomery below 30--less than one fourth of Kalamazoo's rate. A look at capacity per arrest for serious crimes alters some of our views on capacity (Table 3-11).[4] In this case two of the ring counties (DuPage, Oakland) with higher populations but less crime, move from the "Smaller" to the "Medium" category. Dauphin also drops from the "Larger" to the "Medium", while Erie does the opposite. Montgomery stands alone in having exceptionally low jail capacity.

Table 3-11

Counties Categorized by Local Jail Capacities

	Larger Capacities	Medium Capacities	Smaller Capacities
Categorized on the basis of Population rates	Kalamazoo St. Clair Saginaw Dauphin	Peoria Erie	Montgomery DuPage Oakland
Categorized on the basis of arrests	Kalamazoo St. Clair Saginaw Erie	Peoria Dauphin Oakland DuPage	Montgomery

Political Linkages

With the exception of a few highly publicized cases, most decisions made by criminal court practitioners (and even office heads) are of low visibility. The public's vision is obscured even further by the judicial shroud which covers much courtroom activity. Only the cumulative impact of these routine decisions is noticed by the general public, if even then. Political elites, however, (county board members, local mayors, civic activists) may be more aware of what the courts are doing, and they may be important sources of inputs into the court system. Despite this, most court communities work within a comfortable "zone of indifference." Routine decisions within that zone are not likely to result in negative publicity or have any lasting repercussion which adversely affect "business as usual--a vital concern to court community regulars. This relatively high degree of political insulation notwithstanding, the political linkages between

the court community and its local environment are important to consider. They can affect the practitioners' perceptions of their latitude as well as the costs attached to venturing beyond this zone of indifference.

A problem in categorizing the political linkages between court systems and their environment is that perception of latitudes and costs are, in important respects, individual level phenomena (i.e., they vary by practitioner). However, there are also "global" aspects to these matters. These global aspects are important because they can lead to institutionalized procedures or norms which make boundary violations more or less likely (ie., procedures related to the exercise of discretion by individuals, plea bargaining practices, etc.). With respect to latitude (the breadth of the zone of indifference) two global factors come to mind in the criminal court context: the nature of the crime problem (violent crime in particular) and the extent of media coverage in the county. Moreover, these two factors can be expected to have an interactive effect upon the practitioners' perceptions of their latitude. Where violent crime is a rare occurrence, crime is unlikely to be a salient local political issue. While exceptional occurrences are likely to generate much publicity, court practitioners can do largely what they wish with mundane cases. In all likelihood, no one is watching. This is especially true where there is little media coverage in a community. Moreover, court community members can point to minimal crime rates and argue that their procedures are working. However, where violent crime rates are

high and where an area is saturated with media (i.e., daily newspapers, local television stations) the members of the court community may feel that their latitude is significantly restricted.

Independent of latitude is the costs that practitioners associate with violating community expectations. Two general types of global factors are considered important here--one externally determined, the other internally determined. The first is the overall level of political competition in the county. This is important because it affects the perceived costs of negative publicity. Where political competition is very low--everyone always wins big--the cost of "incidents" is less dear. High levels of electoral competition can lead individuals to proceed more cautiously because a small change in public sentiment could lead to uncertainty and possible disruptions in "business as usual" (personnel changes, policy changes, etc.).

The second factor is the level of community involvement. Some court communities are staffed with what might be called "imports"--young lawyers with no roots in a community who are attracted by a variety of professional, personal, and economic factors. Others are dominated by locals who have grown up in a community and who often have strong ties to it. The level of community involvement in the latter is expected to be greater than in the former, and this has important implications for the nature of the political linkages between the court community and its environment. Locals are expected to be much more familiar with the community's sentiments and much more concerned with its welfare than imports. This can lead to procedures

as well as a general atmosphere that place a high premium on avoiding decisions which might be interpreted as betrayals of the public's trust.

To shed light on the nature of the political linkages between the court communities we studied and their local environment we pulled together data on a variety of phenomena (violent crime, media, political competition, community involvement); these are presented in Table 3-12. The data on personal violent crime come from the earlier discussion on crime levels; the number in parentheses represents a ten-year average. We collected 2 types of data on media during the observational phase of the study. The first was the number of county-focused television stations and newspapers; more detailed data on this are shown in Appendix IX, Table IX-1. With respect to political competition we collected data on the last three elections (where possible) for a variety of different offices--governor, U.S. senator, state senator and representative, county sheriff and prosecutor. For the last three elections for each of these offices we computed the margin of victory for the winner. The average margin for all offices is reported in parentheses in Table 3-12 (margins for each office are reported in Appendix IX, Table IX-3).

To obtain information on the level of community involvement, we used data from our background questionnaire, for judges and prosecutors only.[5] Two variables were considered most relevant--the proportion of their life spent in the county and the number of civic and political organizations to which they belong. County averages for these two variables are reported in Appendix IX, Table XI-4; their average rank is presented in Table 3-12.

Table 3-12
Judgments and Summary Scores on
Measures of Political Linkages

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Level of violent personal crime (10 year average)	Lower (205)	Higher (860)	Higher (792)	Medium Low (442)	Medium High (582)	Medium Low (333)	Lower (201)	Medium High (520)	Lower (243)
Level of media concentration (number of local TV stations and county-wide papers)	Lower (0)	Higher (4)	Medium (2)	Lower (0)	Medium (2)	Medium (2)	Lower (0)	Higher (4)	Higher (4)
Level of newspaper coverage (average articles on crime or criminal justice matters for a specified period)	Lower (.37)	Higher (2.59)	Medium (.59)	Medium (.87)	Lower (.41)	Medium (.75)	Higher (2.35)	Higher (4.76)	Higher (2.81)
Level of political competition coverage (margin of victory)	Lower (32)	Medium (17)	Medium (17)	Medium (15)	Lower (24)	Medium (17)	Lower (24)	Lower (24)	Higher (11)
Level of community involvement (average rank for two measures of involvement)	Lower (1.5)	Medium Low (3)	Medium High (5)	Medium Low (3)	Medium Low (3)	Medium High (6)	Medium High (6)	Higher (7.5)	Higher (7.5)

Table 3-13 categorizes the linkages to the court community on two dimensions--the expected level of public scrutiny of court workings and the expected level of the court community's concern. While these are admittedly rough categorizations, they are useful in that they pull together a large body of data. One important observation is that three of the nine cells are empty. Perhaps most important is that no county falls in the High/High category. Erie comes closest. It is high on every measure except crime rates, where it is very low. Two other counties are considered to have high levels of public scrutiny (Peoria, Dauphin) because of a combination of higher to medium levels of violent crime, and high levels of and media concentration and paper coverage. However, their expected level of court community concern is categorized as medium because the levels of political competition and community involvement in these counties are not exceptionally high. At the opposite end of the spectrum are two of the suburban ring counties (Oakland, DuPage). They have lower violent crime rates, not much media concentration, less competitive political systems, and less community involvement. The remaining four counties (St. Clair, Saginaw, Kalamazoo, Montgomery), are all categorized as experiencing only a moderate level of public scrutiny. Kalamazoo and Saginaw scored moderately on all three measures (crime rates, media concentration newspaper coverage) while St. Clair has a higher crime rate its media concentration and coverage is relatively moderate. Montgomery had a low crime rate and low level of media concentration, but scored highly on the newspaper coverage. Kalamazoo scores low on the court community concern dimension because it has a less competitive political system and a low level of community

Table 3-13

Categorization of the Political Linkages Between the Court Community and their Local Environment

Expected level of court community concern	Expected Level of Public Scrutiny		
	High	Medium	Low
High	---	Erie	---
Medium	Peoria Dauphin	Saginaw St. Clair Montgomery	Oakland
Low	---	Kalamazoo	DuPage

involvement; St. Clair and Saginaw score moderately on both measures. Montgomery has a low level of competition but a high level of involvement and was given a moderate score.

State Level Influences

Although the most immediate environmental influences operating upon criminal courts are those that emanate from the county they serve, state level influences are also very real. Regardless of the county in which they operate, every criminal court follows a set of statewide laws and criminal procedures. These laws define crimes, specify possible punishments, determine acceptable operating procedures and ground rules, and set "speedy trial" standards. Moreover, for serious offenders who are to be sentenced to the state penitentiary systems, all county judges operate under similar constraints. Finally, judges from various counties within a state often meet at regular intervals in judges' conferences; chief judges usually meet more frequently. Such meetings can facilitate the dissemination of informal norms and perspectives throughout a state, perhaps offsetting, to a degree, wholly local influences.

While a number of state level influences undoubtedly operate to affect criminal court operations we will focus our discussion on three we feel are most relevant to sentencing: the severity of the state sentencing code, the structure and capacity of the state penal system, and the nature of general sentencing norms.

Severity of the State Sentencing Code

One important difference in statewide legal environments lies with the severity of sentencing codes. Although such codes normally provide criminal court decisionmakers with a wide range of sentences and a good deal of discretion, some measure of statutory severity must be considered. The sentencing code sets the parameters within which plea bargaining takes place and helps shape its form and content. County specific "going rates" for individual offenses are apt to be affected, although certainly not determined, by the statewide code. In addition, the severity of the code is important for symbolic reasons. Most convicted defendants do not receive the maximum penalty for their offense. But the participants' perceptions of a given offense are likely to be influenced by the state code, especially if it has recently been revised. The code's treatment of a given offense can be viewed roughly as a statement by the political community of its concern about a type of proscribed behavior. The accuracy of this statement will vary across different crimes at different points in time. Code provisions dealing with peripheral, victimless crimes (those involving marijuana, blue laws, gambling, etc.) are not apt to be accurate reflections of social concern. Those that deal with the "staples" of the criminal justice system (rape, armed robbery, burglary, theft, etc.) are, especially if the code has been recently revised.

A number of problems are encountered in attempting to gauge the relative severity of state sentencing codes. Minimums and maximums are often specified for large numbers of offenses. For some types of offenses (drug violations, some property and personal offenses)

penalities vary with some objective measure of severity not readily comparable across codes, such as the amount and/or type of drugs involved. Special "enhancement" provisions may be relevant that affect sentencing, among them the recency of a criminal conviction or the existence of a prior record. Moreover, the definition of some crimes varies across states; this is true of forgery, fraud, and different types of assault and battery cases.

Some of these problems (differing definitions and enhancement provisions) have no resolution and, therefore, weaken the validity of any attempt to scale sentencing codes. Despite this, it is possible to construct an adequate severity scale using the following procedure. First, the scope of the effort was limited to a handful of selected crimes. These are reported in Table 3-14 along with the statutory minimums and maximums in each state. These offenses were chosen because they are relatively comparable across states and, together, constitute the bulk of all sentenced cases in the counties. For example, in the Illinois counties these offenses account for 67 percent of sentenced cases. The comparable figures for Michigan and Pennsylvania are 54 and 71 percent, respectively. As Table 3-14 indicates, the minimum for all offenses in each state is probation (0 months in confinement), except for rape and armed robbery in Illinois. This lack of variance eliminates the use of minimum sentences in the ranking scheme. In contrast a good deal of variation can be seen among the maximums. Moreover, a cursory examination of the rank ordering across the three states indicates that the Michigan maximums

Table 3-14

Statutory Minimums and Maximums for Selected Offenses, by State (in months of potential incarceration)

Offense	Illinois			Michigan			Pennsylvania		
	Minimum	Maximum	Rank of Maximum	Minimum	Maximum	Rank of Maximum	Minimum	Maximum	Rank of Maximum
Voluntary Manslaughter	0	84	3	0	180	1	0	120	2
Rape	36	360	2	0	Life (480)	1	0	240	3
Armed Robbery	36	360	2	0	Life (480)	1	0	240	3
Robbery	0	84	2 (tie)	0	180	1	0	84	2 (tie)
Burglary	0	84	3	0	180	2	0	240	1
Aggravated Battery	0	60	1 (tie)	0	60	1 (tie)	0	60	1 (tie)
Theft	0	60	2 (tie)	0	72	1	0	60	2 (tie)
UUW	0	36	2	0	60	1 (tie)	0	60	1 (tie)
DWI	0	12	1 (tie)	0	3	2	0	12	1 (tie)
Possession of Heroin	0	60	1	0	48	2	0	36	3

are the highest (or are tied) in over two thirds of the eleven offenses and second highest in the others. The relative ranking of Illinois and Pennsylvania, however, is less clear.

To refine and clarify these rankings the following procedure was used. A "standardized" score was assigned to each offense for each state based upon its distance from the mean of the maximums for all three states.[6] The eleven resulting standardized offense scores were then averaged to derive a general severity score. These scores, along with the average rank ordering (derived from columns 3, 6, and 9 of Table 3-14) are reported in Table 3-15. The Michigan sentencing code clearly ranks as the most severe on both measures. Pennsylvania ranks second, but the difference between it and Illinois is not great. Given the coarseness of the measures, it is doubtful that Pennsylvania and Illinois differ significantly.

Structure and Capacity of the State Penal System

The nature of the state penal system is important because it affects both the ability and inclination of judges to send prisoners to state facilities. For example, at least some judges are less apt to send marginally dangerous criminals to state institutions that are large, old, decrepit, and understaffed than to more modern, well-equipped, smaller facilities.

Table 3-16 reports selected indicators of the nature and quality of the three state penal systems. A number of observations can be made on the basis of these data. First, the structure and orientation of Michigan's penal system seem to be quite different from the systems in Illinois and Pennsylvania. Michigan has the largest number of

Table 3-15

Summary Measures of the Severity of Sentencing Codes

	Illinois	Michigan	Pennsylvania
Average standardized offense specific score	-.10	.13	-.03
Average ranking	1.91	1.27	1.81

Table 3-16

Selected Quality Indicators of State Level Correctional Facilities

	Illinois	Michigan	Pennsylvania
Total number of facilities	10	23	8
Percent with a capacity under 500	40 (4)	73.9 (17)	25 (2)
Percent with a capacity over 1,000	40 (4)	8.6 (2)	37.5 (3)
Percent which are maximum security	50 (5)	26 (6)	25 (2)
Percent which are minimum security	10 (1)	56.5 (13)	25 (2)
Percent built before 1925	30 (3)	8.6 (2)	50 (4)
Percent built after 1950	30 (3)	73.9 (17)	25 (2)
Percent built after 1970	20 (2)	26 (6)	0 (0)
Percent of state budget devoted to corrections (1979)	1.53	1.53	1.12
Dollars spent per prisoner (1979)	14,084	14,177	14,306
Ratio of inmates to full time staff	3.3	2.5	2.7
Percent of cells greater than or equal to 70 sq. ft.	15	59	51

Source: Sourcebook of Criminal Justice Statistics - 1981
Tables 1.67 - 1.70, 1.5

facilities (row 2, 3), and they are decentralized throughout the state. While Illinois and Pennsylvania have largely maximum and medium security institutions (90 and 75 percent, respectively), the majority of Michigan's institutions are minimum security (row 5). Michigan's institutions also tend to be newer (rows 6-8)--almost three-quarters were built after 1950 and one quarter during the 1970s. Four of Pennsylvania's eight institutions were built before 1925, as were three of Illinois' ten.

Michigan looks less distinctive with respect to some other aspects of its penal system. The state does not, for example, devote a higher proportion of its budget to corrections than Illinois. While Pennsylvania devotes the lowest proportion of its state budget to corrections, the per prisoner expenditures are fairly comparable (row 10). Moreover, Pennsylvania's inmate/staff ratio is comparable to Michigan's; both have significantly lower ratios than Illinois. Pennsylvania and Michigan also have a higher proportion of larger cells than Illinois (row 12). These figures suggest that while Pennsylvania does not have the capital investment in correctional facilities that Michigan has, it is fairly comparable to Michigan in terms of expenditures per inmate, the level of supervision, and cell size. Both rank above Illinois on all three dimensions.

Another important dimension to state penal systems is their capacity. The criteria a judge uses for determining whether a defendant merits "state time" may vary with the relative capacity of state institutions as well as the extent of their utilization. The flow of prisoners to the state penal system may rise to fill the available spaces; it may slow once capacity is reached. Table 3-17

Table 3-17

Capacity Measures of
State Level Adult Correctional Facilities
(1979)

	Illinois	Michigan	Pennsylvania
Confinement capacity (# of prisoners who can be accommodated	11,320	11,627	8,093
Capacity per 1,000,000	100.66	127.39	68.67
Capacity per adult arrest for serious UCR crimes (violent personal crime plus burglary), 1979	.43	.62	.34
Proportion of capacity utilized (December 31, 1979)	.99	1.15	.91

Source: Sourcebock of Criminal Justice Statistics - 1981, Table 1.68. Excludes community-based facilities. This information was supplemented by inquiries to state correctional departments to insure comparability.

shows that Michigan has distinctly greater capacity than either Illinois or Pennsylvania. This is true regardless of what measure is used. Michigan has more absolute capacity, more capacity per 100,000 population, and more capacity per 1979 arrest for serious UCR crimes. Illinois ranks consistently behind Michigan, while Pennsylvania has the lowest capacity. The data on utilization reveals that Pennsylvania has both the lowest capacity as well as the lowest utilization; Michigan on the other hand, has the highest capacity and the highest utilization. This overutilization led to a court ruling which held that Michigan's entire adult penal system violated constitutional standards. Similarly, selected prisons in Illinois have been placed under court order. Pennsylvania was one of only 13 states which did not have any type of pending litigation concerning its penal system in 1982.

Sentencing Norms

It has often been argued that constant interactions among judges and other participants in the same county give rise to a "going rate" for common offenses. A similar effect may exist at the state level. Clearly, the interaction among judges at a statewide level is not nearly so great as in a county, but they do meet formally at regular intervals. Moreover, while judges from different counties are almost certainly subject to different local influences which may affect their sentencing practices, there are also a number of centripetal forces that draw them together. For example, they are all subject to the same sentencing code and probably read the same or similar continuing

education review manuals on sentencing and other relevant matters. And all of them face the same state penal system even though local conditions (such as jail capacity) may differ sharply.

These centripetal forces may combine with different aspects of the state political and legal culture to form the basis for statewide sentencing norms. To suggest that such norms exist does not imply that counties or, indeed, individuals, do not have different sentencing norms and practices. Rather, it simply suggests that punitive or lenient counties or judges in different states deviate from different statewide norms. A lenient county in a punitive state may have a norm of four years in the state penitentiary for an armed robbery--the statewide norm may be six years. This may, however, be above the norm for a punitive county in a lenient state.

Hypothesizing about these state norms and measuring them are two entirely different matters. Good, comparable sentencing data on a statewide basis are difficult to obtain, especially over a long period of time. The time dimension is important in the discussion of norms because the notion of norm implies a certain stability. One relevant set of comparable data which does exist for a long period of time is data on incarcerated prisoners in state institutions, gathered by the Census Bureau since 1926. These data (prisoners per 100,000 population) are reported in Graph 3-3.[7]

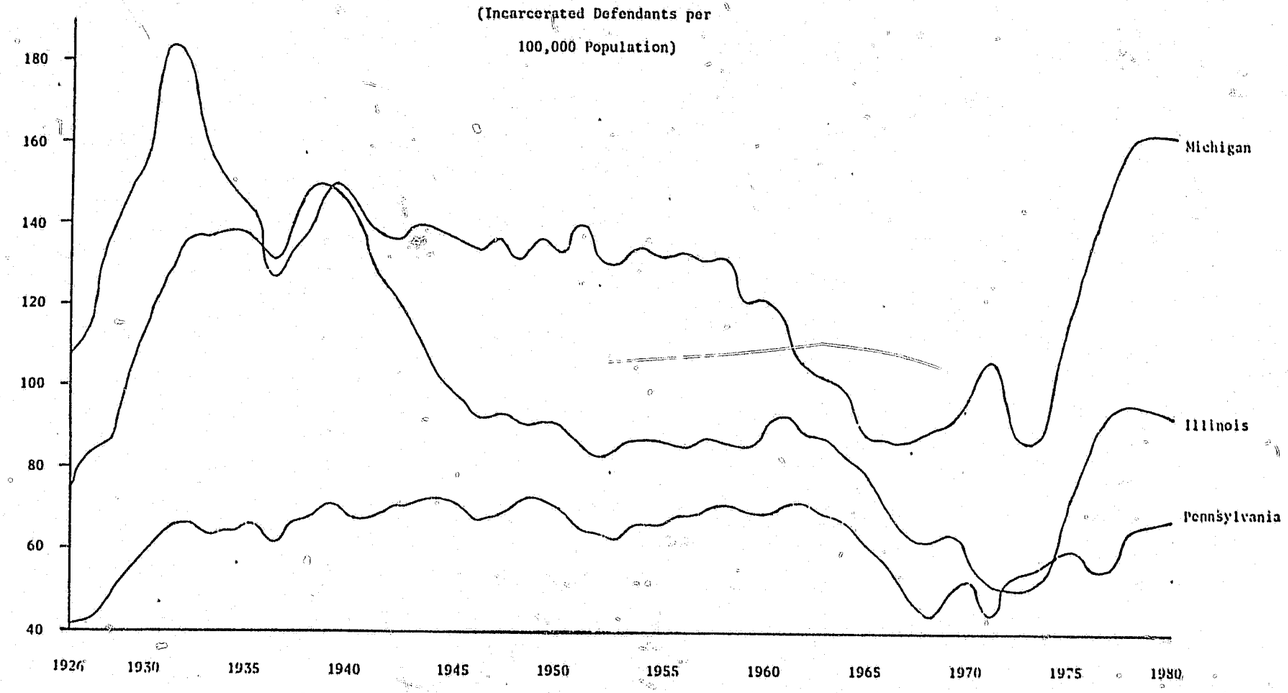
As one might expect on the basis of the data on sentencing codes and penitentiary systems, Michigan incarcerates more individuals per hundred thousand residents than either Illinois or Pennsylvania--and has done so for over forty years. The differences are fairly large and stable from about 1945 to around 1960. The rate of all three--as

Graph 3-3

State Incarceration Rates, 1926-1980

(Incarcerated Defendants per

100,000 Population)



with the nation as a whole--drops during the 1960s. Michigan's drop is not as sustained as Illinois' or Pennsylvania's. Moreover, Michigan apparently responded much more eagerly to the law and order movement of the late sixties and seventies than did Illinois. In relative terms Pennsylvania responded hardly at all. Part of the explanation for these different responses, of course, has to do with penitentiary capacity. Michigan opened six new penal facilities during the 1970s, while Illinois opened two, and Pennsylvania added none. Thus, Pennsylvania judges were not as able to respond as those in the other states.

Whatever the causes behind the changes evident in Graph 3-3, the long-term differences in incarceration rates may not be the sole result of differences in state level sentencing norms. Differences could exist if sentencing norms were identical but crime and/or arrest rates were different (i.e., Michigan has high incarceration rates because it has more crime, and its law enforcement officials catch more criminals). It is extremely doubtful, however, that differences in crime and arrest rates across the three states account for the large differences revealed in Graph 3-3; Michigan's average incarceration rate (per 100,000 citizens) since 1940 is 40 percent greater than Illinois', and Illinois' is 34 percent greater than Pennsylvania's.

A complete examination of this possibility cannot be made because comparable, meaningful data on crimes and arrests do not exist for the years 1926-1980. Data on UCR crime are useful only for the post-1958 period, and these do not cover all crimes subject to penitentiary commitment.. Moreover, most states did not begin publishing statewide arrest figures until the 1970s. Despite these problems,

two partial examinations of the crime-arrest thesis were conducted. First, employing multiple regression to conduct an analysis of covariance, we examined the impact of state dummy variables while controlling for the level of personal violent crime in each year since 1958. Personal violent crime (murder, rape, robbery, assault) was used because, of the available crimes, these were considered the most likely to receive a penitentiary sentence. After controlling for the personal violent crime rate the differences between the states survived. Michigan's adjusted rate is 58 percent greater than Illinois', and Illinois' is 19 percent greater than Pennsylvania. Each of those differences is statistically significant beyond the .01 level.

Using the same technique, but replacing the crime rate variable with an arrest rate variable for personal offenses in the years 1970-1980, similar results were found. Michigan's adjusted rates were 41 percent higher than Illinois', and Illinois' were 28 percent higher than Pennsylvania's. Both differences were statistically significant beyond the .01 level.

One last set of data yields a partial look at differences in sentencing norms and is presented in Table 3-18. It reports data on the average time actually spent in confinement for the seven UCR offenses. Its value is limited for our purposes because release time is not always highly correlated with the judge's sentence. More importantly, these data ignore defendants who received no time in the penitentiary. Despite these deficiencies, Michigan still appears to be the most punitive state. Pennsylvania may be more punitive than it appears to be in Graph 3-3 simply because, while Pennsylvania judges

Table 3-18

Average Time Served for UCR Offenses, 1976-77

	Illinois	Michigan	Pennsylvania
Homicide	40	99	46
Rape	46	N.A.	32
Robbery	21	33	27
Assualt	20	28	22
Burglary	15	22	22
Theft	13	15	18
Car theft	13	16	21

Source: "Huge Disparities in Jail Time," by Jonathan M. Winer, The National Law Journal (Monday, February 23, 1981), p. 1.

do not send as many defendants to the penitentiary as do those in the other states, their sentences are just as high for those defendants they do send.

REFERENCES
Chapter Three

Elazar, Daniel (1970). Cities of the Prairie. New York: Basic Books.

_____ (1966). American Federalism: A View from the States. New York: Thomas Y. Crowell Co.

Grossman, Joel B., and Austin Sarat (1971). "Political Culture and Judicial Research." Washington University Law Quarterly 177-207.

Jacob, Herbert (1969). Debtors in Court. Madison: University of Wisconsin Press.

Johnson, Charles A. (1976). "Political Culture in American States: Elazar's Formulation Examined." American Journal of Political Science, 20 (August): 491-509.

Kritzer, Herbert (1979). "Political Cultures, Trial Courts, and Criminal Cases." In Peter F. Nardulli, ed. The Study of Criminal Courts: Political Perspectives. Cambridge, Mass: Ballinger Publishing Company.

Levin, Martin (1977). Urban Politics and the Criminal Courts. Chicago: University of Chicago Press.

1 The religions used by Elazar to reflect different political cultures are reported below.

TABLE 3-20

Classification of Major Religious Denominations by Political-Cultural Leaning, According to Elazar

Moralistic	Individualistic	Traditionalistic
American Baptist Convention	Assemblies of God	African Methodist Episcopal Church
American Lutheran Church	Churches of Christ	African Methodist Episcopal Zion Church
Christian Reformed Church	Disciples of Christ	All Baptist bodies except American Baptist Convention
Church of Christ Scientist	Eastern Orthodox Churches	Church of God
Church of Jesus Christ of Latter-day Saints (Mormons)	Evangelical United Brethren	Church of God in Christ
Congregationalist (now United Church of Christ and dissident Congregational churches)	Free methodist	Church of the Nazarene
Friends (Quakers)	Lutheran Church-Missouri Synod	Evangelical United Brethren Church
Jewish Congregations	Lutheran General Conference	Pentecostal Churches
Lutheran Church in America	Methodist Church	Presbyterian Church in the United States
Reformed Church in American	Methodist and Episcopal	
United Presbyterian Church in the USA	Prostestant Episcopal	
	Roman Catholic	
	United Lutheran Church	
	Wisconsin Evangelical Lutheran Synod	

[2] The religion data was derived from Church and Church membership in the United States: An Enumeration by Region, State, and County Glenmary Research Center, for the National Council of Churches of Christ in the U.S.A., 1974).

[3] The crime rate data for Illinois and Pennsylvania come from statewide reports on crime broken down by county (Crime in Illinois, published by the Illinois Department of Law Enforcement, Division of Support Services; Crime in Pennsylvania, published by the Pennsylvania State Police, Bureau of Research and Development). In Michigan, however, state economy measures made these data inaccessible. Therefore, we compiled totals by using data from the FBI's Crime in America. While this provided reliable data for Saginaw and fairly reliable data for Kalamazoo, we had to piece together data on Oakland from city breakdowns (Oakland is in the Detroit SMSA). This made the data less reliable, especially for the earlier years when not all units reported. We had good data on Kalamazoo and Oakland for 1975 and 1980 and these were compared with our calculations from Crime in America. These comparisons indicated that our Oakland figures were underreported by 20 percent and those for Kalamazoo by 5 percent. The figures reported in Graph 3-1 and 3-2 are adjusted to compensate for these underestimates.

[4] Because of state cutbacks information on the total arrests for 1980 in the Michigan counties was unavailable. Data on 1977 arrests was available, however. In comparing the non Michigan counties with good 1977 and 1980 arrest data (DuPage, Montgomery, Dauphin, Erie) it was determined that 1980 arrests for the five categories reported in

Table 3-4 were, an average, 5 percent greater than 1977 arrests. Thus, the Michigan arrest figures were adjusted (using the 5 percent figure) to estimate 1980 arrests. While the unavailability of good 1980 data is unfortunate, the figures in row 6 are fairly inelastic (i.e. changes in raw arrest figures would have to undergo large changes before the capacity rates change much). Thus, we feel that the Michigan figures are fairly reliable.

[5] These figures and the data reported in Appendix IX came from analyses of each prominent local newspaper in the nine counties. The data must be viewed cautiously. The number of newspapers in each county varied as did the length of our subscription and the period which the subscription covered. What the data entries in Table 3-12 and Table IX-2 reflect is the average coverage--adjusting for the number of newspapers--given to crime and the criminal justice system during the period of the subscription. For example, if 100 stories in a county served by only one paper appeared in a period of 100 days the average score would be 1. If 200 stories occurred in a 100 day period in a county served by two newspapers its score would also be 1. To do otherwise would inflate the coverage in counties served by more than one paper.

[6] The exact procedure used was the following:

$$\text{Standardized Offense Score} = \frac{\text{State Maximum} - \text{Mean of the three State maximums}}{\text{Mean of the three state maximums}}$$

[7] While category titles changed and some other minor modifications occurred, these data are consistent over time. However, their source has changed over the years. The data from 1926 to 1946 can be found in Prisoners in State and Federal Prisons and Reformatories, U.S.

Department of Commerce, Bureau of the Census. By 1950 the reporting of prison statistics had shifted to the U.S. Department of Justice. Data from 1950 to 1970 can be found in Prisoners in State and Federal Institutions, U.S. Department of Justice, Bureau of Prisons, National Prisoner Statistics. In 1970, responsibility for these statistics was again transferred, this time within DOJ. From 1971 to 1977 the Law Enforcement Assistance Administration in conjunction with the National Justice Information and Statistics Service published prison statistics in a national Prisoner Statistics Bulletin entitled Prisoners in State and Federal Institutions on December 31. After 1977, while the source remains the same, publishing responsibilities were again shifted. DOJ established a Bureau of Justice Statistics with responsibility for all department sponsored statistical reporting including (but not limited to) national prisoner statistics.

CHAPTER FOUR

The Context of Sentencing Decisions

Context and environment are global terms used to classify and catalog the many, sometimes disparate, factors influencing court decisions. The two should not be confused. In contrast to environmental factors (which were discussed in Chapter 3), contextual factors include an assortment of immediate, proximate, or direct conditions, or "givens." These affect the discretionary powers of courtroom actors and channel their activities in various ways. Consideration of contextual factors, then, draws attention to those characteristics of the courtroom setting that have a direct bearing on the participants' actions and on how these characteristics interact with one another. In a sense, if the environment is viewed as analogous to an overall strategy, then context represents the tactics that shape the maneuvers of courtroom participants as they go about their work.

The structure of the bench, the prosecutor's office, and the local defense bar are three of the most prominent features of a local court systems contextual landscape. In addition,the structure and composition of workgroups also play an important role. In many ways the impact of different workgroup configurations upon the handling of cases is more direct than the impact of the other three. Before these matters can be discussed further, however, more needs to be said about a somewhat abstract but nonetheless useful concept: the courthouse community.

The Courthouse Community: An Evolving Concept

The notion of the courthouse community seems to us to be as central to a general understanding of medium-sized courts as the notion of courtroom workgroups was to Eisenstein and Jacob's (1976) study of larger jurisdictions. It does not replace the notion of workgroups; rather, it is a more inclusive concept. Despite our belief that it plays a significant role--based on the many hours we spent in various county courts--it remains an elusive concept, one that requires further thought and elucidation. Here we only begin to develop its general outlines.

At any given moment the court community includes several sets of people who regularly participate in the processing of criminal cases. But this notion includes more than this socio-spatial dimension. Court communities also have a cultural-historical dimension, which includes the socialization processes by which new recruits learn the norms and mores that have developed over the years. Moreover, court communities have "grapevines" of varying dimensions and composition through which new information is transmitted to the members. Finally, each court community has its own unique infrastructure which determines who the "prime movers" are and where the power sources are located. While these aspects of the court community do not fully exhaust its dimensions, each is sufficiently important to require further explanation.

The Cultural-Historical Dimension

Veteran members play an important role as repositories of collected experiences, observed relationships, and court lore. They pass this information on to new recruits through various formal or informal encounters. This respository function is important because it provides stability and continuity to the court's activities. While leaders and assistants come and go, the court community's traditions and norms change very slowly. The nature of these traditions and norms are important aspects of a court community's personality and distinctiveness.

There is ample evidence, albeit mostly qualitative, that the practitioners in most of the counties in this study were not as isolated from one another as they were in larger county court systems (Eisenstein and Jacob, 1976). This is a function of both size and importance of the grapevine (or grapevines) within a court community. The primary function of these grapevines is to collect and disperse information. Transmission of information is easier within prosecutors' offices and centralized public defenders' offices simply because of their internal cohesiveness. Attorneys can return to their offices with the latest news about a judge or another attorney and soon the whole office will know of it. However, the coffee lounge, nearby restaurants, and clubs are also vital parts of the grapevine in some communities. Court community members frequent these places to swap news and update "books" on attorneys or judges. Personal experience, bolstered by such information, become part of the actors' working knowledge about how the courthouse really operates.

While small numbers may help diffuse information and gossip, they do not determine their shape or corresponding communication patterns. In addition to divisions parallelling the formal organization of the courthouse, the communities we looked at had crisscrossed webs of informal relationships. In some counties parts of these webs were spun while the individuals involved were growing up in the same neighborhoods or through early political involvement. In other counties attorneys knew each other from law school, or from when they clerked for judges who appointed them to felony cases at the start of their private practices. Other webs were derived from residential, religious, athletic, or social ties. As a result, even in jurisdictions that had diffuse court communities, members were not strangers to one another.

One possible consequence of the information flows streaming through the court community is that differences in dispositions or disparities in sentencing may become muted since participants are able to compare decisions across workgroups. Well-established communication patterns may produce a certain degree of consistency within the courthouse as a whole even though courtroom workgroups are fleeting and transient. To the extent this effect is found, it is an offshoot of the grapevine and not necessarily a reflection of any normative consensus regarding punishment. In larger, more fragmented courthouse communities, bureaucratic mechanisms may evolve which perform in the same manner as the grapevine to promote a rough consistency in decisions. More will be said of these mechanisms later.

Another aspect of court communities which gives them a distinctive flavor is the identity and distribution of prime movers or authority figures. By virtue of personality, professional skills (or reputation), political power, longevity, or some other attribute one or more individuals (usually not more than a few) seem to play a dominant role within a court community at a given time. This person may be the head prosecutor, the chief felony prosecutor, or a particular criminal court judge; it is rarely a head public defender or defense attorney. Whoever occupies this position tends to dominate the court community through a variety or combination of techniques. Some attract and monopolize media attention. Others dominate by becoming involved in various activities on various levels; their actions and contacts keep others on the defensive, constantly reacting to their initiatives. Still others dominate by virtue of their position and charismatic qualities which engender loyalty, respect, and deference from court community members.

Who these individuals are and how they dominate can have important implications for the tenor of the court community. Moreover, while the impact of some individuals will fade with their tenure, or before, others can have a lasting effect on the norms and structure of the court community. For example, a newly elected, aggressive prosecutor with considerable political resources may be able to revamp plea bargaining procedures and upset "going rates," at least for a while. His changes, however, may well lead to organized opposition on the part of the defense bar, perhaps with the implicit support of the judges. This opposition may be in the form of more trials, increased delays, adverse rulings, etc. The same changes

introduced by a widely respected prosecutor or judge with long tenure in the system may have a more lasting impact, especially since proteges of these individuals may carry out their policies long after they have left the system.

We turn now to the discussion of the structures of three of the most prominent features of a local court system, the criminal bench, the prosecutor's office, and the local defense bar.

The Criminal Bench

Next to the private defense bar the judges who hear criminal cases are often the most loosely organized segment of the court community. Most judges are not subject to many bureaucratic controls in their conduct of day to day affairs. Nonetheless there are important structural variants to the ways in which criminal benches are organized. Benches differ in the way the judges are recruited, how they relate to lower courts, their administrative apparatus, and their assignment policies. Each of these will be discussed here. In addition we will outline some of the differences in the backgrounds and attitudes of the judges which make up the bench in our nine counties.

Recruitment

The formal methods used in the nine circuit courts to select judges initially and later retain them were more similar than they were different. None of the three states had adopted the Missouri Plan (or any of its many variants) allowing for the appointment of

judges. As a consequence, unless they had been appointed to fill a vacancy by death, illness, or retirement, all of the judges were elected. While some began their careers with interim appointments, most in our nine counties were initially elected .

There were several differences in the electoral systems of the three states. The term of office for trial court judges in Pennsylvania was ten years, compared to six years in Illinois and Michigan. Nominations and elections took place within a partisan framework in the Illinois and Pennsylvania counties, whereas non-partisan procedures were followed in Michigan. Party labels, at least formally, were not worn by judges who wanted to retain their positions in any of the three states since retention mechanisms were formally non-partisan. Another difference was the method of retention. In the Michigan and Pennsylvania counties, judges who wished to return to the bench ran in non-partisan elections that allowed them to be challenged. In Illinois, however, the judges "ran on their records" in non-partisan referenda where they had to receive more than 60 percent of the vote.

Both too much and too little can be made of these dissimilarities. Once ensconced in office, judges rarely face any serious competition in their bids for reelection. For example, prior to 1980 no judicial incumbent either in Kalamazoo or in Saginaw had been confronted by a challenger in over a generation. When there was electoral competition, it usually occurred when there was a new seat on the bench or when the incumbent had been appointed and was running for a full term for the first time. In general, then, positions on these benches were "safe seats." Still, the potential for being unseated was always present, and adverse publicity combined with

soured relations with the bar prompted electoral challenges in 1980 in both Kalamazoo and Saginaw. Moreover, in the election preceding this study a Peoria judge was not retained.

Integration and Consolidation of the Lower Courts

Sentencing decisions are, at best, only indirectly affected by structural relationships between the circuit courts and the lower courts, which handle felony cases in their earliest stages. Still, the lower courts can be used as major disposition points within the system. By using rigorous preliminary examinations and extensive plea bargaining, they can filter out cases with weak evidentiary foundations and those with less serious charges, and forward stronger, graver cases to the circuit courts. This makes structural relationships more salient. In addition, if definitions of criminal sanctions are broadened to include the costs of pretrial release, detention, and case processing time, the extent to which the courts are integrated and consolidated may have a more direct bearing on punishment issues. Since this report focuses more narrowly on post-conviction punishment, however, the following remarks will be brief.

The lower courts in Michigan and Pennslyvania are institutionally autonomous entities with their own elected judiciary and few direct ties to the circuit courts; the lower courts in Illinois are integral parts of the circuit court. Illinois lower court judges are selected and appointed by the circuit bench, which also assigns these judges to the court's various responsibilities. This does not happen

in the other states. The circuit judges in Michigan and Pennsylvania must rely almost entirely on their powers of persuasion if they hope to change some practice or policy of the lower courts.

The felony responsibilities (conduct of arraignments and preliminary hearings, setting of bail) of lower court judges was also more centralized in Illinois than in the other two states. In the three Illinois counties there were twenty-nine associate judges (DuPage had thirteen St. Clair ten, Peoria six), but only one judge in each county presided over preliminary hearings or set bail. The number of district court judges in the Michigan counties totalled forty-three (thirty in Oakland, seven in Kalamazoo, six in Saginaw) and in Pennsylvania the number of magistrates was fifty-eight (twenty-nine in Montgomery, twelve in Dauphin, and seventeen in Erie), and all of these officials handled felony cases. Since they were elected from districts or areas within the counties, it was not surprising that they often were more closely attuned to the wishes of their "constituencies" than to the interests and concerns of the circuit courts. Finally, it should be mentioned that only the magistrates in Pennsylvania did not have to be attorneys. This feature, combined with the geographical dispersion of the many magistrate courts throughout the counties, discouraged attorneys and prosecutors from holding frequent preliminary hearings.

The Administrative Component of the Circuit Courts

Procedures for selecting the chief judge in our nine counties varied considerably. Judges rarely organized along bureaucratic lines, especially if the defining criterion was a clear-cut chain of

Assignment Policies

The manner in which judges are assigned to different facets of the county court's work, and the way in which cases are assigned to judges, are two of the most important structural features of a local court system. They are of great interest to the courthouse community and have a marked impact upon the composition and activities of courtroom workgroups. These decisions, shaped partly by state rules, partly by local custom, and partly by the exigencies of the moment, include several aspects which can be combined in numerous ways. Because no simple pattern or arrangements were found in the nine counties, it is best to start with those aspects that relate to the overall organization of the courts' work. We will then turn to the case assignment procedures used in them.

Because circuit courts have jurisdiction over several kinds of cases they may either apportion these cases among all of the judges or decide to have each judge hear only certain kinds of cases. Docket assignments for judges, then, can be classified as "mixed" (as in the first instance) or "specialized" (as in the latter). A second major dimension depends on the nature of the trial term used in the court. Trial terms can be "continuous" (when cases are scheduled for trial at any time throughout the course of a year) or they may be "periodic" (where the year is divided into terms of specific lengths with intervals between them for performing non-trial related work). Figure 4-1 is a schematic representation of these various possibilities and how the nine counties fit in.

Systems with a mixed docket and a periodic trial term must also decide whether to arrange their terms in such a way that the judges presiding over civil and criminal cases hear them in a rotating manner or continually. For example, during a term some judges will handle criminal cases, while others process civil matters; at the end of that term they will then switch dockets. A variation of this syncopatic pattern is when all the judges hear criminal cases during a term and then move to their civil dockets in the next term. When the dockets are truly mixed, even though there are trial terms, the judges may hear a criminal case, turn to a civil dispute, go back to a criminal case, and so on without setting aside particular periods of time to handle certain types of cases. As Figure 4-1 indicates, while the addition of this third dimension creates five possible combinations of docket and trial term types, only four of these combinations were found among the nine courts.

Three of the nine courts in our study--Peoria, Montgomery, and St. Clair--were organized on the basis of specialized dockets. The other six employed mixed dockets. Continuous trial terms were also rather infrequent; again only three courts chose this alternative--DuPage, Peoria, and Montgomery--while the others had periodic trial terms. None of the Michigan courts had specialized dockets or continuous trial, terms and, together with Dauphin and Erie, they made the mixed docket-periodic (rotating) trial term the modal policy combination.

The distinction between mixed and specialized dockets corresponds in general to a court's structural organization. Thus the judges in Michigan had mixed dockets because they shared responsibil-

FIGURE 4-1

DOCKET ASSIGNMENTS AND TRIAL TERMS
IN THE NINE COURTS

TYPE OF DOCKET ASSIGNMENTS

TYPE OF TRIAL TERM	Mixed (Civil and Criminal)		Specialized (Criminal Only)
Continuous	DuPage (7 of 12)*		Peoria (2 of 7) Montgomery (5 of 14)
Periodic	Rotating Systems Oakland (7 of 7) Kalamazoo (4 of 4) Saginaw (5 of 5) Dauphin (5 of 6) Erie (5 of 5)	Pure Mixed Systems	St. Clair (3 of 7)

*NUMBER OF JUDGES HEARING CRIMINAL CASES OF TOTAL NUMBER OF JUDGES

ity for the court's entire caseload. In the three courts with specialized dockets--Peoria, Montgomery, and St. Clair--the court's jurisdiction was parcelled out and divided up among the judges. DuPage was an exception to all of these; its bench was organized along jurisdictional lines, even though the judges assigned to process felony cases also heard civil cases. They belonged to a general "Trial Division."

An important consequence of arranging work among judges along jurisdictional lines is that it narrows the number of judges available to preside over criminal matters. Where the bench is not specialized, all of the judges are likely to be involved in the felony disposition process. Figure 4-1 shows the number of judges who handled criminal concerns as well as the total number of judges. With the exception of Dauphin (where the chief judge did not involve himself in the criminal side of the court's docket), all of the judges in non-specialized systems were responsible for the criminal dockets. As it happens, each of these courts had mixed, periodic dockets. In the other courts, some judges were chosen to process felony cases, while others handled other non-criminal matters. This has obvious implications for courtroom workgroups and the courthouse community since whatever diversity of views or attitudes may exist on a bench can be narrowed or combined in various ways depending on which judges are assigned to criminal dockets.

Jurisdictional differentiation, specialization of dockets, and organization of court time are critical building blocks; indeed, they are the cornerstones of a court's work structure. Once they are in place, the next pieces to be fit are the calendar and the case assignment method. Calendars are important because they affect when

cases are assigned to judges and whether they will remain on these dockets until they are concluded. When "individual calendars" are used, cases are generally placed on a judge's docket relatively early, usually at the time of arraignment in circuit court. They normally stay with that judge until they are completed. As a result, uncertainties regarding the judge's attitudes, predilections, style, and so on that may affect a case are lessened for the attorneys. When "master calendars" are employed, case assignments usually occur much later, perhaps on the scheduled trial date. Moreover, if the cases are not tried or concluded on their scheduled trial date they may be reassigned to another judge.

Master calendars can lead to "plea routing." Whether or not they do depends on how specific cases are actually assigned to judges. The field work revealed three methods of assignment--personalized, random, and sequential. These methods determine not only which judge handles each case, but also the scheduling of cases and when they are placed on the docket for disposition. In personalized processes, formal discretion is lodged with the chief judge, a court administrator, case coordinator, court clerk, or in some instances a high ranking assistant prosecutor. These individuals usually operate with few explicit constraints. In jurisdictions where assignments are done randomly, the identity of the assigning official is immaterial, since the procedure is governed by chance and is, therefore, unbiased or "blind." Sequential assignment ranks cases as they reach the top of active trial lists on a daily basis. If sequential assignment procedures are faithfully followed, the opportunities for judge shopping are minimized. Cases at the head of the trial queue are

given to judges with open courtrooms who are available for work. Thus, sequential assignment procedures operate in conjunction with master calendars. When a judge completes the case, he is assigned the case with the next highest priority, or according to some other decision rule. This can be done on a daily basis or at the start of a trial term if the docket is periodic.

It should be pointed out that sometimes case assignment depends on whether a case is likely to be tried or pleaded. For example, while trial cases may be assigned on a sequential basis, attorneys may be able to obtain a personalized assignment when the question of who the judge will be is critical to the successful negotiation of a plea. In most individual calendar systems with random assignment procedures this would not be possible.

Figure 4-2 classifies the nine courts according to their calendars and assignment methods. Two of the combinations were not found in these courts; in fact, they are logically incompatible and highly improbable. Two clusters of courts emerge in this cross-tabulation. In one cluster, four courts--DuPage, Oakland, Kalamazoo, and Saginaw--had individual calendars, with cases randomly assigned to the judges. The second block includes Erie, St. Clair, and Dauphin which had personalized assignment procedures in conjunction with master calendars. Asterisks have been placed next to the courts in which guilty pleas could be routed to certain judges. All of the master calendar courts, as suggested earlier, provided this opportunity.

Random assignment procedures, of course, close off almost entirely the chance for plea routing, since truly blind systems do not include extraneous considerations in the assignment of cases to

FIGURE 4-2

TYPES OF CALENDARS AND CASE ASSIGNMENT METHODS

ASSIGNMENT METHOD	TYPE OF CALENDAR: Individual	TYPE OF CALENDAR: Master
Random	DuPage Oakland Kalamazoo Saginaw	
Personalized	Peoria	Erie* St. Clair* Dauphin*
Sequential		Montgomery*

*PLEA ROUTING IS POSSIBLE

judges. Despite the fact that Peoria had a personalized system under the auspices of the prosecutor's office, there were few reports that this responsibility was abused or that it was used to route pleas to particular judges. Indeed with only two judges hearing criminal cases, this option was virtually nonexistent from the start. Moreover, there was little to choose from in terms of the attitudes of these judges, which also discouraged judge shopping. This was not true for other courts where there were sharp differences in judicial punishment attitudes. By the same token, the outcome of plea negotiations often turned on the identity of the judge. In courts without random assignment methods, particularly those in Pennsylvania, this issue was frequently central to the disposition process. Regardless of whether the assignment process was personalized or sequential, it was reportedly common to have cases funnelled to judges in order to facilitate the attainment of a guilty plea.

Selected Characteristics of Criminal Court Judges

Tables 4-1 and 4-2 provide information about the backgrounds and attitudes of those judges responsible during our study for processing felony cases in the nine counties. The information reflects an amalgam of the effects of recruitment methods, docket assignment policies, as well as socialization and previous work experiences. Consequently, no single factor can be singled out as decisive in effecting them.

Several points regarding the judges' backgrounds arise from an examination of Table 4-1. While the average age of the judges in all three Illinois counties, as well as in Oakland and in Montgomery

CONTINUED

2 OF 5

Table 4-1

Background Characteristics of Judges by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Average Age	50.8 (N=6)	54 (N=2)	51 (N=3)	49.3 (N=6)	63.7 (N=3)	58 (N=4)	52.5 (N=7)	60.8 (N=4)	60.4 (N=5)
Average percent of life in county	82% (N=6)	90% (N=2)	100% (N=3)	92% (N=6)	84% (N=3)	100% (N=4)	84% (N=7)	96% (N=4)	97% (N=5)
Party ID									
Republican	6	1	1	3	3	1	7	3	3
Democrat	0	1	2	0	0	0	0	0	1
Independent	0	0	0	2	0	3	0	1	1
Average years in office	5.2 (N=6)	7 (N=2)	5 (N=3)	8.7 (N=6)	6.3 (N=3)	12.8 (N=4)	7.9 (N=7)	11.5 (N=4)	12 (N=5)
Percent previously employed as prosecutor	67% (N=6)	50% (N=6)	67% (N=3)	29% (N=7)	25% (N=4)	40% (N=5)	38% (N=8)	60% (N=5)	40% (N=5)

*This figure includes all public defenders who regularly handled a felony caseload; the handful of defenders who handled an occasional case are not included.

Table 4-2

Attitude Structure for Judges by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Belief in Punishment									
Mean	-.09	.50	-.16	.30	-.49	.07	.17	.89	.24
Standard Deviation	.47	.25	.32	.74	.40	.29	.72	.53	.56
Range	1.08	.36	.63	2.36	.79	.63	2.04	1.21	1.43
High	.35	.68	.15	1.34	-.10	.29	1.18	1.63	1.14
Low	-.73	.32	-.48	-.92	-.89	-.35	-.87	.42	-.29
Regard for Due Process									
Mean	.30	.55	.36	-.24	.04	-.35	-.60	-2.03	-1.09
Standard Deviation	.28	.43	.21	1.37	.35	.57	.90	.82	.46
Range	.78	.60	.36	3.82	.60	1.30	2.54	1.71	.93
High	.60	.85	.60	1.30	.24	.38	.68	-.97	-.52
Low	-.18	.24	.24	-2.52	-.36	-.93	-1.87	-2.68	-1.45
Concern for Efficiency									
Mean	.83	.98	.51	.53	.31	.44	.06	1.19	.49
Standard Deviation	.88	.61	.28	1.09	.56	.85	1.16	1.02	.91
Range	2.10	.87	.53	3.16	1.08	1.94	3.34	2.23	2.51
High	1.97	1.41	.71	2.52	.95	1.51	1.44	2.70	1.83
Low	-.13	.55	.19	-.64	-.13	-.43	-1.90	.46	-.68
N	6	2	3	6	3	4	7	4	5

hovers around fifty, it was closer to sixty in the other counties. Almost all of the judges were "locals" (i.e., they had spent almost all their lives except for college, law school, and perhaps military service in the counties they served). Except for Peoria, St. Clair, and Saginaw, most of the judges said they were Republicans. No particular pattern for the other counties is evident, although the Michigan counties had more "independents," reflecting the non-partisan character of judicial races in that state. In terms of longevity, only judges in Saginaw, Dauphin, and Erie averaged more than ten years on the bench; the rest ranged from five to nine years. Finally, goodly proportions of the judges, especially those in Illinois, were former prosecutors or assistant prosecutors.

Table 4-2 presents the means and related statistics on the three composite measures derived from the attitude questionnaires. To ease the task of comparing the counties, the means are in standardized form so that the overall mean for all respondents is zero, and the standard deviation is one.

Considerable variation in the "Belief in Punishment" mean scores exists. Kalamazoo has an exceptionally low mean, while Dauphin and Peoria are exceptionally high. Of some importance, especially in St. Clair and the Pennsylvania counties where judge shopping occurred, is the range of scores within each county. Although only a limited amount of variation exists within St. Clair, the Pennsylvania ranges are 1.21, 1.43, and 2.04. Overall, the ring county within each state had the widest range, and Oakland had the widest range of all nine counties.

With respect to the "Regard for Due Process" scale, the Illinois counties tend to have higher means while, the Pennsylvania counties, especially Dauphin, tend to score fairly low. The ranges for Illinois counties on the "Regard for Due Process" scales tend to be smaller than for counties in the other two states. The widest ranges show up once again in the larger, ring counties with Oakland having the widest of all. Dauphin's judges exhibit the highest average "Concern for Efficiency" scores, followed by Peoria and then by DuPage. The other counties show little variation, except for Montgomery, which has an exceptionally low average. The Illinois counties again evidence the smallest range in efficiency scores, while the Pennsylvania counties have the widest ranges. Montgomery has the widest overall range, followed by Oakland, Erie and Dauphin.

The Prosecutor's Office

The most bureaucratized segment of the court community is the prosecutor's office. Each has a hierarchy, formal channels of communication, specialization of labor, etc. Moreover, many offices also attempt to establish formal policies in a variety of areas and attempt to centralize important functions. The orientation of a particular office is likely to depend largely upon the views of the chief prosecutor, and we begin our discussion of the office with this figure. We then review some of the most important policies and practices employed by the various offices. Finally, we report data on the backgrounds and attitudes of the felony assistant.

The Chief Prosecutors

Of the nine chief prosecutors in our study, seven were Republicans; the only Democrats were in St. Clair and Erie, two of the declining counties. Saginaw, the other declining community, had elected only one Democrat in over three decades (in 1964, the year of the Johnson landslide). The Illinois prosecutors were in the middle of their first or second terms during 1980. In Michigan all the chief prosecutors were up for reelection; in Pennsylvania the three prosecutors were just settling into their first year in office.

The chief prosecutor's style of administrative leadership was determined through interviews with assistants who were asked to describe them according to whether they were strong policymakers or "first among equals." As the designation suggests, the former style leads to efforts to establish, enforce, and monitor adherence to policy guidelines. The second style imposes fewer restrictions, less central direction, and weaker controls to guarantee compliance with whatever guidelines or policies may exist. Figure 4-3 cross-tabulates these styles (with an additional distinction between strong policymakers and policy makers) with county type. As the figure clearly shows, chief prosecutors in the ring counties were described by their staffs as strong policymakers, while prosecutors in the declining counties were reported to exhibit more relaxed styles of supervision. Two of the prosecutors in the autonomous counties fell between these two poles. This rather tidy pattern was broken only by Kalamazoo, whose chief prosecutor (a former sheriff's deputy from Wayne County) was keenly interested in management techniques such as PROMIS which the office adopted shortly after his election.

FIGURE 4-3

TYPE OF COUNTY AND PROSECUTOR LEADERSHIP STYLE

PROSECUTOR LEADERSHIP STYLE	TYPE OF COUNTY: Ring	Autonomous	Declining
Strong Policy Maker	DuPage (40)* Oakland (51) Montgomery (21)	Kalamazoo (14)	
Policy Maker		Peoria (16) Dauphin (7)	
First Among Equals			St. Clair (14) Saginaw (13) Erie (5.8)

*NUMBER OF FULL TIME ATTORNEYS ON STAFF OR ITS EQUIVALENT

The sizes of the offices (F.T.E. prosecutors) are shown in parentheses in Figure 4-3. Despite the fact that the three largest offices have strong policymakers, size is not the only determinant of leadership style. Also important are the strong ideological cast of middle-class suburban politics, a public commitment to clamp down on crime, and the use of policies to achieve political ends.

Office Policies and Practices: Assigning and Controlling Staff

Table 4-3 summarizes the kinds of policies that existed in each of the offices during the time the field work was being done. The charging and screening functions of prosecutors' offices are clearly pivotal in the operation and performance of the courts and in the dynamics of plea negotiations. However, there was not much variance in this regard across the counties. Only the Pennsylvania offices did little or no screening of initial charging decisions; state laws give the police this authority. In contrast, no felony charges can be lodged against a person in Michigan without the approval of the prosecutor. While the Illinois prosecutors had worked out arrangements to review police charging decisions and to screen cases before they reached circuit court, this was not mandated by law.

Assignment problems are as complex and critical for prosecutors' offices as they are for courts. A basic issue is whether there should be continuity in the prosecution of cases. For example, cases may be permanently assigned to assistants, or before at the preliminary hearing. Such "continuous prosecution" (sometimes referred to as "vertical prosecution") is fairly infrequent, except for special programs that focus on career criminals or sex offenders, because of

Table 4-5
Case Processing Practices of Prosecutor's Office

	DuPage (Ring)	Peoria (Autonomous	St. Clair (Declining	Oakland (Ring)	Kalamazoo (Autonomous	Saginaw (Declining	Montgomery (Ring)	Dauphin (Autonomous	Erie (Declining
Pre-Trial Court Screening: Does prosecutor screen cases?	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Type of Screening Mechanism	Rotating (all felony prosecutors)	Centralized (1 experienced trial prosecutor, 1 less experienced)	Centralized (1 entry level prosecutor)	Centralized	Rotating (all felony prosecutors)	Pre 1980: specialized; Post 1980: Centralized (2 experienced prosecutors)	NA	NA	NA
Attorney Deployment: Continuity of Appointment	Discontinous	Discontinous	Discontinous	Discontinous	Discontinous	Continuous	Discontinous	Discontinous	Discontinous
Method of Deployment (Cases or Judges)	Cases	Judge	Judge (changed to cases in spring 1980)	Judge	Cases	Cases	Cases	Cases	Cases
Degree of Centralization in Plea Offers; who sets initial plea offer?	Central Committee	Assistant, in accordance with guidelines	Assistant, in accordance with very general guidelines	Assistant, in accordance with specific guidelines	Assistant who issues warrant	Assistant, in accordance with guidelines	Assistant, in accordance with guidelines	Assistant, in accordance with guidelines	Assistant in accordance with guidelines
Must Assistant have offer approved by member of office hierarchy?	Not applicable	Yes, but varies with seniority	No	Only if it violates guidelines	Yes, if final offer differs from original; varies by grade	No	No	Yes	No
Type of post hoc auditing or review procedure	Very formal	Informal	Informal, sporadic	Formal	Formal	Informal	Formal	Informal	Informal

the administrative complications such arrangements entail. More common is "discontinuous prosecution" (or "horizontal prosecution"), where assistants are assigned to major stages in the disposition process. In this system several prosecutors may be involved in a single case at different disposition points (e.g., one group does all bail hearings another does all preliminary hearings, and yet another does trial work).

The case assignment problem at the trial level--which assistant will handle which case--is nonexistent in offices using continuous prosecution, since the assistant who conducted the preliminary hearing will prosecute the case in circuit court. This, of course, means that an office is not divided by a lower and upper court distinction where neophyte assistants are consigned to a lower court to earn their spurs.

In offices with discontinuous prosecution, two options exist in assigning cases at the trial court level. One is to appoint assistants to cases; the other is to assign them to specific judges. When assistant prosecutors are assigned to cases rather than to judges, the person making these assignments may or may not know who the trial judge will be. Much depends on when judges are assigned their cases. If the prosecutor's office has this information, their choices will directly influence two-thirds of the composition of the courtroom workgroup. Other considerations in case assignment include the workload in the office, the experience and competence of assistants, and who the defense attorney is. When assistants are assigned courtrooms, the case assignment procedures used by the court automatically determine which prosecutor will try which case. Assignment

strategy in this type of system shifts from a case-by-case orientation to one that matches the personalities and temperaments of assistants with those of the judges. When an assistant cannot get along with the assigned judge, tenure in that courtroom will likely be brief.

Among our nine counties only Saginaw tried to maintain continuity in its assignments (Table 4-3, row 3). The other eight offices had discontinuous prosecution. Of these, only two--Peoria and Oakland--placed their assistants for extended periods in particular courtrooms, and St. Clair switched its assignment policy to cases in 1980. Indeed, in one instance an Oakland prosecutor had worked before the same judge without interruption for nearly seven years. This was unusual, however, as the office generally rotated its assistants after a year or so. Obviously, courtroom assignments that place assistants in a day-to-day working situation with judges more often than not foster relatively close relationships between these two members of the triad.

One final, but extremely important aspect of prosecutor offices is the extent to which they restrict the discretion of assistants in plea matters. Neither judges nor defense attorneys were normally subjected to explicit controls in such negotiations. Head prosecutors had, however, instituted a variety of controls over the assistants in the hope of increasing the uniformity of dispositions. The types of controls form a continuum. At one extreme, a chief prosecutor uses a "laissez-faire" approach. Individual assistants are viewed as professionals who are hired and trained to exercise their judgment. They know their cases better than any supervisor and are, therefore, given virtually unfettered discretion. They do not need prior

approval of plea offers, and the review of their decisions is minimal. In many ways assistants are viewed as private practitioners simply appended to the prosecutor's office. Such an approach enhances the system's flexibility and ability to respond to new and different types of information. It also maximizes the potential for inconsistent treatment of similar cases.

At the other extreme is the bureaucratic approach. Here assistants are viewed as agents of the head. They are essentially trial technicians who carry out the policies of the elected prosecutor. Their discretion is very limited. Plea offers in individual cases are set by the head prosecutor, the chief of the felony division, or a central committee. No deviations from the official offer can be made without prior approval. Case dispositions are closely scrutinized for their consistency with approved offers. The strengths and weaknesses of this approach are virtually the opposite of the laissez-faire aoproach. In short, uniformity is maximized, flexibility is restricted.

Between these extremes a variety of mixed approaches are possible. For example, a near laissez-faire approach binds assistants to very general plea policies. Examples of these policies include: "Don't Reduce Armed Robberies," "Never Agree to Probation," "Always Get Two Years For Residential Burglaries." Offices in which assistants are allowed to formulate their own offers, but are required to clear them with a supervisor before officially communicating them to the defense attorney, are closer to the bureaucratic approach. A less bureaucratic approach would involve post hoc reviews of plea bargains to insure general compliance with office policies.

In our counties DuPage's office had gone further than the others in limiting the discretion of its assistants. The chief prosecutor had created a committee (the Indictment Committee) that set all guilty plea offers. He also had instituted a system to check whether these "bottom line" offers were followed. As Table 4-3 shows, two other centralized offices (Peoria and Dauphin) required their assistants to clear all plea offers with a member of the office hierarchy. The other offices took a variety of approaches. Oakland's prosecutor, for example, had simply forbidden charge or sentence bargaining in cases involving certain crimes (e.g., distribution of drugs, robbery, burglary) and monitored compliance through regular reviews of the case records. Failure to comply had resulted in the dismissal and forced resignation of two assistants. In those offices where the assistants were described as "first among equals," there were few constraints on how assistants handled felony cases, and head prosecutors relied more heavily on informal "audits."

Selected Characteristics of Felony Assistants

Almost all of the assistant prosecutors who were assigned to work on felony cases were white males in their early thirties. Only a handful of women were prosecutors, and there were no black assistants. As Table 4-4 shows, the aggregated characteristics of the assistant prosecutors vary considerably, but no distinct or surprising patterns stand out.

A goodly amount of variation exists in terms of "localism," that is, the average proportion of years lived in the county. For instance, the mean for Montgomery's assistants was 78 percent compared

Table 4-4

Background Characteristics of Felony Assistants on the Prosecutor's Office by County

	Dupage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Average Age	34 (N=13)	30 (N=5)	31 (N=6)	34 (N=9)	34 (N=10)	33 (N=8)	31 (N=10)	32 (N=6)	33 (N=9)
Average percent of life in county	22% (N=12)	60% (N=5)	67% (N=6)	45% (N=9)	22% (N=10)	30% (N=8)	78% (N=10)	78% (N=6)	42% (N=8)
Party ID									
Republican	9	3	0	3	4	2	6	4	2
Democrat	0	1	6	0	1	1	2	0	6
Independent	5	1	0	6	5	5	2	2	1
Average years in office	3.1 (N=14)	4.4 (N=5)	2.3 (N=6)	4.9 (N=8)	4.4 (N=9)	3.4 (N=8)	2.4 (N=10)	2.7 (N=6)	2.6 (N=9)
Percent Part-time	0% (N=14)	0% (N=5)	0% (N=6)	0% (N=9)	0% (N=10)	0% (N=9)	0% (N=11)	0% (N=8)	67% (N=9)

to 22 percent in DuPage, and 45 percent in Oakland, the other ring counties. Similar contrasts among the counties in the autonomous or declining categories are also evident. On the other hand, the assistants in the three Pennsylvania counties generally had spent less time in their positions than those in Illinois and Michigan, possibly because of elections had recently been held in the former jurisdictions and because salaries were much lower in Pennsylvania than in the other states. In the Michigan counties, where the chief prosecutors were nearly at the end of their four-year terms, the felony assistants averaged 4.9 years in Oakland's office, 4.4 years in Kalamazoo, and 3.4 in Saginaw. In contrast, the means hovered around 2.5 years in the Pennsylvania counties.

Both local and state factors combined to give each of the felony staffs' a partisan orientation. The assistants in the ring and autonomous counties tended to have Republican allegiances, while those in the declining counties declared themselves to be Democrats. In Michigan, despite the partisan nature of prosecutor elections, most of the assistants in the three counties considered themselves to be independents. Indeed, there were more independents than Republicans even though all the chief prosecutors had run on Republican tickets. Only two assistants declared that they were Democrats in these counties.

The attitude structures for the nine groups of felony assistant prosecutors are displayed in Table 4-5. On the standardized "Belief in Punishment" scale, the means for DuPage and Peoria--particularly the former--stand out from the other counties. Their average scores are 1.37 and 1.01, respectively while the others range from a low of

Table 4-5

Attitude Structure for Felony Assistants in Prosecutor Offices by County

	Dupage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Belief in Punishment									
Mean	1.37	1.01	.11	.71	.41	.82	.76	.75	.54
Standard Deviation	.62	.26	.42	.72	.67	.69	.57	.41	.58
Range	1.81	.70	1.21	2.16	2.12	2.40	1.57	.86	1.45
High	2.28	1.36	.64	2.14	1.33	1.91	1.51	1.28	1.33
Low	.47	.66	-.57	-.02	-.79	-.48	-.06	.42	-.12
Regard for Due Process									
Mean	-.58	-.27	.22	-.98	-.63	-.77	-.61	-1.16	-.38
Standard Deviation	.99	.69	.93	1.19	1.01	.63	.26	.69	.62
Range	3.33	1.68	2.22	3.50	3.08	1.96	.81	1.80	1.55
High	1.30	.60	1.30	.69	.82	.36	-.26	-.36	.27
Low	-2.04	-1.08	-.92	-2.80	-2.26	-1.60	-1.07	-2.17	-1.27
Concern for Efficiency									
Mean	-.12	.53	.39	-.28	.80	-.12	.32	.37	.28
Standard Deviation	.64	.84	.49	.72	.60	.77	.51	.94	1.20
Range	2.50	2.22	1.32	2.11	2.09	2.58	1.55	2.41	3.35
High	1.35	1.94	.95	.82	2.23	.71	.92	1.33	1.78
Low	-1.15	-.28	-.37	-1.29	.15	-1.87	-.64	-1.08	-1.57
N	14	5	6	9	10	9	10	6	8

.11 in St. Clair to .82 in Saginaw. Although no consistent pattern either by type of county or by state is apparent for these scores, it is worth noting that the range of scores within an office was greater in the Michigan counties than in the others.

In contrast to the assistant prosecutors' generally strong emphasis on punishment, their concern for due process was considerably weaker. The means on the "Regard For Due Process variable varied between -.5 and -1.0. The assistants in Dauphin had the lowest averages, with -1.16, and those in St. Clair had the highest (and only positive) mean, with .22. Again no pattern emerges. Nor does one emerge in regard to their "Concern for Efficiency". The standardized means for this composite measure had positive signs in six of the counties and negative ones in the rest. Only Kalamazoo's assistants had a fairly extreme mean (.80).

The Local Defense Bar

Unlike the sections outlining the structure of the bench and the prosecutor's office, here we are dealing with a much more amorphous component of the court community. This is especially true in counties with a very diffuse private bar and/or no public defender's office. We begin by describing the structure of the defense bar. Then we talk about differences in the structure of indigent defense systems and the work practices they employ. Finally, we present some data on the background and attitudes of public defenders and contract attorneys.

The Structure of the Local Defense Bar

The extent to which felony criminal work is concentrated in the hands of a small group of attorneys is one of the most important structural characteristics of the court community's defense bar. It can affect the composition of workgroups, the level of consistency in handling cases, and perhaps even the system's efficiency. The extent to which defense work is privately or publicly funded is also important.

The defense bar's concentration, as well as its private-public mix, is affected by both public policies and private markets. Clearly, wealthy defendants are more likely to hire private defense attorneys. This leads to a more diffuse defense bar. However, even in counties with large proportions of indigent defendants (those defended by publicly-paid attorneys) a highly concentrated defense bar is not insured. This depends upon structure of the indigent defense system.

A good deal of variance in both the private-public mix and the level of concentration was uncovered across our counties; these data are reported in Table 4-6. Overall, nearly 57 percent of the sampled felony defendants in the counties were represented by publicly paid defense attorneys. However, the mix in the Michigan counties was much more heavily tilted toward publicly paid attorneys than those in the other states. The Michigan proportions averaged about 75 percent and were fairly consistent across the three counties. In Illinois and Pennsylvania, the ring counties used far fewer publicly paid attorneys than the other jurisdictions. Slightly more than a third (33.6 percent) of Montgomery's defendants and only about 20 percent of DuPage's defendants had publicly paid counsel, compared to at least 55

Table 4-6

Structure of Defense Bar

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
% of all cases represented by public paid attorney	19.7 N=660	63.9 N=947	57.0 N=976	67.7 N=761	79.5 N=706	77.2 N=624	33.6 N=449	55.2 N=652	55.9 N=449
Number of attorneys accounting for the bulk of indigent defense cases*	7	8	13	76	10	78	11	9	14
% of all cases represented by 15 most "regular" private attorneys	11.1	19.5	21.0	6.7	10.2	14.7	12.0	23.1	26.6
Degree of concentration in criminal bar: percent of cases handled by public defender plus 15 most regular private attorneys	30.8 (22)	83.4 (23)	78 28	N.A. (91 attorneys handled 74.4% of cases)	89.1 (25)	N.A. (93 attorneys handled 91.9% of cases)	45.6 (26)	78.3 (24)	82.5 (29)

*This figure includes all public defenders who regularly handled a felony caseload; the handful of defenders who handled an occasional case were not included.

percent in the autonomous or declining counties. The second row of Table 4-6 shows the number of attorneys who represented these defendants. The numbers are quite small in all but two of the counties. Whereas an average of about 10 attorneys represented indigent defendants in the other counties, 76 attorneys in Oakland and 78 in Saginaw were appointed counsel for indigent defendants, according to our case samples.

The level of concentration of the local private bar is indicated in the third row of Table 4-6. It shows the proportion of cases handled by the 15 most regular private attorneys in each county. In both DuPage and Montgomery the proportions are relatively low, suggesting that their criminal defense bars were diffuse. A clearer picture of the size and concentration of the bars (row 4) emerges by combining the percentages in the first and third rows and adding the numbers of attorneys. In five of the counties fewer than 30 attorneys represented more than 75 percent of the sampled defendants--Peoria, St. Clair, Kalamazoo, Dauphin, and Erie. In DuPage and Montgomery the proportion of cases handled by "regulars" was much smaller because publicly paid attorneys handled only 20 and 34 percent of the cases, respectively, and because no private attorneys dominated the markets. In Oakland and Saginaw there were large numbers of lawyers who represented both indigent defendants and those who could pay for legal services.

Figure 4-4 summarizes the preceding description by classifying the counties according to whether their defense bars were concentrated or not, and by whether criminal defense work was largely public or private in nature. The practice of criminal law was neither primarily

FIGURE 4-4

ORIENTATION AND CONCENTRATION OF CRIMINAL DEFENSE BARS

LEVEL OF CONCENTRATION	ORIENTATION OF BAR: Privately Oriented	ORIENTATION OF BAR: Publicly Oriented
Not Concentrated	Montgomery DuPage	Oakland Saginaw
Concentrated		Peoria St. Clair Kalamazoo Dauphin Erie

private nor performed by just a few specialists in any or our counties; therefore, the lower left cell is empty. For five of the counties, there were relatively small numbers of criminal defense attorneys, and most of them were publicly paid or retained. The least concentrated and most privately oriented defense bars were in Montgomery and DuPage. Oakland and Saginaw also had diffuse defense bars, but most of their cases were publicly paid or financed.

Indigent Defense Systems

Indigent defense systems exerted considerable influence upon the structure of the local defense bars in the nine counties. While these results have an obvious bearing on the courthouse community and on workgroups, there are other facets of indigent defense systems that need to be discussed because of their importance in shaping the working environment of criminal attorneys.

Upon close scrutiny indigent defense systems seldom look alike. Perhaps the most basic distinction is their location on a private-public continuum. At the private end are systems in which members of the local bar are chosen or appointed on a case-by-case basis and paid to represent poor defendants. At the other end are public defender offices with full-time staffs working under a more or less centralized administration. Between these poles are "quasi-public" models in which a law firm or group or attorneys, often on a part-time basis, handle indigent defendant cases on a contractual basis with the court or county. Table 4-7 provides an overview of the nine systems.

Oakland and Saginaw, both of which had highly decentralized defense bars (despite high proportions of defendants with publicly

Table 4-7
Structure of Indigent Defense System

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous	Saginaw (Dedclining)	Montgomery (Ring)	Dauphin (Autonomous	Erie (Declining)
Type of indigent defense system	Public model	Quasi-public model, all part-timers	Public model	Private model	Quasi-public model contract system	Private model	Public model	Public model	Public Model
Type of head	Full-time	Part-time	Part-time	None	None	None	Part-time	Full-time	Part-time
Tenure of head as of 6/80	11 yrs.	7 yrs.	1 yr.	N.A.	N.A.	N.A.	6 mos.	16 mos.	3 yrs.
Terms of tenure	Serves at pleasure of county judges	Serves at pleasure of county judges	Serves at pleasure of county judges	N.A.	Set by Contract	N.A.	Serves at pleasure of County Commissioners	Serves at pleasure of county Commissioners	Serves at pleasure of County Executive
How are appointed attorneys chosen?	Personalized appointment by individual judge --only for special cases	Personalized appointment by individual judge --only for special cases	Personalized appointment by individual judge --only for special cases	Personalized appointment by individual judge --varies by judge special cases	N.A.	Office of assigned counsel--alphabetical rotation among attorneys on list	Personalized appointment by public defender office from a list of attorneys	Personalized appointment by public defender office, from a list of attorneys	Personalized appointment by public defender office from a list of attorneys (except in homocide cases)
How are publicly financed attorneys paid?	Salary	One lump sum for salary and expenses	Salary	According to fee schedule	A set contract sum, with provision for additional funds if cases assigned exceed a set number	According to fee schedule	Salary	Salary	Salary

paid attorneys) fit the "private model." They assigned indigent defendants to a wide array of lawyers, most of whom who were not criminal law specialists. In the other counties (those with public or quasi-public systems) a handful of attorneys handled indigent cases. Under the private systems in Oakland and Saginaw, attorneys were reimbursed according to fee schedules with payments for performing different activities (e.g., so much for conducting a preliminary hearing, filing a motion, etc.), and not for the time spent on a case. The counties with public defender systems paid attorneys a salary, while those with quasi-public systems gave attorneys lump sums to cover expenses and fees. The point here is that attorneys working under either the public or quasi-public systems were not paid on a case-by-case basis.

Table 4-7 outlines other important facets of the various indigent defense systems. Only two of the six counties with public or quasi-public systems (DuPage and Dauphin) had full-time chief or head defenders, and of these six counties only DuPage and Peoria had heads with any significant amount of time in office. Illinois head defenders are selected by the circuit judges in the county. In Pennsylvania, however, they are chosen by the county commissioners or executive. This means that Illinois defenders may be susceptible to different kinds of pressure than their counterparts in Pennsylvania, who are more insulated from judicial pressures but more susceptible to county partisan influences.

As just mentioned, every county--with the exception of Peoria and those in Michigan--paid their public defenders straight salaries. DuPage also allowed full-time defenders to supplement their salaries

through private practice. Peoria paid each public defender a flat fee to cover both salary and office expenses since all were part-timers with private offices. Kalamazoo also had a lump sum contract with a consortium of private attorneys who bid the contract. Unlike Peoria, however, the Kalamazoo contract had an overflow provision for additional monies to be paid if an attorney handled more cases than had been stipulated in the contract.

Figure 4-5 sorts the counties according to whether publicly paid attorneys were assigned to courtrooms or to cases and whether their representation was continuous or discontinuous. In Oakland the circuit court judges appointed attorneys prior to the preliminary hearing. Thus, attorneys knew who the sentencing judge would be if the defendant was bound over to circuit court and convicted. Judges varied in how widely they spread these appointments. In some courtrooms only a few attorneys handled all indigent defendant cases, while in others many lawyers were assigned to just a few cases over the course of a year. In this respect the judges could control the formation of workgroups if they wished. In DuPage and Peoria this control rested in the hands of the head of the public defender's office. They chose to station their staffs in courtrooms, assigning them to judges rather than to cases. In five of the counties, publicly financed attorneys generally represented their clients throughout all stages of the process. In Montgomery County and all Illinois counties, however, the public defender assigned to a client at the preliminary hearing usually differed from the one assigned at the trial. Peoria and St. Clair had public defenders who specialized in preliminary hearings but did no trial level work. In DuPage the

FIGURE 4-5

ASSIGNMENT PRACTICES OF INDIGENT DEFENSE SYSTEMS

REPRESENTATION PRACTICES	ASSIGNMENT POLICIES: Judge	ASSIGNMENT POLICIES: Case-By-Case
Continuous	Oakland	Dauphin Erie Kalamazoo Saginaw
Discontinuous	DuPage Peoria	Montgomery St. Clair

felony public defenders rotated responsibility for preliminary hearings among themselves.

Selected Characteristics of Public Defense Attorneys

Tables 4-8 and 4-9 report data on the backgrounds and attitudes of the public defenders or the contract attorneys. Comparable data for private attorneys are not presented because those who were interviewed did not constitute a random sample of private attorneys. Since there were no public defenders or contract attorneys in Oakland and Saginaw, no data are shown for these counties.

The average age of the public defense attorneys was quite similar to that of the prosecutors; generally they were in their early thirties. The dominance of locals in the offices varies across the counties, but no discernible pattern seems to exist. One ring county (Montgomery) is high, while another (DuPage) is low. Among the autonomous counties, one is high (Peoria) but one is low (Dauphin). In two of the declining counties, locals predominated. Overall, then, the predominance of locals did not vary with the kind of county.

In one major respect, the attorneys did differ from the assistant felony prosecutors: more often than not the attorneys were Democrats. With the exception of DuPage and Montgomery, which are highly Republican counties where public defender positions were coveted political prizes, most offices were dominated by Democrats. The average term of employment in office ranged from two years in Erie to over five in DuPage.

Table 4-8

Background Characteristics of Public Defenders by County

	Dupage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Average Age	34 (N=8)	32 (N=5)	32 (N=9)		36 (N=10)		35 (N=17)	30 (N=10)	33 (N=13)
Average Percent of life in county	40% (N=8)	79% (N=5)	59% (N=9)		61% (N=10)		70% (N=17)	38% (N=9)	81% (N=13)
Party ID									
Republican	8	1	0		4		15	3	3
Democrat	0	3	5		3		2	6	5
Independent	0	1	4		3		0	1	5
Average years in office	5.3 (N=8)	3.6 (N=5)	4.0 (N=9)		N.A.		4.7 (N=17)	3.2 (N=9)	2.0 (N=11)
Percent part-time	25% (N=8)	100% (N=6)	33% (N=9)		100%		88% (N=17)	0% (N=10)	62% (N=13)

Table 4-9

Attitude Structure for Public Defenders by County

	DuPage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Belief in Punishment									
Mean	-.67	.05	-.77		-.73		-.68	-1.13	-.53
Standard Deviation	.71	1.08	.72		.95		.66	.73	.68
Range	2.25	2.58	2.06		2.49		2.20	2.70	2.28
High	.16	1.45	.15		.70		.27	.22	.93
Low	-2.09	-1.14	-1.91		-1.79		-1.93	-2.48	-1.35
Regard for Due Process									
Mean	.46	.61	.44		.61		.60	1.06	.71
Standard Deviation	.69	.85	.54		.83		.80	.43	.73
Range	2.14	2.26	1.58		2.20		2.76	1.39	2.76
High	1.30	1.45	1.30		1.45		1.63	1.63	1.63
Low	-.84	-.81	-.28		-.75		-1.13	.24	-1.13
Concern for Efficiency									
Mean	.11	.72	-.75		-.32		-.41	-1.0	-.32
Standard Deviation	1.22	1.46	.60		.83		.75	.46	1.21
Range	3.66	4.06	1.97		2.31		2.53	1.49	4.04
High	1.48	2.53	.23		1.03		.50	-.44	1.14
Low	-2.18	-1.53	-1.75		-1.28		-2.03	-1.93	-2.90
N	8	5	9		10		16	10	13

The standardized "Belief in Punishment" scores, reported in Table 4-9, reveal some interesting patterns. In Dauphin, where the judges scored extremely high and the prosecutors fairly high, the public defenders scored very low. The next lowest score is in St. Clair, which also had very low punishment scores for judges and prosecutors. In Dupage and Montgomery the defenders' average scores were also fairly low; the prosecutors in these counties were fairly high, especially in DuPage, while the judges were largely neutral. The only truly high "Belief in Punishment" average among public defenders was in Peoria, where the judges and prosecutors also were quite high. Fairly wide ranges existed within all offices.

The "Regard for Due Process" averages reveal much less variation across counties, although they are higher in Pennsylvania. Indeed, Dauphin's average is more than twice DuPage's and St. Clair's. The ranges are also wider in Pennsylvania, except in Dauphin. Dauphin has both a high average and a small range and standard deviation, revealing a good deal of consensus on due process questions. Dauphin defenders, however, differ greatly from Dauphin judges, who had the lowest regard for due process among judges. The Pennsylvania public defenders, especially in Dauphin, also reveal a generally lower "Concern for Efficiency" than those in Illinois, except for St. Clair. St. Clair and Dauphin both have exceptionally low average scores and low ranges and standard deviations, again indicating a good deal of consensus. Peoria public defenders had the highest "Concern for Efficiency" scores; the Peoria prosecutors and judges had the second highest scores among their respective groups. The inconsistency

between Dauphin defenders and judges is also clear with respect to efficiency. The Dauphin judges scored highest here, while the defenders score lowest.

Workgroup Configurations: Attitudinal and Stylistic Dimensions

So far in this chapter we have been concerned with the structure of the principal organizational components of the local court system--the bench, the prosecutor's office, and the defense bar. Most decision-making in criminal courts, however, takes place at the workgroup level. Although we have talked about the impact that the structure of various functions can have upon different aspects of workgroup formation, it is important now to talk about the salient dimensions of these workgroups as well as the varieties of ways in which individual traits are arrayed within them. This discussion will shed light on the importance of workgroup configurations for criminal court decision-making, a topic we will return to in Chapter Seven.

Our approach to identifying workgroup configurations was twofold. First we examined the distribution of cases across individual decisionmakers to identify workgroups. For reasons which will become clear in Chapter Seven, we did not want to categorize every chance grouping of individuals as a workgroup. Rather we wanted to be assured of a certain level of prior interaction. An examination of the distribution of triads across cases led us to use a five case cutoff (i.e., before a triad was categorized as a workgroup, members

of that triad had to have handled at least five cases together in their respective county sample). This resulted in the identification of 102 workgroups across the nine counties.

The next step was to examine the configurations of scores in each workgroup on the principal measures of individual attitudes and operating styles in this study--"Belief in Punishment," "Machiavellianism," "Responsiveness," and "Trial Competence." For each workgroup the score of each participant on each measure was plotted on a scale. Then the resulting set of diagrams (4 sets of 102) were analyzed for relevant patterns. After a particular set of preliminary categories was visually constructed, operational criteria were defined to determine whether a particular workgroup belonged to a particular category. For example, for a workgroup to be categorized as a Prosecutor-Judge cluster on dimension X, the spread between the two scores had to be within one or one-half of a standard deviation. The criteria differ for each structure, because the configurations were different and because the variance in the criterion variable differed. There was, for example, little variance in Machiavellianism but a great deal in Responsiveness.

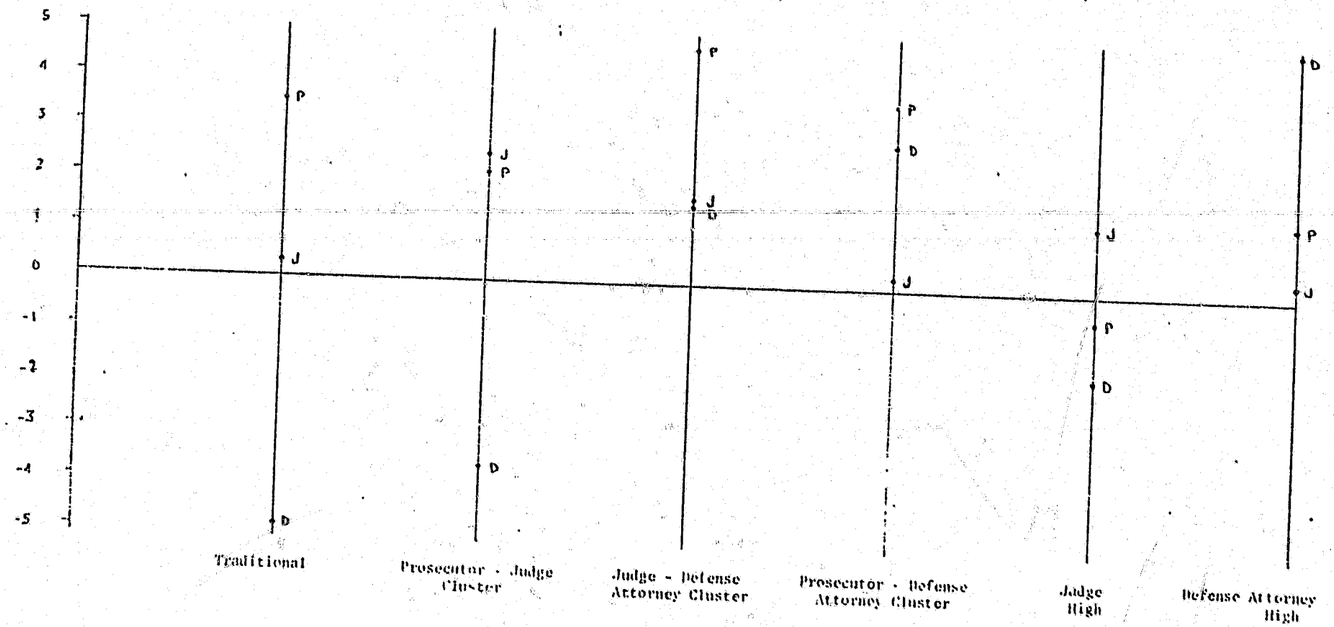
The final groupings of configurations are depicted in Figures 4-6 to 4-9, along with their relative frequencies. Each merits further discussion.

The Punishment Structure

Analysis of the "Belief in Punishment" scores for 84 separate workgroups with complete data on this variable revealed six distinct configurations. Figure 4-6 indicates the variable scores by role and

Figure 4-6

Average Punishment Scores By Role and Triad Type

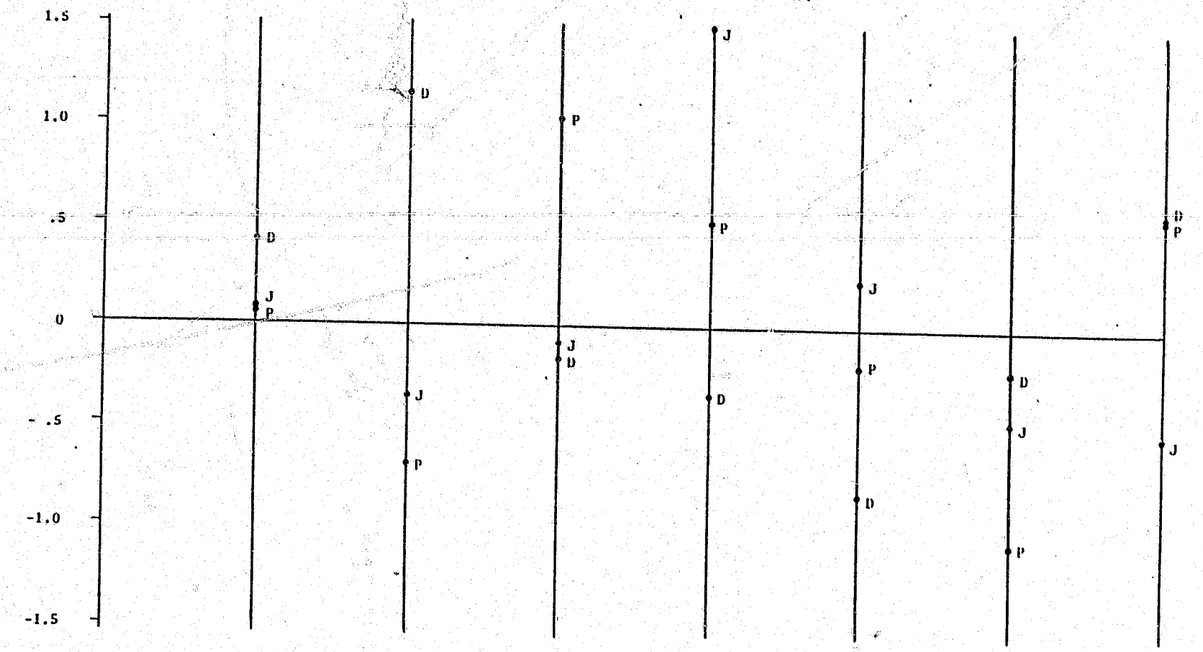


triad type; the scores are the means of the z-scores for the triads. The "traditional" triad in which the judge's score lies roughly midway between the prosecutor (with high beliefs in punishment) and the defense attorney (with low scores) is the modal grouping, but still accounts for less than half (44 percent) of the workgroups. With this in mind, it is interesting to find that the second most common pattern is the "prosecutor-judge cluster" in which both actors share relatively similar high beliefs in the efficacy of punishment, matched against defense attorneys with more lenient or liberal views. This cluster made up roughly 28 percent of the workgroups. The other patterns accounted for only a handful of workgroups. All but one, it may be noted, are characterized by defense attorneys with relatively high "Belief in Punishment" scores.

The Mach Structure

The existence of "outliers" (i.e., individuals with either higher or lower scores on the Machiavellianism scale than the other two members of the triad), was the defining characteristic of the patterns shown in Figure 4-7. Being either higher or lower on this scale means that individuals had various psychological advantages, or disadvantages, in gaining what they wanted. This figure indicates that most triads were marked by the existence of one actor who was a "Hi Mach" or a "Lo Mach." The "inconclusive" category accounted for only about a quarter of the workgroups. The most frequent configurations were the "Defense Dominant" and "Prosecutor Dominant" patterns, each of which handled about 20 percent of the workgroups. Judges who

Figure 4-7
Average Machiavellianism Scores by Role and Triad Type



	Inconclusive	Defense Dominant	Prosecution Dominant	Judge Dominant	Defense Recessive	Prosecution Recessive	Judge Recessive
% Workgroups (N=94)	24.5	23.4	21.3	2.1	10.6	7.4	10.6

were "Hi Machs" relative to the other members of the disposition triad did not appear frequently, and this pattern was involved in the handling of just a few defendants.

The Responsiveness Structure

The responsiveness structure (Figure 4-8) of the triads proved to be the most challenging to categorize. Unlike the other variables, clear patterns did not readily emerge, and those that did were often not as tightly knit. This meant that subjectively based categorizations were occasionally necessary. After these residual triads were classified, only 7 of 93 workgroups had to be categorized as "Interdeteminate."

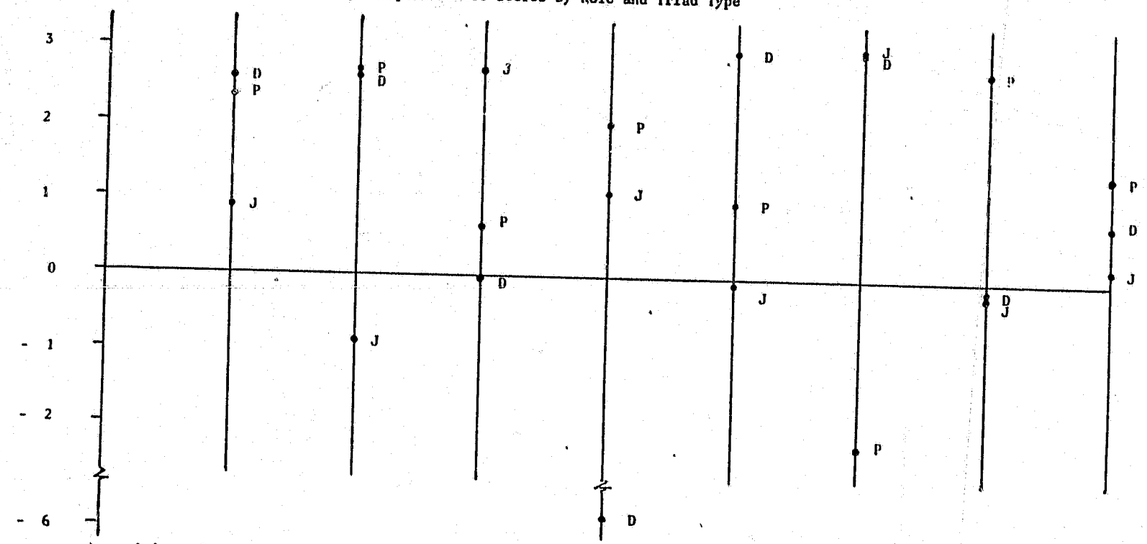
Only about 12 percent of the workgroups constituted cohesive, highly responsive workgroups. The modal group was a highly responsive prosecutor-defense attorney cluster with a quite unresponsive judge. This configuration included a full third of all workgroups and cases. The next two most frequent groupings were a highly responsive judge and prosecutor cluster (14 percent of the workgroups) and a highly responsive judge-defense attorney cluster (about 13 percent of the triads).

The Trial Competence Structure.

This was the easiest and most straightforward configuration to categorize, because only the defense attorney and prosecutor scores had to be assessed. Three patterns stood out (as indicated in Figure 4-9). One depicted a rough parity of trial skills for the two attorneys. The other two, as might be expected, had either one or the

Figure 4-8

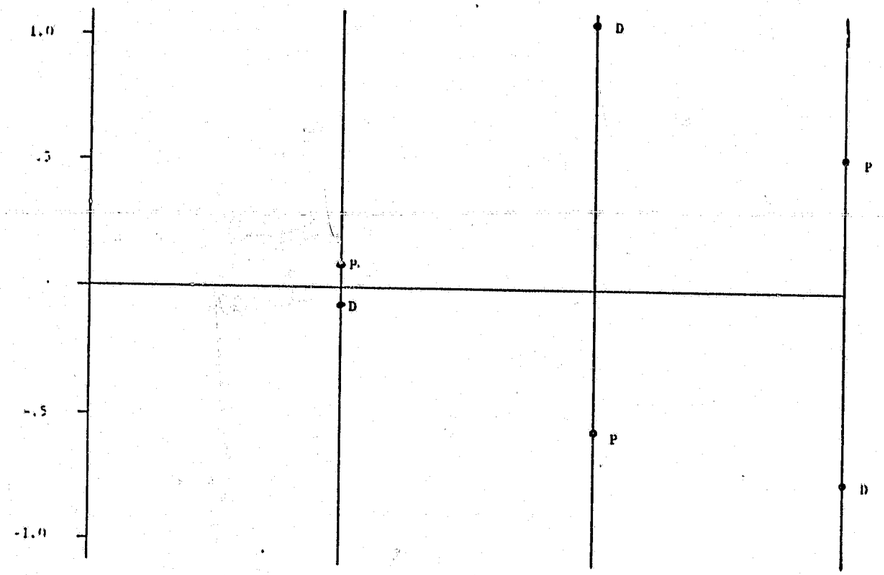
Average Responsiveness Scores By Role and Triad Type



	Judge - Prosecutor - Defense Counsel Cluster	Prosecutor - Defense Counsel Cluster; Judge Low	Prosecutor - Defense Counsel Cluster; Judge High	Judge - Prosecutor Cluster; Defense Counsel Low	Judge - Prosecutor Cluster; Defense Counsel High	Judge - Defense Counsel Cluster; Prosecutor Low	Judge - Defense Counsel Cluster; Prosecutor High	Indeterminate
% Workgroups (N=93)	11.8	33.3	4.3	14.0	5.4	12.9	10.8	7.5

Figure 4-9

Average Trial Competence Scores By Role and Dyad Type



	Attorney Cluster	Defense Counsel High	Prosecutor High
% Workgroups (N=92)	46.7	35.9	17.4

other of these two ranked as more skilled than the second attorney. The configuration in which the prosecutor and defense attorney were more or less evenly matched in trial skills included over 47 percent of the workgroups. The proportion of "defense high" workgroups was nearly double that of the "prosecutor high" triads, probably reflecting the greater experience of private defense attorneys.

Conclusions

The context of sentencing decisions is a richly variegated amalgam of factors and influences flowing from the courthouse community, the policies and practices of the sponsoring organizations, and the shifting, multiple configurations of the courtroom workgroups. As this chapter amply demonstrates, no simple patterns were found in these amalgams. One reason, of course, is the sheer complexity that characterizes each of these elements and the myriad ways they can be combined. Much of this chapter, accordingly, was devoted to sorting through this complexity, identifying and cataloging the major facets of the elements, and then seeking to determine whether they were organized into readily identifiable structures. The other, less obvious, reason is that in trying to understand how these processes and systems were joined together and how they functioned, there may be a tendency to assume, and thus expect, a higher degree of integration among the various parts than really exists. Moreover, one might be tempted to look for mutually reinforcing tendencies when in fact there are strong centrifugal forces at work.

The felony disposition process--and ultimately sentencing decisions--however, are the products of loosely coupled systems and structures. Loose coupling both allows and encourages parallel, divergent, and convergent forces to move through the processes. Because relationships among environment, context, organizations, groups, and processes are not always well-defined, a goodly amount of inconsistency and conflict is typically found in the "system." Patterns of variables are difficult to decipher and when found may be only feebly arranged since there are few unifying tendencies. Yet it is also clear that the "system" does not fly apart and disintegrate into its basic, constituent elements. Court dynamics show a constant tension between centrifugal and centripetal forces, between stability and instability, between regularity and randomness.

It is for this reason, for example, that the policies of the sponsoring organizations may not mesh particularly well. Each is responding to its own definition of the situation, its own interests and constituency. In Kalamazoo, to cite one case briefly, all four judges decided for a while on their own how much time throughout the year they would give to felony cases. As a result, criminal trial terms varied in length from courtroom to courtroom. They were also weakly coordinated so that sometimes all four courts were scheduled for criminal trials while at other times one, two, or three courtrooms were hearing felony cases. In addition, because there was no regularity about when terms started, how long they lasted, or how many judges were available, problems were created for the prosecutor's office.

Even within a sponsoring organization, policies may produce cross-cutting demands on its members. For instance, the Oakland prosecutor's office assigned its assistants to judges, which greatly facilitated plea negotiations but at the same time its policies forbade them from explicit charge or sentencing bargaining in many kinds of felony cases. As a result, the prosecutors walked a fine line in working out guilty pleas with defense attorneys who were anxious to know their clients sentence if they pleaded guilty. It was often difficult for even experienced defense attorneys to tell the difference between a guarantee from the assistant and his informed "guestimate" of what the judge would do.

Such examples hint at the tangled flow of influences shaping the behavior of people working in courts. It may be best then to accept the existence of ambiguity in developing a realistic understanding of how they make decisions. It should also be recognized that the processes within which they operate are highly interactive in the sense that during the decision-making process certain factors may emerge as important only under certain conditions. It is this kind of perspective that guides the analyses in the following chapters.

Chapter Five

SENTENCING: A MACRO PERSPECTIVE

This chapter examines aggregate differences in sentencing patterns across the nine counties. Two dimensions of these patterns will be of particular interest--severity and consistency. Despite the importance of these areas, our analysis of them is largely speculative, for two reasons. First, despite the magnitude of the data collection effort here, when we examine them from a macro perspective, we are dealing with only nine observations. With such a small number we can only speculate as to which of a myriad of factors accounts for an observed pattern. A second problem is that there is little prior research to guide us in our effort to understand the patterns that emerge. Thus the best we can hope to do here is to use our understanding of the internal workings of each system, in conjunction with what we know about environmental influences, to fashion a reasonable explanation of observed sentencing differences across counties.

The Severity of Sentences

Most criminal court practitioners, and probably the public at large, firmly believe that some counties are more punitive than others. The issue of inter-county disparities has been of concern to students of criminal courts since the crime surveys of the 1920s (Nardulli, 1978, Chapter 1). In discussing inter-county sentencing patterns contemporary scholars talk about local legal culture and

differences in "going rates" for various offenses. Unfortunately, with some exceptions (Eisenstein and Jacob, 1976; Levin, 1977) differences in sentencing levels are not documented, much less explained. If we approach the question of inter-county disparities in sentencing in light of our three-pronged theoretical approach to analyzing criminal courts, two categories of factors seem relevant: contextual factors and environmental factors. Tables 5-1 and 5-2 list several specific factors within each of these broad categories and map out their implications for sentencing in the counties. It should be stressed that this set of factors is not exhaustive. It merely reflects our best judgment as to the most relevant factors. It should also be mentioned that some of the factors may have an impact only in combination with some other factor. That is, the relationship may be conditional so that the availability of plea routing, for example, may have an effect only when there is adequate variance in judicial sentencing philosophies or the county's political ideology may be relevant only where political linkages are "tight."

The predictions laid out in Table 5-1 with respect to "Belief in Punishment" configurations were based upon the relative level of attitudes in a county and the pattern of role means, especially for judges and prosecutors.[1] DuPage and Peoria ranked as more punitive because their prosecutors had the high overall means, and its judges were also fairly high. St. Clair and Kalamazoo were listed as lenient because judge and public defender scores were below the overall mean, and prosecutor scores were moderate. The other counties are categorized as moderate because the configurations tended to be closer to the overall mean. Plea routing permits a prosecutor and defense attorney

Table 5-1

Contextual Factors and Sentencing Expectations

	More Lenient Sentences Predicted	Moderate or no Sentences Prediction	More Punitive Sentences Predicted
Attudinal Configuration for "Belief in Punishment	St. Clair Kalamazoo	Oakland Saginaw Montgomery Erie Dauphin	DuPage Peoria
Availability of Plea Routing (Yes, No)	St. Clair Montgomery Dauphin Erie		DuPage Peoria Oakland Kalamazoo Saginaw
Centralization of Plea Bargaining (Low, medium, high)	St. Clair Saginaw Montgomery Erie	Peoria Oakland Kalamazoo Dauphin	DuPage
Use of Prosecutorial Screening (No, Yes)	Montgomery Dauphin Erie		DuPage Peoria St. Clair Oakland Kalamazoo Saginaw

who have reached a plea aqreement to take it to a judge of their choosing. This is expected to lead to more lenient sentences because those involved will doubtless take their cases to more lenient, accommodating judges, assuming some exist. The Pennsylvania counties and St. Clair all have some provision for plea routing, as well as adequate variation across judges (especially in Erie and Montgomery). The other counties do not permit plea routing.

The centralization of plea bargaining is considered relevant because it impedes last-minute concessions by trial prosecutors to induce pleas. DuPage had the most rigid system and is, therefore, included in the severe category. Peoria, Oakland, and Kalamazoo, had less rigid restrictions on assistant prosecutors but are listed above those counties with laissez faire policies (St. Clair, Saginaw, Montgomery, Erie). Finally, the lack of prosecutorial screening in the Pennsylvania counties is expected to result in more lenient sentences. Rigorous screening procedure sought to enhance the prosecutor,s bargaining power in specific cases as well as in their overall relations with defense attorneys.

Table 5-2 lists the most relevant environmental factors for explaining inter-county differences in severity; some are county level influences, others are state level. The severity of social strains in a county was thought to be relevant because in heterogeneous counties, especially those suffering from some economic malaise--or where crime is highly concentrated in a major city or among an identifiable population grouping--sentencing decisions may take on decidedly political overtones. Sentencing may be more severe than in prosperous suburban counties with no serious crime problems. Peoria, St. Clair,

Table 5-2

Environmental Factors and Sentencing Expectations

	More Lenient Sentences Predicted	Moderate Sentences Predicted	More Punitive Sentences Predicted
County Level Environmental Factors			
Severity of Social Strains (Low, medium, high)	DuPage Montgomery	Oakland Saginaw Kalamazoo Erie	Peoria St. Clair Dauphin
Political Ideology Liberal, moderate, conservative)	St. Clair Erie	Oakland Kalamazoo Saginaw Dauphin	DuPage Peoria Montgomery
Seriousnes of Crime Problem (Low, medium, high)	DuPage Montgomery Erie	Kalamazoo Dauphin Saginaw Oakland	Peoria St. Clair
Local Jail Capacity (Low, medium, high)	Montgomery	Peoria Dauphin Oakland DuPage	Kalamazoo St. Clair Saginaw Erie
State Level Environmental Factors			
Severity of State Code (Less severe, more severe)	DuPage Peoria St. Clair Montgomery Dauphin Erie		Oakland Kalamazoo Saginaw
Penitentiary Capacity (Low, medium, high)	Montgomery Dauphin Erie	DuPage Peoria St. Clair	Oakland Kalamazoo Saginaw
Severity of Long-term State Sentencing Norms (Low, medium, high)	Montgomery Dauphin Erie	DuPage Peoria St. Clair	Oakland Kalamazoo Saginaw

and Dauphin are included in the more severe category because they all have fairly high crime levels, especially in their major city. Moreover, the county's minorities are also highly concentrated in the major city. Finally, blacks made up over half of the court system's felony defendants (as represented in our case samples) in all three counties. DuPage and Montgomery are listed as more lenient because of their homogeneous population and their low, diffuse crime levels. The other counties have one or more moderating influences which lead us to classify them in the middle.

The political ideology of the counties is considered relevant because, if judges try to reflect the views of their constituents, those in more conservative counties will be more likely to sentence similarly situated defendants more severely. The predictions here are based on the categorizations made in Chapter Three (Table 3-5). The impact of the crime problem factor is expected to be similar to political ideology. In counties where crime is a serious problem judges may feel more compelled to sentence severely than do judges in counties with minimal crime problems. These predictions are based upon the discussions in Chapter Three, Table 3-8. The prediction for the impact of the ideology and crime level categories reported in Table 5-2 are expected to be especially important for Peoria. It is listed in the severe category for both factors (as well as in the social strains category). DuPage, Montgomery, and St. Clair are listed in the severe category for one of these but in the lenient category for the other. Moreover, as reported in Table 3-14, the political linkage between the Peoria courts and its local environment

is also considered to be relatively "tight." This should make the system more responsive to this relatively unambiguous set of external influences.

The impact of the local jail capacity depends upon no political linkages. It is important because where capacity is low it has a constraining impact upon the ability of judges to give marginal offenders jail time. Their only other choice would be to send them to a state penitentiary, a choice from which some would not flinch. High capacity levels, on the other hand, may determine whether some of these other factors play a role. More will be said of this later.

At the state level three factors are considered relevant--the severity of the state sentencing code, penitentiary capacity, and the severity of statewide sentencing norms. The expected impact of each is self evident. As Table 5-2 indicates, the Michigan counties stand out on all three dimensions. The three factors are undoubtedly intertwined to such an extent that we cannot unravel them, especially since we have only a handful of counties. Nonetheless, it is clear that Michigan's maximum penalities are more severe, it has more relative penitentiary capacity, and, for a long time has sentenced more people to the penitentiary. In addition, Michigan has a number of medium or medium security prisons oriented to less serious offenders. This is expected to increase the attractiveness of penitentiary commitments to Michigan judges, especially with respect to the more plentiful, marginal offender.

Before we embark on a detailed analysis of sentencing severity, we need to examine the overall sentencing patterns in our nine counties.

Sentencing Patterns

Graph 5-1 portrays the unweighted proportions of all cases in the nine counties that were given at least one of five basic sentence forms: a penitentiary commitment, a jail term, probation, diversion, or a monetary punishment (restitution or a fine). The shaded portion of the bars indicates the proportion of cases given some punishment in addition to the basic, most severe one. For example, all county jail sentences were accompanied by some term of probation (30%), a fine (21%), a combination of probation and a fine (17%), or some other form of punishment (32%). Fifty-five percent of all probation cases were also given a fine while another four percent of penitentiary sentences were given an additional form of punishment, usually a term of probation to be completed after being released. Graph 5-1 indicates that probation is by far the most common basic sentence form, accounting for close to half of all sentences. Penitentiary and jail are each used in roughly 20 percent of all cases while diversion and money punishments account for the remaining 10 percent of the cases.

A close examination of Figure 5-1 reveals, however, that this pattern does not characterize all counties. It reports the proportion of sentenced cases in each of four basic sentencing forms by county, along with the proportion for all nine counties (the grand mean). The money category is excluded because of a lack of variance across counties. While DuPage county gave over 8 percent of sentenced cases solely a monetary punishment, most of the other counties hovered around 1-2 percent.

Graph 5-1

The Distribution of Basic Sentence Forms

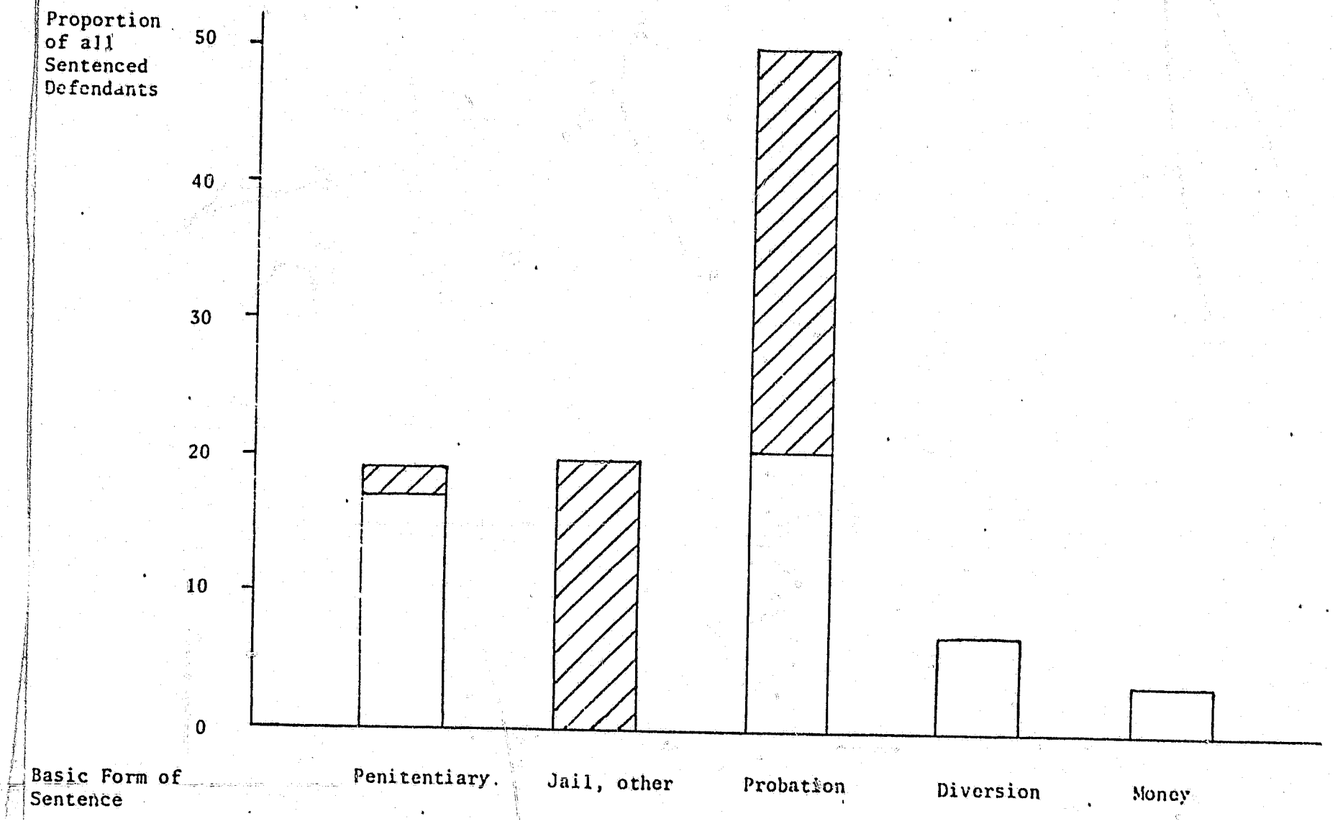
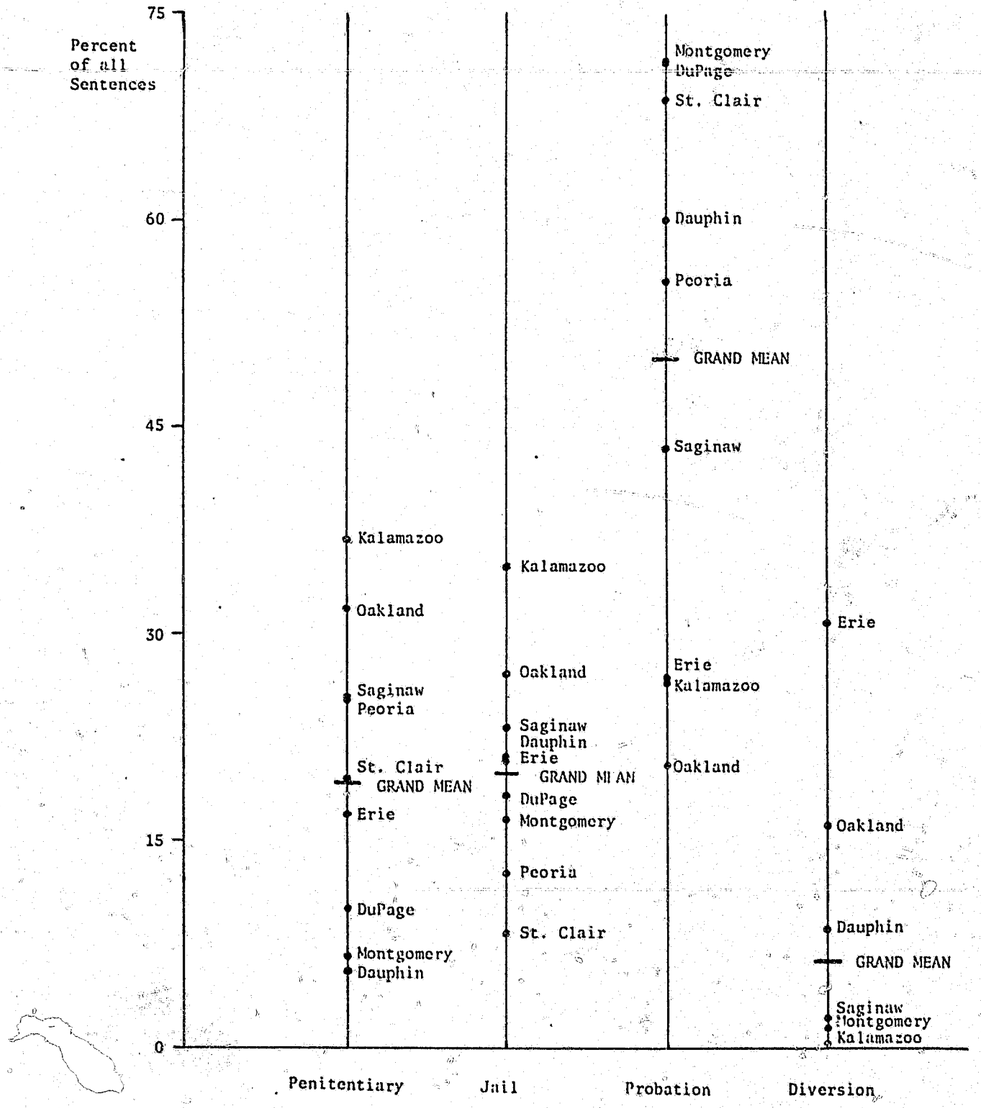


Figure 5-1

The Distribution of Basic Sentence Forms, by County



Several observations can be made on the basis of Figure 5-1. First, in two Michigan counties, Kalamazoo and Oakland, penitentiary commitment is the modal form of punishment, followed by jail confinement. Dauphin, Montgomery, and DuPage are the least likely to send defendants to the penitentiary, while they are among the most likely to use probation (along with St. Clair). Peoria and St. Clair are the least likely to use the local jail. Oakland, Kalamazoo, and Erie are the least likely to use probation. Oakland and Erie, however, employ diversion far more than the other counties. None of the Illinois counties utilized a form of diversion. No other significant patterns readily emerge from Figure 5-1.

Severity: A More Rigorous Examination

While the patterns embodied in Figure 5-1 are suggestive about which counties hand out the most severe sentences, one must be extremely cautious in interpreting the data. They are raw numbers that do not control for differences in the severity of cases or for the criminal records of the defendants, which together are the primary determinants of sentences within counties (as will be shown in Chapter Six). Moreover, these data are only crude indicators of sentencing severity since they ignore differences in the length of sentences. To identify meaningful differences in county-wide sentencing tendencies, these differences must be controlled. Fortunately, analysis of covariance using stepwise multiple regression (Cohen and Cohen, 1975, Chapter Nine) permits us to control simultaneously for the impact of offense and criminal record while examining the role of the county. The dependent variable for this analysis is the minimum amount of time

a convicted defendant was required to be incarcerated, coded in months (non-confinement sentences coded 0).[2] This is a straightforward and comparable measure of a sentence's severity, and it will be used in the later micro level analyses of sentencing.

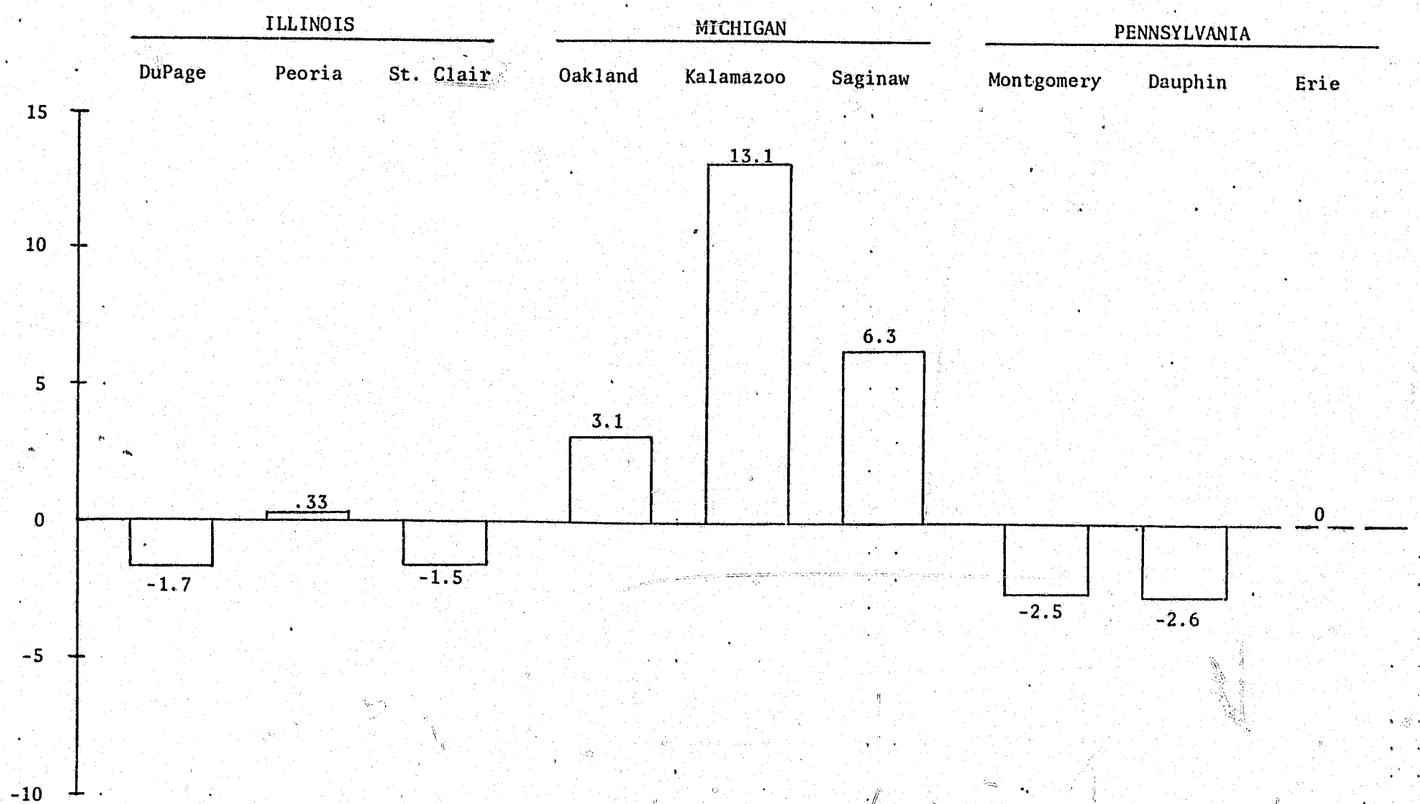
The analysis of covariance was conducted by merging the cases from all nine counties into one analysis pool. Dummy offense variables for each (K-1) of the main offenses were entered in the first step of the regression analysis, followed by the criminal record variable.[3] Then dummy variables representing each (G-1) of the counties were entered to determine the difference in the residualized sentence variable across counties. Some results of this analysis, the B coefficients for the dummy county variables, are reported in Graph 5-2.[4] These B coefficients represent the mean difference between each county and the reference county (Erie, in this case) on the residualized sentence variable (i.e., with the effects of offense and criminal record "partialled out").

While these figures are all referenced to the Erie mean, they can be compared to one another to determine relative sentencing levels. The analysis of covariance does not provide information, per se, on the statistical significance of the differences across the counties reported in Graph 5-2. Independent analyses, however, reveal important differences; the most important are across states. The Michigan cases received much more severe sentences than those from other counties--about eight months more overall. There is no significant difference between Illinois and Pennsylvania cases when offense and criminal records are controlled. However, some statistically significant inter-county differences do exist. Each county in Michigan

Graph 5-2

Results of Analysis of Covariance for

Minimum Months in Confinement



sentences more severely than do those outside of Michigan. In Michigan, Kalamazoo is more severe than both Oakland and Saginaw , and Saginaw is more severe than Oakland. Of the others Peoria and Erie were slightly more severe than the other counties, while Dauphin and Montgomery were slightly more lenient.

Determinants of Severity Levels

We cannot be too cautious in interpreting and extrapolating from these results. The limited amount of variation on some important independent variables--due to the small number of counties--undoubtedly prevents a thorough testing of some of the propositions discussed earlier. Nevertheless, two general conclusions seem justified. First, with the exception of Michigan, there appears to be less intra-state variance than we expected, especially along contextual and socio-political lines. Moreover many of the differences contemplated in our sampling strategy did not emerge. Second, some structural factors (penal capacities) and state level influences appear to play an important role in determining severity levels.

Contextual and Socio-Political Factors. A confusing picture emerges when we examine the contextual expectations (Table 5-1) in light of the results reported in Graph 5-2. The attitudinal configuration of the "Belief in Punishment" variable led to lenient expectations for Kalamazoo and St. Clair. While St. Clair was in fact characterized by lenient sentences, Kalamazoo was by far the most punitive county of the nine. These results are anomalous, not only because Kalamazoo had the most lenient judges but also because the St. Clair sentences are on a par with those in Peoria and DuPage--both of which were expected

to be punitive on the basis of the attitudinal configuration of the decision-makers. All of the counties that allow plea routing were lenient (St. Clair, Montgomery, Dauphin, Erie), as predicted, but so were several that did not permit it (DuPage, Peoria). A similar problem emerges with respect to the centralization of plea bargaining and the prosecutorial screening variable.

If we examine some of the county level environmental influences a similarly contradictory picture emerges. With respect to social stress expectations DuPage and Montgomery were opposites from Peoria, St. Clair, and Dauphin. However, Graph 5-2 suggests that these counties differ hardly at all. Much the same can be said with respect to political ideology. The most conservative counties (Montgomery, Peoria, DuPage) do not sentence much differently than the two moderately liberal counties (St. Clair, Erie). Assessing the influence of the crime problem is plagued by similar problems. Even Peoria, which falls in the "severe category" in each of the three socio-political categories listed in Table 5-2 (social stain, political ideology, seriousness of crime problem), and which is not politically insulated from its environment, does not hand out distinctively severe sentences.

A number of factors may be confounding our expectations; two seem most likely. First, the hypotheses may be too simplistic and fail to address the complexities of the severity issue. Second, conflicting influences in a county may well counter balance one another, thereby leading to inconclusive results. This is, of course, another way of saying that there is an insufficient number of counties --given the number of independent influences--to partial out the

effects of extraneous variables. Third, other factors currently unidentified may be constraining the impact of the contextual and socio-political factors. This suggests that the relationship between contextual and socio-political factors and sentencing is more complex than initially contemplated. That is, before a given contextual or socio-political factor can have its expected effect, some other condition(s) must be met.

The first observation seems to be particularly relevant for some of the hypotheses concerning contextual influences (Tables 5-1). The availability of plea routing, for example, was associated with more lenient sentences. However, in some counties (Dauphin) the prosecutor can unilaterally route cases to a particular judge, perhaps leading to more severe sentences. The centralization of plea bargaining was thought to lead to more severe sentences because last minute concessions were more difficult. However, if an office is under pressure to "move cases" centralization may make no differences. Finally, while prosecutor screening may lead to stronger cases and more severe sentences it may also result in overcharging. Systemic adjustments to this overcharging may make sentences appear less severe. In sum, these complications may require refinements in theorizing and data collection if these relationships are pursued in future studies.

The role of conflicting influences is best illustrated with respect to the impact of the socio-political influences (social strain, ideology, crime problem) in the Illinois and Pennsylvania counties. If social strains and the seriousness of the crime problem are examined, we would expect DuPage and Montgomery to have lenient sentences; however, both have very conservative political leanings,

suggesting that they would have more stringent sentencing tendencies. DuPage's contextual features also provide grounds for expecting more severe sentences, while Montgomery's point to more lenient ones. St. Clair is marked by a similar problem. While it is a moderately liberal county, it has a severe crime problem and serious social cleavages and delaying these cross-cutting factors are its contextual characteristics which lead to more lenient expectations.

Despite these problems they cannot entirely account for the difficulties encountered with the contextual and socio-political factors. As noted earlier, Peoria is very close to having consistently more punitive expectations, yet is relatively lenient. Moreover, while the contextual and socio-political characteristics of the Michigan counties fairly consistently yield moderate expectations, they sentence relatively severely. Some of this can be clarified with reference to the second confounding factor discussed earlier: the possibility that some other factor was constraining the impact of the contextual and socio-political influences.

The best candidate for this "other factor" is detention capacity, both local and state. Detention capacity may obscure comparisons across counties because it can have a strong, direct impact on sentencing levels, thus confounding the interpretation of contextual and socio-political influences. Higher detention capacity can lead to higher going rates, independent of personal views and external pressures. It strengthens the prosecutor's bargaining position and provides decision-makers with more flexibility. Threats of what will happen to marginal offenders after trial may be empty if space is inadequate. Moreover, local officials may not hesitate to give

"county time" to marginal offenders who may not warrant "state time." If local space is unavailable, however, these individuals may not receive any time at all. These problems prevent a meaningful examination of the impact of contextual and socio-political factors. They may have a discernable effect only where "all other factors" are equal.

The level of detention capacity may be intertwined with contextual and socio-political factors in even more subtle ways. Certain levels of detention capacity (beds per population, beds per arrest) may be required to "unleash" these other factors. Thus, even if we were to control for detention capacity, we might find that contextual and socio-political factors play a role only in counties with relatively high capacity levels. Every county, regardless of its makeup, may have a core of cases that require incarceration. If this core exhausts detention capacity there is little room for other factors to affect sentencing levels. Where detention capacity exceeds these "core requirements" it becomes possible for other factors to play a role (i.e., they become unleashed). Thus contextual and socio-political factors may only play a role where detention capacity is high.

Detention Capacity and other State Level Influences. The importance of detention capacity in understanding macro level differences in sentencing is not limited to its interrelationship with contextual and socio-political factors, which are speculative in any event since it has a rather demonstrable and direct effect upon severity, as can be seen in Graph 5-2.

The most striking finding revealed by that graph is the distinctiveness of the Michigan counties. While an experimental or quasi-experimental design would be required to determine causality, the pattern strongly suggests that these differences can be attributed to the greater detention capacity of the Michigan state penitentiary system. Also important may be Michigan's medium security and decentralized orientation and, perhaps, its qualitative advantages. Moreover, the only intra-state differences of any consequence are in Michigan. These can be explained with reference to differences in local detention capacity. Kalamazoo is the most punitive of the three Michigan counties, and it has the most detention capacity; Oakland is the lowest, and it has the least capacity (Table 3-7).

Despite the importance attributed to detention capacity it should be stressed that it does not resolve all the interpretational problems here and cannot be considered the only determinant of severity levels, especially at the state level. To confirm this one need only compare the state level capacities and utilization rates of Michigan and Pennsylvania with their sentencing patterns. Pennsylvania evidences lenient sentencing tendencies as well as low detention capacity. But it also has the most excess capacity in its state penal system. While Michigan evidences punitive sentencing tendencies and large capacity, this large capacity is overutilized. Thus, commitments do not necessarily increase to fill available spaces, and capacity limits do not always stifle commitments.

The observation that detention capacity is not the only determinant of sentencing levels is reinforced if it is recognized that two other factors may also account for the distinctiveness of Michigan

sentences--the severity of the criminal code and long term statewide sentencing norms. These do not have the intuitive appeal and concreteness of detention capacity and cannot account for intra-state variance. They are important to note, however, because they, along with detention capacity, may be part of a more abstract and encompassing cultural explanation that could account for the distinctiveness of Michigan sentences. If cultural differences relating to appropriate punishments exist across these states, then the greater detention capacity and more severe sentencing code and norms may all be a function of those differences. In fact, each may feed on the other. Punitive expectations of the populace may lead to more severe sentencing norms, and these may become institutionalized in the state code. Moreover, they may cause overutilization of penal facilities, leading to enhanced capacity. This may, in turn, lead to more severe sentencing norms, and so on. Unfortunately, the examination of such a cultural explanation would require time series data on a large number of sites and is beyond the scope of this project.

Internal Consistency

In addition to severity, the other major factor to be considered in this discussion of sentencing disparities is consistency. However, while we were interested in inter-county disparities in the severity analysis, here we are concerned with intra-county disparities. The focus of the analysis is: Do similar defendants charged with similar offenses receive similar sentences? It is an accepted maxim of justice that equals should be treated equally. Yet court community lore is replete with stories of radically disparate sentences given by

different judges for similar crimes, or plea bargains offered by different prosecutors. Some disparities are inherent in human institutions such as criminal courts, and some differences are legitimate and necessary. In addressing the problem of consistency one encounters considerable analystic and methodological problems in distinguishing between legitimate and illegitimate components of internal disparities. Legitimate disparities in sentences are those due to such things as the seriousness of the offense, the factual circumstances surrounding the crime, and the criminal record of the defendant. Such factors would have to be considered in treating equals equally. Illegitimate disparities would be differences attributable to such things as the bargaining skills of one of the participants, the defendant's bail status or race, and the judge's views on punishment.

An ideal approach to assessing consistency would neatly differentiate between legitimate and illegitimate components of disparities. Such an approach, however, would require exhaustive lists and measures of factors which affect sentences, as well as universally acceptable criteria as to which are legitimate and which are illegitimate. As these requirements are beyond our reach a more modest approach was used. It simply measures the prominence of widely accepted legitimate factors in explaining sentencing disparities within counties. More specifically we use as our measure of internal consistency the proportion of various (R^2) attributable to offense seriousness and the defendant's criminal record.[5]

This approach assumes that the more variance attributable to these two factors the greater the consistency of sentencing patterns in a county (i.e., the greater the likelihood that equals are being treated equally). This is a reasonable and defensible assumption. However, we should stress that a low level of consistency, as we have just measured it, does not necessarily mean that the role of illegitimate factors is necessarily greater, unless illegitimate factors are broadly defined. For example, we can make no inferences about the role of racial disparities or socioeconomic disparities in counties which score low on our measure of internal consistency. All we can say is that not as much weight is given to offense and record as in other counties.

Contextual factors are considered to be the most relevant to the analysis of internal consistency because they affect most directly the internal processing of cases. The issue of internal consistency is not likely to be salient enough to be the focus of environmental pressures. It lacks the glamour and appeal of a news article focusing on the pretrial release of a rapist or a sentence of probation in a violent crime. Moreover, the determination and documentation of internal consistency is normally beyond the capabilities of local groups which monitor criminal court activities.

Two general types of contextual factors can be expected to have an affect upon consistency--the organization and control of work within the system and the size and diffuseness of the pool of decision-makers. With respect to the first factor, the degree of specialization in a judge's docket, the nature of personnel deployment, and the centralization of plea bargaining in the prosecutor's office are

all expected to be important. Systems with full-time criminal judges, those that utilize platoon deployment of personnel assign public attorneys to judges, not cases, and those with more centralized plea bargaining are expected to have more internal consistency. The establishment and observance of sentencing norms is expected to be facilitated when certain judges hear only criminal cases over a long period of time, especially when the prosecutor and public defender (where relevant) are assigned to them. The centralization of plea bargaining is expected to encourage consistency because it theoretically limits the discretion of individual assistants.

The size and diffuseness of court communities are expected to affect consistency for several reasons. The larger the number of individuals involved in an ongoing set of decisions the larger the matrix of attitude, idiosyncratic beliefs, personality and stylistic clashes, etc. that enter into the decision calculus. This, of course, increases the probability of inconsistent sentences. Then too, a large personnel pool makes the establishment and observance of low sentencing norms more unlikely. This is especially true if there is a large number of non regular participants.

Table 5-3, drawing on contextual characteristics discussed in Chapter Four, lays out some predictions concerning consistency. With respect to docket specialization, DuPage is ranked low because its judges hear civil and criminal cases simultaneously; Peoria, St. Clair, and Montgomery judges hear only felony cases on a full-time basis. The others have rotating dockets (see Figure 4-1). Peoria is categorized as being "high" with respect to personnel deployment because prosecutors and public defenders were both assigned to judges

Table 5-3

Contextual Factors and Sentencing Consistency

	Consistency Expectation		
	Lower Sentencing Consistency	Medium or No Prediction	Higher Sentencing Consistency
Specialization of Judge's Docket	DuPage	Oakland Kalamazoo Saginaw Dauphin Erie	Peoria St. Clair Montgomery
Nature of Personnel Deployment	Kalamazoo Saginaw Montgomery Dauphin Erie	St. Clair Oakland DuPage	Peoria
Centralization of Plea Bargaining	St. Clair Saginaw Montgomery Erie	Peoria Oakland Kalamazoo Dauphin	DuPage
Size and Diffuseness of Court Community	DuPage Oakland Montgomery	Saginaw	Peoria St. Clair Kalamazoo Dauphin Erie

on a semi-permanent basis. Either the public defender (DuPage) or the prosecutor (Oakland, St. Clair) were assigned to judges in those counties and they have been placed in the medium category. Counties in the low consistency category assign attorneys to cases, not judges. The rankings in the centralization of plea bargaining category are based on the discussion summarized in Table 4-3. All three ring counties because of the "size and diffuseness" of their criminal defense bars are placed in the low consistency category. Saginaw is ranked as medium because, while it had a relatively small number of judges and prosecutors, it spread its indigent defense work among many members of the private bar.

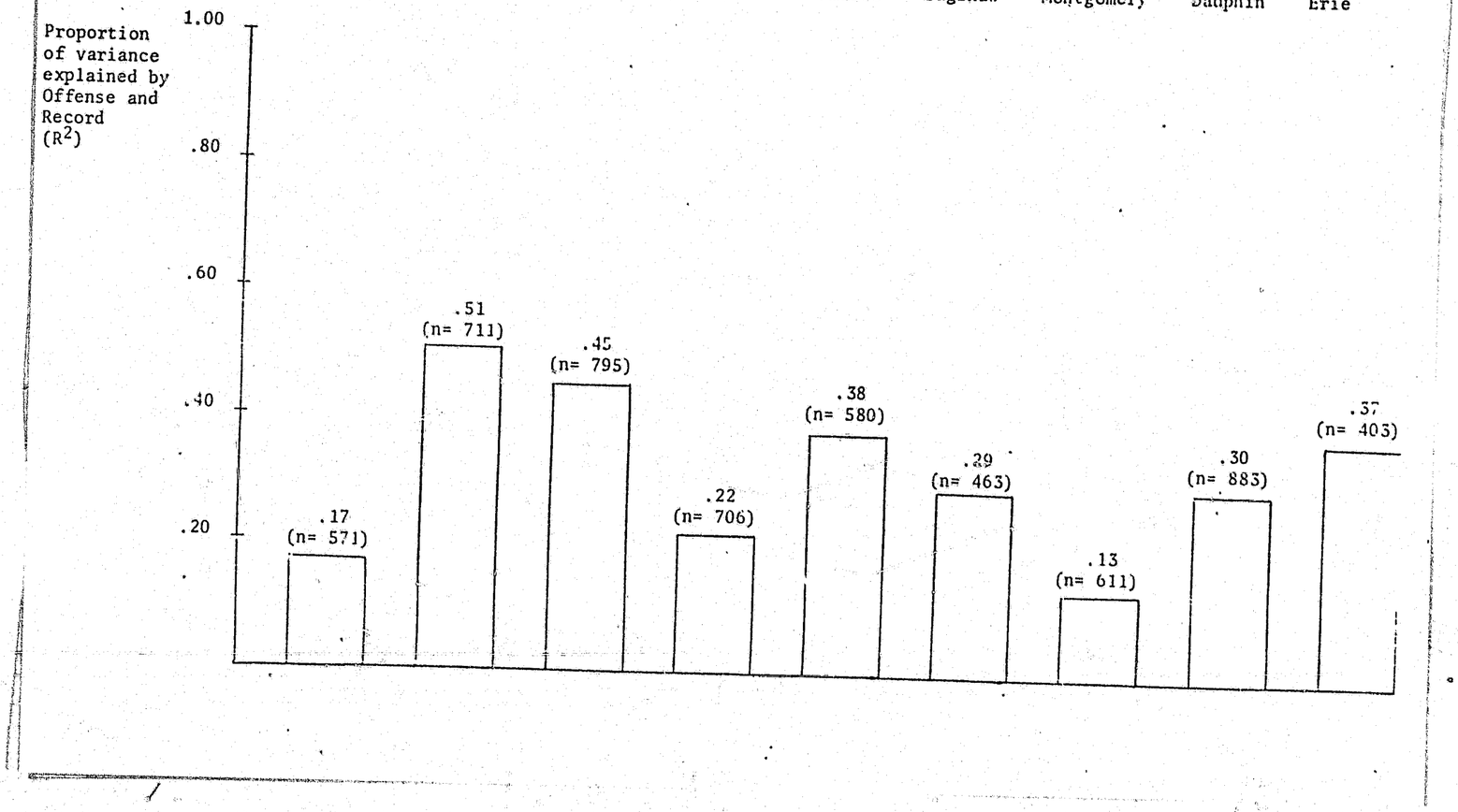
Patterns of consistency

Graph 5-3 reports our measure of internal consistency (R^2) for each county, excluding murder and rape cases.[6] As is evident, Peoria and St. Clair have the highest degree of consistency while DuPage, Oakland and Montgomery have the lowest. The others are in between, with Kalamazoo and Erie being a bit high.

If these results are viewed in light of the expectation laid out in Table 5-3 we can make some cautious generalizations. First, while having a small, fairly concentrated court community does not insure a high level of internal consistency, having a large, diffuse community seems to lead to low internal consistency. The three largest counties (DuPage, Oakland, Montgomery) have the lowest level of internal consistency, although Oakland is close to being in the medium range. DuPage and Montgomery have the lowest level of consistency despite the fact that they have some characteristics thought to be related to high

Graph 5-3

Results of Internal Consistency Analysis



levels of consistency (specialized dockets in Montgomery, centralized plea bargaining in DuPage). This suggests that these factors may be operative only in counties with smaller, concentrated court communities. While that in fact, may be the case, these counties also have other characteristics thought to be related to low levels of internal consistency (non-specialized dockets in DuPage, laissez faire prosecutor policies and personnel deployment procedures in Montgomery). The combined impact of these various factors may overcome any centralizing influences.

If the non-ring counties are examined, it appears that something in addition to a small, concentrated court community is required to produce internal consistency. Consider the two counties with the highest levels of consistency, Peoria and St. Clair. In addition to being small, they both have specialized dockets and assign either prosecutors of defense attorneys to judges. Indeed, Peoria may have the highest level of internal consistency because it is small, and has specialized dockets, and assigns prosecutors and public defenders to individual judges, and has some degree of centralized control over plea offers in the prosecutor's office. The other counties with smaller court communities--Kalamazoo, Saginaw, Dauphin, Erie--have a mix of attributes that work at cross purposes in attaining higher levels of internal consistency. For example,they all have rotating dockets (x weeks hearing criminal cases; x weeks hearing civil cases), and each assigns public attorneys to cases, not judges. This, of course, is expected to have a deleterious effect upon efforts to

establish and enforce sentencing norms. This may explain why, although these counties have smaller court communities, they also have only medium levels of internal consistency.

References for Chapter Five

Cohen, Jacob, and Patricia Cohen (1975). Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences. New York: Lawrence Erlbaum Associates.

Eisenstein, James, and Herbert Jacob (1977). Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little Brown.

Levin, Martin A. (1977). Urban Politics and the Criminal Courts. Chicago: University of Chicago Press.

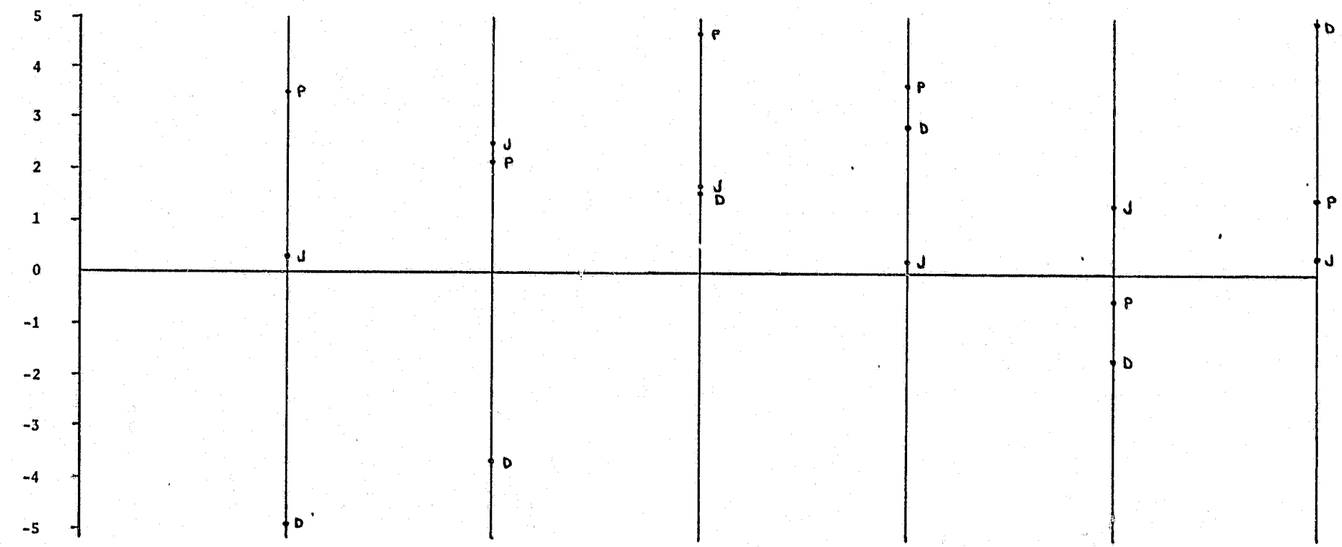
[1] Figure 5-A reports the configuration of "Belief In Punishment" scores for the nine counties. The means scores for such role are plotted by county. These scores were derived from the tables in Chapter Four.

[2] In Illinois, which has a determinate sentencing law, and day-for-day sentence reduction for good behavior, all penitentiary sentences were halved. Illinois jail sentences (all confinements less than one year) were unchanged. Michigan and Pennsylvania have indeterminate sentencing laws but they also have statutory provisions that prohibit parole before the minimum sentence is served. Thus the minimum penitentiary times across all three states are meaningful and comparable. Two dispositions unique to Michigan and Pennsylvania, deferred prosecution and accelerated rehabilitative dispositions (ARD's), are comparable to probation in Illinois and were, therefore, coded 0. One last point should be noted: Kalamazoo and Dauphin had a handful of sentences in excess of 100 years. As these distorted some analyses they were recoded to 20 years, the next highest code in each of the counties.

[3] Dummy variables are coded 1,0 (or some other dichotomous scale); 1 usually depicts the presence of a given characteristic (being a Democrat, being a Protestant), while 0 usually depicts the absence of a given characteristic (not being a Democrat, not being a Protestant). Dummy variables can be used to quantify and, therefore, statistically control for, a nominal scale, such as religion (Protestant, Catholic, Jew, other), political affiliation (Democrat, Republican, Independent, other), or criminal offense (murder, rape, robbery, etc.). When dealing with a set of K dummy variables which

Figure 5-A

Average Punishment Scores By Role and Triad Type



	Traditional	Prosecutor - Judge Cluster	Judge - Defense Attorney Cluster	Prosecutor - Defense Attorney Cluster	Judge High	Defense Attorney High
% Workgroups (N=84)	44.0	27.4	8.3	6.0	7.1	7.1

CONTINUED

3 OF 5

exhaust all possibilities in a data set, multiple regression permits one to enter only K-1 of the dummy variables. Entering the Kth variable does not permit a unique solution to the underlying set of simultaneous equations and adds no additional information to the analysis (Cohen and Cohen, 1974, p. 172-73). This is true because in dummy variable analysis the B coefficient for a given variable represents the mean value on the dependent variable for all cases belonging to the category represented by tne dummy variable (the mean value for all Democrats or all Prostestants, or all murder cases). The value of the intercept (A) is the mean value on the dependent variable of the cases not represented by the dummy variable. Thus, when a nominal scale has K categories represented by K-1 dummy variable the value of the A intercept is the mean value on the dependent variable for the Kth category.

4 The analysis of minimum months of confinement was also conducted without the most extreme sentences (murder and rape cases) but the results were virtually identical.

5 It was not feasible to control for the seriousness of the factual circumstances surrounding the crime because the relevant facts vary so much from offense to offense. Their role in a given county's regression equation would, therefore, vary depending upon the frequency of different offenses.

6 Murder and rape cases were excluded because the existence of a handful of these extreme cases resulted in inflated and extremely unstable R^2 for certain counties. A county's R^2 depended almost solely on whether it had any extreme murder or rape cases. As this diminished the utility of the R^2 or a measure of consistency, these cases were excluded.

FINAL REPORT

SENTENCING AS A SOCIOPOLITICAL PROCESS: ENVIRONMENTAL, CONTEXTUAL, AND INDIVIDUAL LEVEL DIMENSIONS

VOLUME TWO

Chapters 6-8

Appendices

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June 30, 1983

Chapter Six

A MICRO LEVEL ANALYSIS OF SENTENCING

Chapter Five examined sentencing decisions with an eye toward understanding environmental and contextual influences upon severity levels and internal consistency. This chapter, and Chapter Seven, approach sentencing from a different perspective. Our theoretical focus here is the process by which sentencing decisions are made. We want to enhance our understanding of the criteria used by decision-makers in setting sentences as well as how these criteria are blended into a decision. Chapter Five was concerned more with the milieu in which these decisions are made and its impact upon certain aspects of sentencing.

In this chapter we first lay out a general model of the sentencing process. It is a dynamic model which incorporates case related factors which affect sentencing and addresses the role which decision-makers play. This model is a more elaborate conceptual apparatus than that presented in Chapter Five because--given the orientation of prior research--we know much more about micro level processes. After the model is presented and discussed we empirically examine parts of it. Methodological problems prevent us from conducting a comprehensive examination of it, and lead us to defer parts of the quantitative analysis to Chapter Seven (those segments dealing with the role of decision-makers). The quantitative analysis presented here will be reported in two segments. The first is a general analysis of the model based on a pooled set of sentenced cases from all nine counties. While this pool is not a sample of any larger universe, its use has many advantages. It will permit a more succinct examination of the model than separate analyses of the nine samples (i.e., we

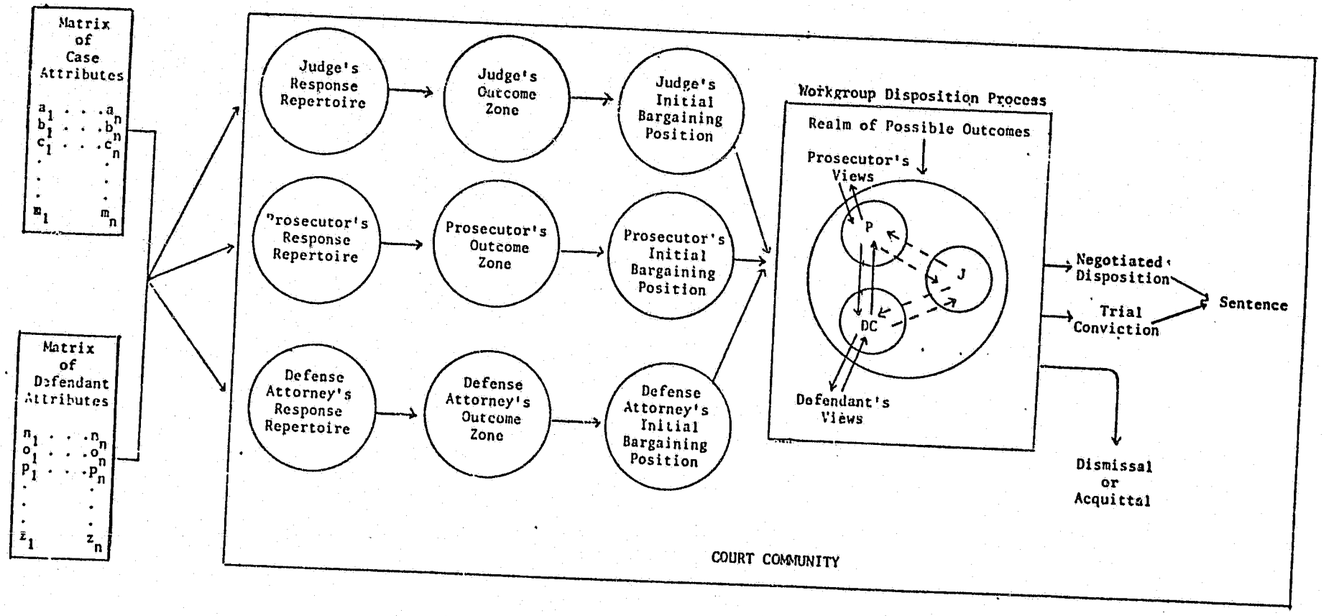
will not lose the forest for the trees). Moreover, its size (over 5,300 cases) will permit us to examine complex interactions between factors which occur too infrequently in smaller samples to permit meaningful statistical analysis. While the results cannot be generalized to any larger universe the use of a pooled set of cases does not undermine the ability of our statistical techniques to describe whatever relationships exist.[1] After the general regression model is presented and discussed, it is extended to the nine county samples. While the nine equations are reported in Appendix X, selected findings are discussed. The aim here is to assess the consistency of the results reported in the general model and to discuss any noteworthy patterns.

Sentencing: An Integrated, Dynamic Model

A very general depiction of our view of the sentencing process is presented in Diagram 6-1. We view cases as inputs into a system which encompasses a relatively fixed set of participants who have a history of prior interactions--inside and outside the work place--and who anticipate ongoing relations in the future. These individuals are members of a court community. That court community operates within the social, political, and structural constraints of a given county and state environment. Salient characteristics of a case define a cue set composed of fact matrices which activates the response repertoires of the principal decision-makers in the case--the judge, prosecutor, and defense attorney. These response repertoires consist of a set of personal beliefs, instincts, court community norms, etc. which conditions each participant's reaction to the fact matrices embodied in a case. These response repertoires tell them which facts are relevant to consider as well as how each is to be assessed. However, because any set of matrices can give rise to different,

DIAGRAM 6-1

MICRO LEVEL MODEL OF THE SENTENCING PROCESS



often conflicting, reactions from a given individual, they must be assimilated. This assimilation is a complex, non-additive, and highly personalized process; one which is not likely to be the result of rational calculations made in light of a cohesive theory of punishment. Its result is a set or zone of outcomes, or outcome preferences, which are perceived as appropriate and attainable by the participant. Obviously each option varies in its acceptability to the participant. From this outcome zone each participant molds an initial bargaining position--influenced not only on the desirability of the outcome but by its attainability and the strategy or approach used by the participant in interactions with other participants.

These bargaining positions may be viewed as an initial set of internally generated inputs (withinputs) into the workgroup disposition process. The differences, or similarities, in these positions will have an impact upon the nature and direction of the negotiations. These negotiations are bounded by the realm of possible outcomes, and influenced by the views and pliability of the defendant and prosecutor office procedures and policies. These negotiations--which must be viewed as ongoing--give rise to a set of intermediate actions, or occurrences which can be viewed as a second wave of withinputs. They may include delaying tactics, concession refusal, legal motions, and the like. These actions can influence the substance of the negotiations as well as their success. The success of the negotiations affects, of course, the disposition mode (guilty plea, trial conviction, acquittal or dismissal). Disposition mode affects whether there is any sentence, the types of criteria embodied in the sentence, the nature of their impact, and the severity of the sentence.

A more detailed analysis of each component of the model will further illuminate its utility, but prior to that analysis, a few general comments are in order. First, it should be stressed that this is essentially a model of

trial court processes leading to sentencing. It does not address most lower court actions which affect the process. However, depending upon the structure of some court systems and assignment processes, some of the decision-makers, especially the defense attorney or prosecutor, may handle the case at an earlier stage of the proceedings. Their outcome zones may be well formed by the time the case reaches the trial level. Also, some prosecutor offices formulate bargaining positions before a case is formally arraigned at the trial level. While important to clarify, these points have little affect on the utility of the model. The processes used to define these zones and positions are expected to be similar, and the aspects of the model dealing with the movement of positions in the negotiating process are wholly applicable.

A second general point is that despite the prominent role given to the assimilation and integration of case and defendant matrices into outcome zones and bargaining positions, this should not be viewed as a "rational" model of the sentencing decision. In fact, it attempts to integrate both--limitedly rational and non-rational components into a framework which is consistent with our field observations and earlier research. While this will become evident in the following discussion a few comments are worth noting here. First, the model does not assume that response repertoires and assimilation processes are based on any cohesive sentencing philosophy which the actor is attempting to implement. Second, the model does not assume that each individual makes a complete "search" of the case and defendant matrices before outlining outcome zones and bargaining positions. Individuals may stop their search once they feel familiar enough with the case to get a "fix" on it; other relevant information, if it becomes available at all, may turn up during negotiations. Finally, the model does not assume that outcome zones are perceptually clear sets of outcome preferences which are assigned rigid priorities. At a given point in time the

options which are outside the outcome zone may be clearer than those within it. Moreover, all movements in outcome zones over time are not the result of rational deliberations made in light of a sophisticated dispositional strategy.

The Cue Set

Diagram 6-1 identifies two types of case specific information (case attributes, defendant attributes) which are the most important decision cues; more, however, needs to be said about which attributes are the most important and why. Also we need to discuss how these various factors are likely to affect sentence.

Case Attributes. Two subsets of factors define the case attribute matrix. One is a seriousness subdimension, the other includes factors affecting the likelihood of conviction. Considerations such as the type of offense, the number of offenses, the seriousness of any injury, the presence of a weapon, and the amount of drugs or property involved are examples of seriousness factors. Attributes affecting the likelihood of conviction include the type and quality of available evidence, the prior relationship between the defendant and the victim (normally only in personal offenses and some property crimes), and legal deficiencies in the state's evidence.

Seriousness criteria are important because of the need for external rationality in sentencing decisions. The demand that the "punishment fit the crime" is an important constraint upon decision-makers. It leads them to establish a certain hierarchy or rank ordering of offenses. These criteria are not constraints in the sense that a public clamor would necessarily follow occasional deviations. Rather, they constrain behavior because a basic aim of the socialization process of the court community is to teach new recruits what a case is "worth." This is done to facilitate the disposition of cases; regular

and dramatic deviations from accepted ways of viewing cases are done at the risk of reprobation and social ostracism. As Chapter Five suggests, similar cases may be "worth" different sentences in different counties. However, within a county an offense's "going rate"--normally a range of sentence options--raises a strong presumption. That presumption can obviously be rebutted by extenuating or mitigating factors (situational factors), but the burden is with the rebutter.

Factors affecting the likelihood of conviction are relevant to sentence because they are one subset of situational factors which can be used to rebut presumptive sentences. They are negotiating tools which can enhance the bargaining position of the state or the defense. They can make other arguments more or less compelling simply because they affect the projections of what will happen in a trial. To the prosecutor a half loaf is better than none, other things being equal. Defendants facing almost certain conviction after trial will be more apt to accept higher offers than other defendants.

Defendant Attributes. While various defendant attributes affect sentencing, the defendant matrix was two general subdimensions: attributes affecting the decision-makers' perceptions of the defendant and those affecting the defendant's bargaining resources. Three aspects to decision-maker perceptions are important for reasons which are readily apparent: the defendant's risk to the community, prospects for rehabilitation, and sense of remorse. Perceptions of the defendant's risk to the community--although not necessarily their actual risk--would be most affected by criminal record and perhaps by the defendant's physical appearance, race, age, and sex. Older defendants and women would probably be viewed as less threatening than males in their prime years, espe-

cially those with a rough or imposing appearance. Moreover, some individuals in some communities may view racial minorities as more threatening, especially in interracial incidents.

Views of prospects for rehabilitation would be most affected by the defendant's background, present life style, and age. Relevant here would be such things as familial upbringing, support of parents, educational achievement, present marital status, employment record, etc. If the defendant's alleged criminal actions were wholly inconsistent with earlier life patterns, then the decision-makers may be more inclined to view them as an isolated incident and the defendant as a good prospect for rehabilitation. Younger defendants may simply be given the benefit of doubt. However, older defendants whose lives reveal a pattern of dead ends, lost opportunities, and failures may not be viewed as good risks for sentences such as probation or work release. Perceptions of the defendant's remorse are relevant but probably the least significant of the three categories. They may not even be relevant in all types of cases. Indicators of remorse would include the defendant's attitude toward the system (deference, respect) as well as evidence of any attempts at restitution or apology. Hostility and evidence of threats outside the courtroom are likely to result in more severe sanctions.

The second set of relevant attributes (bargaining resources) concern the defendant's abilities to deal with complex and harried process by which cases are handled. Defendants who have the psychological and financial wherewithal to resist pressures to compromise on unfavorable terms may be more able to secure sentencing concessions in plea agreements than other. The defendant's ability to deal with uncertainty and his overall sophistication in dealing with life's affairs would be relevant here, as would his financial status and various situational factors. A defendant who can secure pretrial release and hire a

reputable attorney stands a much better chance of securing concessions than an unemployed defendant who is in jail during all pretrial proceedings. However, if one is arrested while free on bail, his bargaining position could change markedly. First offenders may be in a better bargaining position than repeat offenders, simply because they usually need not fear what an unrestrained judge might do after a trial. This may be especially true in jurisdictions with severe "enhancement" provisions for repeat offenders. The defendant's psychological skills and financial standing may be most effective when the probabilities of ultimate conviction are clouded by evidentiary or legal problems.

Mediating Factors. While the case and defendant attributes listed above are fairly straightforward, we cannot expect what their relationship to sentencing will be. The "slot machine" theory of justice is no more applicable to trial courts than to the U.S. Supreme Court. These attributes affect sentence only to the extent that decision-makers deem them relevant and can successfully place them on the bargaining agenda. This may be easy with respect to offense seriousness and certain situational factors affecting seriousness (use of a weapon, extent of injury) but more difficult for other types of factors. Even when a participant is able to introduce a certain attribute on the bargaining agenda its impact is problematic and depends upon a variety of factors. Three of the most important of these include the type of case, the mode of disposition, and the views, skills and operating style of the decision-makers handling the case. They are important because they represent contextual influences which affect how these attributes are melded into a sentence. Conceptually we may view them as mediating factors.

More will be said of these as we introduce other aspects of the model but a discussion of offense seriousness will illustrate what we mean by mediating factors. Offense seriousness is perhaps the most important mediating factor

because it is a primary determinant of the realm of possible outcomes, which bounds the workgroup interaction process shown in Diagram 6-1. It is important as a mediating factor because the constraints upon the negotiator vary across levels of seriousness, as does the motivation for the decision-makers to resist those constraints and have their views prevail. For example, regardless of the weight of evidence or amount of property involved in an average theft case, it will be difficult for a prosecutor to get a large concession. If the going rate for theft in the county were three months in the county jail, six months would be a major victory for the prosecutor. Theft may have a statutory maximum sentence not much greater than that, thus defining a fairly limited realm of possible outcomes. Different constraints operate upon the defense counsel. With a going rate of three months he cannot get a confinement concession of more than a few months, although he could get other types of concessions (less probation, no fine, a dismissal).

Another important point is that in most theft cases neither the prosecutor nor the defense counsel is apt to exhaust their resources or reservior of good will in order to obtain large deviations from the going rate. No one--inside or outside the court community--really cares much about such cases. The situation is different with respect to more serious cases such as rape and armed robbery. Everyone is concerned with these cases and the constraints upon the negotiations are much looser. Going rates tend to be high as do statutory maximums. Deviations of twelve to eighteen months--from a going rate of seven to eight years--might not be as difficult to obtain in these cases as three or four months in the theft case. With more room to negotiate it is easier for more factors to play a more important role in the sentencing decision.

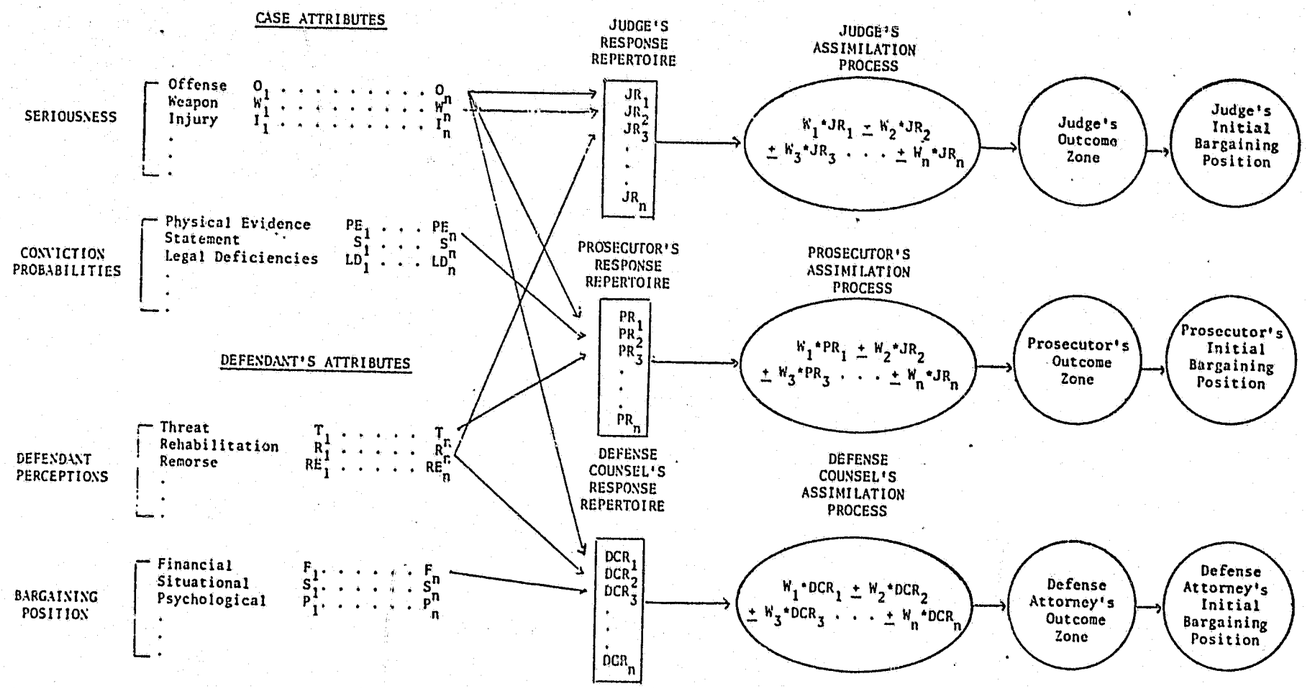
Response Repertoires and Bargaining Positions

Case and defendant attributes affect the dispositional process, and sentence, only if these attributes mean something to the decision-makers and if they act on the impulses stimulated by them. Diagram 6-2 displays, in more detail, our view of this process. At the far left of the diagram are the case and defendant matrices discussed earlier. Various participants examine these matrices with, at least, two objectives in mind. They want to determine in their view 1) what the case is worth and 2) how to proceed with it (i.e., what their strategy will be). While the two objectives are closely intertwined we are primarily interested, for now, in the determination of the former.

Responses and Weights. The response repertoires represented in Diagram 6-2 represent a set of beliefs, instincts, and norms used to translate case and defendant matrices into a range of feasible outcomes which each participant uses in the bargaining process. Several points are worth mentioning with respect to the mesh between attributes and response sets. First, and most obvious, not every attribute illicits a response; some may simply be deemed irrelevant. Moreover, in different counties--or at different times in the same county--the relevance of various attributes may vary. Race, employment status, and educational attainment are examples of attributes whose relevance may vary across geographic locale; the importance of sex may be an example of a factor in a state of flux in some counties. Second, an attribute may be relevant but to only one or two members of the triad handling the case. While some factors are thought to be relevant across the board (offense seriousness, criminal record), others are probably unique to roles. Many prosecutors, for example, may deem expressions of remorse irrelevant, while judges may not be overly concerned with

DIAGRAM 6-2

FROM ATTRIBUTES TO BARGAINING POSITIONS



the defendant's negotiating resources. A corollary to this, of course is that even within roles different participants may differ in their assessment of the relevance of different attributes.

A third point is that even though all three decision-makers may agree on the relevancy of a certain attribute, or set of attributes, they may assign different, even conflicting, weights to them. Race or SES may be a good example here. While some may be inclined to sentence blacks or socially deprived individuals more severely, others may view these as mitigating factors. Having several arrests but no convictions may be viewed differently by the prosecutor and the defense attorney. The defendant's successful completion of a probation term for a prior conviction may be seen by the defense attorney as evidence that the defendant is a good risk; to the prosecutor it may mean that the defendant has already gotten a break and does not deserve another.

Sources of Responses. It is important to inquire as to where and how participants learn how to evaluate attributes in terms of their worth in the bargaining process. The more varied and idiosyncratic this process is, the greater the likelihood of divergences in bargaining positions, interpersonal conflicts, and sentencing disparities. There seem to be at least four important sources of influences which affect the content of individual responses: court community norms, legal codes, office policies, and individual views. Court community norms are the most important for two reasons. First, they speak directly and relatively unambiguously to some of the most important attributes. These norms govern going rates for common offenses as well as the treatment to be accorded first offenders. Also, as these norms are the expression of collective experiences over an extended period of time, they can affect the participants' assessment of what a particular legal deficiency or factual matrix is worth in the bargaining process. A second reason for their significance is that their scope

is relatively broad. Their influence and impact is not unique to any given individual or members of a specific office. These norms are transmitted through the socialization process in the court community to which all members are exposed. This is not to say, however, that all members are equally receptive to these socialization influences. Moreover, as suggested in the analysis of internal disparities in Chapter Five, some court communities may not be as effective as others in establishing and transmitting norms, especially large ones with diffuse defense bars.

Legal codes also affect the content of responses. Their scope is as general as court community norms but their import is much more ambiguous. Most sentencing codes provide decision-makers with a relatively wide range of sentences from which to choose. Flat time codes or codes which specify minimums may have the most impact, although prosecutors can always modify the charge. Office policies can influence responses in a very direct and unambiguous manner. However, these policies are normally relevant only to prosecutors, and then only in offices governed by a certain type of philosophy. Judges are normally quite protective of their sentencing prerogatives and they are not really constrained by the same type of organizational structure as prosecutors. Defense attorneys are even more decentralized than judges; even highly bureaucratic public defender offices do not normally have many centralized controls on the discretion of assistants. The view is that the public defender's client is the defendant and, within reasonable bounds, the sentence should be acceptable to him, not the hierarchy of the public defender's office. Most prosecutors, however, view the public as their client. As an elected official some prosecutors feel responsible for sentencing levels and have established firm-guidelines and rigid enforcement procedures. In such offices the response set of assistant prosecutors is likely to be heavily influenced by office policies.

One last source of influence concerns the attitudes and views of the individual decision-maker. Despite their socialization into the court community and the ethos of their office these individuals are likely to be the product of a variety of backgrounds, upbringings, and socialization processes. As such these individuals will, in all probability, differ in what aspects of a case are relevant and/or evaluate similar attributes differently. This is most likely to be reflected in their views of what adjustments are to be made to the going rate because of the presence of certain traits.

Mapping Outcome Zones. Identifying and evaluating relevant attributes are only one aspect of the process by which participants map their outcome zones; integrating conflicting, and even consistent, factors is another. The process which individuals used to define ranges of feasible outcomes might not be as analytically distinct as suggested here, but the factors which affect the assimilation process are different from those which influence how various attributes are individually evaluated. It is not likely to be an additive process which is similar across individuals. Several factors, acting independently and in conjunction with one another, are likely to influence this process. Among the most important are the participants' formal role, their perceptions of their bargaining position, idiosyncratic views of different attributes, their operating style, their views of the other members of the workgroup handling the case, and relevant office policies.

The formal role is important simply because it will lead decision-makers to initially focus on different attributes as well as to weight them differently. The defense attorney will weigh the absence of any weapon very heavily while the prosecutors may stress a recent conviction. Bargaining position--influenced by perceptions of legal deficiencies or conclusive evidence or the defendant's personal and financial resources--may interact with role determined

weights. A defense attorney who feels he is in a strong position may weight a given attribute differently than if he were in a weak position. How much differently, however, may depend upon that attorney's operating style. A highly responsive attorney's weights may not differ while an unresponsive attorney may attempt to take advantage. Idiosyncratic priorities may also play a role in some cases. Some individuals may place so much emphasis on certain attributes that they may simply negate the impact of all others. A judge may feel strongly that all child molesters must go to prison and may ignore all mitigating circumstances in evaluating the case. Certain prosecutor office policies may have the same effect. Examples of such policies would include stipulations that all drunk drivers must spend three days in jail, or all offenders using a weapon must spend a year in the penitentiary.

The generation of an initial bargaining position is an integral part of the process of mapping out an outcome zone and is affected by some of the same considerations: role, operating style, perceptions of other members, bargaining position, office policies, etc. In addition, the initial views and expectations of the defendant might constrain what the defense attorney may be able to propose at the early stages of the process. Role is important because the prosecutor and defense attorney will obviously be inclined to begin at opposite ends of their outcome zones; weaknesses in their bargaining position may moderate this tendency somewhat. One's style and relations with the other workgroup members may have an important effect on the formulation of an initial position. Highly responsive individuals in "garden variety" cases, working with equally responsive cohorts, may initially offer very reasonable packages likely to meet with the acceptance of all. Under less ideal conditions the participants may make less reasonable offers to provide themselves with bargaining room.

The Workgroup Disposition Process

The participants' initial bargaining positions are important withinputs into the workgroup disposition process. These formal positions, together with the "fall back" positions which their outcome zones encompass, have important implications for the manner in which the case flows through the process and the structure of interaction among the participants. Diagram 6-3 presents three possible configurations of initial bargaining positions; they can be viewed as the two end points and the midpoint of a larger continuum. Configuration A represents a situation in which the interactions among the participants are to be highly collegial. There is considerable overlap in their positions and a plea is likely to be almost a spontaneous result of initial contacts. This configuration is probable in "normal" cases involving nonserious offenses and defendants who possess no unusual attributes (i.e., probation or ARD cases) or those involving 1-2 months in the county jail, for example.

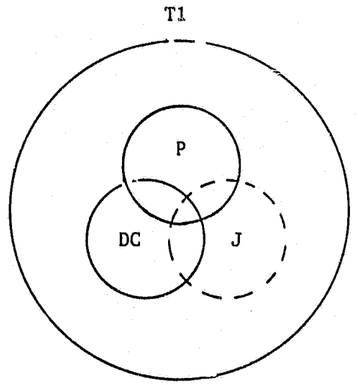
Configuration B represents a situation where considerable, but not unbridgeable, gaps exist between the initial bargaining positions of the decision-makers. This situation might result in more serious cases, and/or those in which factual aspects lead the participants to initially evaluate the cases differently. The interactions among the participants in Configuration B is likely to be characterized by quasi-adversarial bargaining. That is all are working toward the same--a plea bargain--goals but are jostling for whatever advantages they can attain. All believe that goal is attainable and fully expect the required compromises will, and should be forthcoming.

Configuration C represents situations in which unbridgeable gaps in initial positions exist. No one expects the necessary compromises to be forthcoming, for a variety of reasons. The case may be so highly publicized

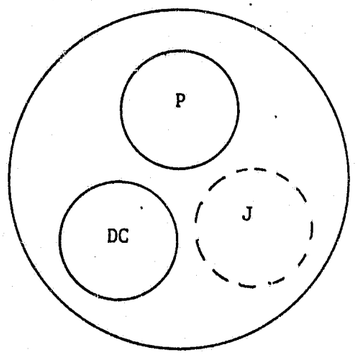
DIAGRAM 6-3

POSSIBLE CONFIGURATIONS OF INITIAL BARGAINING POSITIONS

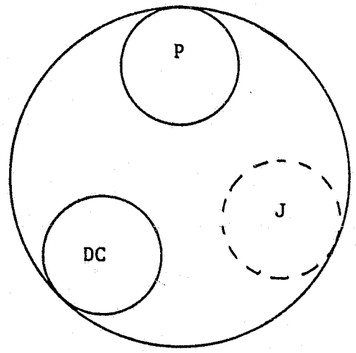
A



B



C



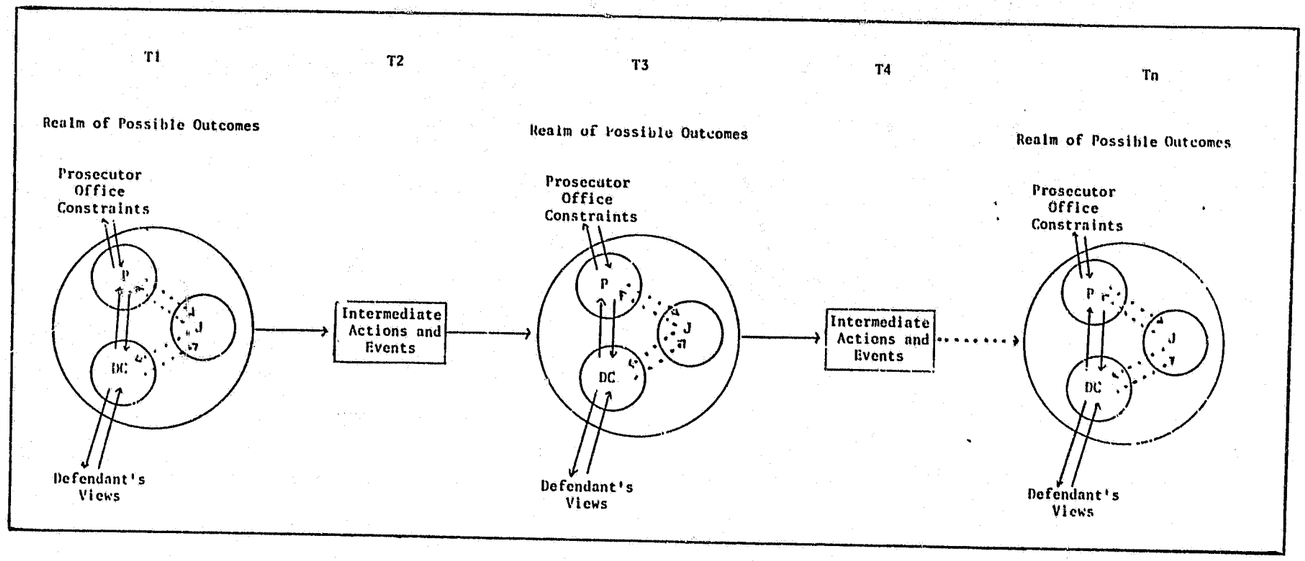
that the prosecutor may prefer losing to making the required concessions. Or the defendant may steadfastly maintain his evidence, and be supported in his position by the evidence. Whatever the cause of the gaps the nature of the interactions among the participants are likely to be formalistic and adversarial.

Of the various configurations represented in Diagram 6-3, Configuration B is likely to result in the most complex set of interactions and requires extended discussion. Where compromises are expected initial bargaining positions merely form new withinputs which affect strategies, actions, and bargaining positions at subsequent stages. This process cannot be understood from a static perspective as is indicated in Diagram 6-4. At each stage the circle around each participant represents their outcome zone; the larger circle represents the realm of possible outcomes. Changes in these zones over time can be affected by four sets of factors: 1) information exchanges on bargaining positions, 2) the operating style of the participant, 3) intermediate actions and events, and 4) the configuration of bargaining positions--and other decision-maker attributes--within the workgroup. Obviously the impact of these factors is apt to be neither simple nor additive. Rather, one is likely to trigger another and interact together in affecting outcome zones at later points in time.

The simple exchange of bargaining positions and information on the case is a crucial factor for a couple of reasons. First, it can sometimes modify the views of others. An explanation of how a particular case or defendant matrix was evaluated may, at the very least, provide new information to the others. It may even lead them to substantially change their outcome zone. On the other hand a full articulation of one's assessment may produce a convincing rebuttal, leading to modification by the proponent. A second reason information exchange

DIAGRAM 6-4

WORKGROUP DISPOSITION
PROCESS



is important is that it can affect the development of strategy. This is particularly important when the judge is involved in the negotiations. The interactions between the judge and the others in Diagram 6-3 are marked by dotted lines to reflect the fact that not all judges will reveal their views at pretrial conferences or are assigned to cases before the day of the trial or plea. When judges are part of the negotiations, however, it becomes possible for the other participants to assess the gaps between outcome zones as well as the factors which divide the participants. This is valuable information for the development of bargaining strategies. It tells them what areas need the most attention (i.e., undercut a particular piece of evidence, get a former employee to testify, develop a restitution package). In addition, it informs them of the alignment of positions and the possibility of coalition formation. More will be said of this later.

Equally important in understanding the development of bargaining strategies and the bargaining process itself is an understanding of the operating styles of the participants. Given a certain case and defendant matrix and a certain configuration of positions, different individuals will react differently. A number of decision-maker attributes may affect that reaction. Attorneys with strong personal bargaining skills (respected trial attorney, fearsome reputation in the court community, highly manipulative personality) may choose a more confrontational strategy than others, employing trial threats, making motions, "stonewalling" requests for concessions, etc. Activists judges may be more inclined to bridge the gap between the attorneys by insisting on a series of pretrial conference, revealing preferences, cajoling, etc.

Despite these traits and their impact, the responsiveness of the participants may be the most important for understanding reactions to initial bargaining positions. In most situations more responsive participants are expected to

pursue conciliatory strategies leading to compromise. However, the impact upon the bargaining process is apt to vary by role. The judge and prosecutor normally have much more discretion in setting and modifying their bargaining positions than the defense attorney, who must secure the defendant's acquiescence. Thus, more responsive judges and prosecutors may be expected to contribute sentencing concessions in the bargaining process, while defense attorneys contribute other concessions over which they have more control (refrain from delaying tactics and/or from raising frivolous motions).

The actions--or inactions--which flow from the decision-makers' interactions at one stage in the proceeding become new withinputs at later stages in the bargaining process, as do occurrences over which the decision-makers have no control. These actions and occurrences can materially change the matrix of case attributes, as well as the participants' perceptions of them. In addition, they can affect the willingness of the participants to be conciliatory. Some actions can even change the composition of the workgroup handling the case. Examples of these intermediate actions and occurrences include filing, arguing, and deciding legal motions, the use of delaying tactics, the death or disappearance of witnesses, misgivings on the part of the victim, the administration of a lie detector test to the defendant, a substitution of judges, the judge revealing (or changing) his position, the rearrest of the defendant; etc.

While the impact of some of these is straightforward others can be more involved. The impact of a legal motion upon sentence may vary depending upon its outcome, its scope, and whether the defendant pled guilty or was convicted after a trial. While a large number of motions may be viewed as obstructive, overly legalistic strategies, they can form the basis for appeal after a trial. Thus, they may generate some concessions in plea cases but form the basis for sanctions after trial conviction. Delaying tactics may have a similar effect.

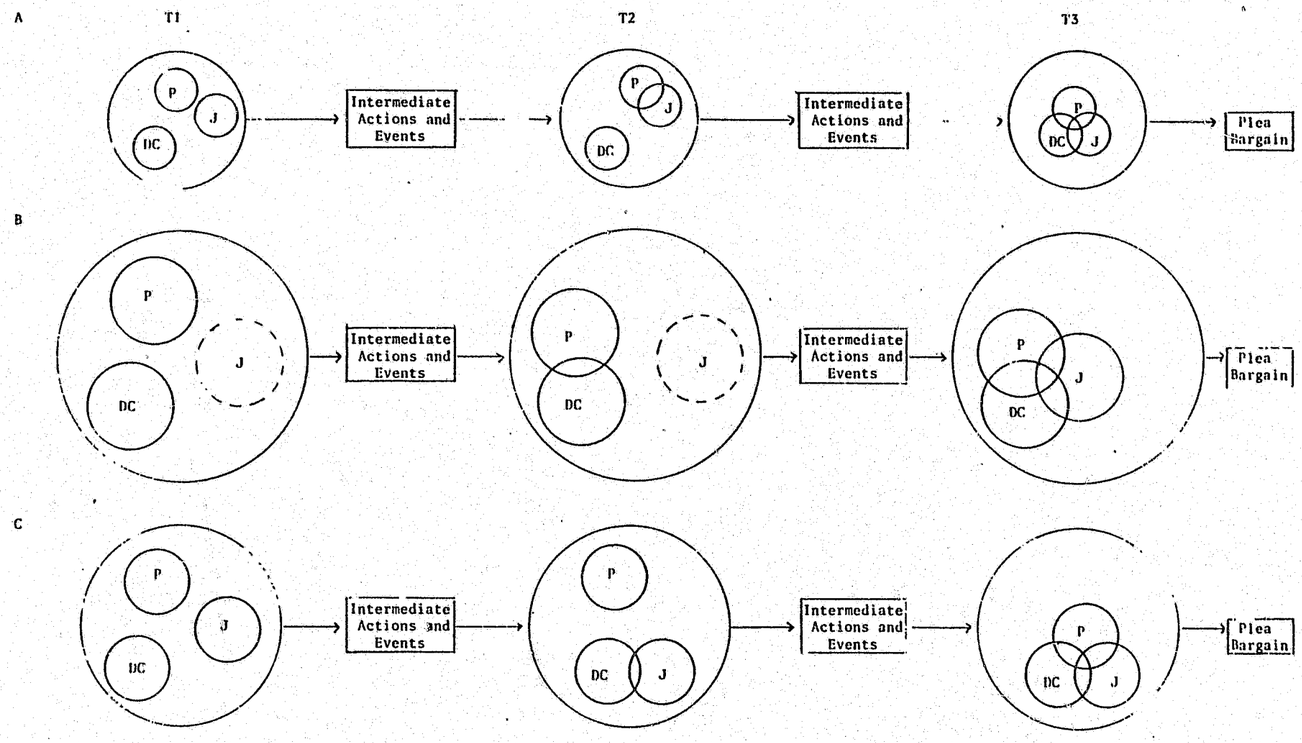
To the extent they work, they may erode the state's position and result in bargaining concessions; if the defendant is convicted by trial after lengthy delays he may receive a more severe sentence. The impact of lie detector tests will vary with their outcome--even though the results are inadmissible they can affect bargaining positions. The impact of a change of judges will, of course, depend upon the views of the new judge.

The configuration of bargaining positions--and other decision-maker traits--is important to consider here because they can have an important impact upon strategies. Their role is best portrayed through a reference to Diagram 6-5. Diagram 6-5 lays out various configurations of outcome zones and their changes over time. The first sequence (A) is a routine case in which all the participants take moderate positions at T1; the judge makes his position known from the beginning. At T2 the prosecutor, learning that the judge is not far from his own position and persuaded by some of the judge's arguments, moves to a position with which the judge can agree. Because of client control problems, however, the defense attorney cannot agree to the terms. All three participants, however, are highly responsive individuals who have worked together over a long period of time. Consequently, the judge and prosecutor accommodate him by "splitting the difference" in order to reach an agreement. A less responsive prosecutor might have been less accommodating, forcing the defense attorney closer to his initial position, or to trial.

Sequence B differs in several ways from Sequence A. It involves a more serious offense; this is reflected in the larger realm of possible outcomes as well as in the participants' larger outcome zones. These are larger because statutory codes have wider ranges and because the court community's going rate is likely to include a wider range of acceptable sentences. Assume Sequence A represented a theft case with no statutory minimum and a one year maximum, with

DIAGRAM 6-5

OUTCOME ZONE MOVEMENT IN PLEA NEGOTIATIONS



a going rate of two to three months. These limitations mean that the various outcome zones cannot be very large and that position shifts cannot be great. Assume further that Sequence B involves an armed robbery, with a twenty year maximum and a four to five year going rate. The options here are much broader and the possibility of large shifts exists. For example, the prosecutor in Sequence B had to move much further than the prosecutor in Sequence A. However, because the defense attorney's outcome zone in Sequence B is so much larger than in Sequence A, the participants could find a mutual position.

A second important feature about Sequence B is that the judge is not involved in the early stages of the bargaining process, as indicated by the broken circle encompassing his outcome zone. This can be due to personal preferences or the fact that the judge was not assigned the case until the day of disposition (i.e., some type of master calendar system was employed). This forces the defense attorney and prosecutor to come to terms before presenting their bargain to the judge. This, of course, eliminates the possibility of one of the participants forming a coalition with the judge. Moreover, it mitigates the impact of the judge in the bargaining process. In Sequence B the judge adjusts his position to the common ground worked out by the prosecutor and defense attorney. While this common ground may have been developed with a general idea of where the judge stood, a more activist judge may well have brought the others closer to his view.

Sequence C illustrates a third variant, but it by no means exhausts the possibilities. At T1 all of the participants are involved in the process and their positions are a moderate distance apart. Learning of the judge's views, and the reasons behind them, the defense attorney makes an eloquent presentation which undercuts some of the judges's assumptions and reveals new information. Moreover, before T2 the defense attorney has the defendant take a lie detector

test which includes questions on prior criminal activities, and the defendant passes the test. At T2 the judge shifts to a position the defense attorney can accept, but the prosecutor is still unmoved. The defense attorney then makes a motion to suppress several items of evidence. The judge throws some pieces out but not all. The state's case is further weakened because the extended negotiations have dampened the ardor of the victim and the witnesses as the case involved only a small theft. Thus, in T3 the prosecutor moves to the position shared by the judge and defense attorney.

The Mode of Disposition

The final factor which can have an important effect upon the sentencing process is the mode of disposition. Its effect is twofold--it can affect the severity of the sentence (direct effect) as well as the manner in which other factors affect sentencing (mediating effect). This first effect is straightforward. Many observers and participants contend that most defendants who resist a plea and are convicted after a trial (especially a jury trial) will receive a longer sentence. It is in part a nuisance penalty for making the participants endure the work and uncertainty that a trial entails. It also, however, unleashes the constraints which are inherent in the bargaining process. The judge and prosecutor are free to revert to positions closer to or above their initial bargaining position, without concern for the defense attorney's views, arguments, or restraints.

Related to the fact that the judge and prosecutor are "unleashed" in trial cases is that, because of contextual differences between pleas and trial convictions, they can react differently to various actions and occurrences which transpired during the negotiating process. Some of these factors may be more important in one context then another; others may have entirely different

effects in the different settings. Bargained sentences must be acceptable to the defendant and that can either enhance or mitigate the impact of certain factors. For example, a plea bargain normally focuses on the most serious offense charged--a compelling argument for the plea is that the others will be included in the deal "at no extra cost." No such assurances need be given after a trial conviction--sentence increments for subsequent offenses are simply part of the "trial penalty." The role of alleged legal deficiencies also illustrates the mediating role mode of conviction can play. In negotiations alleged defects, or even successful motions to suppress part of the evidence, can be used to secure concessions. Even if the motions are far fetched they can form the basis for an appeal. After a trial conviction, however, excessive legal motions may be viewed as frivolous, legalistic tactics designed to frustrate attempts to efficiently process the guilty. As such they may lead to more harsh sentences. Finally, disposition mode is important because it may affect the impact of the defense attorney on the sentence. After a trial the defense attorneys views on various aspects of the case (employment status, defendants family life) and his bargaining resources may not seem as compelling as during the plea discussions.

Empirical Assessments of the Model: Problems and Prospects

The model just developed is a result of meshing what we knew about the sentencing process before we began the field work with the insights generated by that field work. While this approach led to a more refined and empirically grounded model which reflected the fruits of our toil, it also made it impossible for us to structure data collection efforts which permitted a rigorous test of every aspect of the model. Indeed, even if we had a concrete vision of it

going into the field, it would have been difficult to collect the data and construct the measures necessary to examine adequately this rather complex model. Moreover, even with the necessary data there is some doubt whether even the most sophisticated multivariate data analysis techniques could accurately depict some of the complex relations and processes embodied in it.

Consider the difficulties involved in simply examining the role of case and defendant matrices. Within the model, what is important are three different decision-makers' perceptions of various factual and quasi-factual arrays of information (offense seriousness, evidentiary strengths, legal deficiencies, threats posed to the community, rehabilitative potential, etc.). Only a concerted data collection effort with a certain subset of decision-makers and a small set of cases could produce good perceptual data on these matters (see Hogarth, 1971, for such an effort, but with judges only). While it would be possible to ascertain, initial bargaining positions, the process by which various arrays of data are meshed with response repertoires and integrated into outcome zones would be extremely difficult to gauge. Simply handling and sorting out arrays of data would be difficult. Moreover, it is doubtful that the decision-makers themselves could completely map their outcome zones. At a given point in time they may know better what is outside of these zones than inside them.

Observing and measuring relevant happenings and occurrences once workgroup interactions begin also presents formidable problems. It may be possible to capture, or at least infer, changes in bargaining positions. But pinpointing the intermediate actions, occurrences, and interactions which produced those changes is far more challenging. Also it is extremely difficult to know what is happening with witnesses and victims. Inaction on the part of various partici-

pants poses a wholly different, and nearly insurmountable, set of problems. Finally, innuendos and exchanges made in private conservations are difficult to reliably capture.

Given these difficulties one may argue that the development of this model was a fruitless effort or, worse, purely academic. While the matter is open, we think not. If we could offer no empirical insights into the utility of the model, it would still be useful in directing future studies and for focusing debates on the "real nature" of the sentencing process. But we can offer some empirically based insights, however rough, into the utility of some aspects of the model. We are able, for example, to talk about the types of case and defendant attributes which evoke responses from decision-makers in the sentencing process, as well as examine the role of certain mediating factors (offense seriousness, mode of disposition). However, our data rests soley on objectively based measures, not on the perceptions of the various decision-makers. This will cause some interpretational problems with respect to the role of certain variables. While we may know that they affect sentencing, we may not always know why. Moreover, these data will offer few insights into the process by which attributes evoke responses and are integrated into bargaining positions and outcome zones. Correspondingly, our analysis will not pick up attributes which do not evoke fairly strong, widespread responses. It will miss factors which appeal to smaller subsets of individuals, or factors which are interpreted differently by different participants (thereby negating their impact).

Similar problems, and prospects, exist for the analysis of the role of decision-makers and intermediate actions and occurrences. While the available data on the latter are extremely limited we can examine the role of two types of defense tactics--the use of legal motions and delaying strategies. In addition we have some data on prosecutorial actions--the modification of charges during

the course of the negotiations. Finally, we can roughly estimate the impact which an offer of a monetary settlement has on the length of the sentence a defendant receives. No data exists on inactions or happenings which affect perceptions of seriousness or the probabilities of ultimate conviction.

While our analysis of the role of decision-makers (to be presented in Chapter Seven) is similarly limited it can provide important insights into the sentencing process. We obviously have no information on outcome zones or initial bargaining positions. But we can infer where these zones and positions might be by using attitudinal information on the participants' views on punishment ("Belief in Punishment"). Moreover, our measures of case seriousness, operating styles, and Machiavellianism can say something about how the views of individuals are reflected in sentences. Finally, various categorizations of these variables can say something about the impact which configurations of individuals--but not outcome zones--can have upon the translation of views into sentences. More will be said about these matters in Chapter Seven.

Available Measures of Case Attributes, Defendant Attributes, and Intermediate Actions

Because of the broad array of case level data available in this study it will be useful to lay out relevant variables in light of some of the categories contained in Diagram 6-2. Table 6-1 describes various case attributes which are indicators of various components of the case matrix discussed in the context of Diagram 6-2. One limitation obvious from an examination of Table 6-1 is that while we have been talking in terms of a matrix of case attributes as perceived by three different individuals, here we are dealing with an objectively defined set of indicators. The differences are crucial and help to illustrate the

Table 6-1
Measures of Case Attributes Affecting Sentence

Case Attribute	Variable Name	Type of Indicator
Most Serious Offense Convicted Upon	OFFSER1	Seriousness
Second Most Serious Offense Convicted Upon	OFFSER2	Seriousness
Third Most Serious Offense Convicted Upon	OFFSER2	Seriousness
Presence of A Weapon	WEAP (1 = Weapon present on defendant during crime; 0 = no weapon present)	Seriousness
Use of A Weapon	WEAPUSED (1 = Weapon used; 0 = No Use of a Weapon	Seriousness
Extent of Injury	INJURY (1 = none, 2 = Slight, 3 = Serious)	Seriousness
Inter Racial Incident	BW (1 = Black Perpetrator, White Victim; 0 = All Others)	Seriousness/Threat
Inter Sexual Incident	MF (1 = Male Perpetrator, Female Victim; 0 = All Others)	Seriousness/Threat
Amount of Physical Evidence Available	PHYSEVID (# of independent Pieces of Physical Evidence)	Probability of Conviction
Existence of A Damaging Statement by Defendant	STATMNT (1 = Existence of a Statement; 0 = No Statement	Probability of Conviction
Existence of a Prior Relationship Between Defendant and Victim	OVREL (1 = Existence of a Prior Relationship 0 = No Prior Relationship	Probability of Conviction/ Seriousness

limitations of this analysis. Implicit in the notion of matrix is a set of rows with a series of entries (columns) in each. Conceptually this means that if a row represents a crucial aspect of a case, then the various entries represent information bits which are relevant for the case's assessment by decision-makers. For example, if a subcomponent of case seriousness concerns the use of a weapon, then one row in the case matrix may contain various bits of information on the weapon. Was there a weapon? What type? Was it used? Did the defendant use it to threaten the victim? Did it injure someone? The limitations of this analysis lie in the fact that we generally do not have an exhaustive list of relevant dimensions (rows), or extensive information on relevant aspects of each (columns), or information on how decision-makers assess these sets of attributes.

Table 6-1 lists the case attributes which are thought to influence perceptions of seriousness and the probabilities of a conviction. The coding of those variables which were not discussed earlier is also described, as well as the acronym used to depict the variable. Most of the seriousness indicators are fairly straightforward. They relate to the seriousness of the charges upon which the defendant was convicted (OFFSER1, OFFSER2, OFFSER3) and various situational factors (WEAP, WEAPUSED, INJURY, BW, MF). If the defendant was convicted on only one charge, OFFSER2, OFFSER3 are coded "0". A comment is in order with respect to the interpretation of BW and MF, the variables which depict an interracial or intersexual incident. They are categorized as factors which may affect perceptions of seriousness as well as the threat posed by the defendant. They are obviously different in kind from such variables as WEAP or INJURY. However, to the extent that racial and sexual bias or sterotypes affect participants' perception of seriousness, these factors must be considered.[2]

The three available variables thought to affect the probabilities of conviction (PHYSEVID, STATMNT, DVREL) are straightforward, but crude. In addition to the information we have on these variables, we would like to know the contents of any statements made, the type of physical evidence available, and the nature of the prior relationship.

Table 6-2 reports some information on defendant attributes. These present interpretational problems because they may be reflecting more than one type of concern, or because we may not know exactly which of two or more concerns they might reflect. The first three listed (CRIMRCD, OTHIND, PROBPRLE) primarily relate to the participants' concerns with the threat posed by the defendant to the community, and the defendant's rehabilitative potential. Each variable concerns the defendant's proclivity--past or current--to engage in criminal activities. In addition, these variables also reflect differences in bargaining positions. Most defendants with a history of criminal activity probably feel a stronger need to have some influence on sentence than do most first offenders, who may be able to afford to gamble. This is especially true where the probabilities of conviction are great, and/or where sentencing enhancement provisions exist for repeat offenders.

The role of the detention status variable (CONFINED) provides the most difficult interpretational problems, largely because of the importance of the controversy which has surrounded it over the years. Many have argued that its role reflects the bias in the system toward those with enough money to purchase their freedom. This, of course, enhances their ability to assist in their defense, hire a private attorney, and engage in stalling tactics. As such it would be a reflection of bargaining resources. Others, however, argue that what role detention status plays is due to the fact that practitioners can spot dangerous criminals early in the process and arrange for a bail which the

Table 6-2
Measures of Defendant Attributes Affecting Sentence

Defendant Attribute	Variable Name	Type of Indicator
Criminal Record	CRIMRCD	THREAT/ Rehabilitation/ Bargaining Position
Existence of a Separate Pending Indictment	OTHIND (1 = At Least One Other Indictment Pending; 0 = No Other Indictments Pending)	THREAT/ Rehabilitation/ Bargaining Position
Current Probation or Parole Status	PROBPRLE (1 = Currently On Probation Or Parole; 0 = Not Currently On Probation Or Parole)	- -
Detention Status	CONFINED (1 = Confined At Time Of Disposition; 0 = Not Confined	THREAT/ Bargaining Position
Sex	DSEX (1 = Male; 0 = Female)	THREAT
Race	DRACE (1 = Black; 0 = White)	THREAT
Youth	YNG (1= 20 Or Under; 0 = All Others	Rehabilitation
Age	OLD (1 = 45 Or Older; 0 = All Others)	THREAT

defendant cannot possibly make. Thus, any longer sentence which these individuals receive is really a reflection of their perceived threat to the community not any bias in the system.

The race (DRACE) and sex (DSEX) variables are said to affect perceptions of the defendant's threat to the community because of the impact of bias and social stereotypes. These factors may lead practitioners--consciously or unconsciously--to view blacks as greater threats than whites and women as lesser threats than men. The age variables are broken into two dummy variables (YNG, OLD) because a non linear relationship between age and sentence is expected. Younger defendants are expected to receive shorter sentences than others largely because their rehabilitative potential, in most instances, is considered to be greater. Longer sentences may be viewed as counter productive. Older defendants are expected to receive lower sentences because they generally are viewed as posing a lesser threat to the community.

Table 6-3 lists several variables which concern certain actions or occurrences which have transpired over the course of the case's disposition. While the referents of each variable are fairly clear the measures are crude. Consider the first two, MOTIONS and DELAY. They are intended to capture defense tactics which run counter to accepted norms within most court communities. The use of frivolous (and sometimes not so frivolous) legal motions and lengthy delays interfere with the efficient processing of cases. The legalistic and logistical problems these tactics cause may damage what is an otherwise sound prosecution. However, as real as these problems may be the variables we use to measure them are somewhat flawed. Not all motions are considered frivolous, nor are they equally detrimental to the state's case. Moreover, some lengthy delays are neither needless nor due to defense tactics. Despite these shortcomings these are the best measures we have to tap these important phenomena.

Table 6-3
Measures of Intermediate Actions and Occurrences Affecting Sentence

Action(s) or Occurrence(s)	Variable Name
Filing of Legal Motions by Defense	MOTIONS (# of Legal Motions Filed)
Length of Delay	DELAY (Days Arrest to Disposition)
Offer of Money Settlement	MONEY (1 = Restitution Or Fine Imposed; 0 = No Restitution Or Fine Imposed)
Charge Modification by Prosecution	CHANGE (Value of Most Serious Offense at Arrest Stage (minus) Value of Most Serious Offense at Sentencing Stage)

The offering of a monetary settlement, in the form of restitution to the victim or a fine, is considered an important occurrence in negotiations. Despite the evident socioeconomic bias, such an offer can relieve the pressure on the prosecutor and judge to press for incarceration, or as much jail time as they ordinarily would. The MONEY variable used to reflect this occurrence, however, is again flawed. It only reflects the imposition of a monetary punishment. We do not know whether the offer came from defense, or was insisted upon by the prosecutors or judge. More important, we do not know whether defense offers in other cases were refused.

The final variable, CHANGE, reflects modifications in the seriousness of the charges by the prosecution. While crude it is probably the least flawed of the four measures in Table 6-3. It was calculated by simply subtracting the variable measuring the seriousness of the most serious offense upon which the defendant was convicted (OFFSER1) from the variable measuring the most serious offense at arrest (ARRSER1). It should be stressed that the seriousness of the charges can be increased as well as decreased during the course of the dispositional process. These changes can result from bargaining pressures as well as factual changes which affect the prosecutor's judgment as to what is the most appropriate, or convictable, charge. The important point is that despite these changes an offense which is reduced from aggravated battery to simple battery is not likely to be viewed in the same light as cases which are "real" simple batteries. Much of the defense bargaining resources may have been expected in simply getting the charge reduction. Thus, the actual sentence may be on the "high side" of the going rate for simple batteries. The opposite may be true for charge increases. A charge which is increased from simple battery to aggravated battery may be on the "low side" of the going rate for aggravated batteries.

As stressed earlier we do not expect simple linear relationships between case attributes, defendant attributes, defendant attributes, intermediate occurrences and the sentence which the defendant receives. Several important mediating factors were mentioned earlier but only two are available for this analysis--the seriousness of the case (OFFSER1) and the mode of disposition (TRIAL: 1 = Trial conviction, 0 = Guilty Plea). The seriousness variable is relevant because, as discussed earlier, there is simply more room for mitigating and aggravating factors to play a role in more serious cases (i.e., the absolute value of "discounts" and "markups" is greater in more serious cases). Disposition mode is important because the context of decision-making after a trial is so different from that in plea negotiations. The relevance and meaning of various factors is likely to be quite different in the two settings.

Because of their importance these two variables will be used extensively in interaction terms to probe for non linear relationships between the various measures just laid out and sentence. An interaction term is simply a variable which is computed by multiplying two, or sometimes three, variables together. For example, a two way interaction term between the defendant's race and offense seriousness would be computed as follows: RACE*OFFSER1. To test for the significance of the interactive effect (i.e., that blacks get more severe sentences than whites as the severity of the offense increases) one must first "force" into the regression equation the two linear terms (RACE, OFFSER1), then permit the interaction term to enter. The test for the interaction lies with the significance (F value) of the interaction term. Because of the high level of colinearity between the interaction term and the two linear terms, the B-coefficient and F value of the two linear terms often change considerably when the interaction term is entered. These B-coefficients may become much smaller and even "flip" (reverse their sign); the F values often drop below acceptable

levels of significance. These changes are unavoidable. However, these terms must be left in the equation in order to properly gauge the joint impact of the variables. To properly interpret the joint effect of the variables the B-coefficient of all terms must be considered (i.e., if the linear term has a negative sign but the interaction term has a positive sign the overall effect of the interaction is positive not negative). The significance of the interactive effect, however, depends solely on the F value of the interaction term (Cohen and Cohen, 1975, Chapter Eight). One other point which should be stressed in interpreting interaction terms is that their B-coefficients can be deceptively small because of the large range which can occur from multiplying two interval variables.

A Quantitative Assessment of the Model, I

Using cases from all nine counties Equation 6-1 reports an interactive regression model using the variables just described. The dependent variable, JAILMIN, is the minimum incarceration time to which the defendant is sentenced; probation and other non confinement sentences are coded 0 as no incarceration time is required.[3] The equation explains about 61 percent of the variance (R^2 = .611; adjusted R^2 = .609; n= 5331).[4] The first value in the parentheses below the term is the F value; the second is the beta weight. For a sample of this size an F value of 3.8 is required for a .05 level of significance, 6.1 is required for a .01 level, and 10.8 is required for a .001 level. All but three variables (INJURY, OTHIND, SEX*OFFSER1) were significant beyond the .001 level; they were significant beyond the .05 level.

Equation 6-1
GRAND EQUATION

-.4 + .44*OFFSER1 + .14*OFFSER2 + .18*OFFSER3 - .18*TRIAL + 1.46*OFFSER3*TRIAL
(21.4; .31) (37.1; .06) (15.3; .04) (.02; -.001) (67.3; .08)

-.90*WEAP + .18*WEAP*OFFSER1 + .59*INJURY
(1.7; -.01) (24.6; .12) (4.9; .02)

+3.16*BW + .10*PHYSEVID + 2.68*PHYSEVID*TRIAL
(10.8; .03) (.38; .01) (15.8; .05)

-.27*DVREL - .08*DVREL*OFFSER1
(.15; -.004) (8.6; -.04)

+1.51*CRIMCRCD + .10 * CRIMRCD*OFFSER1 + .34*OTHINDCTS
(26.5; .06) (41.8; .07) (4.9; .02)

+6.41*CONFINED + .26 * CONFINED*OFFSER1 - 1.50*RACE
(113.3; .12) (84.4; .16) (8.3; -.03)

+.12*RACE*OFFSER1 - .48*SEX + .21*SEX*OFFSER1
(20.5; .06) (.43; -.01) (6.1; .15)

-1.65*YNG + -.01*DELAY -.001*DELAY*OFFSER1 + .001*DELAY*OFFSER1*TRIAL
(12.6; -.03) (16.9; .04) (57.6; -.16) (30.9; .09)

+.45*MOTIONS - .09*MOTIONS*OFFSER1 + .06*MOTIONS*OFFSER1*TRIAL
(5.7; .02) (66.9; -.9) (26.9; .12)

-2.28*MONEY + .11*CHANGE
(25.3; -.05) (75.3; .08)

Technically, of course, these significance levels are irrelevant as we are not dealing with a sample of cases; we report them solely as a measure of the likely stability of the results.

To facilitate an assessment and interpretation of this rather complex and imposing equation we will proceed by independently discussing each set of variables (case attributes, defendant attributes, intermediate actions). It should be stressed that Equation 6-1 reports the final stage of a stepwise regression analysis with each term forced into the analysis in the order reported in Equation 6-1. In discussing some of the results we will find it

useful to discuss their initial impact (i.e., their bivariate impact or their effect at the stage in which they were entered) or their impact net of only selected variables. This type of approach can be extremely useful in providing insights into what lies beneath the face of the equation. These insights can be particularly important in an analysis which employs a large number of linear and interactive terms. A problem with discussing the results in a stepwise fashion is that they are often quite different from the final results; moreover it is not feasible to report thirty some odd stages of a regression analysis. Thus the reader must be cautious when we discuss the impact of a variable "controlling only for ____" or "net of only ____". The results being discussed will not be consistent with those reported in Equation 6-1.

Case Attributes

Of the seriousness indicators the three offense seriousness measures (OFFSER1, OFFSER2, OFFSER3) were most important. OFFSER1 was, by far, the most potent variable; its r^2 with JAILMIN is .48. This is not surprising given the manner in which the variable was constructed. However, the fact that there is so much within offense consistency does attest to the centrality of a court community's going rate. It does appear that most other factors are simply marginal adjustments to this norm. While the seriousness of the second offense (if there is one) contributes to the sentence, it does not "count" for nearly as much as the first offense. The B-coefficient for the linear OFFSER1 term (i.e. at step one of the regression, before other variables are entered) is nearly 1 (B = .97) indicating a one month increment in JAILMIN for each increment in OFFSER1, which is also measured in months. The B-coefficient for OFFSER2 is only .15, indicating that a second offense adds only a fraction of its "worth" (i.e., what it would bring as a first offense) to the sentence.

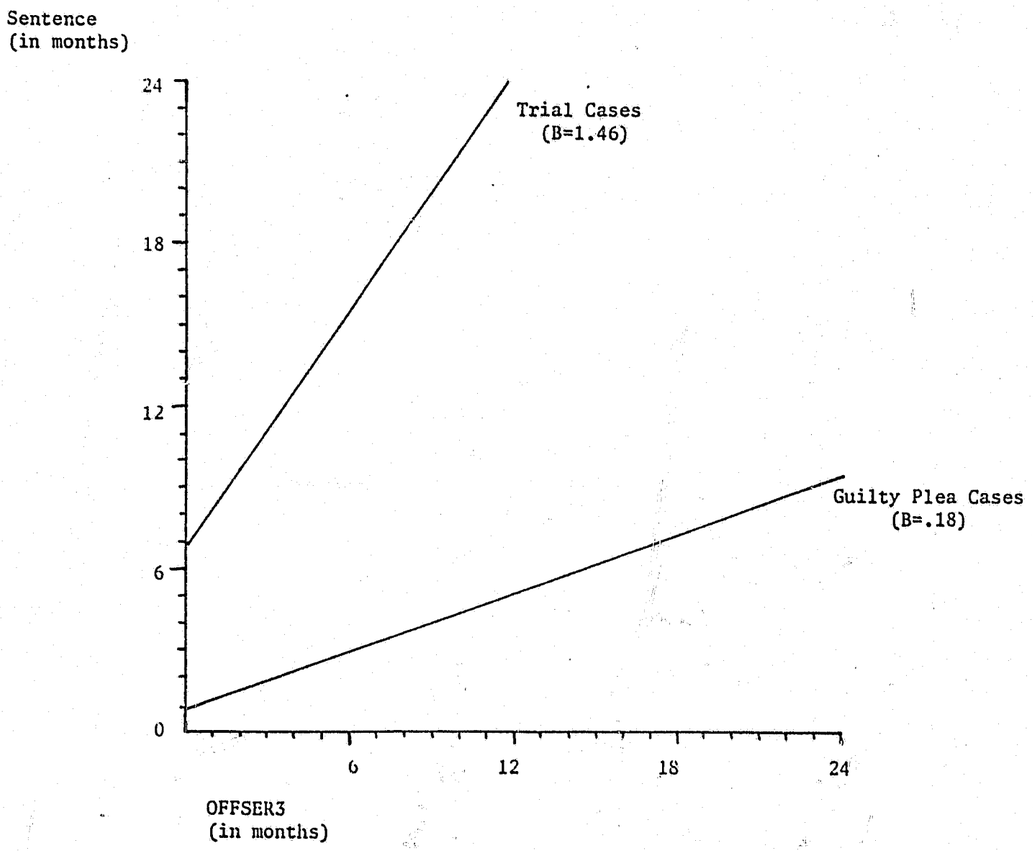
The effect of the seriousness of the third offense charged (OFFSER3), provides us with the first opportunity to discuss the role of disposition mode (TRIAL) as a factor affecting sentence as well as a mediating factor (i.e., one which affects the impact of another independent variable). Independent of disposition mode, OFFSER3 has an impact very similar to OFFSER2 (B = .17); independent of OFFSER3, TRIAL has a very significant linear effect upon sentence (B = 10.2; F = 110). This suggests that, controlling for the seriousness of the first three offenses, a defendant who is convicted after a trial, as opposed to entering a guilty plea, pays a "trial penalty" of about 10 months.

However, the two variables (TRIAL, OFFSER3) interact and jointly affect sentence, reducing the linear impact of the TRIAL variable and greatly enhancing the impact of OFFSER3 in trial cases. The B-coefficient for the OFFSER3*TRIAL term--which approximates the slope of the OFFSER3 regression line in trial cases--is 1.46.[5] This suggests that the impact of OFFSER3 in trial cases is about ten times as great as in guilty plea cases and its "worth" in trial cases is almost fifty percent greater than if it were the first offense charged. Diagram 6-6 roughly illustrates this interactive relationship, controlling for only OFFSER1 and OFFSER2. The independent effect of TRIAL drops from 10 months to 6 months after the impact of OFFSER3 in trial cases is controlled. Other variables also eat away at the linear impact of TRIAL, virtually eliminating its independent affect. More will be said of this later.

Three other seriousness indicators affect sentence. The existence of a weapon (WEAP) has an effect upon sentence, but only in more serious cases. Even then its impact is fairly marginal, as is indicated by the rather low B-coefficient of the interaction term. The increase in sentence for the existence of a weapon in a crime with an OFFSER1 value of ten months would only be about one month; for fifteen months the increase in sentence would be about

Diagram 6-6

Illustration of the Impact of OFFSER3

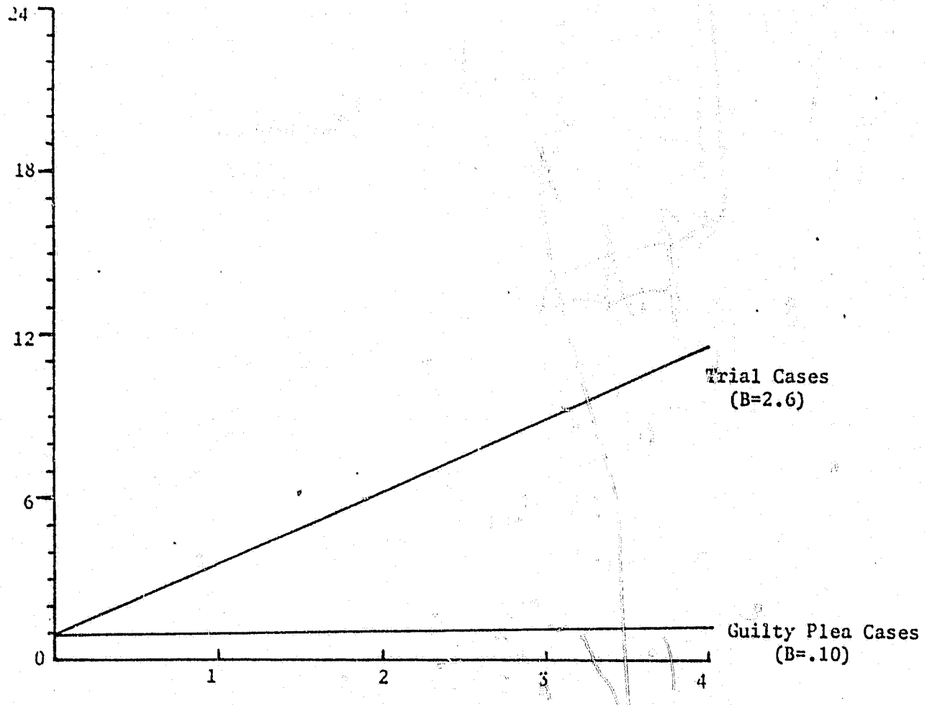


two months. The INJURY variable has an even weaker impact upon sentence. The B-coefficient of the variable depicting an interracial incident involving a black assailant and a white victim (BW), indicates that blacks pay a penalty of almost three months in jail for victimizing a white. Independent analyses confirm that whites pay no such penalty for crossing racial lines, suggesting that racial bias and stereotypes play a role in participant perceptions of seriousness.

Two factors thought to affect the probabilities of conviction (PHYSEVID, DVREL) affected sentence, but in different ways. The existence of a prior relationship between the defendant and victim had no significant linear impact upon sentence but it did interact with OFFSER1. In more serious cases a prior relationship can lead to a lesser sentence. However, the effect is slight, not amounting to more than a month or two even in fairly serious cases. The number of pieces of physical evidence (PHYSEVID) did have a linear effect upon sentence but its real impact can only be understood in conjunction with the TRIAL variable. This relationship is depicted in Diagram 6-7. What the interaction term reveals, when compared to the linear term, is that the impact of physical evidence is essentially limited to trial cases. The B-coefficient for PHYSEVID before the interaction term is entered is .37. Afterward it is .20, while the B-coefficient for the interaction term, PHYSEVID*TRIAL, is 2.8. This is demonstrated in the drastically different slopes in Diagram 6-7. Another important point about Diagram 6-7 is that it shows that the linear impact of the TRIAL term is eliminated with the introduction of the PHYSEVID * TRIAL term (note the difference in the intercepts of the two slope lines between Diagram 6-6 and 6-7). This is important because it suggest that there is no simple, across the board "trial penalty." Rather penalties are only levied in certain types of cases--situations, for example, in which the evidence was so great that

Diagram 6-7

Illustration of the Impact of PHYSEVID



a trial "should never have been held." This confirmed observations made by many practitioners during the field research. They contended that trial penalties were imposed only in cases which should have never gone to trial. Within the model developed here, this can be explained by referring to Diagram 6-3. Penalties may be appropriate only when cases characterized by Configuration B are treated as though they represented situations characterized by Configuration C.

Defendant Attributes

Two of the variables thought to reflect concern with the threat posed by the defendant to the community, as well as the defendant's bargaining position--CRIMRCD and OTHINDCT--had a significant impact upon sentence. But only CRIMRCD had a strong impact and its impact was greater in more serious offenses. The combination of a serious case and a long record obviously have a compound effect upon the participants' perception of what can and should be done. In addition, the defendant in such cases is not in a strong position to resist bargaining pressures.

Despite the importance of the defendant's criminal record the most important defendant attribute, from a statistical perspective, is the defendant's detention status at the time of disposition (CONFINED). It has a very strong linear impact upon sentence. Indeed, if we look at the impact of the CONFINED variable before its interaction term with OFFSER1 is entered, it is evident that defendants who were confined were given an average sentence which was over nine months greater than those released on bail. Beyond this linear effect, however, bail status also interacted with OFFSER1, demonstrating that the pretrial detention status differential is greater in more serious cases.

Despite the importance of the CONFINED variable there is still some confusion as to its interpretation. Since offense, criminal record, disposition mode, evidence, etc. are controlled one could make a strong argument that the impact of the CONFINED variable reflects the effects of socio-economic bias in the system, as reflected in the defendant's weakened bargaining position and the participants' biased perceptions of the threat posed by lower class defendants. This would not be inconsistent with some of the other findings in this analysis. On the other hand, it is difficult to counter the argument that detained defendants are being detained primarily because of the participants' views of certain aspects of the case or defendant not captured in our measures. It might well be that these attributes would have led to a longer sentence regardless of pretrial detention. Despite this dilemma, the truth of the matter undoubtedly lies somewhere in between. Detention status probably reflects both types of factors.

Three of the four social attributes (RACE, SEX, OLD, YNG) thought to reflect concerns about the threat posed by the defendant as well as his rehabilitative potential had an effect upon sentence. Defendants under twenty years of age received an average, across the board break of almost two months; defendants over forty-five, however, received no preferential treatment. Males received a more severe sentence than similarly situated females, and the differential increased with the seriousness of the offense. Much the same can be said about blacks. In addition to the penalty imposed for victimizing whites, blacks convicted of more serious crimes received more severe sentences than similarly situated whites. This effect does not appear to show up, however, in less serious crimes. One last point should be noted about the RACE and SEX variables--neither had a linear effect upon sentence. Their impact in more serious cases would have been lost if their joint effect with OFFSER1 had not been examined.

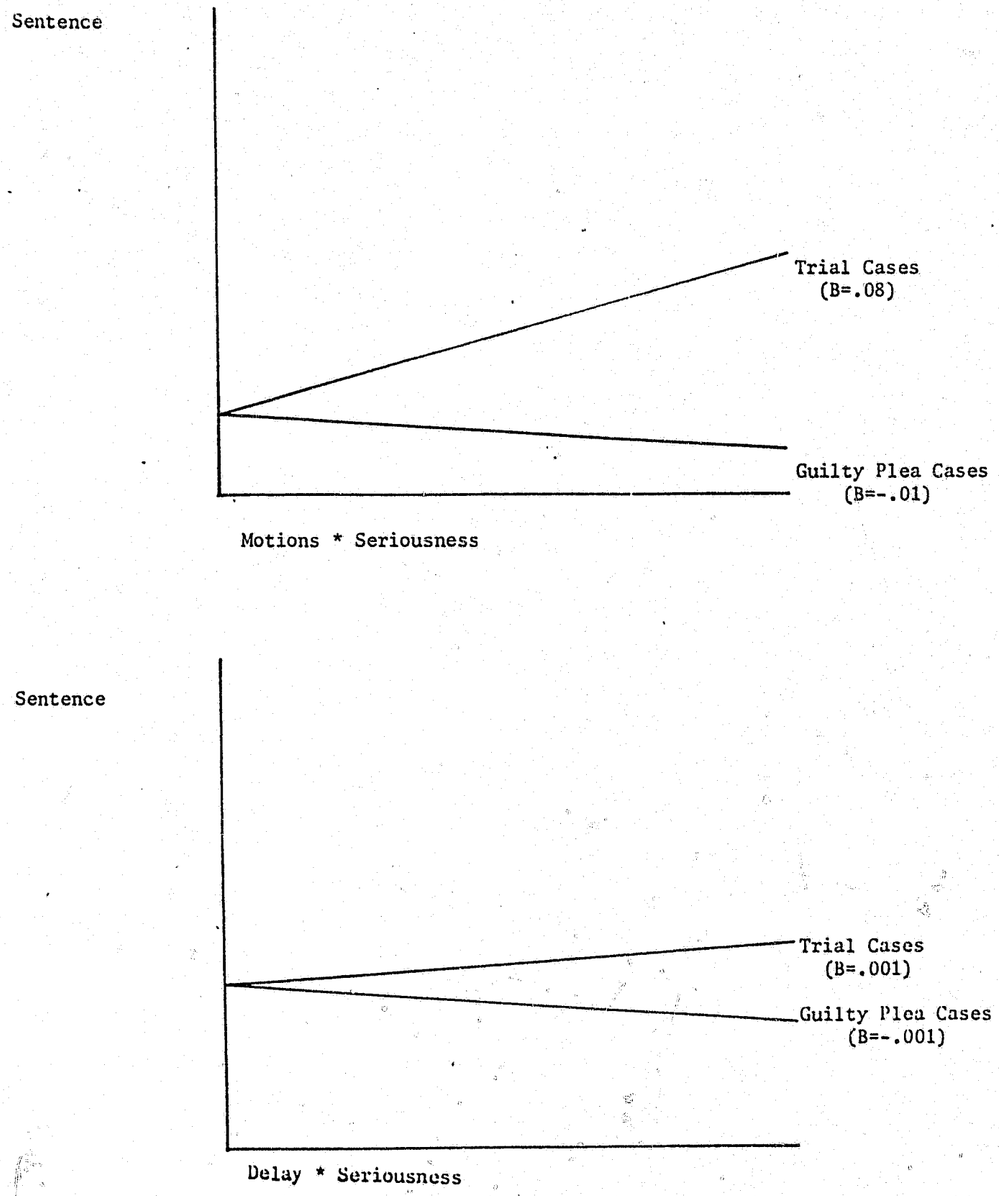
Intermediate Actions and Occurrences

All four of the variables discussed earlier had an effect upon sentence. Two had a fairly straightforward effect. The CHANGE variable, which measured changes between the severity of the most serious offense at arrest and that at conviction had a positive effect. This means that offense reductions (positive values of CHANGE) resulted in marginally higher sentences and charge increases (negative values of CHANGE) resulted in marginally lower sentences. This means, of course, that despite charge modifications the participants perceptions of the case's worth are still affected, to a degree, by the original charge. The B-coefficient of the MONEY variable, 2.28, reveals that where a money settlement is involved in a case (restitution or fine) the defendant receives, on average, more than a two month break in sentencing. Whether this money settlement in fact comes from a defense offer, or was a primary component of the bargaining positions of all participants, it is clear that defendants unable to take advantage of such a possibility will be sentenced more severely than others.

The impact, if not the interpretation, of the MOTIONS and the DELAY variable upon sentence is much more complicated. Their relationship to sentence is similar and can be profitably discussed together. Diagram 6-8 illustrates these relationships, although they are not drawn to scale. The important point to note is that the impact of each variable varies with OFFSER1 and is different for trial and guilty plea cases (i.e., these analyses entail three way interactions). In more serious cases a number of motions and delaying tactics can lead to sentence concessions in plea bargained cases. In trial cases, however, these same type of actions were associated with more severe sentences in more serious cases. The differences in context account for the different relationships.

Diagram 6-8

Illustrations of the Relationship between Legal Motions, Delay, and Sentence



These actions can damage the state's case as well as introduce additional work and uncertainty. This is why they can be used to secure concessions in negotiations but incur sanctions if the negotiations fail.

An Empirical Assessment of the Model, II

In this section we are concerned with an examination of our model in each of the nine counties. This is important because, unlike the pool of cases analyzed in Equation 6-1, the nine county analyses are based on samples of real populations of cases. While the general analysis was useful in obtaining a clear, concise picture of a very complicated set of relationships, we need to examine the county samples to assess the pervasiveness of the relationships uncovered in Equation 6-1. This analysis will yield insight into problems in dealing with smaller samples of cases. Also, in some cases it will allow us to speculate as to the environmental or contextual sources of observed patterns. This is extremely difficult, however, because of the small number of counties.

In comparing these influences we encounter two important problems. The first concerns the complexity of the equation. We need not compare the impact of each term in Equation 6-1 to assess important differences in the structure of the sentencing decision in the nine counties. We have already, for example, talked about differences in the role of OFFSER1, and have speculated about the reasons for the differences; this was done in the context of the "internal consistency" analysis in Chapter Five. Moreover, some variables are simply not as important as others, for either policy or theoretical reasons. Thus, if the relatively weak variables such as role of WEAP or INJURY or DVREL varied across counties it would not be of great practical or theoretical consequence. While the nine equations are reproduced in Appendix X, we will primarily be concerned

here with the role of the TRIAL variable, selected variables that have some socio-political implications (BW, RACE, CONFINED, CRIMRCD) and the four sets of variables tapping intermediate actions or occurrences.

A second problem encountered in attempting to compare the impact of selected variables across counties is statistical. Differences in the range, variance, and distribution of variables makes comparison of B-coefficients and beta weights incomparable across samples. While procedures are available to test the significance of B-coefficients across samples, they involve an extensive amount of hand calculation. Given the numbers of variables and samples involved, this procedure is unlikely to yield returns consummate with the required investment. Thus, we are restricted to making cautious and very rough statements about differences in the impact of variables across counties. We will generally assume a difference if a variable has no impact in one sample but does in another, or if their significant relationships are inverse. We will not generally be able to say anything about differences in the size of similar relationships. However, because the B-coefficient of dummy variables (coded 0, 1) is equal to the difference in the mean values of the dependent variable in the two categories, we will generally be able to say more about them than other types of variables.

Disposition Mode

The principal empirical question here is: Does the impact and role of the TRIAL variable differ across counties? Table 6-4 sheds some light on these questions. The first row of Table 6-4 displays the B-coefficient for the TRIAL variable, while controlling only for OFFSER1, OFFSER2, and OFFSER3. As just noted, because TRIAL is a dummy variable these differences can usefully be examined. We can see from the table that some differences in the linear impact

Table 6-4 ·
Summary of the Impact and Role of Trial

Percentage	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
B-coefficient for TRIAL (Linear impact; controlling only for three offense serious-ness variables)	5.0 (.001)	11.9 (.001)	14.3 (.000)	27.5 (.000)	0 N.S.	16.5 (.002)	4.0 (.05)	3.4 (.001)	6.3 (.001)
Average Sentence For All Cases	2.7	8.3	9.0	12.6	21	14.4	1.9	2.8	6.3
Is There a General Trial Penalty?	No	Yes	Yes	Yes	No	Yes	No	No	No
Does the Physical Evidence Variable (PHYSEVID) Positively Inter-act With Trial	No	Yes (.000)	No	No	No	No	No	Yes (.01)	No
Is Three Way Interaction Involving Trial Motions (MOTIONS * OFFSER1 * TRIAL) Positive?	No	No	No	Yes (.05)	No	No	No	Yes (.05)	No
Is Three Way Interaction Involving Delay (DELAY * OFFSER1 * TRIAL) Positive?	No	No	No	No	No	No	No	Yes (.000)	No

of trial exist across counties. TRIAL has no linear impact in Kalamazoo and it has only a modest impact (3-6 months) in the Pennsylvania counties and in DuPage. However, in Peoria, St. Clair, and Saginaw there are hefty differences between trial and guilty plea cases (12-16 months). We find an astronomical 27 month differential in Oakland county. However, these differences must be examined in light of the general level of sentencing severity in the county. Row 2 reports the average sentence in each county for the cases analyzed. In the counties where TRIAL had a significant linear effect, the size of the effect parallels the average sentence fairly closely. Oakland still has a sizeably larger trial penalty but that is largely due to the effect of four "outliers." With those removed the B-coefficient for TRIAL is 10.7, which is much more consistent with the other counties.

The next question is whether these results reflect a general trial penalty, or one which is operative only in certain types of cases or situations. Five of the nine counties (St. Clair, Oakland, Saginaw, Montgomery, Erie) are categorized as having general trial penalties. A county is categorized as having a general trial penalty if there is a sizeable positive B-coefficient for the linear TRIAL variable and/or a significant and positive interaction between OFFSER1 and TRIAL. This interaction term was not significant in the general analysis but was included in the nine individual analyses because of its importance for this point. If there is a positive interaction between OFFSER1 and TRIAL it means that all cases receive a trial penalty, since all sentenced cases have at least one offense (only a fraction of cases are convicted on two and three offenses). Moreover, a positive interaction means that the trial penalty increases with more serious offenses. Two of the four counties categorized as having general trial penalties (St. Clair, Oakland) had positive OFFSER1 * TRIAL interaction terms.

The next important point with respect to the role of the TRIAL variable across counties is the pervasiveness of the PHYSEVID*TRIAL term. In Equation 6-1 it was found that cases with a hefty amount of physical evidence received more severe sanctions at trial than those with scant evidence (see Diagram 6-7). As the entries in row 3 of Table 6-4 indicate, the relationship depicted in Diagram 6-7 is found only in Peoria and Dauphin county. Although St. Clair and Oakland come very close to having significant, positive interactions, their initially significant interaction effect was wiped out by other variables which later enter into the regression equation. The interaction term is positive but very weak in DuPage, Saginaw, and Erie. However, a review of row 5 of Table 6-4 reveals that Peoria accounts for most of the impact of the PHYSEVID * TRIAL term in Equation 6-1. The B-coefficient for that term in Peoria was 8.8; the B-coefficient in Equation 6-1 was 2.6.

The positive impact of the three way interaction terms involving the MOTIONS and DELAY variables (MOTIONS*OFFSER1*TRIAL, DELAY*OFFSER1*TRIAL) depicted in Diagram 6-8 was not widely represented across the nine counties, as the last two rows of Table 6-4 demonstrate. For the MOTIONS term we found significant, positive relationships only in Oakland and Dauphin county, although positive insignificant relationships were also recorded in Kalamazoo and Erie. The nine county analyses revealed that the positive impact of the three way interaction term involving DELAY was solely due to Dauphin county. The B-coefficient of that term in Dauphin was .04, while the B for the grand analysis was .001. None of the other county analyses produced significant results, although positive relationships were found in St. Clair, Saginaw, and Montgomery.

Although the results depicted in Table 6-4 yield few discernible patterns several generalizations and comments can be made. Perhaps, the most important concerns the existence of a general trial penalty. The general analysis found that the TRIAL variable had a strong and varied role but that no general trial penalty existed. The county analyses revealed a more complex picture. Two counties showed no trial effect whatsoever (Kalamazoo, Erie). Erie is categorized as having no trial effect, despite the entry in Table 6-4, because other variables wiped out its initially significant effect. Others showed only a moderate trial effect (DuPage and the Pennsylvania counties), but no general trial penalty. In these latter counties the TRIAL effect is usually restricted to defendants who are convicted on two or more offenses. In the remaining counties, those in which TRIAL had a strong linear impact, a general trial penalty exists. This, of course, suggests that court community sentencing practices concerning trials differ considerably across counties.

The results concerning the impact of the two and three way interaction terms involving TRIAL are less illuminating. They essentially reveal very spotty results. We should, however, be very cautious in using these results to discount the validity of the results reported in Equation 6-1. The reason that the county by county results may not yield an accurate picture of these relationships may be wholly statistical, especially with respect to the three-way interaction terms. Because trial cases usually account for only 5-10 percent of all sentenced cases we are dealing with a relatively small n, even in the pooled set of cases used to produce Equation 6-1. The number of cases which define the interactive effect becomes progressively smaller as we add additional "conditions" to the analysis. Thus, we are talking about serious offenses which go to trial and involve a large number of motions, or extensive delays. When this relatively small number of cases is broken down by county several things can

Table 6-5
Summary of the Impact of the CRIMRCD and CONFINED Variables

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Did CRIMRCD have a positive linear impact?	Yes (.000)	Yes (.000)	Yes (.000)	Yes (.000)	Yes (.000)	Yes (.000)	Yes (.000)	No	Yes (.000)
Did CRIMRCD * OFFSER1 have a positive effect?	No	Yes (.000)	Yes (.000)	No	No	No	No	No	Yes (.000)
B-coefficient and significance level of CONFINED variable (linear impact)	3.6 (.000)	7.1 (.000)	8.1 (.000)	N.A.	15	11.5	1.6 (.01)	7.0 (.000)	8.6 (.000)
Did CONFINED * OFFSER1 have a positive effect?	Yes (.000)	Yes (.000)	Yes (.000)	N.A.	No	No	Yes (.000)	Yes (.000)	Yes (.000)

happen which can obscure an underlying relationship. First, in a particular county there may be a small range of variation or such a loose pattern among a small number of cases that no significant relationship is found. However, when these cases are merged with those from eight other counties an underlying relationship may emerge. Second, the potential for an outlier, or a small set of outliers, to obscure on otherwise clear relationship is much greater in the county samples than in the pooled set of cases. Both factors were found to be operating here in the various counties, in conjunction with one interaction term or another.

Selected Defendant Attributes

Here we want to discuss those variables pertaining to the defendant's criminal record, pretrial detention status, and race, including the BW variable (which was earlier categorized as a seriousness indicator). Table 6-5 summarizes the impact of the CRIMRCD and CONFINED variables, and they are fairly straightforward. CRIMCRD had a strong and positive linear impact in every county but Dauphin; however, it interacted with OFFSER1 in only three counties (Peoria, St. Clair, and Erie). The impact of the CONFINED variables was even more widespread. It had a powerful linear impact in every county for which we had data;[6] it interacted with OFFSER1 in six of the eight counties. The summary data on the two variables with racial connotations (BW, RACE) reveal a more complex and uneven set of results, as seen in Table 6-6. The BW variable had a significant effect in three of the nine counties. It had no significant effect in the ring counties, Kalamazoo, Peoria and Erie. Although the RACE variable and/or the RACE*OFFSER1 interaction term was initially significant in five counties (rows 2, 3), its significance was ultimately wiped out in every county but Oakland (rows 6, 7). As seen in rows 4 and 5 the variable most likely to

Table 6-6
Impact of Race Variables by County

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Does the variable depicting an inter racial offense (BW) have a significant postive impact?	No	No	Yes (.01)	No	No	Yes (.001)	No	Yes (.01)	No
Do Race variables have a significant positive effect after offenses are controlled?									
RACE	Yes (.001)	Yes (.01)	No	Yes (.000)	No	Yes (.000)	No	Yes (.001)	No
RACE*OFFSER1	No	Yes (.001)	No	Yes (.000)	No	No	No	Yes (.000)	No
What variables significantly weaken or eliminate impact of the racial variables?									
RACE	CRIMRCD	CRIMRCD	—	CRIMRCD	—	BW, CRIMRCD, CONFINED	—	CRIMRCD	—
RACE*OFFSER1	—	CRIMRCD* OFFSER1, CONFINED	—	DVREL* OFFSER1, CRIMRCD,	—	—	—	WEAP* OFFSER1	—
Ultimate impact of Race variables									
RACE	N.S.	N.S.	N.S.	Positive (.05)	N.S.	N.S.	N.S.	N.S.	N.S.
RACE*OFFSER1	N.S.	N.S.	N.S.	Positive (.001)	N.S.	N.S.	N.S.	N.S.	N.S.

weaken or eliminate the RACE variable was CRIMRCD. The CONFINED variable and various situational variables (BW, DVREL, WEAP) also played a role in some counties.

Few observations can be made about the impact of CRIMRCD because it has a pervasive influence across the counties. While CRIMRCD interacted with OFFSER1 in only one third of the counties, its linear impact was significant well beyond the .001 level in every county but Dauphin, where it was not statistically significant. Little light can be shed upon the failure of CRIMRCD to have an impact upon sentence in Dauphin. While it is initially significant at the .01 level, its bivariate relationship with sentence (.10) is one half to one third as strong as in the other counties. Mild intercorrelations with stronger variables wiped out its impact. The only observations which can be made about the pattern of the CONFINED variable's impact concerns the size of the differential between released and confined defendants--it had a significant impact in all counties with data. While observations about size must be made cautiously for reasons noted earlier, some points seem evident on the basis of row 3 of Table 6-5. Although we have data on only two ring counties, the bail differential seems much smaller in these counties (1.6 to 3.6 months). Also the two Michigan counties seem to have larger differentials (11.5 to 15 months). This corresponds with the observation in Chapter Five that the Michigan counties tended to give longer sentences.

Statistical reasons contribute to, but do not determine, the pattern of the BW variable's impact. The ability of a dummy variable to have a significant statistical relationship with another variable is partially dependent upon the distribution of cases in the two categories. Small differences in the mean scores of the dependent variable in the two categories of the dummy independent variable are more likely to be significant as the distribution of cases in the

dummy independent variable approaches 50% - 50%. The same size difference is less likely to be significant in highly skewed distribution, 20% - 80%, for example (Cohen and Cohen 1975, Chapter 5). This partially accounts for the pattern of the BW variables' impact. All distributions are highly skewed; the most balanced is in Peoria where 10 percent of the cases involve interracial incidents. However, the distribution is extremely skewed in three counties where BW has no impact: DuPage (.1% - 99.9%), Montgomery (1% - 99%), and Erie (4% - 96%). This undoubtedly undermines the ability of the BW variable to significantly affect sentence.

This cannot, however, entirely explain the pattern observed in Table 6-6. Dauphin, for example, has the same distribution as Erie (4% - 96%) yet it shows a significant impact. Moreover between 9 and 10 percent of the sentence cases in Peoria, Oakland, and Kalamazoo involve interracial events and BW has no significant impact. However, if we examine the pattern of the BW variable in light of the county characteristics described in Chapter Three, no explanation readily emerges. The small number of counties makes it impossible to relate the various county characteristics to the pattern of findings.

The failure of the RACE variable, and the RACE*OFFSER1 term, to significantly affect sentence outside of Oakland may be attributable to some of the same factors that affected the analysis of the TRIAL variable. The small number of black defendants sentenced on serious cases--which defy the RACE*OFFSER1 relationship--apparently do not form a sufficiently distinct pattern to yield a significant association in the individual counties. The only other explanation is that one county Oakland, accounts for the entire relationship reported in Equation 6-1. This seems doubtful since the relationship in Equation 6-1 is not much weaker than in Oakland; the B-coefficient for the RACE*OFFSER1 term is .33 in Oakland and .12 in the pooled set of cases.

Intermediate Actions and Occurrences

While the results of the three way interaction terms involving the TRIAL variable and the DELAY and MOTIONS variable (DELAY*OFFSER1*TRIAL, MOTIONS*OFFSER1*TRIAL) were reported earlier, we still need to discuss the impact of the linear and two way interaction terms involving these variables. Table 6-7 reports these data. The DELAY variable had a linear impact only in DuPage and the DELAY*OFFSER1 term had a significant negative impact only in DuPage and Kalamazoo. In Dauphin, however, this term had a positive impact (i.e., those who delayed received more severe sentences), which is the reverse of what was reported in the general analysis. The impact of the MOTIONS variable was more widespread, and patterned. The linear version of MOTIONS had a positive effect in two of the Pennsylvania counties, which again is inconsistent with the results reported in Equation 6-1. However, the MOTIONS*OFFSER1 term had a significant negative relationship in all of the non Pennsylvania counties except Saginaw.

The MONEY variable has a more uniform and widespread impact than the other variables. But while it was negative in five counties, the size of the impact varies somewhat. Judging from the B-coefficients reported in Table X-3, Appendix X, the sentence "discount" due to a monetary settlement is about 4-5 months in DuPage and Peoria, 1-2 months in St. Clair and Montgomery, and a whopping 9 months in Kalamazoo, where sentences are considerably longer. The impact of the CHANGE variable is limited to just two Michigan counties (Oakland, Saginaw). The impact is exceptionally strong in Saginaw ($F = 71.6$) and this undoubtedly accounts for the significance of CHANGE in Equation 6-1.

Table 6-7
Summary of the Impact of the Intermediate Actions
and Occurrence Variables

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Did DELAY have a negative linear impact?	Yes	No	No	No	No	No	No	No	No
Did DELAY and OFFSER1 negatively interact?	Yes (.001)	No	No	No	Yes (.000)	No	No	No Positive at .01	No
Did MOTIONS have a negative linear impact?	No	No	No	No	No	No	No Positive Effect at .000	No Positive Effect at .002	No
Did MOTIONS and OFFSER1 negatively interact?	Yes (.05)	Yes (.000)	Yes (.000)	Yes (.02)	Yes (.001)	No	No	No	No
Did MONEY have a negative impact?	Yes (.000)	Yes (.000)	Yes (.05)	No	Yes (.001)	No	Yes (.01)	No	No
Did CHANGE have a negative impact?	No	No	No	Yes (.01)	No	Yes (.000)	No	No	No

With some exceptions statistical factors, rather than substantive ones, seem to account for the pattern of relationships for these variables. One possible exception concerns the role of the DELAY and MOTIONS variables in the Pennsylvania counties. While significant relationships are sparse and somewhat weak, the direction of the relationships in Pennsylvania are opposite from those in other counties. Longer delays and motions lead to longer sentences, if anything, in the Pennsylvania counties, but shorter ones outside Pennsylvania. It should be stressed, however, that the DELAY*OFFSER1 term is significant and negative in only two of the non Pennslyvania counties.

The impact of the MONEY variable in Pennsylvania is similarly distinct--especially when contrasted with Illinois. MONEY has only an anemic effect in Montgomery county while fairly strong effects in two of the Illinois counties. The largest B-coefficient, by far, is in Kalamazoo, but it is the only county in Michigan to show a significant relationship. However, the Michigan counties do not use money punishments to the same extent the Illinois counties do. Oakland and Saginaw impose money punishments in 6 and 18 percent of their cases while Dupage and St. Clair use it in 70 and 31 percent, respectively. The Pennsylvania counties use money punishments to the same extent as in Illinois, but their impact is not as great. The CHANGE variable's impact is restricted to the Michigan counties, especially Saginaw. The reason for this, however, may be statistical. Forty-three percent of all sentenced cases in Saginaw involved reductions (22.9%) or increases (17.5%) in charge, while no other county showed changes in more than 22 percent of their sentenced cases. Dauphin had charge changes in 8 percent, Erie 10 percent, Dupage and Montgomery 15 percent. The others hovered around 23 percent. Thus, as we might expect, the greater the occurrences of these actions, the larger the role they play in the sentencing decision.

Summary and Discussion

Several points noted in the general analysis (Equation 6-1) are worth reemphasizing. Perhaps the most important is the central role of offense seriousness as a determinant of sentences as well as a mediating factor. From a statistical perspective it would not be inappropriate to view sentences as clustered around a county specific going rate (represented here by OFFSER1) with other factors accounting for the deviations around this going rate. The deviations are larger for offenses with higher going rates, accounting for the prominence of OFFSER1 as a mediating factor. The results presented in Equation 6-1 indicate quite clearly that many factors are important considerations only in more serious offenses, where outcome zones are larger and permit more play.

Also important are the insights which these general analyses provide into the role of disposition mode as a factor in the sentencing process. At first glance the strong linear effect of the TRIAL variable suggests that an across the board trial penalty is imposed on those who resist pressures to plea bargain. More involved, non-linear analyses involving OFFSER3, PHYSEVID, MOTIONS, and DELAY however, suggest that trial penalties are not universal. They are reserved for certain types of cases, those in which there is a considerable amount of physical evidence (which suggests that they should not have gone to trial), or those in which court community norms concerning collegiality, reasonableness, accommodativeness, etc. are violated.

Finally, several comments are in order concerning the role of variables with socio-political connotations. It appears from the analysis that several such variables affect the participants' perceptions of the case and are reflected in the sentence. The role of CONFINED, BW, RACE, SEX, MONEY all suggest

that some type of social bias exists in the sentencing of defendants. At the same time one could argue that the statistical significance of these variables is largely due to the size of the sample. Their relatively small contributions to the R^2 (none but CONFINED increased the R^2 by even .01) means that they are not important influences.

While this may be the case--especially when contrasted the importance of the offense variables--contributions to the R^2 can be a misleading measure of the importance of these variables. This is especially true with respect to some dummy variables and/or those that interact with OFFSER1. Consider, for example, the role of BW and CONFINED. Each predicts important differences in sentence but their contribution to the R^2 is limited by the fact that only a small portion of the cases in the pooled set involved interracial incidents (6%) or detained defendants (26%). Similar limits apply to the RACE * OFFSER interaction term. There are simply not that many blacks in the pooled cases involved in serious offenses, and this restricts the contribution of RACE to the R^2. This does not, however, detract from the importance of these variables' impact. It simply means that we must consider the form of the relationship as well as its strength. We must understand the importance of these variables under certain conditions and evaluate their role within the process in light of those conditions. A related point is that we have only begun to understand the conditions under which these factors affect sentencing. It might be that other conditional factors exist. The failure to include these could also be contributing to their relatively marginal explanatory power (contributions to R^2).

Most of the insights derived from the county specific analyses were methodological. Many of the relationships depicted in Equation 6-1 did not emerge in the county regression analyses (reported in Appendix X). But this does not mean that the results of the general analysis should be discounted. The

fact that the merged pool of cases is not a sample of a larger population, does not undercut the ability of multivariate statistical techniques to describe underlying relationships. The merging of samples did not fabricate relationships. Rather it brought together a sufficiently large range of variation and number of cases for relationships to be picked up by conventional multivariate techniques.

This observation has important implications for future research. The pooled set of cases revealed relationships which did not emerge in the county samples not because it had over 5,300 cases but because it had a large number of fairly serious cases (burglaries, robberies, rapes, etc.). Our analyses, and those to be reported in Chapter Seven, reveal that most of the "action" occurs in more serious cases. Various factors become unleashed because outcome zones and the realm of possible outcomes in these cases allow for much play. This of course, dictates stratified sampling procedures which systematically over select more serious cases. This may be the only way to examine the role which various factors play in a given county--short of selecting a huge multi-year sample. Moreover, the latter approach may have its own problems. Merging cases from a multi-year period which were handled by different people following different procedures may be as problematic as pooling cases from different counties.

One last point should be stressed. Offense seriousness may not be the only variable to consider in devising sampling procedures. When we analyzed the role of variables such as BW, MONEY, CHANGE, etc., we noted the distribution of these variables (the frequency of their occurrence within the jurisdiction) had an effect upon their impact. In order to accurately assess their role in a county it may be necessary to over sample them as well. If this is not practi-

cal researchers should at least be sensitive to the fact that distributional problems--not theoretical ones--may account for differences in results or failures of a variable to play a significant role in an analysis.

REFERENCES

Cohen, Jacob and Patricia Cohen, 1975. Applied Multiple Regression/Correlation Analysis For the Behavioral Sciences. New York: Wiley.

Hogarth, John (1971). Sentencing as a Human Process. Toronto: University of Toronto Press.

[1] While the pooling of cases cannot create relationships it may well obscure them. If a variable, or set of variables has a different impact in different types of counties, the pooling of cases from these different settings may well obscure real effects of the variable(s). This is why we also report county by county analyses. Using this disaggregated approach, as will be seen shortly, has its own set of problems.

[2] Some situational indicators which may affect perceptions of seriousness, but which are missing, include the amount of property involved in property cases and the amount of drugs available in drug cases. The unrealiability and inconsistency of data on the former and the unavailability of a common measure in the latter prevented us from including these measure.

[3] This measure of sentence was considered most reasonable because the over crowded nature of jails and prisons makes it unlikely that many imprisoned will spend much time beyond what is minimally required. Moreover, this measure was fairly easily determined in all three states. In Illinois, which has a determinate sentencing law and day-for-day sentence reductions for good behavior, all penitentiary sentences were halved. Illinois jail sentences (all confinements less than or equal to one year) were left unchanged. Michigan and Pennsylvania have indeterminate sentencing laws but they also have statutory provisions which prohibit parole before the minimum sentence is served. Thus, the minimum penitentiary times across all three states are meaningful and comparable. Two dispositions unique to Michigan and Pennsylvania, deferred prosecution and accelerated rehabilitative dispositions (ARD's), are comparable to probation in Illinois and were, therefore, coded 0. One last point should be noted. Kalamazoo and Dauphin had a handful of sentences in excess of 100 years. These distorted the results and were, therefore, recoded to 20 years, the next highest code in each of the counties.

[4] It should be noted that one reason for the high number of cases is that for all variables but OFFSER1 efforts were made to replace missing data with reasonable estimates. The estimation techniques varied with the variable. For example, county specific means were used for missing DELAY data while county means for various age categories were used to replace missing CRIMRCD data. Most of the dummy variables were highly skewed and the value of the modal group was used to replace missing data. It should be stressed that the impact of the unadjusted variable was always compared with the impact of the variable with estimated missing data. In no instance did the new variable strengthen the relationship with JAILMIN; in most instances the relationship was mildly weakened or unaffected.

One last point should be noted. No data on pretrial detention status was available in Oakland. Because of this variable's strength we did not want to eliminate it. Nor did we want to eliminate Oakland from the general analysis. Therefore we used a breakdown of a trichotomized version of the CRIMRCD variable and the the type of offense with which a defendant was charged to estimated CONFINED in Oakland. We looked at the distribution of confined defendants in all counties to estimate detention probabilities across various combinations of criminal record and offense.

[5] The B-coefficient of the interaction term for OFFSER3 * TRIAL approximates the slope of the OFFSER3 variable in trial cases because the B-coefficient for the linear term (OFFSER3) adds very little to its impact in trial cases (B = .18). The B-coefficient of the linear term is the slope of the OFFSER3 variable in guilty plea cases. Because the TRIAL variable is a dummy variable (coded 1 = Trial; 0 = Guilty Plea) its B-coefficient is interpretable as the difference in the intercepts of these two slopes, as seen in Diagram 6-6.

[6] As noted earlier we had no information on detention status in Oakland and

we did not think it useful to plug in estimates of CONFINED as we did in the general analysis.

CHAPTER SEVEN

Decision Makers and the Sentencing Decision

Judges, prosecutors, and defense attorneys all play a crucial role in the conceptual framework introduced in Chapter Six (Diagram 6-1, et seq.) To the extent that their individual perceptual screens, response repertoires, and assimilation processes differ, their outcome zones and initial bargaining position for a given case are likely to be different. The dimensions of these zones and positions, and how great an impact they will have on a sentence, is likely to depend upon the type of case as well as the operating style and bargaining resources of the individual. In short, the role that decision makers play in sentencing decisions can only be understood in light of the contextual realities discussed in the development of the general model depicted in Diagram 6-1.

Decision maker Influences upon Sentencing: An Elaboration

Several aspects of this model which relate to the role of decision makers need to be elaborated; they stand in stark contrast to earlier attempts to examine the role of decision makers in judicial decisions (see Gibson, 1983 for an excellent review of studies in this area). First, the model makes it clear that, at least in guilty plea cases and probably most cases, the sentencing decision is a joint endeavor. While formal authority rests with the judge the prosecutor and defense attorney play an important role. In plea bargained cases--which constitute the vast majority of all cases--they play a central role. While the structure of plea bargaining varies somewhat from county to

county, one nearly invariant characteristic in felony cases is that the prosecutor and defense attorney meet to negotiate the terms of the plea. In some locales the judge also participates, but often only after preliminary negotiations have resulted in agreement or have narrowed differences. Thus, the outcome of those negotiations may depend upon the mix of views among the participants, not only upon those of the judge or any other single individual (see Diagram 6-4).

A second point which is very clear from the discussion of the model is that no simple relationship between the predispositions of decision-makers (reflected in their initial bargaining positions) and sentence is likely to occur. The mere existence of three decision-makers--one of whom must answer to an office hierarchy and another who must satisfy a client--insures that complex avenues of influence will exist. Diagram 6-4 suggests that the type of case, particularly its seriousness, will affect the movement of bargaining positions, as will the configuration of bargaining positions in a particular case. The bargaining resources and operating styles of the decision-makers will also affect the movement of bargaining positions, as will certain structural characteristics of the system.

Before we discuss further the role these various mediating factors play in the movement of bargaining positions, we need to address certain methodological problems relating to the identification of initial bargaining positions. As noted in Chapter Six, we have no data on initial bargaining positions. Such data would need to be collected from every decision-maker on every case, a virtually impossible task. Our best available indicator of initial bargaining positions is the "Belief in Punishment" measure. Although it is not a case-specific measure of appropriate punishment, it does tap the general views of the decision-makers toward punishment. The initial bargaining positions of those

who score low on the scale are likely to be in the lower spectrum of the realm of possible outcomes for most cases, and vice versa. Obviously, certain attributes of a given case or defendant may outweigh general inclinations. Overall, however, these case-specific considerations should balance one another and enable us to trace the impact of decision-makers upon sentencing decisions through the use of the "Belief in Punishment" measure.

Case Characteristics

The seriousness of an offense and the defendant's prior criminal record probably affect the impact of a decision maker's views on a sentencing decision. State laws often stipulate upper and lower sentence bounds for offenses and repeat offenders, although these restrictions are usually less strict for more serious crimes and offenders. These stipulations are then refined and reinforced by local norms. In cases involving relatively minor offenses and/or first offenders, therefore, the range of possible outcomes is apt to be so small that the attitudes of the various decision makers will not make much difference. Such cases are likely to receive probation or, at most, several months in the local jail, regardless of who is handling them.

The opportunity for attitudes to play a major role is more likely to come with the more serious cases and offenders. Neither local norms nor state laws are likely to place severe restrictions on the workgroup's scope of activity; the realm of possible outcomes allows for much movement. Moreover, these cases also provide the motivation for the participants to advocate their views forcefully, at least in an informal arena. While criminal courts are inundated with "junk" or nonserious cases, it is the serious cases that provide the personal and professional challenges to criminal court practitioners. More importantly,it is the stories about these cases upon which court lore is based,

and upon which court community reputations are built. These factors combine in various ways to make case seriousness an important mediating factor in sentencing decisions. Highly punitive prosecutors can push harder; less punitive ones have more room to give and still report a respectable sentence. Much the same can be said for judges. Highly lenient defense attorneys have more opportunity to ply their trade in serious cases, and it is easier to appease them; highly punitive defense attorneys are less likely to negotiate, tenaciously, thus separating themselves from the more lenient attorneys.

Bargaining Skills and Operating Styles

More serious cases may well provide decision makers with the opportunity and the motivation to interject their own personal views into the outcome of a case. However, while it could also be a necessary it need not be a sufficient condition for attitudes to affect sentences. Various traits of the individual decision makers may also be important. The attitudes of these individuals are important in understanding their initial bargaining positions. But extreme positions do not insure extreme sentences. We must be as sensitive to decision-maker attributes, which affect the movement of bargaining positions within the realm of possible outcomes, as to those attributes which influence the placement of initial positions. Within the context of criminal courts, two types of attributes are likely to affect movement--bargaining skills and various dimensions of operating style.

Bargaining Skills. We have two relevant measures of the decision maker's bargaining skills--"Machiavellianism" and the attorney's "Trial Competence." "Machiavellianism" is relevant here because personality type can be considered a crucial factor in bargaining situations. Individuals with certain personality traits are more able to get their way than others. They may be more manipulative or simply more persuasive negotiators. While there are different personality types and measures, "Machiavellianism" seems to be particularly relevant here (Christie and Geis, 1970; Vlemming, 1979; Hansson and Straub, 1973; Sheppard and Vidmar, 1980). Simply stated, "Machiavellianism" refers to the tendency of individuals to manipulate others in order to achieve their own personal goals. According to Christie and Geis (1970):

> High Machs manipulate more, win more, are persuaded less, persuade others more, and otherwise differ significantly from low Machs as predicted in situations in which subjects interact face to face with others, when the situation provides latitude for improvisation and the subject must initiate responses as he can or will, and in situations in which affective involvement with details irrelevant to winning distracts low Machs (p. 312).

Such a perspective may be useful for predicting the outcomes of negotiations among workgroup members with different views as well as the success that defense attorneys have in "selling" their clients on the deals arrived at in plea negotiations. Prosecutors who are punishment oriented and who are "Hi Machs" may be more successful in negotiating severe sentences than other prosecutors, especially in more serious cases. By the same token, punishment oriented defense attorneys who are "Hi Machs" may be more able to sell their clients a poor bargain than other attorneys.

"Trial Competence," although technically an aspect of operating style (which will be discussed below), is viewed here as a measure of bargaining skills. Prosecutors and attorneys who are highly regarded for their trial skills will be viewed as more credible if they threaten to go to trial. This image will increase opponents' work and risk in going to trial. The expectations are obviously not the same for prosecutors and defense attorneys. Punitive prosecutors who are also perceived as skilled trial lawyers are expected to

negotiate more severe sentences, especially in more serious cases. Defense attorneys who are most lenient and who are viewed as skilled trial attorneys are expected to negotiate less severe sentences, especially in more serious cases.

Operating Styles. Besides the "Trial Competence" measure just discussed, two other dimensions of operating style are relevant for understanding the movement of initial bargaining positions. One relates to the judge's inclination to become involved in and affect, on an informal basis, the disposition of a case. While many judges maintain their distance from pretrial proceedings and negotiations, others deviate from the traditional, detached judicial role and play a more active part. As suggested in Sequence B of Diagram 6-4, those judges who refuse to become involved in negotiations are less apt to leave their mark on the sentence than others. Thus, a "Judge's Involvement" is important to consider here.

Another relevant dimension of operating style, shared by all three members of the workgroup, is "Responsiveness." Responsiveness concerns the extent to which an individual is accommodating and sensitive to the needs of coworkers and is important because workgroup members are part of a larger, ongoing courthouse community. Many identify with this larger community and feel that it is in their long term interests to be "good citizens." Good citizens are respectful of local norms and customs, and responsive to the problems and needs of other good citizens. Sometimes these obligations supercede formal role-determined dictates in a given case. More responsive workgroup members may be more pragmatic in case negotiations, achieve what they deem is "the possible," and do what is necessary to maintain better relations within the community.

With respect to sentencing, we would generally expect more responsive individuals to be more willing than others to compromise (move) their initial bargaining position to a mutually acceptable one. However, we should also

recognize that constraints sometimes operate upon the ability of these individuals to move. There may be limits as to how far a defense attorney can compromise because of the need for the defendant's acquiescence. Also, in offices which effectively limit the discretion of prosecutors, the impact of responsiveness may be muted. Thus the impact of responsiveness may well vary by role, prosecutor office policies, and with the bargaining resources of the defendant.

Attitudinal and Stylistic Configurations of the Workgroup

It may not be sufficient to look merely at case characteristics and decision maker attributes to understand how individual views affect sentences. It may also be important to understand the immediate context within which the decision is made--the attitudinal and stylistic configurations that characterize the workgroup involved in handling the case. For example, an individual's views on sentencing may have a greater impact when they are very close to those of another workgroup member, especially if that other is the judge (Sequence C, Diagram 6-4). Moreover, "Hi Machs" may be most successful when other workgroup members are "Low Machs." Likewise, a prosecutor's trial ability may be a potent negotiating tool only when it is perceived to be considerably greater than the defense attorney's. The types of attitudinal and stylistic configurations which exist in our data were laid out in chapter 4 (Figure 4-6 to 4-9). More will be said about their specific implications for sentencing.

Structural Characteristics of the System

One last set of factors which may affect how individual attitudes may affect sentences is structural characteristics. Although important, they are largely beyond the scope of the present analysis. Some of the most obvious factors are the extent to which plea bargaining is centralized in the prosecu-

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tor's office, the actual amount of discretion enjoyed by the judge, the nature of the state sentencing code, and whether or not plea routing (taking a plea bargain to a judge of one's choice) is possible.

In some prosecutor offices plea bargains in individual cases are set by a central authority; deviations from the "bottom line" are not permitted. Obviously a prosecutor has much less leeway under such circumstances than in a system where laissez faire policies are pursued. It limits how a prosecutor will formulate an initial position and how much deviation from those positions will be possible at a later date. It should also be noted that in some counties the judge's discretion in sentencing is fairly limited, thereby affecting the role of the judge's views. For example, some counties have procedural rules requiring a presentencing investigation (PSI) before sentencing can occur. In some counties these PSIs contain specific sentence lengths. Others have only an "in-out" recommendation; still others contain no sentence recommendation at all. Obviously, judges in counties with required PSIs which contain sentencing recommendations enjoy less discretion than others. Prosecutor plea bargaining policies can also affect the judge's discretion. Judicial discretion is enhanced in counties which have only charge or count bargaining; it is less where there is sentence bargaining.

Another important structural factor is the nature of the state sentencing code. Individuals can have greater influence in indeterminate sentencing states than in determinate sentencing states, especially where the permissible ranges are narrow or where high minimum sentences are required for many offenses. This has the effect of constricting the realm of possible outcomes. Finally, the availability of plea routing is apt to complicate the impact of attitudes. Defense attorneys may find it necessary to defer to the prosecutor's views

solely to secure the prosecutor's agreement to route the case to an acceptable judge. However, this is likely to be a consideration only in situations where the case is initially sent to a highly punitive judge.

An Empirical Assessment of the Role of Decision Maker Influences: A "Best Case" Analysis

The quantitative analysis of decision maker influences is presented separately from the analysis of case characteristics reported in Chapter Six--despite the fact that the unit of analysis and the dependent variable is the same in both--because of a serious missing case problem. This problem came about for two reasons: missing information on decision maker attributes, especially defense attorneys and the desire to make this a "best case" analysis. Despite our efforts to interview those who handled a goodly number of felony cases in our sample, the large number of non-regular private attorneys in most counties left us with slightly over 2,000 cases (2020 out of 5911) for which we had complete data on both the case and the decision makers involved. Our desire to make this a "best case" analysis prompted us to exclude all trial convictions and to include only cases handled by participants who regularly handled cases together. This latter requirement led us to exclude all cases in which the members of the triad did not jointly handle at least five cases in the county sample.[1]

Only negotiated cases were included because most of the propositions to be examined deal with bargaining positions, strengths, strategies, etc.; the inclusion of trial cases might have diluted whatever relationships existed. Cases handled by participants who did not frequently interact were also excluded because of the nature of some of the hypotheses tested. Implicit in most

hypotheses was an assumption that each participant in the bargaining process had a well-grounded understanding and appreciation of the strengths, weaknesses, views, operating styles, etc., of the other participants. This understanding, in conjunction with the characteristics of the case at hand, forms the basis for the strategies, tactics, and concessions used by that individual in the bargaining process. These, of course, ultimately shape the outcome of the negotiations. The requirement that the three decision makers handling a particular case had to have jointly handled at least four other cases simply offered a degree of insurance that a certain amount of familiarity and prior interaction had occurred. While this requirement reduced the generalizability of whatever relationships we uncovered, it also reduced the deleterious impact which a lack of familiarity might have had. Finally, we felt that the "five-case requirement" might enhance the stability of whatever relationships were found. Sentences which result from a single interaction among a set of individuals representing a certain attitudinal or stylistic configuration may be affected by a unique occurrence or circumstance. This, in turn, may obscure whatever underlying relationship exists. In short, while there is nothing intrinsically "magic" about the five case requirement, the impact of idiosyncratic factors should be considerably diluted if each configuration of individuals occurs at least five times.

While the elimination of trial cases reduced the total number by less than one hundred cases, the five-case requirement eliminated slightly over half the cases, leaving approximately 800 for analysis.[2] One hundred and two distinct triads, or workgroups, handled these 800 cases. More cases were not included for analysis because two of the Michigan counties (Oakland and Saginaw) have no public defender's office, and two other counties (DuPage and Montgomery) have very unstable workgroups. The two Michigan counties distribute indigent defense

work to the private bar, so the likelihood of a triad working together is minimal. DuPage and Montgomery are large court communities whose personnel assignment procedures make it unlikely that the participants will jointly handle a large number of cases. These counties contributed so few cases (DuPage and Saginaw contributed none), that this is essentially an analysis of the interaction of regular felony practitioners in counties whose case and personnel assignment procedures produce relatively stable workgroups.

It should be emphasized that the merging of cases from various county samples which met our "best case" criteria does not result in a sample of a larger universe, as was the case with the general analysis in Chapter Six. We are simply working with a pool of cases that exhibit a particular trait--they were handled by felony practitioners who frequently interact. We cannot, therefore, generalize the results to any wider universe. This does not, however, negate the possibility of gaining important insights into the structure of criminal court decision making. The fact that the cases handled here are not a sample does not undermine the power of statistical techniques to describe underlying relationships. A related point is that the creation of this "regular's pool" of cases does not appear to have resulted in any biased subset. Evidence for this can be seen in the means and correlation coefficients for the offense seriousness and criminal record variable--the two most potent predictors of sentence. If all sentenced cases in the five counties are included, the mean for the offense seriousness variable is 8.8, and its correlation coefficient is .66; for the pooled set of cases the mean is 8.0, while the correlation coefficient is .66. For the criminal record variable in the large sample the mean is .02, and the correlation coefficient is .27; for the pooled cases the mean is .08, and the correlation is .29.

Despite the non-generalizability of the analysis, pooling cases from various counties is advantageous for exploratory purposes because it provides for a much wider range of variation in the crucial attitudinal, personality, and operating style variables. In some counties the criminal cases are handled by only two to four judges and four to six prosecutors. Such small numbers make it difficult to partial out the effects of different traits. Also, small ranges of variation may obscure any underlying pattern of relationships. In the pooled set of cases we are dealing with 21 judges, 29 prosecutors, and 51 defense attorneys who combined in various ways to sentence almost 800 defendants. This should provide sufficient variation and cases to tease out whatever relationships exist.

One final point should be noted. To simplify what will become a quite complex analysis, we will include only two of the most important case and defendant attributes reported in Chapter Six--the seriousness of the offense (OFFSER1) and the defendant's criminal background (CRIMRCD). These are important for theoretical reasons, as noted earlier. Inclusion of the others would unnecessarily clutter the quantitative analysis while contributing very little new insight.

Decision-makers and Sentencing: A Linear Model

Because the model laid out earlier is highly complex, a step-by-step explanation will facilitate an understanding of its subtleties and an appreciation of its utility. If one begins with an examination of the bivariate correlations between the Belief in Punishment variables for the three decision makers (see Table 7-1), a puzzling pattern of correlations emerges. While PPUN and DPUN have anemic .11 and .09 correlations, respectively, JPUN has a -.23

Table 7-1
Summary of Individual Level Measures

Variable Name	Acronym*	Source and Derivation of Measure
	Attitudinal Measures	
Judge's Belief in Punishment	JPUN	Factor analysis of punishment related attitudinal items
Prosecutor's Belief in punishment	PPUN	" "
Defense Counsel's Belief in Punishment	DPUN	" "
Transposed version of DPUN (high is extremely lenient)	DLENCY	Reversed and translated DPUN
	Personality Type Measures	
Judge's Machiavellianism	JMAC	Six item "Mini Mach V" Test
Prosecutor's Machiavellianism	PMAC	" "
Defense Attorney's Machiavellianism	DMAC	" "
	Operating Style Measures	
Judge's Responsiveness	JRES	Factor analyses of personnel evaluation data derived from Q Sort procedure
Prosecutor's Responsiveness	PRES	" "
Defense Counsel's Responsiveness	DRES	" "
Judge's Involvement	JINVOL	" "
Prosecutor's Trial Competence	PTRL	Single question derived from Q Sort data
Defense Counsel's Trial Competence	DTRL	" "

*Some of these variables also have dichotomous or trichotomous versions; they are indicated by a "1" following the (JMAC1, PRES1, DTRL1, etc.)

correlation! Using multiple regression analysis, and controlling for offense seriousness and the defendanc's criminal record, the following results were produced (R square = .49, n = 792):

EQUATION 7-1

JAILMIN = -.6.5 + .87 * OFFSER + 4.3 * CRIMRCD + .25 * JPUN
(525; .64) (67; .21) (.87; .03)

+ .54 * PPUN + .21 * DPUN
(4.6; .06) (3.3; .05)

The numbers in the parentheses below the B coefficient for each variable are the F value and the beta weight, respectively. Because we are not dealing with a sample, tests of statistical significance based on probability theory are not strictly applicable. However, to enhance the stability of the reported results, we will adhere to accepted conventions concerning probability levels. With the number of cases being used here an F value of at least 3.84 is needed for a finding to be significant at the .05 level; 6.64 is needed for a significance level of .01; and, 10.84 is needed for a level of .001. As is evident while all B coefficients are positive, only PPUN is statistically significant--and then only at a very marginal level. A rather dismal view of the role of decision makers emerges.

Individual Influences and Case Characteristics

As suggested earlier, the model tested in Equation 7-1 represents a simplistic conceptualization of the criminal court decision-making process. To refine this analysis, some of the notions discussed earlier will now be discussed in greater detail. We will first look at case characteristics as mediating factors. To do this a set of interaction terms with the OFFSER1

variable and the CRIMRCD variable and the three "Belief in Punishment" variables was computed and introduced into the regression equation analysis. Preliminary results indicated that all three attitudinal variables positively interacted with OFFSER1, with F values ranging from 52 to 8. However, the interaction term involving OFFSER1 and the prosecutor's Belief in Punishment (PPUN) eliminated the effect of the interaction terms involving OFFSER1 and the two other punishment variables (JPUN, DPUN). Further analyses revealed that the impact of an interactive term involving OFFSER1 and the prosecutor's responsiveness variable (PRES) was significantly stronger than PPUN * OFFSER1 and, indeed, wiped out the effect of PPUN * OFFSER1 on the JAILMIN variable. Replacing PPUN * OFFSER1 with PRES * OFFSER1 eliminated the collinearity between the PPUN * OFFSER1 variable and the interaction terms involving JPUN and DPUN (DPUN * OFFSER1, DPUN * OFFSER1), allowing the latter variables to enter the equation as statistically significant terms. Subsequent analyses also revealed that an interaction term involving the defense attorney's responsiveness (DRES) and offense seriousness was also statistically significant. The judge's responsiveness (JRES) played no significant role. Finally, while interaction terms involving the defendant's criminal record (CRIMCRD), JPUN, and PPUN were not significant, DPUN and CRIMRCD did positively interact.

The interactive model produced the following equation (R squared = .58; n = 799):

EQUATION 7-2

JAILMIN = -6.3 + 2.3 * OFFSER1 + .90 * CRIMRCD - .78 * JPUN
(66.6; 1.67) (.56; .04) (5.7; -.09)

+ .10 * DPUN + .98 * PRES + .27 * DRES
(.57; .02) (12; .11) (2.1; .05)

- .13 * PRES * OFFSER1 - .11 * DRES * OFFSER1
(115; - .68) (24.8; -.98)

+ .08 * JPUN * OFFSER1 + .04 * DPUN * OFFSER1
  (27.3; .28) (16.3; .30)

+ .29 * DPUN * CRIMRCD
  (6.3; .15)

The results of the regression analysis are somewhat difficult to interpret because of the existence of the interaction terms and the fact that the signs of some linear terms (see JPUN) "flip" once the multiplicative terms are added to the equation. To facilitate the interpretation of these results, Equation 7-2 has been used to predict sentences for various levels (high, medium, low) of the relevant decision-maker traits, across different types of offenses (see Table 7-2).[3] For each entry in Table 7-2 the values of the relevant variables were allowed to vary, while the others were assigned the "medium score."

Consider first the impact of JPUN (rows 1-3, Table 7-2). The proper interpretation of its impact is that in more serious cases more punitive judges sentence more harshly than less punitive judges. This is borne out in Table 7-2. In cases with seriousness scores above 10 (the mean for OFFSER1 was 8.0) the difference in predicted sentences for different levels of JPUN becomes increasingly larger. Equation 7-2 does not, however, do a good job of predicting sentences across levels of JPUN in cases with OFFSER1 scores below 10, and these predictions are set off with parentheses. As can be seen in the theft example, the equation predicts an inverse relationship between JPUN and sentence. This is because the sign on JPUN "flipped" when the JPUN * OFFSER term entered the equation. While this suggests a negative relationship between JPUN and sentence in less serious cases, independent analyses revealed no such relationship in cases with OFFSER1 scores below ten.

Table 7-2

Sentence Predictions based on Equation 7-2
(in months)

	Offense Seriousness			
	Theft (mean = 3.1)	Burglary (mean = 10.4)	Unarmed Robbery (mean = 27)	Armed Robbery (mean = 53.2)
Judge's Punitiveness (JPUN)				
Low (3)	5.52	9.67	19.03	33.84
Medium (6.5)	3.66	9.85	23.86	46.00
High (8)	2.86	9.93	25.93	51.22
Defense Attorney's Punitiveness (DPUN)				
Low (4.5)	2.67	7.68	18.50	36.99
Medium (8.5)	3.66	9.85	23.86	46.00
High (14)	8.68	16.46	30.47	58.37
Prosecutor's Responsiveness (PRES)				
Low (6.0)	-2.22	10.78	30.19	52.33
Medium (8.5)	3.66	9.85	23.86	46.00
High (10)	5.38	9.29	20.07	28.59
Defense Attorney's Responsiveness (DRES)				
Low (5.0)	4.08	15.09	40.06	79.49
Medium (11)	3.66	9.85	23.86	46.00
High (14)	3.44	7.22	15.76	29.25

The interpretation of the DPUN * OFFSER1 variable is similar to that of the JPUN * OFFSER1 term, but much "cleaner" predictions emerge. In more serious cases defendants represented by more punitive defense attorneys receive longer sentences. The sentence differential between cases handled by defense attorneys who scored low and high on the DPUN variable goes from about 6 months in theft cases to 21 months in armed robbery cases. Problems similar to those encountered with JPUN occur also with respect to PRES (Prosecutor's Responsiveness), again because the sign of the linear term is different from the interaction term. What was predicted, and what Equation 7-2 reveals for higher levels of seriousness, is an increasingly larger negative impact of PRES in more serious cases (rows 7-9, Table 7-2). More responsive prosecutors can, and apparently do, give away more when they have more bargaining room. The sentencing differential between prosecutors who score low and high on Responsiveness goes from 1 month in burglary cases to 27 months in armed robbery cases. Independent analyses again confirmed that in less serious cases PRES does not have a positive relationship.

The DRES variable (Defense Attorney's Responsiveness) produced unexpected but not implausible results. It was originally thought that more responsive defense attorneys--as good citizens and flexible coworkers-- would generally work to produce higher sentences than less responsive attorneys, especially in more serious cases. However, as Equation 7-2 and Table 7-2 (rows 10-12) reveal, the opposite effect occurs. More responsive attorneys receive "better" sentences than less responsive attorneys, especially in more serious cases. This is plausible--perhaps more so than the original hypothesis--for a number of reasons. If prosecutors and judges were to "reward" attorneys with better pleas they would be more inclined to reward more responsive attorneys than less responsive ones. Also, while the defense attorney may be able to contribute to

the efficient and expeditious processing of cases in various ways (refrain from raising frivolous motion, avoid jury trials), the judge and prosecutor can do little for the defense attorney that would be more beneficial in securing the defendant's agreement to a plea than a "real" sentencing break. Finally, expecting longer sentences from more responsive attorneys may, in the long run, erode their share of the local market--leaving only unresponsive attorneys. Thus, it appears that in serious cases involving highly responsive defense attorneys, the judge and prosecutor move to accommodate the defense attorney.

One last finding reported in Equation 7-2 concerns the CRIMRCD variable. While neither JPUN or PPUN interacted with CRIMRCD, DPUN did. As predicted, the interaction was positive--the impact of the defense attorney's punitiveness is greater in cases involving defendants with longer criminal records. As the impact of the DPUN * CRIMRCD variable is very straightforward (no signs flipped) and followed the pattern of the others, no predicted sentences were computed.

Bargaining Skills and Operating Styles as Mediating Factors

Equation 7-2 clearly demonstrates that it is important to consider case attributes in order to unravel the role of decision maker influences in the sentencing process. It is important, however, to go beyond the basic equation and ask if other attributes of the decision makers play a role in the negotiation of sentences (i.e., act as mediating factors). Clearly the most relevant of those concern their bargaining skills ("Machiavellianism," "Trial Competence"). Also, while some of the measures of responsiveness (DRES, PRES) were found to have a direct effect upon sentencing, responsiveness and "Judges's Involvement" may be considered as mediating factors in some situations.

A number of hypotheses could be posited regarding these attributes. The most basic ones are laid out, by role, in Table 7-3. The views of punitive judges who are also "Hi Machs" or who tend to become more involved in negotiations are expected to have a greater impact than punitive judges who are "Lo Machs" or who keep their distance from the negotiations. On the other hand, punitive judges who are also highly responsive are expected to move their positions (agree to lower sentences) more readily than punitive judges who are unresponsive. Prosecutors who are highly punitive and who are skilled trial attorneys or ("Hi Machs"), are expected to negotiate more severe sentences than other prosecutors simply because they are more able to move others toward their position. However, punitive prosecutors who are also highly responsive are expected, like the judges, to agree to less severe sentences than highly punitive and unresponsive prosecutors. The expectations for defense attorneys are expressed in terms of more lenient defense attorneys and they are essentially the opposite of those for prosecutors.

Once again initial expectations proved too simplistic. None of the analyses of these hypotheses yielded stable and significant results. To determine if the results were confounded by measurement error, the continuous version of the mediating factors (JMAC, PTRL, DRES, etc.) were replaced by the discrete versions (JMAC1, PTRL1, DRES1, etc.) and the analysis was redone. This resulted in only a modest improvement. Hypothesis J2, concerning JPUN and JINVOL1, was confirmed beyond the .01 level. Defendants sentenced by more punitive judges, who were also evaluated as being highly involved in pretrial negotiations, received more severe sentences than other defendants.

The disappointing results led to a more complex analysis involving three-way interactions between the terms reported in Table 7-3 and the OFFSER1 variable. The presumption--as demonstrated in Equation 7-2--was that more things

Table 7-3

Summary of Basic Hypotheses Concerning Negotiated Sentences, Attitudes, and Other Decision Maker Traits

Hypotheses #	Interaction Term	Expected Impact
	Judge	
J1	JPUN * JMAC	+
J2	JPUN * JINVOL	+
J3	JPUN * JRES	-
	Prosecutor	
P1	PPUN * PMAC	+
P2	PPUN * PTRL	+
P3	PPUN * PRES	-
	Defense Attorney	
D1	DLENCY * DMAC	-
D2	DLENCY * DTRL	-
D3	DLENCY * DRES	+

can happen in more serious cases, and that these various influences are only "unleashed" when there is more play--and more at stake--in the negotiations. This time, however, the introduction of OFFSER1 did not yield the expected results. While some of the modified hypotheses (J1, P3, D3) received some support, the high level of multicollinearity among the interaction terms produced results which were too unstable to be considered reliable. But some stable, unexpected results did occur; they concerned the Machiavellianism variables. In examining the interaction between the prosecutor's Punitiveness, the prosecutor's Machiavellianism, and OFFSER1 (PPUN * PMAC1 * OFFSER1), it was discovered that a two way, positive interaction between PMAC1 and OFFSER1 was highly significant. It eliminated the initially significant impact of the three-way interaction (i.e. the addition of PPUN to the interaction term added nothing to its explanatory power). A positive, two way interaction between DMAC1 and OFFSER1 was barely significant at the .05 level but was considered too unstable to be reliable. However, the discrete linear term, DMAC1, was found to have a stable and significant impact. These results are reported in Equation 7-3 (R squared = .60; n = 799).

EQUATION 7-3

JAILMIN = 3.5 + 1.3 * OFFSER + 1.3 * CRIMRCD - 2.6 * JPUN
(12.3; .97) (1.16; .06) (14.3; -.27)

+ .15 * DPUN + .7 * PRES + .27 * DRES - 6.2 * JINVOL1
(1.21; .03) (5.5; .08) (1.9; .05) (8.7; -28)

+ 1.6 * DMAC1 - .37 * PMAC1 - .12 * PRES * OFFSER
(8.27; .07) (.30; -.02) (111.8; -.67)

- .06 * DRES * OFFSER + .11 * JPUN * OFFSER + .03 * DPUN * OFFSER
(6.8; -57) (44.8; .37) (10.3; .24)

+ .26 * DPUN * CRIMRCD + .22 * PMAC1 * OFFSER + 1.05 * JPUN * JINVOL1
(5.2; .13) (13.4; .29) (10.0; .32)

The results concerning the Machiavellianism variables were unexpected because they were initially conceptualized as mediating factors. Like the "Judge's Involvement" variable (JINVOL1), these variables were expected to affect the participants' ability to have their views prevail in a bargaining encounter. Indeed, the literature on Machiavellianism, which describes "Hi Machs" as manipulators who are highly persuasive and who are more apt to "win" than "Low Machs," leads one to suspect that this attribute would have an important mediating influence in plea bargaining situations. However, the discovery that the prosecutor and defense attorney's "Machiavellianism" have an independent and positive influence upon sentence is also consistent with the psychological literature. For example, in Vlemming's review of Machiavellianism studies he notes that:

> Summarizing the results substantiates that the Christie and Geis (1970, p. 49) remark about "high as contrasted to low Machiavellians have a negative view of people in general..." still holds true. The articles discussed so far confirm that high Machs in contrast to low Machs have no trust in other people, are not conscientious, or nurturant towards others. They also have only little empathic capacity and little respect for others and besides they do not think much of equality, forgiving, or honesty. (Vlemming, 1979, p. 307)

Such assertions would clearly support an hypothesis suggesting a positive relationship between Machiavellianism and sentencing. Moreover, they demonstrate the importance of blending more general personality attributes with task specific attitudes in analyses of this sort. Their importance is underscored by the fact that PMAC1 and DMAC1 were the only decision maker attributes analyzed which had a linear impact upon sentence.

The failure of the other variables to perform as mediating factors, as hypothesized, is not redeemed by the discovery of more direct influences. Hindsight, however, does suggest some reasons for the instability and/or failure of some results, especially with respect to the role of DRES and PRES. Both variables already played a prominent role in the analysis (see Equation 7-2), and the use of each a third time, especially in conjunction with OFFSER1 again, produced too much multicollinearity for the analysis to produce stable results. The failure of the Trial Competence variables to perform as mediating factors was due to a failure to consider differences in trial abilities and will be addressed in the following section.

Structural Characteristics and Workgroup Configurations as Mediating Factors

One last place to look for factors that might help unravel the relationship between participant influences and sentencing is the most immediate environment surrounding the decision makers. In the criminal court setting that environment would probably be found in the office policies and procedures within the local court system and the makeup of the workgroup which handles the disposition of a given case. Because of the procedure used to derive the pool of cases analyzed here, an involved analysis of structural characteristics is not possible. The five counties that constitute the bulk of the cases provide insufficient variation on most dimensions. Two important dimensions which can be examined, however, concern the amount of discretion given to individual prosecutors and judges in the sentencing decision. Data derived from interviews with participants in each county allowed us to create a trichotomous prosecutor

discretion variable (1 = little discretion; 2 = some discretion; 3 = unfettered discretion), and a dichotomous judge discretion variable (0= some constraints upon discretion; 1 = virtually no constraints upon discretion). With respect to both variables it is expected that the impact of the decision maker would be greater in counties where discretion is greater.

The overall makeup of the workgroup is important because different configurations of attitudes and work styles could have important implications for bargaining strategies and, ultimately for who is more successful in the negotiations. Indeed, one reason that the analysis of decision maker attributes as mediating factors was so singularly unsuccessful may be that it is not fruitful to look at individuals as isolated entities when the issue is the movement of bargaining positions. Rather, we may need to look at the configuration of individuals involved in handling a case. Chapter Four laid out several distinct types of configurations for several of the relevant attributes of decision makers. Not all of these are relevant for the purposes of this analysis, but two stand out--the Punishment structure and the Trial Competence structure.

An examination of Figure 4-6 (the diagram presenting the Punishment structure) leads to a number of observations from which hypotheses can be generated. If the distribution of judge means is examined across categories, it becomes evident that the judge is more apt to cluster with another participant than is the prosecutor or defense attorney (Prosecutor-Judge Cluster, Judge-Defense Attorney Cluster, Defense Attorney High). This leads to the expectation that the judge's views on sentencing will have more of an impact in workgroups characterized by a judge cluster, especially in more serious cases. A second prominent feature of Figure 4-6 is the existence of a sizable number of workgroups where the defense attorney's Belief in Punishment is much lower than the

other two (Prosecutor-Judge Cluster), or the prosecutor's Belief in Punishment is much higher than the others (Judge-Defense Attorney Cluster). This raises a question as to how different participants respond when faced with highly homogeneous opponents who share a very different viewpoint from their own. The relevant intervening variable here may be Machiavellianism. It would seem that "Hi Machs" would do better when faced with such odds, regardless of whether they were a defense attorney or a prosecutor. Thus, among persons who are attitudinal deviants within a workgroup (a highly punitive prosecutor or a highly lenient defense attorney), "Hi Machs" should be more effective in persuading and manipulating the others than "Low Machs," especially in more serious cases.

An examination of Figure 4-9 suggests why Equation 7-3 revealed no significant impact for the two Trial Competence variables (DTRL, PTRL) and generates some fairly straightforward hypotheses. The impact of the Trial Competence variables was diluted in the analysis which produced Equation 7-3 because it failed to take into account the fact that, in the majority of workgroups, trial skills of the attorneys are fairly balanced. Trial Competence is useful as a bargaining tool only when one or another opponent has a decisive edge. Thus, where the defense counsel is the most skilled (Defense Counsel High), more lenient attorneys should secure lower sentences than more punitive attorneys, especially in more serious cases. Correspondingly, where the prosecutor is more skilled (Prosecutor High), more punitive prosecutors should secure more severe sentences than less punitive ones.

Table 7-4 summarizes the hypotheses and identifies the dummy variables used in depicting the relevant workgroup configurations as well as those used to define the structural, discretion variables.

Equation 7-4 reports the results of the analysis (R squared = .63; n = 760):

Table 7-4

Summary of Hypotheses Concerning Structural Characteristics, and Selected Workgroup Configurations

Hypotheses#	Interaction Term	Expected Impact Upon Sentence
	Structural Characteristics	
S1	JUDGDISC * JPUN * OFFSER	+
S2	PROSDISC * PRES * OFFSER	-
	Punishment Structure	
P1	JCLUSTER * JPUN * OFFSER	+
P2	DPUNLOW * DMAC1 * OFFSER	-
P3	PPUNHIGH * PMAC1 * OFFSER	+
	Trial Competence Structure	
T1	DTRLHIGH * DLENCY * OFFSER	-
T2	PTRLHIGH * PPUN * OFFSER	+

JUDGDISC = Amount of Judge's Discretion (0 = limited; 1 = not significantly limited)

PROSDISC = Amount of Prosecutor's Discretion (1 = quite limited; 2 = some limits; 3 = virtually unlimited)

JCLUSTER = Whether or not Judge's Belief in Punishment clusters with Prosecutor or Defense Attorney's cluster (0 = no cluster; 1 = cluster)

DPUNLOW = Whether or not Defense Attorney's Belief in Punishment is far below a Prosecutor-Judge Cluster (0 = not below; 1 = below)

PPUNHIGH = Whether or not Prosecutor's Belief in Punishment is far above a Judge-Defense Attorney Cluster (0 = not above; 1 = above)

DTRLHIGH = Whether or not Defense Attorney's Trial Competence is evaluated far above Prosecutor's (0 = not above; 1 = above)

PTRLHIGH = Whether or not Prosecutor's Trial Competence is evaluated far above Defense Attorney's (0 = not above; 1 = above)

Equation 7-4

JAILMIN = 3.1 + .89 * OFFSER1 + 1.36 * CRIMRCD - 1.69 * JPUN + .25 * DPUN
(40.8; .66) (1.43; .07) (3.9; -.18) (2.1; .06)

+ .47 * PRES - .06 * PRES * OFFSER1 + .09 * JPUN * OFFSER
(1.37; .05) (7.12; -.34) (17.2; .30)

+ .27 * DPUN * CRIMRCD - 6.04 * JINVOL1 - .34 * PMAC1 + 1.64 * DMAC1
(5.9; .14) (6.39; -.27) (.17; -.01) (8.0; .07)

+ .3 * PMAC1 * OFFSER1 + .66 * JPUN * JINVOL1 + .25 * PPUN - .19 * PTRL
(28.1; .39) (2.7; .18) (.40; .03) (.03; -.01)

- 1.8 * PTRLHIGH + 5.47 * PROSDISC + .01 * JCLUSTER - .11 * PPUNHIGH
(.92; -.03) (10.7; .13) (.00; .00) (.01; -.00)

- .07 * PROSDISC * PRES * OFFSER1 + .04 * JCLUSTER * JPUN * OFFSER
(22.3; -.41) (6.67; .12)

- .18 * PPUNHIGH * PMAC1 * OFFSER1 + .10 * DPUNLOW * DMAC1 * OFFSER
(13.1; -.20) (9.2; .11)

+ .08 * PTRLHIGH * PPUN * OFFSER1
(6.01; .08)

Of the seven hypotheses generated, three were supported (S2, beyond .001 level; P1, at .01 level; T2 at .01 level), while two were not (S2, T1). The two others resulted in unexpected, but enlightening findings (P3, beyond .001 level; P2, beyond th .001 level).[4]

No support could be found for the hypothesis that the impact of the judge's views on punishment were enhanced in counties where they enjoyed wider discretion (S1). However, very strong support was provided for the proposition that the impact of a prosecutor's responsiveness is much more limited in offices with centralized plea bargaining policies. While the B coefficient of the PRES * OFFSER1 term in Equation 7-4 is not zero, its absolute value is much smaller than in Equation 7-2 (.06 as opposed to .13). Thus, most of the sentencing variance attributed to the prosecutor's responsiveness comes in counties where

prosecutors have the most discretion.[5] The fact that the interaction term involving the judge's discretion (JUDGDISC * JPUN * OFFSER1) was not statistically significant may be due to situational differences between judges and assistant prosecutors. Assistant prosecutors, unlike elected judges, are subject to removal and discipline by the head prosecutor and his administrative staff. The latter individuals, of course, are also normally the ones responsible for checking and approving plea offers. Moreover, the types of checks upon the discretion of judges in this study were less formal and explicit than those placed upon assistant prosecutors.

Only one of the hypotheses dealing with the configuration of trial abilities within workgroups was empirically supported. In more serious cases, more punitive prosecutors who enjoy a decisive edge in trial abilities over the defense attorney are able to negotiate longer sentences than equally punitive prosecutors who do not hold such on edge. While parallel findings for the defense attorney cannot be reported, it should be noted that the defense attorney interaction term laid out in Table 7-4, (DTRLHIGH * DLENCY * OFFSER) initially had a statistically significant, negative impact upon sentence, as hypothesized. This impact is eliminated when the three-way interaction term involving the prosecutor's trial edge enters the equation. The reason is quite clear: two of the components of the three-way interaction terms are highly intercorrelated (PTRLHIGH, DTRLHIGH), and another is identical (OFFSER1). If the prosecutor term (PTRLHIGH * PPUN * OFFSER1) were not in the equation, the defense attorney term (DTRLHIGH * DLENCY * OFFSER1) would be significant. The defense attorney term was deleted because the prosecutor term was somewhat stronger and more stable.

Only one of the hypotheses generated from an analysis of the Punishment structure of the workgroups was confirmed. Nonetheless, the results provided interesting insights into how workgroup coalitions and individual attributes interact to affect decisions within the courtroom setting. The confirmed hypothesis (P1) held that, in more serious cases, the impact of the judge's punitiveness would be greater when it was similar to the punitiveness of one of the other actors. In other words, it would seem that the impact of an individual's views can be enhanced if a de facto coalition exists. The other hypotheses dealt with the opposition situation: What happens to an "attitudinal deviant" within a workgroup? It was hypothesized that "Hi Machs" would be more able to "pull" the others toward their personal views than would "Low Machs." In fact, the opposite effect was found. "Hi Machs" are more apt to compromise their views when they find themselves isolated than are "Low Machs." Moreover, the findings are both stable and highly significant.

At first glance these results appear to be inconsistent with the literature on Machiavellianism. "Hi Machs" should be more tenacious--and successful--in the pursuit of their personal ends. However, if the results are examined from a contextual perspective, a different conclusion emerges. By moving toward the views of others, "Hi Machs" who are attitudinal deviants in a particular workgroup are not realizing their own personal conceptions of what is an appropriate sentence. They are, however, furthering a more important personal goal: the realization of a negotiated settlement. Defense attorneys do not themselves have to spend any additional time in jail if they can persuade their clients to accept a higher sentence. But they will have to try the case if a compromise is not reached. "Hi Mach" defense attorneys appear to be more willing than "Low Machs" to sacrifice their clients' interests than their own, at least when they become attitudinal deviants. Similar arguments can be made

for prosecutors. Rather than tenaciously negotiating to accomplish the sentence that "ought to be," "Hi Mach" prosecutors apparently find it easier to compromise their personal views. In this way, they can avoid trials and achieve personal ends.

Conclusions

Despite the limitations on the generalizability of these results--due to the restrictions placed upon case selection--the analyses conducted here produced a number of points which have important implications for the study and understanding of judicial decision making. First, the data analyses suggest that the decision makers involved in handling a case have an important impact upon the sentence. While a regression model containing only case seriousness and a measure of the defendant's criminal record explains 48 percent of the variance in our regular's pool of cases, the final model produced here (Equation 7-4) explained 64 percent--an increase of 16 percent. This represents a one third improvement in explanatory power.

Equally important is the finding that we cannot understand the role of individual level influences without integrating them with contextual factors into a more comprehensive model of the sentencing process. The analysis demonstrated that by focusing solely on the judge--using a linear, bivariate model--one cannot produce a meaningful picture of the decision making process. We had to incorporate the attributes of all three decision makers and utilize them in conjunction with information on cases. While offense seriousness was, by far, the most important contextual factor, the failure to include the attributes of all three decision makers would have yielded an incomplete and inaccurate picture of the decision making process. Likewise, the inclusion of

the data on structural constraints and workgroup configurations made theoretical contributions far beyond their relatively meager contribution to the R^2 (.06). These contributions justify their inclusion in Equation 7-4 despite the complexities that they entail.

The contribution to explanatory power of three-way interaction terms is limited by the number of cases in extreme categories (i.e., attitudinal deviants handling serious cases who are "Hi Machs"). The theoretical insights generated by the inclusion of these variables is not so bounded. These findings demonstrate that it may not be sufficient to consider only the attributes of all three decision makers. It may also be important to know how these attributes are arrayed in a particular set of negotiations, as well as the constraints that operate upon the discretion of one or more of the negotiators, as suggested in the development of the model laid out in Chapter Six. While such observations may seem almost common sensical, they have all too frequently been neglected in decision making studies. The consequence, of course, has been sterile models of the decision making process, which are spurned by observers and practitioners familiar with the complexities of reality.

The results reported here are important for reasons that have little to do with our overall theoretical efforts. They say something about the nature of justice meted out by criminal courts. Despite the limitations due to our case selection procedures, these results strongly suggest that some factors which play a role in the sentencing of defendants represent influences that are antithetical to accepted notions of Anglo-Saxon justice, expecially when viewed in light of some of the findings reported in Chapter Six. While it is not surprising that decision maker attributes affect sentences--critics have long asserted as much--the data reported in Table 7-2 and the complexities embodied in Equation 7-4 emphasize the magnitude of these influences as well as the

variety of ways in which such influences can enter the decision making process. At the same time, the analysis suggests where the problem is most severe (in most serious cases) as well as some ways to cope with the problem (structural controls on discretion). The latter point sheds light on a long-standing controversy--the efficacy of structural controls over prosecutorial discretion in low visibility decisions. But a discussion of that point will have to be taken up elsewhere. In any case, the observations made here could have important implications for continuing efforts to reform the sentencing process.

References

Christie, R. and R. L. Geis (1970). Studies in Machiavellianism. New York: Academic Press.

Gibson, James L. (1983). "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior," Political Behavior, Vol. 5, no. 2.

Hansson, R. O. and R. I. Straub (1973). "Effects of Machiavellianism on Courtroom Plea Bargaining." Proceedings of American Psychological Association, 8:255-266.

Rogers, Rex and Gun R. Semin (1973). "Mach V: An Improved Scoring System based on a Triadic Choice Model," Journal of Personality and Social Psychology 27:34-40.

Sheppard, B. H. and Vidmar, N. (1980). Adversary Pretrial Procedures and Testimonial Evidence: Effects of Lawyers' Role and Machiavellianism." Journal of Personality and Social Psychology, 39:320-332.

Vlemming, R. G. (1979). "Machiavellianism: A Preliminary Review." Psychological Reports 44:295-310.

[1] There was, of course, nothing magic about five cases. We initially used cutoffs of ten and eight cases, but that left us with too few cases and excluded too many counties altogether. A three-way cross tabulation revealed that five was a good cutoff point--most other triads occurred in only one or two cases.

[2] Despite the significant loss of cases due to these restrictions, we view it as wholly legitimate to restrict our efforts here to a best case analysis. If decision maker attributes affected sentencing decisions we wanted to find them. The tremendous amount of time, effort, and money invested in research design, interviewing, data collection and set up, and index construction merited caution in the examination of hypotheses. The same was true of the data analysis. Because of the complexities and costs (in terms of time and of money, for the computer) of analyzing an interactive model involving the attitudes, personalities, and operating styles of three individuals, we did not want to be concerned with controlling for extraneous influences caused by a lack of familiarity among participants or trial dispositions. Nor did we want these factors to confound our results by masking or weakening underlying relationships. Later analyses can extend this model by relaxing the two restrictions placed upon the cases selected for analysis. Before this can be done, however, it is important to have a well-developed, empirically grounded conception of how the core members of the court community operate.

[3] The high, medium, and low scores were determined by examining the actual distribution of scores in the cases analyzed. Low scores represent the highest score in the lowest decile; high scores represent the lowest score in the highest decile. Medium scores are about

at the median.

4 It should be noted that interaction terms involving the defense attorneys' Punitiveness and Responsiveness (DPUN * OFFSER1, DRES * OFFSER1) are dropped from Equation 7-4. High intercorrelation between them and some of the new variables, especially those involving the punishment structure dummy variables, reduced their significance level and led us to drop them from the regression analysis.

5 No sentencing predictions were computed for Equation 7-4 because of its complexity. The costs in producing the predictions were considered to exceed the benefits that might be derived from them.

Chapter Eight

CONCLUSIONS

The goal of this research effort has been to enhance our theoretical understanding of the operation of state criminal trial courts. This report focused on one aspect of the research, sentencing, as an appropriate and effective mechanism for communicating our current thinking about the nature of such a theory. Before turning to discussion of the findings regarding sentencing, it is appropriate to comment briefly on the general accomplishments of the research.

General Accomplishments of the Research

Although the task of mining the rich lode of high quality data generated by our research is not complete, the outlines of several major contributions have emerged. First, the research breaks important methodological ground. It demonstrates the feasibility of systematically measuring the characteristics of the major participants in a court system, and provides examples of the research instruments needed to carry this out. These characteristics include not only traditional measures of background and attitudes, but interpersonal operating styles as revealed by the Q-sort as well. The research develops methods for utilizing these data, as in the classifications of workgroups' structures of attitudes. And perhaps most significantly, it shows how data from the individual, contextual, and environmental levels of analysis can be combined.

Second, our ability to describe relevant features of courts and their environment has been enhanced. We outline and identify measures of important dimensions of courts' environments. We also provide a systematic classification of calendaring and case assignment combinations.

Finally, through the analysis of sentencing, we have made significant progress toward improving our theoretical understanding of courts. More is involved than refining our knowledge of the role that traditional factors such as bail, race, charge, method of disposition,, and the like play in sentencing. Just as importantly, we draw on our theoretical approach to demonstrate the effect of attitudes and personal characteristics of key decision makers, of contextual variables (sponsoring organizations' policies, court structure), and of environmental factors (state criminal codes, local political structures, etc.). And perhaps most notably, we illustrate the intricate patterns of interaction among these many variables.

We will return to some final thoughts on the nature of courts and the challenge of studying them later in this chapter. In the section that follows, however, we will elaborate on the themes just presented by focusing on this report's implications for understanding sentencing.

The Nature of Dynamics of Sentencing: Some Patterns of Interaction and Crucial Characteristics

Our examination of sentencing provides empirical support for the utility of viewing sentencing as a social as well as a political process. This emphasis differs from that found in research focusing on attitudes.[1] We show that sentences emerge through the interactions of prosecutors, judges, and defense

attorneys, many of whom share long histories of interaction and anticipate future relationships, and all of whom are affected by the work structure of the local court and the larger environment. Our initial assumption that three levels of analysis (individual, contextual, and environmental) could be and should be integrated received strong confirmation. By social science standards, our efforts to explain outcomes statistically achieved substantial success. Explanation of 60 percent of the variance in a dependent variable (here, sentence length) compares quite favorably with most published research.

The Nature and Origins of "Going Rates"

The concept of "going rates" served as a good starting point in understanding sentencing. Each court community shares expectations about what a case is initially "worth." In calculating this value, offense charged and prior record provide powerful starting points. Their large contribution to explaining variation in sentencing suggests that these initial assessments exert strong influences on the imposition of penalties throughout the life of a case. Together, they account for about half of the variance in sentences in our pooled samples with the lion's share of the effect going to offense. Still this "presumptive" sentence only serves as a starting point, as numerous factors interact in complex ways to raise or lower the sentence. Their cumulative impact in our equations beyond that provided by offense and record accounts for about one-third again as much variance as these two factors. Their contribution is substantial, particularly since we entered them into our equations after offense and record had already explained half of the variance. Since error always creeps into statistical analyses, and measurement problems inevitably arise, it becomes increasingly difficult to wring additional explained variance

out of what remains unexplained. Looked at in this light, the boost in explained variance beyond that obtained using offense and record (the going rate) assumes added significance. In cases where the charges are serious, the modifications made in the going rate by the additional variables translate into significant changes in the amount of time defendants spend in jail or prison.

Questions about the origins of and changes in going rates are best addressed in longitudinal research. Our active field research lasted about six months, and our case samples with two exceptions covered a year or less, too short a period to analyze changes over time. Our interviews often strayed into consideration of changes, but we did not pursue the topic systematically, and certainly did not inquire specifically about the development of going rates. Our understanding of courts and courthouse communities, however, permits cautious, informed speculation about the origins and transformation of going rates. We can list without elaboration (or consideration of complex interactions) some central elements: the nature and dynamics of crime patterns and public and media perception of them; the content of state criminal statutes; the capacity of the local jail and state prison system; the attitudes and policies of strong and strategically located sponsoring organization leaders; patterns of recruitment and traditional techniques for socializing new courthouse community members; the nature of the grapevine's operation; and (to the extent they exist) shared community attitudes toward crime and punishment.

Previous research prepared us for the discovery of important differences in sentences between jurisdictions, and hence going rates. Chapter Five presented the results of our comparison of sentence severity, and confirmed important differences among the nine counties revealed in our earlier work.[2] While our three-state research design limits our ability to generalize,

Michigan's consistently more severe sentences demonstrate that state-related factors exert powerful influences on going rates. Illinois and Pennsylvania counties show relatively little within-state variation. However, our data also show that state-level factors do not always produce similar outcomes among jurisdictions in a state. Although Michigan's three counties all reflect the effect of that state's tendency to impose more severe sentences, the differences found among them suggest that going rates within a state can vary substantially.

We did not measure directly opinions concerning appropriate sentences by charge and record so we cannot describe how much court communities differ in the degree of consensus that exists. However, indirect evidence permits us to make some inferences. In particular, we can look at the degree of consensus on measures of attitudes toward punishment and due process. On the basis of these data, we infer that court communities indeed do differ in the strength of agreement over what a case is likely to be worth. Figure 4.6 illustrated the diversity of patterns in prosecutors', defense attorneys', and judges' belief in punishment scores. Our interviews also uncovered evidence of discrepancies in some counties in what respondents felt defendants deserved. In some, defense attorneys described how they sought to arrive at the "right" solution, even if it sometimes meant telling an inexperienced prosecutor that he was not asking for a severe enough sentence! In others, we heard complaints from prosecutors and public defenders about each other's unreasonable stand on punishment. These data provide only a crude measure of consensus, of course. Respondents who differ in their belief in punishment nevertheless may agree on what a case is worth in their county.[3]

We can say much more about the degree to which counties rely on offense and record to determine sentence. These data are shown in Graph 5-5, and demonstrate substantial differences. In three counties these variables explained only about 20 percent of the variance; in four, they accounted for at least 40 percent (and in one case, 50 percent). This measure offers a severe test of the impact of offense and record since it does not take into account differences in the total variance in sentences that we could explain in each county.[4] Thus, while going rates provide a useful start in examining sentencing, the degree to which these rates explain sentences differs markedly among jurisdictions.

Patterns of Complexity in the Modification of Going Rates

We can extend our appreciation for the complexity of sentencing by examining the regularities that emerged in the ways that going rates were modified.

The central role of offense seriousness

Offense seriousness not only principally determines assessments of cases' going rates; it also acts as the most important factor in determining how other sentencing components shape outcomes. It helps structure complexity through its role as the most important aspect of a case upon which other things depend. As the preceding chapters repeatedly show, the "action" (read interaction) modifying going rates occurs in more serious cases. Part of the reason is that there is more potential sentence to work with. A six-month maximum misdemeanor offers little latitude to decision makers beyond incarceration/non-incarceration. This is not to say that differences of a few months in time served are not significant to defendants and others, because they undeniably are. Their significance, however, pales in comparison to the deviations of several years in sentences imposed in more serious cases. Seriousness also serves to ration the introduction of factors that can influence sentence outcomes, but which cannot be used to influence every outcome. For example, attitudes toward punishment can lead to special efforts to shape a sentence. But it requires expending scarce resources to do so--time, psychic energy, additional investigation, and the calling in of favors to route a case, obtain a postponement, or reach a plea bargain. Likewise, the best attorneys (and often best trial judges) do not get a random sample of cases, but rather those that stand out for one reason or another. Clearly, offense seriousness is the principal characteristic of cases that stand out.

Thus, in cases with low going rates, possible modifications in sentences are comparatively narrow, and participants are reluctant to expend the resources needed to effect such modifications. Sentencing in such cases becomes routine, interactions more predictable, and complexity less pronounced. Many participants do not much care what happens, especially once it is clear a conviction will result. But in the more serious cases, the full complexity of the sentencing process comes to fruition.

Social characteristics of the defendent

Criminal record, of course, contributes directly to calculation of the going rate. Furthermore, its effect depends upon offense severity. As Chapter Six showed, in more serious cases, defendants with longer criminal records get higher sentences. Other attributes of defendants besides their prior record modify going rates, however. Bail status emerges as one of the most noteworthy,

though the extent to which being confined reflects the effect of social characteristics as opposed to other factors remains unclear. We also found age, sex, and race (including racial disparity in the defendant/victim diad) shaped sentences, with the latter two interacting with seriousness. In statistical terms, the effect of these characteristics on sentence length appears to be small, but real. The policy and legal implications of their effect when evaluating the fairness of sentencing, however, do not depend totally on the size of their impact.

The personal characteristics of judge, prosecutor, and defense attorney

Our research confirms the conclusions of the attitude theorists whose research suggested that the attitudes of decision makers affected sentences; it also supported the contention that the effect of attitudes is contingent upon other variables.[5] We have added to the understanding of the effect of attitudes on sentencing in several important ways, however. We demonstrated their impact by taking into account the context in which decisions on sentencing were made, and we showed that the attitudes of the prosecutor and defense attorney, not only those of the judge, must be considered. Prior to this, research by attitude theorists for the most part had been acontextual and judge-centered.

The characteristics of the courtroom workgroup

Research utilizing organization theory argued that the combined characteristics of the judge, prosecutor, and defense attorney, including their familiarity and patterns of interaction, affected sentencing. This study shows that it is not just the attitudes of participants that must be taken into account, but the specific combinations of both attitudes and interpersonal

interaction styles as well. The effect of a prosecutor's attitude toward punishment, for example, depends on the attitudes of the defense attorney and the judge, the seriousness of the offense, and the combination of personal styles of interaction of all three.

The policies of sponsoring organizations and the work structure

With the exception of one county, only the prosecutor's office policies among sponsoring organizations appeared to affect sentencing outcomes. The principal finding related to the interaction of the centralization of plea bargaining (and degree of centralization of discretion generally) and individual trial prosecutors' attitudes. In serious cases, centralized offices with explicit policies on plea bargains reduced the effect of their assistants' personal attitudes.

Other policies interact with what we term the "work structure." This research heightened our appreciation for the effects of decisions on whether to use mixed or specialized dockets and continuous or periodic trial terms, whether to assign cases randomly, sequentially, or at the discretion of one individual, and whether to use individual or master calendars. The entire functioning of a criminal court, and hence the character of discrete processes like sentencing, is conditioned by these work structures. One effect of structure, the attorneys' ability to "route" cases to particular judges either unilaterally or through negotiations, appears especially significant in understanding sentencing. We believe work structure has further implications for both the evaluation of criminal courts' performance and for reform. A subsequent section of this

chapter examines its usefulness for evaluation. With respect to reform, it appears that work structure is more susceptible to change than many other factors that shape sentences.

Legitimate and illegitimate trials

Discussions of plea bargaining frequently grapple with the problem of determining whether a defendant's right to trial is chilled by imposition of a penalty in the form of a longer sentence upon conviction after trial. If defendants contemplating a plea, it is argued, know that they will receive more time if convicted after exercising their right to trial, then plea bargaining introduces a significant limitation on a fundamental constitutional right.

Serious problems arise in empirically determining if such a penalty exists. Almost all field research reports both defendants and many members of the court community believe that such a discrepancy in sentences for pleas versus trials exists. (The existence of this perception is sufficient grounds for many critics of plea bargaining to advocate its abolition.) But the empirical demonstration of a discrepancy is difficult for two reasons.[6] First, the number of trials in most jurisdictions is too small to permit statistically meaningful examination of the question. Second, if a trial penalty does exist and successfully deters defendants' exercise of their right to trial, the number of trials also will be very small, making statistical detection difficult if not impossible.

Our field interviews suggested a partial solution to the problem of determining whether a trial penalty exists and how it might be detected. It rests on distinguishing between two types of trials--legitimate and illegitimate. The distinction rests on the assumption that the court community regards

some cases as legitimate trials, and imposes no penalty. Others, however, are illegitimate, and become eligible for differential treatment in order to keep their future volume down. If some trials fall into the legitimate category, they will diminish the size of the difference between sentences imposed in illegitimate trials as opposed to pleas. In nearly all of our jurisdictions, we heard assertions that a trial penalty existed. But when we asked specifically if some trials were considered legitimate, we often (but admittedly not uniformly) received affirmative responses with specific examples.

The analysis of the pooled sample of cases in Chapter Six provides some statistical support for the existence of the distinction. The amount of physical evidence had no linear effect on sentence, but it interacted with the trial variable. Where physical evidence is plentiful and the defendant goes to trial, sentences are longer.

Thus, sentences do vary somewhat depending on whether the conviction is by plea or trial, but primarily only when the case is regarded as illegitimate and unsuitable for trial. In instances when the evidence is questionable or conviction otherwise in doubt, the exercise of the right to trial may well incur no additional sentence penalty in many jurisdictions.

Jurisdictions' "environmental" characteristics

Our research design sought to determine if differences in the environments of courts produced systematic differences in outcomes. It permitted examination of the effect of two categories of differences: those arising from characteristics of the state in which they are located; and those unique to the specific county.

Differences associated with states deserve particular emphasis because previous research places little emphasis on them. Michigan's three counties sentenced most harshly, despite differences among them. Sentences in the other two states' counties varied relatively little. Further, other differences in the dynamics of our courts' operation appear state-related. Michigan counties used individual dockets, for example, while the three Pennsylvania courts relied on master calendars. Though our understanding of the significance of state-level factors remains preliminary, it suggests that greater attention should be paid to it in future research.

Differences in the counties were embodied in the "ring, autonomous, declining" classification used in selecting them. The analysis revealed few if any systematic differences in sentencing associated with this distinction, however. Ring counties in each state were either more lenient or as lenient as other counties, but the differences were not great. Prosecutor's offices exhibited more centralization, affecting the impact of assistants' attitudes on sentencing, but this finding is confounded by the fact that the ring counties also had the largest prosecutor's offices.

The classification of the counties' environments into three types, then, failed to reveal any clear relationship to sentences. But by no means can we conclude that local environmental factors leave sentences untouched. As noted, the substantial differences found among Michigan's three counties confirm that the specific characteristics of a county can produce very different patterns of sentencing. While we do not presently have a clear image of how the many attributes of courts' environments act to shape outcomes, how they interact with one another, or how their patterns of interaction themselves vary under different conditions, one environmental characteristic nevertheless appears to exert

a powerful influence over the criminal process, including sentencing: the capacity of local jails and state prison systems. The availability of cells helps determine the options available in sentencing. In many cases, the relative capacity of the state prison system compared to the local jail can trigger a complex set of calculations, particularly when the county jail is full. Defendants whose crimes carry "county time" going rates must either be sent to state prison or released with little or no incarceration. Other things being equal, greater capacity creates the opportunity of reaching further down the ranks of case seriousness in deciding when defendants receive incarceration.

Measures of sentence severity provide partial support for this logic. As noted, Michigan's counties sentence defendants to prison and jail more frequently (see Chapter Five, Figure 5-1); its prison system's capacity exceeds that of the other two states by a substantial margin (see Table 3-17).[7] The two harshest counties measured by minimum confinement (from Chapter Five, Graph 5-2), Kalamazoo and Saginaw, also possess the largest jail capacity (Table 3-11). Montgomery and DuPage, which both sentence leniently, also rank lowest in jail capacity.

These patterns are only suggestive. The relationship between jail capacity and sentence severity of the counties that fall in the mid-range on these two measures is inconclusive. But the positive association between capacity and severity at the extremes, when combined with other evidence of the significance of jail capacity on the criminal process,[8] suggests that this environmental factor plays a significant role. Its effects clearly are complex, and perhaps include shaping going rates.

Toward a Comprehensive Theory of Criminal Courts: Lessons from the Analysis of Sentencing

The patterns of interaction and crucial characteristics of sentencing just described represent a substantial advance in our knowledge. The methodological breakthroughs provide for the first time the means to integrate variables from several levels of analysis, and the comparative research design permits insights into the effect of environmental variables. Our ability to demonstrate empirically the contribution of individual characteristics of judge, prosecutor, and defense attorney (and the relationship of their attributes to those of their counterparts in a given case) to explaining sentences provides quantitative empirical confirmation of many aspects of our general theoretical approach.

The specific findings presented in the previous chapters cannot be considered startling, but this is neither surprising nor disappointing. Research on state criminal courts, which now constitutes a substantial body of literature,[9] provides a sufficiently accurate description to preclude major surprises and the conceptualization which guided this research drew upon this prior research. We knew, for example, that sentencing was a complicated, diverse process, one that depended on a variety of factors at several levels of analysis. We wanted to integrate the disparate approaches to criminal courts utilized in previous studies. Similarly, the complexity and variety of criminal court sentencing processes guarantees that any study which goes into enough depth to understand them in any given jurisdiction will necessarily be confined to too few courts to allow generalizations applicable to all criminal courts.

Given the complexity of sentencing (and other criminal court processes) and the current body of research on it, our knowledge of it from here on will expand relatively slowly. Reform efforts, to be effective and to accomplish the results they seek, must rest on solid (and slowly growing) information. More importantly, we need to understand the extent to which sentencing is uncontrollable, impervious to consciously planned manipulation. Our discussion of reform and evaluation in the final section of this chapter examines the limits to reform and pinpoints areas most susceptible to reform. Its policy questions are direct and important. Before turning to this discussion, however, we will examine in detail the limits that exist to expanding our understanding of sentencing.

Limits to Understanding Sentencing

In many respects, our knowledge of sentencing is limited. Our assessment of it begins with a recognition of these limits and an exploration of their origins in the sheer complexity of the process.[10]

The complexity of courts as social institutions

Our efforts to integrate data from three levels of analysis--the individual, the contextual, and the environmental--repeatedly demonstrated the complexity of the social processes at work in criminal courts generally, and in the sentencing process in particular. Indeed, we can usefully think of sentencing as a dense tangle of interactions. The overwhelming message of the preceding chapters is that whenever one seeks a simply relationship between sentence and almost any conceivable factor, the data answer "it depends."

The significance of this finding rests on the empirical identification of the major factors influencing sentences and the demonstration of the actual contribution they make. In the following paragraphs, we present the principal factors which structure sentence outcomes and produce the "tangle of interactions" contributing to complexity.

Though we restricted the size of our sampling universe to multi-judge courts outside major urban centers in three states, our sample exhibited variation in the population served, the number of trial judges, and the size of the prosecutor's office and defense bar.[11] Despite the limited range of this variation compared to what would be found had we looked at all courts, differences associated with size are apparent. The number of courtroom workgroups composed of individuals who had jointly handled criminal cases in the past was higher in the smaller counties. Sponsoring organizations, particularly the prosecutor's office, were less bureaucratic and centralized. Communication among the members of smaller courthouse communities also was easier, and facilitated the development of common understandings.

Regardless of jurisdiction size, however, "work structures" differed significantly and affected how sentences were determined. Work structures are determined by the nature of the calendar, how cases are assigned to judges, and how prosecutors and defense attorneys are deployed. The rich array of combinations which were found have implications for the ability to "route" cases to judges (and consequently the presence of sentence bargaining), the frequency of interaction among particular combinations of judge, prosecutor, and defense attorney, and the stability of patterns of sentencing over time.

Sentencing decisions result from two sets of interactions--primary interaction among judge, prosecutor, and defense attorney, and a set of secondary interactions between each of the three with other individuals and organizations (the central office, police and probation departments, and so forth). A variety of personal characteristics of the three primary decision makers influence the dynamics of their dealings and shape outcomes. Differences in personal attitudes, their abilities as attorneys, and styles of interacting with others all play a role. Further, the precise effect of these differences depends (among other things) on the characteristics of other members of the workgroup triad which shift with every change in the composition of the workgroup.

Among the "other things" referred to above are case characteristics. The nature of the defendant, the strength of the evidence, and especially the nature of the offense determine in important respects the <u>way</u> other factors determine outcomes. The effect of attitudes toward punishment, for example, depends on the seriousness of the offense. So does the impact that personal styles of interaction have. In fact, offense seriousness is so important that we assign it a central role (see the discussion above on p. 8-6).

Finally, the political, socioeconomic, and legal environment surrounding each court system shapes the context in which sentencing takes place. Similar defendants charged with similar crimes and dealt with by attorneys and a judge who resemble a triad in another jurisdiction are likely to receive different sentences. The list of environmental factors that influence sentences is not only lengthy (including the local crime rate, jail capacity, the state criminal code, effectiveness of political control over major participants, and so forth), its elements interact with one another. Whether strong public and political

sentiment for harsher sentences in fact produce them depends upon other environmental factors such as the effectiveness of political controls and the capacity of local and state detention facilities.

Each source of complexity just reviewed interacts with others. For example, the interaction between environmental factors and case characteristics itself may depend on jurisdiction size or the personal attributes of judge, prosecutor, and defense counsel handling a particular case. The result is that even under the best conceivable research conditions, our ability to make sense of the booming confusion such complexity produces is limited.

In addition to the complexity of interactions among the substantial array of variables just described, another feature of criminal courts generally (and consequently their sentencing) adds yet another dimension to their intricate nature. In almost every jurisdiction we studied, significant flux was occurring. The identity of crucial participants (judges hearing criminal cases, the chief prosecutor or public defender), jail population, shape of the work structure, or nature of the cases brought to court often underwent rapid change. Even the way in which various components of the system interacted changed. Hence, by the time comprehensive studies are completed, they will likely be out of date. Research designs that sample cases over a period of more than one or two years may well mask significant changes that confound the results of the analysis.

Methodological, institutional, and human limits to understanding

In practice, actual research, no matter how carefully it is conceptualized, implemented, and analyzed, will fall short of its maximum potential quality. Such inevitable limits cannot be ignored if our thinking about

sentencing is to avoid serious mistakes. The conduct of this research has made the nature and significance of many of these limits abundantly clear. To obtain reliable measures of enough variables at the individual, contextual, and environmental level to unravel some of the complexity required a substantial research effort in each jurisdiction. Budget constraints precluded studying more than a handful of jurisdictions. Furthermore, if the number of jurisdictions were increased, the number of principal investigators would have to rise, compounding problems of coordination and implementation of equivalent research designs. It seems highly unlikely, therefore, that we will ever have enough truly comparable data for enough jurisdictions to allow a small enough group of researchers to begin sorting out the impact of between state and within-state variables. Studies that focus on one state permit no valid analysis of the effect of state-level variables. Multi-state studies such as this one are unlikely to include enough states to fully assess their impact. More seriously, they are likely to produce too few jurisdictions in each state to examine the effect of local environmental factors.

Finally, it is unlikely that we will ever be able to measure some variables adequately enough to answer certain questions. Even if serious cases are over-sampled in an effort to maximize opportunities to examine the interactions we found with offense seriousness, in many jurisdictions there simply are too few serious cases within short time periods (especially given the state of "flux" described above) to produce samples large enough to support multivariate statistical techniques. Those courts handling large numbers of serious cases create other problems, however. They are so complex and large that the time and effort needed to obtain an adequate understanding of their dynamics escalates rapidly. The number of such courts that can be included in a single study is

therefore limited. In addition, the number of participants whose attitudes, backgrounds, and interpersonal operating style need to be measured quickly mushrooms. Despite extensive efforts in our smaller courts, we obtained complete information on only 34 percent of the 5,900 sentenced defendants in our sample. Designs which adequately measure such elusive characteristics as strength of evidence or changes in decision-makers' perceptions as a case matures would be so time-consuming and expensive that they also would force a significant reduction in the number of courts studied. Thus, regardless of the remedy one proposes to overcome the limits of research, serious shortcomings remain. A study consisting of a "before and after" examination of several states undergoing reform in certain respects (say, changes in sentencing laws or case processing rules), even if the inauguration of the reforms could be anticipated to permit the design and funding of a study of their "before" status, would be unlikely to obtain measures of individual attitudes, operating styles, or extensive interviews like those we gathered. And even if it could be done, the mass of data generated would be undigestible given the time, money, and limits to energy and patience available to researchers.

The conclusion is inexorable and stark. We will never be able to obtain reliable, empirically-based knowledge of sentencing (or any aspect of criminal justice) that is in any sense complete or comprehensive. Of course, our research demonstrates how some of these daunting limits to research can be ameliorated. We believe our methodology and research instruments provide useful guides to subsequent research, and will facilitate more efficient conduct of comparative research projects. But even the best conceived projects will inevitably leave significant gaps in our understanding. We will have to learn to live with them.

Aids to Partial Understanding: Patterns of Variation

Acknowledgement of the formidable (and inevitable) limits on what we can know about sentencing does not justify pessimism. Though our knowledge will remain partial, this is no different than in most human affairs. The question is not whether we have complete knowledge, but rather whether our partial knowledge is useful.

We need to concentrate on those aspects of sentencing where knowledge is possible, saving energy and resources. Our study provides a fuller picture of sentencing as revealed by empirical research than any other to date. As already acknowledged, some findings were common knowledge thanks to prior research. But others, though touched upon by some prior research, lacked verification. Our study not only identifies sources of complexity in sentencing, it offers empirical support for their contributions.

Thus, while a major watchword in the study has been, "it depends," we now know that factors whose impact we could only speculate about in the past are important. For example, critics of research focusing on the relationship between judicial attitudes and sentencing asserted the attitudes of prosecutors and defense attorneys also shaped case outcomes, but such assertions rested on informed speculation, not empirical research. We cannot explain with exactitude just how attorneys' attitudes shape sentences but we demonstrate conclusively that they can and do play a role in shaping sentences. Although their impact is incredibly complex because it depends on a number of other variables, knowing about their relevance clearly is useful. It supports a cautious approach to sentencing reform since it forces us to consider upon what sentences depend. We

are not just restricted to listing factors upon which sentences depend. We can now begin to identify some of the patterns of variation, and go beyond the stage of informed hypothesis generation.

In searching for patterns in the complexity we found, one concept proved so useful that it warrants explicit identification here. The notion of a "criminal court community" proved to be a powerful metaphor in guiding our thinking. Many of the ideas, concepts, and approaches we apply in understanding a local community provide productive insights into courts. The metaphor encourages casting a broad net in searching for explanations, looking not only at factors proximate to sentencing such as the defendant's characteristics, the charges, and the workgroup, but at distal factors such as the structure of the work of the court, the characteristics of the social and political environment, and the state judicial system's structure and rules. It also reminds us that tinkering with a functional aspect of an intricate web of interrelationships is likely to produce unpredictable alterations in many other relationships and inspire efforts to compensate.

The Evaluation and Reform of Sentencing: Prospects, Limits, and Problems

Normative Questions of Evaluation Raised by the Empirical Research

The initial Request for Proposal issued by the National Institute of Justice that led to this research stated an ultimate objective of improving our knowledge concerning the efficiency, consistency, and fairness of courts. Our principal purpose was not to evaluate the performance of the nine jurisdictions we studied, nor to specify what reforms may be needed. Nevertheless, an important part of the ultimate value of the research rests in its contribution to practical decision making by those in a position to attempt reforms. This report's focus on sentencing precludes looking at efficiency, but it can directly address consistency and fairness.

While we wish to avoid a lengthy philosophical exploration of the nature of fairness and consistency, some discussion of what we mean by these terms is unavoidable. After all, if a court does not sentence consistently, isn't it unfair? And if so, what is the difference between the two? Without such clarification, we have no way of separating the two.

By consistency, we mean identical treatment of identical cases. In this definition, a consistent court may not necessarily be fair. South Africa's criminal courts may treat all black defendants the same, but unfairly. The hypothetical test of consistency, then, would be: "Would any given case, if reintroduced into the system, produce the same outcome?"

One might be tempted to equate consistency with fairness. In one sense, this is valid. It is "fair" to have defendants receive the same sentence regardless of when they come to court or what judge they appear before. But what if "like cases" are not treated the same in such a system? If black defendants always got longer sentences in more serious crimes regardless of judge or year, the "fairness" such consistency produced would at best be incomplete. Thus, judgments about fairness must draw upon societal values. Equitable outcomes ignore those characteristics (race, religion, and so forth) that the evaluator believes ought to be ignored. In this view, equity demands that "like cases" be treated alike, and it specifies the characteristics one must consider to determine whether cases are alike. Thus, a belief in racial equality may lead someone to require that two cases identical in all respects

save the defendant's race should receive the same sentence. But two defendants who differ only in their prior criminal record may not be judged "alike", and a different sentence consequently tolerated.

Given these definitions, what does the research reported in the preceding chapters suggest about the notions of consistency and equity in criminal courts? We will discuss consistency first, then turn to fairness.

The far-reaching effects of variations in the courts' work structures identify and clarify several problems in attaining consistency in sentencing. First, they demonstrate the need to define the time period for which judgments about consistency will be made. During our field research, the two judges assigned criminal cases in Peoria's "continuous specialized" docket differed little from one another and sentenced fairly harshly. But their assignment to criminal cases ended about the time our field research was completed. If their replacements sentenced alike but much less severely than their predecessors, different conclusions about consistency would result if the period in which judgments were being made encompassed both sets. Peoria would have been inconsistent because a defendant's sentence would have depended on <u>when</u> the case was heard. The example drawn from Peoria suggests a second dimension to consistency. If the second set of judges also differed from each other in their sentences, defendants would face inconsistency based on <u>who</u> heard the case.

Thus, work structure affects several dimensions of consistency profoundly. Permanently assigning a group of similar judges (who would dominate interactions producing sentencing) to criminal cases would enhance both types of consistency. In such a situation, defendants' sentences would depend neither on when their

case came to court nor which judge heard it. At the other extreme, courts which rapidly rotate judges to hear criminal cases, and whose judges impose very different sentences in identical cases, would display little consistency.

The structure and dynamics of the court community also affect consistency. Where the community exhibits diffuseness, with less efficient mechanisms for communicating the content of decisions and for sanctioning deviations from local norms, consistency will be more difficult to achieve. The strength of commitment to going rates, and the extent to which the formulas for assessing a case's worth (which depend on the court community's functioning) interact with the degree of diffuseness to further shape consistency. Finally, consistency tends to increase where the principal sponsoring organizations, especially the prosecutor's office, promulgate and enforce rules designed to limit their member' descretion.

Type of calendar and case assignment methods (see Figure 4.2 and the accompanying discussion) offer some insights into dimensions of inconsistency. We can distinguish two types of systems in which defendants receive different sentences in identical cases depending on the judge. In one, the source of the inconsistency is random, the product of a blind draw case assignment system (or a sequential system that is not manipulated). In the other, inconsistency depends on decisions made by individuals who run a "personalized" case assignment system. In the first, unequal sentences are distributed irrespective of case or defendant characteristics. The second, however, is susceptible to unfairness and takes a variety of forms depending on how those who control case assignment exercise their discretion. Rich defendants may be able to hire attorneys who can route cases better than their poor cousins; vindictive

prosecutors may send out of county residents to the toughest judge. The systematic purposive nature of the resulting inconsistency produces a form of systemic inequity.

The limits encountered in explaining sentencing (discussed in more detail above) teach some important lessons about the difficulty of measuring fairness and determining when unfairness exists. Purely methodological and statistical problems make the detection of unequal outcomes difficult in all but the largest courts. If the number of serious cases with black defendants and white victims is small, the contribution of these factors to explaining variance in a large pool of cases will be small even if those few black defendants receive substantially heavier sentences. Further, multivariate techniques which "control" simultaneously a number of variables run the risk of squeezing the social meaning out of real human conditions. Part of being a young black male in many jurisdictions includes the likelihood of having a prior record and being too poor to make bail. When we "control" for bail and record to look at the residual effects of race, we trade standing on solid statistical ground for artificial and perhaps distorted views of social reality.

Thus, to reiterate a significant point made in Chapter Six, we cannot conclude that substantial fairness exists merely because statistical analysis shows the characteristics that ought not to shape sentences in an equitable system (for instance, race) in fact contribute little to our ability to predict sentence. The existence of such relationships, even if statistically weak, may provide deceptively powerful evidence for a lack of fairness. But by the same token, the presence of such relationships does not tell us whether deviations from complete fairness are minor departures from perfection or serious violations of basic equity.

Reflections on Fairness and Consistency in Sentencing in This Study

The complexity of the sentencing process suggests that attaining fairness and consistency will be quite difficult. Problems associated with conducting empirical research that examines sentences statistically mean that our ability to assess unfairness faces significant limitations. Therefore, our tentative conclusions about consistency and fairness are offered cautiously.

Clearly, consistency is low when we expand our focus beyond a single jurisdiction. We have confirmed previous findings of differences between states and among jurisdictions in the same state.[12] Our classification of work structures and field interviews inquiring into their dynamics suggest that consistency across time in a single jurisdiction in many instances is low. As a result, efforts to assess current consistency face a problem. By the time the necessary research has been completed and the data analyzed, the jurisdiction may have changed significantly.

Our data provide some insights into consistency within a single jurisdiction during a relatively short period of time. To the extent that the personal characteristics of judge, prosecutor, and defense attorney shape outcomes, decisions are likely to be inconsistent. The complexity of interaction muddies somewhat the conclusions that can be drawn, however. Nevertheless, we demonstrate fairly conclusively that sentences depend in part on who participates in the disposition of the case.

We also uncovered enough evidence of unfairness in sentencing to warrant concern. The following characteristics interact with a variety of other variables (such as seriousness of the offense) to affect sentence length: the race of the defendant, racial disparity in the defendant/victim diad, the

defendant's sex, and whether the defendant was confined prior to conviction. These characteristics suggest the operation of some social bias. As noted above, the seriousness of such inequities (indeed, whether they represent no more than what we must expect in an imperfect world) cannot be assessed, but the fact that they exist presents a far different policy situation than if we had found they had absolutely no effect on sentence.

The Reform of Sentencing: No Easy Answers; Many Unbitten Bullets

The portrayal of sentencing that emerges from this report presents a mixed picture to advocates of reform. Before examining its encouraging portions, we will examine the formidable obstacles to conscious, planned changes in sentencing.

Why there are no easy answers

The pervasive complexity that characterizes sentencing makes an assessment of the impact of initiatives seeking to bring about change difficult even where we seem to have good knowledge. Some of the limits to knowledge about sentencing are probably incapable of being overcome. Hence, reform efforts will always operate somewhat in the dark.

Constant flux in criminal courts poses additional obstacles. By the time we can obtain good information on sentencing in a given jurisdiction (assuming the resources for obtaining and analyzing it are available), significant changes may have taken place which render specific reform a moot or inappropriate. Though we know some of the factors that create flux, manipulating changes in these factors is often impossible. Changes in the crime rate, the going rate as

produced by the dynamics of the criminal court community, and patterns of recruitment for judges and attorneys, for instance, all impinge on sentencing but ordinarily cannot be controlled.

Even where it appears that changes can be made that might affect sentencing, problems in actually bringing them about are imposing. Some may require a degree of cooperation among several independent decision-making centers (for example, a D.A.'s and P.D.'s office) that may not be forthcoming. Some can be implemented unilaterally, but those in a position to do so may refuse and effectively resist pressures to change. For example, Erie's President Judge could have altered significant features of the work structure by changing the court's calendar, but refused to do so despite the D.A's entreaties. The efforts of one participant to change may be vetoed by another or neutralized by another. Even when attempts to institute changes succeed, their impact on sentences may be deflected or changed by simultaneous uncontrolled factors.[13]

Finally, some reforms require biting unpalatable bullets. Our research confirms both commonsense and previous research with respect to the importance of jail and prison capacity. The question is not so much whether it affects sentences significantly, but rather why its importance is ignored, and whether the reasons for ignoring it are so powerful and persistent that nothing can be done. Rarely do proponents of stiffer sentences consider jail and prison capacity. Their reluctance to raise taxes or cut other expenditures to increase the capacity required for lower sentences when there is no room in the prisons certainly rests on sound assessments of political reality. But, paradoxically, it also acts to frustrate these reforms as the prison system struggles to avoid overcrowding by accelerating the release of less serious offenders as in Michigan. The same dynamics that produce irresistible temptations to rely on

rhetoric in lieu of hard decisions on jails and taxes also silence public officials inclined to speak truthfully about the limits to reform of the criminal process, including sentencing.

What can be done? Thinking realistically about sentencing reform

If the overall prospects for successful planned change in sentencing are bleak, the picture is not uniformly dismal. Recognition of the limits to reform imposed by complexity itself can be regarded as a positive step. It suggests fewer of the costs associated with failed reform (including increased cynicism and disillusionment) need be incurred. Knowing the rich variety of factors which shape sentences permits more sophisticated mental testing of the likely effect of the introduction of reforms into the sentencing process. It also encourages accurate assessments of the effects changes in other aspects of the criminal process might have on sentences.

Our research clarifies the options available to would-be reformers of sentencing. Some can be implemented fairly quickly and relatively easily, and at the local level. The work structure (case assignment and calendar), the degree to which plea bargaining is centralized in the hands of a single individual or unit in the prosecutor's office, procedures for routing pleas to judges, and the imposition of other policies limiting discretion in sentencing (for example, Erie's judicial prohibition on ARD in shoplifting cases) constitute the most prominent examples of such changes.

Other changes possible within a jurisdiction present greater obstacles and delays to implementation. Changing the capacity of the local jail provides perhaps the most powerful possible change. The incentives surrounding the provision of publicly paid defense counsel to indigents can, in some states at

least, be altered. Recruitment and retention procedures and criteria, and consequently the characteristics of key decision makers, also possess the potential to induce significant changes over time.

Finally, several changes at the state-level offer the prospect (but not a guarantee) of affecting sentences. They include changing the capacity of the state prison system, altering the state criminal code (especially provisions relating to sentencing), and changing the recruitment procedures and incentive structures (especially funding mechanisms) of the principal courtroom decision-makers.

Several "lessons" for reform have arisen from our research. Our discussion of reform concludes with them.

Lesson 1: Don't expect too much.

Ambitious efforts to reform sentencing significantly require substantial time and effort to be implemented, and once implemented are likely to have limited effects at best, and no impact or unintended consequences at worst. Previous research permitted drawing this conclusion. Our richer understanding of how complexity requires the simultaneous alteration in a number of factors in an intelligent and coordinated way to effect substantive (as opposed to symbolic) change adds strong confirmation and depth to this lesson. In particular, isolated efforts to impose quick change are likely to fail, either due to unanticipated consequences or the ability of opponents of change to thwart it in many of the myriad ways provided by complexity. In sentencing, like ecology, you can't do just one thing.

Lesson 2: Reforms just focusing on judges or the control of judicial behavior will often fail to have their intended effect.

Our research confirms empirically that judges' attitudes and other characteristics do not operate independently of other factors, including the characteristics of prosecutors and defense attorneys. The effects of proposed reforms on all three need to be considered.

Lesson 3: Reforms ought not to focus exclusively on serious cases.

From a policy perspective, it may be unwise to focus solely on the serious crimes that attract the attention of the media and public officials. Most crimes charged are not serious, but to defendants, victims, and families involved in such cases, the outcomes are significant. Reforms in more serious cases' sentencing inevitably will affect less serious cases, effects which need to be taken into account. The less serious cases' outcomes affect jail capacity, consume resources, help shape attitudes, and help define patterns of interaction in the courthouse community. In turn, these help fashion outcomes in more serious cases. By the same token, this does not mean that reform should ignore serious cases. In an important way, the "action" in criminal courts focuses on serious cases because the most intricate and significant interactions take place in them and their outcomes influence all dispositions just as less serious cases shape what happens in the most serious.

Lesson 4: Many reforms supported by some relevant participants in the sentencing process will be unpopular with others.

Reforms touted as being favored by virtually everyone are likely to be falsely advertised. Failure to anticipate sources of opposition will lead to

flawed strategies of implementation and inaccurate assessment of the effects of reforms.

Lesson 5: Changes confined to a single jurisdiction require considerable cooperation and probably some luck to succeed. If they do succeed, it does not mean they can be transplanted successfully elsewhere. By the same token, changes imposed at the state level pose problems for consistency among jurisdictions because local implementation efforts will often differ.

Reform at the state level can best tinker with the content of the criminal code. Local court communities traditions, mix of attitudes, and work structure are less amenable to alteration from above. The differences in Michigan's counties attest to the variation such factors can produce even working under the same criminal code and state judicial rules.

Leson 6: Changes in the work structure can have some effect on consistency.

Greater stability in assignments of key personnel promotes consistency (but leaves fairness untouched). Even where inconsistency remains due to differences among the triads of judge, prosecutor, and defense attorney who hear cases, the source of such inconsistency can be made purposive and discretionary or random.

Lesson 7: Sentences can be increased across the board only if there is excess prison capacity available or if capacity is expanded. Efforts to increase sentences for certain crimes will lead to lower senten-

ces or earlier release for others in the absence of additional prison capacity.

One would think such an obvious lesson would be trivial. It isn't. Our field research uncovered surprisingly little evidence of sensitivity to the importance of this factor, a failing that even a superficial observer of criminal justice in the United State can easily confirm. In the longer run, of course, crowded jails and prisons create demands for increased capacity. Thus, effects of efforts to increase sentences may only appear after prison capacity is increased in response to such pressure. Of course, once new capacity becomes available, The opportunities for greater inconsistency increase. This leads to a final lesson.

Lesson 8: Even successful efforts to change sentencing carry with them significant risks and paradoxes.

Enhancing attainment of one goal may reduce achievement of others. Greater severity can increase inconsistency; efficiency may conflict with severity; greater fairness may reduce both efficiency and consistency. Consequently, the initial formulation of the national Institute of Justice's research solicitation, to consider how courts' efficiency, consistency, and fairness can be modified, presents fundamental inconsistencies and dilemmas that reform efforts can not ignore.

1 For an excellent example of the "individual approach" that focuses upon the attitudes of judges as a means to explain sentences, see John Hogarth, Sentencing As A Human Process (Toronto: University of Toronto Press, 1971).

2 See especially Chapter 5 in James Eisenstein, Peter F. Nardulli, and Roy B. Flemming, "Final Report: Explaining and Assessing Criminal Case Disposition: A Comparative Study of Nine Counties," submitted to the National Institute of Justice, August 1982. The same patterns of severity emerged when sentences for specific crimes (armed robbery, burglary, theft, and possession of hard drugs) were examined in the nine counties.

3 The best means of measuring the degree of consistency in judgments about "going rates" is to present respondents with a set of hypothetical cases and compare their assessment of their worth, the procedure used by Tom Church (see "Who sets the pace of litigation in urban courts," Judicature, 65 (1981), p. 76) to measure case length. But even this technique, relying on hypothetical cases, introduces a degree of artificiality. The ability of researchers to ever measure consensus on going rates, particularly given the constraints on resources and time, is probably rather limited. Conceivably, one could obtain participants' initial assessments of a set of actual cases as they arose. Such research would require an extraordinary degree of cooperation from attorneys and judges, would be difficult to organize and implement, and would require a very large budget and lengthy period of research in the field. Realistically speaking (though theoretically possible) such research probably will never be done.

4 An alternative measure would examine the proportion of just the explained variance accounted for by offense and record. Preliminary results of such an analysis strongly confirm that "going rates" differ in their power to explain

sentences. In Peoria, especially, but in Montgomery, Kalamazoo, and St. Clair as well, they account for a substantial proportion (from 56 percent to 79 percent) of the explained variance.

5 See James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," American Political Science Review, 72 (September 1978), 911-924. He shows that judges who believe their personal views ought not affect sentences appear in fact to sentence without reference to them. In our research, the principal contingent factors are offense seriousness and the personality measure derived from the Machiavellianism scale.

6 For an effort to do so, relying on 29,000 felony cases heard in an urban trial court over six years, see Thomas M. Uhlman and N. Darlene Walker, "He Takes Some of My Time; I Take Some of His: An Analysis of Judicial Sentencing Patterns in Jury Cases," Law and Society Review, 14 (1980), pp. 323-341. See also David Brereton and Jonathon D. Casper, "Does It Pay to Plead Guilty? Differential Sentencing and the Functioning of Criminal Courts," Law and Society Review, 16 (1981-82), pp. 45-70.

7 The clarity of this association is blurred by the fact that Michigan's penal code is harsher than Illinois' or Pennsylvania's. In turn, this may be a function of a more fundamental attribute that produced both.

8 For a detailed analysis of the effect of incarceration capacity on the operation of criminal justice systems, see Roy B. Flemming, Punishment Without Trial (New York: Longman, 1982) and Flemming, Kohfeld, and Uhlman, "The Limits of Bail Reform: A Quasi-Experimental Analysis," Law and Society Review, 14 (1980), pp. 947-976.

9 See for example: James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown, 1977; Peter F. Nardulli, The Courtroom Elite (Cambridge: Ballinger Publishing Co., 1978);

The Vera Institute of Justice, Felony Arrests: Their Prosecution and disposition in New York City's Courts (New York: The Vera Institute of Justice, 1977); Thomas Church et al., Justice Delayed: The Pace of Litigation in Urban Trial Courts (National Center for State Courts, 1978); Milton Heumann, Plea Bargaining: The Experience of Prosecutors, Judges, and Defense Attorneys (Chicago: The University of Chicago Press, 1978); Malcolm Feeley, The Process is the Punishment (forthcoming book); Pamela J. Utz, Settling the Facts: Discretion and Negotiation in Criminal Court (Lexington: D.C. Heath and Co., 1978); James Gibson, "Judges' Role Orientations, Attitudes, Decisions: An Interactive Model," American Political Science Review, 72 (September 1978), 911-924; Steve Flanders, Case management and Court Management in U.S. District Courts (Federal Justice Center, 1977); David Neubauer, Criminal Justice in Middle America (Morristown, N.J.: General Learning Press, 1974); Leif Carter, The Limits of Order (Lexington: Lexington Books, 1974); Georgetown University Law School, Plea Bargaining in the United States (Washington, D.C.: Institute of Criminal Law and Procedure, 1978); Martin Levin, Urban Politics and the Criminal Courts (Chicago: The University of Chicago Press, 1977); and Roy B. Flemming, Punishment Without Trial (New York: Longman, 1982).

10 Such inquiry appears relatively infrequently in the social science, and research on the criminal process is no exception. Perhaps we instinctively avoid such admissions in reaction to possible challenges that have historically been leveled at the social sciences. Skeptics argued that social life and interactions involved such variety and complexity as to make systematic knowledge and valid generalizations possible. Social scientists' responses left little room for admission that complete knowledge was in fact not possible for fear that it would be interpreted as acceptance of the skeptics' position. But such defensiveness, though understandable, carries high costs. Much can be

gained from a middle position that argues we can learn some important and useful things about sentencing in a systematic, reliable, scientific fashion, but that there is much that we cannot know through empirical investigation.

[11] For a summary of these differences, see Chapter Three of this report.

[12] See, for example: Eisenstein and Jacob, op. cit.; Martin Levin, "Urban Politics and Judicial Behavior," The Journal of Legal Studies, I (1972), 473; and Church et al., Justice Delayed (National Center for State Courts, 1978).

[13] For a recent example, see Colin Loftin, Milton Heumann, and David McDowall, "Mandatory Sentencing and Firearms Violence: Evaluating An Alternative to Gun Control," Law and Society Review 17 (1982), pp. 319-336.

APPENDIX I

Background and Career Questionnaire

BACKGROUND AND CAREER
QUESTIONNAIRE

COMPARATIVE FELONY COURT STUDY--
ILLINOIS, MICHIGAN, AND PENNSYLVANIA

James Eisenstein, The Pennsylvania State University
Roy B. Flemming, Wayne State
Peter F. Nardulli, University of Illinois

1. In what year were you born? _____

2. How many years have you lived in this county? _____

3. If you are not a life-long resident of this county, has your residence here largely coincided with your professional career?

   Yes _____ No _____ Life-long resident _____

4. From what law school did you graduate? _____

5. What year did you graduate? _____

6. Since you have been in your present position have you been a member or officer of:

	Member		Officer	
	Yes	No	Yes	No
The American Bar Association	___	___	___	___
American Bar Foundation	___	___	___	___
A state bar association	___	___	___	___
A county bar association	___	___	___	___
American Judicature Society	___	___	___	___
Trial Lawyers Association	___	___	___	___
An occupationally specialized organization (state's attorney, public defender, judge, etc.)	___	___	___	___
A national association of lawyers not listed above	___	___	___	___
A non-national association of lawyers not listed above	___	___	___	___

7. How many of the following organizations do you belong to?

   a. Veterans organizations (American Legion, VFW, Amvets, etc.) _____

   b. Religious organizations (Knights of Columbus, B'nai B'rith, etc.) _____

c. Service organizations (Elks, Lions, Kiwanis, Masons, etc. _____

d. Business organizations (Chamber of Commerce Junior Chamber of Commerce) _____

8. Have you ever been appointed to a public board or commission in this county (fire/police commission, school board, etc.)?

   How many times (mark "0" if none)? _____

9. Excluding your present position, have you ever been elected to a public office (city council, county board, sheriff)?

   How often (mark "0" if none)? _____

10. Have you ever held an office in a local political party?

    How many (mark "0" if none)? _____

11. Have you ever served as a member of a private service oriented board or commission (charitable group, boyscouts, hospital board, etc.)?

    How many (mark "0" if none)? _____

12. Which of the following best describes your partisan political preference?

strong Republican	_____
average Republican	_____
weak Republican	_____
Independent	_____
weak Democrat	_____
average Democrat	_____
strong Democrat	_____
other	_____

FOR JUDGES ONLY

How many years have you been in your present position? _____

Were you initially appointed _____ or elected _____?

Prior to coming on the bench, how many years did you spend in the following capacities?

Private-general practice (noncriminal)	_____
Private-criminal defense practice	_____
Private-other specialized practice Specify: _____	_____
Federal Attorney	_____
Lower court judge (associate or district)	_____
Public defender	_____
Assistant state's attorney	_____
Other state or local capacity Specify: _____	_____

FOR ASSISTANT STATE'S ATTORNEYS AND PUBLIC DEFENDERS ONLY

How many years have you been with this office? _____

Did you join this office immediately after law school? _____

If not, how many years after? _____

Are you full-time _____ part-time _____

Do you envision a career for yourself in some public capacity within the local justice system (i.e., within this office, as a judge, as a public attorney, for some other local governmental capacity)?

Yes	_____
Perhaps	_____
No	_____

If your present position is not your first, mark the years spent in the following capacities:

Private-general practice	_____
Private-specialized practice Specify: _____	_____
Federal attorney	_____
Public defender (for assistant state's attorneys only)	_____

Assistant state's attorney (for assistant public defenders only) _____

Other state or local capacity _____
Specify: _____

_____

FOR PRIVATE DEFENSE ATTORNEY ONLY

How many years have you practiced privately in this county? _____

How many lawyers are in your firm? _____

How much of your current practice do you estimate is accounted for by felony criminal cases in this county? _____ (percent)

Have you ever been an assistant state's attorney? _____

How many years? _____

Have you ever been an assistant public defender? _____

How many years? _____

For office use only

C _____

S _____

R _____

APPENDIX II

Attitudes and Views on Criminal Justice Questionnaire

ATTITUDES AND VIEWS ON

CRIMINAL JUSTICE

COMPARATIVE FELONY COURT STUDY--
ILLINOIS, MICHIGAN, and PENNSYLVANIA

James Eisenstein, The Pennsylvania State University

Roy B. Flemming, Wayne State University

Peter F. Nardulli, University of Illinois

In studying the operations of felony courts it is of some importance to know the views of people who handle felony cases on a day-to-day basis. This is especially important in a comparative study such as this. Because of regional differences across the country views on criminal justice might differ. These differences may affect the overall flow or handling of cases and, hence, are of great importance in this study. This questionnaire is designed to measure some of those differences.

The questionnaire is composed of three different parts. Part I, the longest, involves questions directly touching upon a variety of criminal justice issues (bail, sentencing, plea bargaining, etc.). Part II and III, which are quite short, deal with more general views. In all cases it should be stressed that we are interested in your personal views on these matters. There are no "best answers." Moreover, your opinions are completely confidential.

PART I

Please indicate the extent to which you agree or disagree with the following statements by marking an "x" in the appropriate space. Do not attempt to "read" too much into a statement; first impressions are usually best. After reading each statement, decide if you agree or disagree and how strongly you feel about the issue. Please give your opinion for every statement.

	Strongly Agree	Agree	Disagree	Strongly Disagree
1. Plea bargaining subverts the rights of defendants.				
2. Criminals should be punished for their crime in order to require them to repay their debt to society.				
3. Probation should only be given to first offenders.				
4. In the handling of criminal cases efficiency is important as an end in itself.				
5. Most offenders suffer from personal defects and weaknesses that cannot be overcome without help.				
6. Most of those who advocate rehabilitation of criminals do not attach sufficient weight to the seriousness of the crimes they commit.				
7. Bail should not be used to give any defendant a "taste of jail."				
8. Most criminal behavior is the result of forces largely beyond the control of the offender.				
9. The Supreme Court's decisions of the past 20 years expanding the rights of the defendants are basically sound.				

	Strongly Agree	Agree	Disagree	Strongly Disagree
10. Obedience and respect for authority are the most important virtues children should learn.				
11. The frequent use of probation is wrong because it has the effect of minimizing the gravity of the offense committed.				
12. Most criminal court practices which interfere with the expeditious processing of criminal cases should be modified.				
13. Most people are deterred from crime by the threat of heavy penalties.				
14. In practice, plea bargains produce more just outcomes than jury trials.				
15. A nation which tolerates wide variations in standards of behavior among its members cannot exist for very long.				
16. Defendants who save the state the expense of a trial by pleading guilty should get a break.				
17. It is better to let 10 guilty persons go free than to convict one innocent person.				
18. The failure to punish crime amounts to giving a license to commit it.				
19. Existing Supreme Court decisions protecting the rights of defendants which jeopardize the safety of the community should be curtailed.				
20. The most important single consideration in determining the sentence to impose should be the nature and gravity of the offense.				

	Strongly Agree	Agree	Disagree	Strongly Disagree
21. Handling the administrative challenges involved in my criminal court work is as satisfying as handling the legal challenges.	— —	— — —	— — —	— —
22. Prisons should be places of punishment.	— —	— — —	— — —	— —
23. Most people charged with serious crimes should be kept in jail until their trial, even if they have strong ties to the community.	— —	— — —	— — —	— —
24. It is important to sentence each offender on the basis of his individual needs and not on the basis of the crime he has committed.	— —	— — —	— — —	— —
25. Programs designed to speed up the pace of criminal litigation inevitably produce unjust and improperly hurried resolution of criminal cases.	— —	— — —	— — —	— —
26. The criminal court should be run like a business.	— —	— — —	— — —	— —
27. Criminals should be punished for their crimes whether or not the punishment benefits the criminals.	— —	— — —	— — —	— —
28. Even with a prior record, most people with strong community ties should not be detained prior to trial.	— —	— — —	— — —	— —
29. Jury trials more accurately determine guilt and innocence than plea bargaining.	— —	— — —	— — —	— —
30. Our present treatment of criminals is too harsh.	— —	— — —	— — —	— —

PART II

Listed below are eight statements. Each represents a commonly held opinion and there are no right or wrong answers. You will probably disagree with some items and agree with others. We are interested in the extent to which you agree or disagree with such matters of opinion.

Read each statement carefully. Then indicate the extent to which you agree or disagree in the same manner as in Part I. Again, first impressions are usually the best in such matters.

If you find that the categories provided do not adequately indicate your own opinion, use the one which is closest to the way you feel.

	Strongly Agree	Agree	Disagree	Strongly Disagree
1. The best way to handle people is to tell them what they want to hear.	— —	— — —	— — —	— —
2. One should take action only when sure it is morally right.	— —	— — —	— — —	— —
3. It's safest to assume that all people have a vicious streak and it will come out when they are given a chance.	— —	— — —	— — —	— —
4. When you ask someone to do something for you, it is best to give the real reasons for wanting it rather than giving reasons which carry more weight.	— —	— — —	— — —	— —
5. Anyone who completely trusts anyone else is asking for trouble.	— —	— — —	— — —	— —
6. It is hard to get ahead without cutting corners here and there.	— —	— — —	— — —	— —
7. All in all, it is better to be humble and honest than to be important and dishonest.	— —	— — —	— — —	— —
8. It is wise to flatter important people.	— —	— — —	— — —	— —

PART III

You will find six groups of statements listed below. Each group is composed of three statements. Each statement refers to a way of thinking about people or things in general. They reflect opinions and not matters of fact--there are no "right" or "wrong" answers and different people have been found to agree with different statements.

Please read each of the three statements in each group. Then decide first which of the statements is most true or comes the closest to describing your own beliefs. Circle a plus (+) in the space provided on the answer sheet.

Next decide which of the remaining two statements is most false or is the farthest from your own beliefs. Circle the minus (-) in the space provided on the answer sheet.

Here is an example:

	Most True	Most False
A. It is easy to persuade people but hard to keep them persuaded.	+	-
B. Theories that run counter to common sense are a waste of time.	⊖	-
C. It is only common sense to go along with what other people are doing and not be too different.	+	⊖

In this case, statement B would be the one you believe in most strongly and A and C would be ones that are not as characteristic of your opinion. Statement C would be the one you believe in least strongly and is least characteristic of your beliefs.

You will find some of the choices easy to make; others will be quite difficult. Do not fail to make a choice no matter how hard it may be. You will mark two statements in each group of three--the one that comes the closest to your own beliefs with a + and the one farthest from your beliefs with a -. The remaining statement should be left unmarked.

DO NOT OMIT ANY GROUPS OF STATEMENTS.

		More True	More False
1.	A. Men are more concerned with the car they drive than with the clothes their wives wear.	+	-
	B. It is very important that imagination and creativity in children be cultivated.	+	-
	C. People suffering from incurable diseases should have the choice of being put painlessly to death.	+	-
2.	A. Never tell anyone the real reason you did something unless it is useful to do so.	+	-
	B. The well-being of the individual is the goal that should be worked for before anything else.	+	-
	C. Once a truly intelligent person makes up his mind about the answer to a problem he rarely continues to think about it.	+	-
3.	A. It is a good policy to act as if you are doing the things you do because you have no other choice.	+	-
	B. The biggest difference between most criminals and other people is that criminals are stupid enough to get caught.	+	-
	C. Even the most hardened and vicious criminal has a spark of decency somewhere within him.	+	-
4.	A. A man's first responsibility is to his wife, not his mother.	+	-
	B. Most men are brave.	+	-
	C. It's best to pick friends that are intellectually stimulating rather than ones it is comfortable to be around.	+	-

		More True	More False
5.	A. It is best to give others the impression that you can change your mind easily.	+	-
	B. It is a good working policy to keep on good terms with everyone.	+	-
	C. Honesty is the best policy in all cases.	+	-
6.	A. Barnum was probably right when he said that there's one sucker born every minute.	+	-
	B. Life is pretty dull unless one deliberately stirs up some excitement.	+	-
	C. Most people would be better off if they controlled their emotions.	+	-

APPENDIX III

Criteria Sheets for Q-Sort Rankings of Operating Styles

PLEASE INDICATE HOW FAMILIAR ARE YOU WITH THE LOCAL JUDGES' STYLE AND BEHAVIOR IN HANDLING A CRIMINAL CASE.

5 COMPLETELY UNFAMILIAR

4

3

2

VERY FAMILIAR 1

IS IT EASY OR DIFFICULT TO TALK TO THIS JUDGE INFORMALLY WITH OPPOSING COUNSEL ABOUT THE DISPOSITION OF CASES?

5 VERY DIFFICULT

4

3

2

1 VERY EASY

HOW ACTIVE A ROLE DOES THIS JUDGE PLAY IN SEEKING TO AFFECT WHETHER A CASE WILL BE TRIED, DISMISSED, OR PLED?

5 COMPLETELY INACTIVE

4

3

2

VERY ACTIVE 1

WITHOUT GETTING ANY DIRECT INDICATION FROM HIM, HOW WELL CAN YOU PREDICT WHAT THIS JUDGE'S SENTENCE WILL BE IN A CASE JUST FROM THE OFFENSE, EVIDENCE, AND DEFENDANT'S CHARACTERISTICS?

5 CANNOT PREDIC VERY WELL

4

3

2

PREDICT VERY WELL 1

SOME JUDGES DISLIKE AND TRY TO AVOID TRIALS IN EVERY CASE; OTHERS SEEM TO ENJOY THEM. WHAT ABOUT THIS JUDGE?

5 ACTIVELY SEEKS TO TRY CASES

4

3

2

1 ACTIVELY AVOIDS ALL TRIALS IF AT ALL POSSIBLE

WHAT IS YOUR OPINION OF THEIR WILLINGNESS TO BE ACCOMMODATING AND HELPING YOU DEAL WITH THE PROBLEMS AND PRESSURES YOU FACE?

5 NOT AT ALL ACCOMMODATING

4

3

2

VERY ACCOMMODATING 1

CONTINUED

TO WHAT DEGREE CAN THIS JUDGE BE PURSUADED TO CHANGE A DECISION OR ACCEPT AN ARGUMENT INITIALLY REJECTED?

5 CAN PRACTICAL NEVER BE PERSUADED

4

3

2

CAN BE PERSUADED QUITE EASILY 1

IF I WERE A JUDGE, I WOULD HANDLE CRIMINAL CASES PRETTY MUCH THE WAY THIS INDIVIDUAL DOES.

5 STRONGLY DISAGREE

4

3

2

1 STRONGLY AGREE

SOME JUDGES WORRY VERY MUCH ABOUT WHETHER THEIR DOCKET IS CURRENT:
OTHERS DO NOT SEEM TO CARE MUCH. HOW ABOUT THIS JUDGE?

5 NOT AT ALL CONCERNED

4

3

2

VERY CONCERNED 1

PLEASE INDICATE HOW FAMILIAR ARE YOU WITH THESE ATTORNEYS' STYLE AND BEHAVIOR IN HANDLING A CRIMINAL CASE?

5 COMPLETELY UNFAMILIAR

4

3

2

VERY FAMILIAR 1

WHAT IS YOUR OPINION OF EACH'S ABILITY TO TRY A CASE BEFORE A JURY?

5 NOT REALLY VERY COMPETENT IN TRIAL

4

3

2

EXTREMELY COMPETENT TRIAL ATTORNEY 1

WHAT IS YOUR OPINION OF THE RELIABILITY OF INFORMATION ABOUT CASES EACH GIVES YOU AND THEIR RECORD IN KEEPING VERBAL COMMITMENTS?

5 NOT AT ALL TRUSTWORTHY

4

3

2

COMPLETELY TRUSTWORTHY 1

HOW COMFORTABLE ARE YOU DISCUSSING FULLY AND FRANKLY IN AN INFORMAL SETTING HOW A CASE THIS ATTORNEY HAS OUGHT TO BE DISPOSED OF.

5 VERY UNCOMFORTABLE

4

3

2

VERY COMFORTABLE 1

WHAT IS YOUR OPINION OF THEIR WILLINGNESS TO BE ACCOMMODATING AND HELPING YOU DEAL WITH THE PROBLEMS AND PRESSURES YOU FACE?

5 NOT AT ALL ACCOMMODATING

4

3

2

VERY ACCOMMODATING 1

HOW WELL CAN YOU PREDICT WHAT EACH WILL DO IN HANDLING A CASE?

5 NOT AT ALL PREDICTABLE

4

3

2

EXTREMELY PREDICTABLE 1

MY JOB WOULD BE MUCH MORE DIFFICULT IF I DEVELOPED VERY BAD PERSONAL RELATIONS WITH THIS ATTORNEY.

5 COMPLETELY DISAGREE

4

3

2

AGREE COMPLETELY 1

IF I WERE COUNSEL, I WOULD HANDLE MY CASES AND CLIENTS PRETTY MUCH LIKE THIS ATTORNEY DOES.

5 STRONGLY DISAGREE

4

3

2

STRONGLY AGREE 1

APPENDIX IV

Attitudes and Views on the
Local Court System Questionnaire

ATTITUDES AND VIEWS ON
THE LOCAL CRIMINAL COURT SYSTEM

COMPARATIVE FELONY COURT STUDY--
ILLINOIS, MICHIGAN, AND PENNSYLVANIA

James Eisenstein, The Pennsylvania State University
Roy B. Flemming, Wayne State University
Peter F. Nardulli, University of Illinois

For each of the questions below, please indicate your opinion about how things ought to work in this county regardless of how things actually work.

	strongly agree	agree	disagree	strongly disagree
It is improper for judges to participate actively with defense and prosecution in plea negotiations.	— —	— — —	— — —	— —
Judges should never indicate what sentence they would impose before a guilty plea is entered.	— —	— — —	— — —	— —
Attorneys in criminal cases should not expect to be able to rely on the word of opposing counsel.	— —	— — —	— — —	— —
Prosecutors should require defense counsel to file motions to obtain relevant information rather than turning it over informally.	— —	— — —	— — —	— —
When a prosecutor or defense attorney faces a scheduling problem or other work pressure, opposing counsel should go out of his way to be accommodating.	— —	— — —	— — —	— —
Judges and prosecutors should not do anything to help retained defense attorneys collect their fees.	— —	— — —	— — —	— —
Defense counsel should conduct "no holds barred" cross examination of police as a matter of routine practice.	— —	— — —	— — —	— —
In scheduling hearings and trials and enforcing filing deadlines, judges should go out of their way to accommodate the prosecutor and defense counsel.	— —	— — —	— — —	— —
	agree strongly	agree	disagree	disagree strongly

In answering the following questions, please indicate what actually happens in your experience, regardless of what you think ought to happen or what you think happens when others handle criminal cases in this county.

	describes county very well	describes county fairly well	describes county not too well	describes county not at all
Judges do not participate actively with defense and prosecution in plea negotiations.	— —	— — —	— — —	— —
Judges never indicate what sentence they will impose before a guilty plea is entered.	— —	— — —	— — —	— —
Attorneys in criminal cases cannot rely on the word of opposing counsel.	— —	— — —	— — —	— —
Prosecutors require defense counsel to file motions to obtain relevant information rather than turning it over informally.	— —	— — —	— — —	— —
When a prosecutor or defense attorney faces a scheduling problem or other work pressure, opposing counsel goes out of his way to be accommodating.	— —	— — —	— — —	— —
Judges and prosecutors do nothing to help retained defense attorneys collect their fees.	— —	— — —	— — —	— —
Defense counsel conduct "no holds barred" cross examination of police as a matter of routine practice.	— —	— — —	— — —	— —
In scheduling hearings and trials and enforcing filing deadlines, judges go out of their way to accommodate the prosecutor and defense counsel.	— —	— — —	— — —	— —
	describes county very well	describes county fairly well	describes county not too well	describes county not at all

APPENDIX V

Comparative Criminal Court Study File Form

COMPARATIVE CRIMINAL COURT STUDY
FILE FORM

NAME (ONLY IN JURIS WHERE NEEDED) _____

CLERK'S INFORMATION IS COMPLETE YES NO

NEEDS INFORMATION ON _____

PROSECUTOR'S INFORMATION IS COMPLETE YES NO

NEEDS INFORMATION ON _____

QUESTIONS ON _____

HAS BEEN CHECKED YES NO CODER _____

ID INFORMATION

		COLS.
ID01	DECK.....01	1-2
ID02-4	DEFENDANT ID#..(YEAR,CASE,DEFENDANT)..._ _ _ _ _ _	3,4-8,9
ID05	COUNTY..._	10
ID05A	SAMPLE	11
	REGULAR.....1	
	SPECIAL.....2	

PARTICIPANT CHARACTERISTICS

P01 COMPLAINANT INFORMATION (PRIMARY COMPLAINANT) 12

NUMBER OF COMPLAINANTS (CODE DIRECT)..._
8 OR MORE..... 8
MISSING..... 9

P02 TYPE OF PRIMARY COMPLAINANT 13
INDIVIDUAL, NOT A POLICEMAN..... 1
A POLICEMAN..... 2
CORPORATION OR INSTITUTION..... 3
A NONCOMMERCIAL ENTITY (NOT PROFITMAKING)..... 4
UNCLEAR..... 5
MISSING..... 9

P03 SEX 14
MALE..... 0
FEMALE..... 1
NOT RELEVANT..... 8
MISSING..... 9

P04 YEAR OF BIRTH (LAST TWO DIGITS)..__ 15-16
NOT RELEVANT (HAVE AGE).....88
DON'T KNOW.....99

P05 AGE OR ESTIMATED AGE..__ 17-18
97 OR OLDER.....97
NOT RELEVANT (HAVE DOB).....98
MISSING.....99

P06 IS AGE ESTIMATED? 19
NO..... 0
YES..... 1
NOT RELEVANT..... 8

P07 RACE 20
WHITE..... 0
BLACK..... 1
LATINO..... 2
OTHER..... 3
NOT RELEVANT..... 8
MISSING..... 9

SOCIAL CHARACTERISTICS OF DEFENDANT

P08 SEX — 21
- MALE..... 0
- FEMALE..... 1
- NOT RELEVANT..... 8
- MISSING..... 9

P09 YEAR OF BIRTH..... __ — 22-23
- NOT RELEVANT (HAVE AGE)..... 88
- DON'T KNOW..... 99

P10 AGE OR ESTIMATED AGE — 24-25
- CODE DIRECT..... __
- 97 OR OLDER..... 97
- NOT RELEVANT..(HAVE DOB)..... 98
- MISSING..... 99

P11 IS AGE ESTIMATED? — 26
- NO..... 0
- YES..... 1
- NOT RELEVANT..... 8
- MISSING..... 9

P12 RACE — 27
- WHITE..... 0
- BLACK..... 1
- LATINO..... 2
- OTHER..... 3
- NOT RELEVANT..... 8
- MISSING..... 9

P13 MARITAL STATUS — 28
- SINGLE..... 0
- MARRIED..... 1
- DIVORCED OR SEPARATED..... 2
- OTHER..... 3
- DON'T KNOW..... 9

P14 WAS D EMPLOYED AT THE TIME OF HIS ARREST — 29
- NO..... 1
- YES..... 2
- YES, PARTTIME..... 3
- NOT RELEVANT (A STUDENT)..... 8
- DON'T KNOW..... 9

P15 TYPE OF OCCUPATION — 30
- LABORERS..... 1
- SERVICE WORKERS..... 2
- OPERATIVES - FACTORY WORKERS..... 3
- CLERICAL WORKERS..... 4
- SKILLED LABORERS, CRAFTSMEN..... 5
- PROFESSIONAL - MANAGERIAL..... 6
- STUDENT..... 7
- NOT RELEVANT (NO OCCUPATION)..... 8
- DON'T KNOW..... 9

P16 DOES IT APPEAR THAT THE DEFENDANT — 31
- NEVER COMPLETED ELEMENTARY SCHOOL..... 1
- NEVER COMPLETED HIGH SCHOOL..... 2
- COMPLETED HIGH SCHOOL..... 3
- HAD TRAINING OR EDUCATION BEYOND HIGH SCHOOL..... 4
- NOT RELEVANT (IS PRESENTLY A STUDENT)..... 8
- DON'T KNOW, MISSING..... 9

P17 DEFENDANT'S CRIMINAL RECORD — 32-39
- GENERAL STATE INDEX #..... ________
- NOT RELEVANT (INFORMATION AVAILABLE ALREADY)..88888888
- DON'T KNOW..... 99999999

P18 NUMBER OF PRIOR ARRESTS..(CODE DIRECT)..... __ — 40-41
- EVIDENCE OF SOME BUT DON'T KNOW HOW MANY..... 98
- MISSING, DON'T KNOW..... 99

P19 NUMBER OF PRIOR CONVICTIONS..(CODE DIRECT)..... _ — 42
- 7 OR MORE..... 7
- EVIDENCE OF SOME BUT DON'T KNOW HOW MANY..... 8
- MISSING, DON'T KNOW..... 9

P20 NUMBER OF PRIOR JAIL COMMITTMENTS..(CODE DIRECT)..... _ — 43
- 7 OR MORE..... 7
- EVIDENCE OF SOME BUT DON'T KNOW HOW MANY..... 8
- MISSING, DON'T KNOW..... 9

P21 NUMBER OF PRIOR PENITENTIARY COMMITTMENTS..(CODE DIRECT) _ — 44
- 7 OR MORE..... 7
- EVIDENCE OF SOME BUT DON'T KNOW HOW MANY..... 8
- MISSING, DON'T KNOW..... 9

P22 IS DEFENDANT PRESENTLY ON — 45
- PROBATION..... 1
- PAROLE..... 2
- ONE OR THE OTHER (UNCERTAIN OF WHICH)..... 3
- NEITHER..... 4
- DON'T KNOW..... 9

EXISTENCE OF A PRIOR RELATIONSHIP

P23 IS THERE ANY EVIDENCE OF A PRIOR RELATIONSHIP BETWEEN AT LEAST ONE VICTIM AND AT LEAST ONE PERPETRATOR? — 46
- YES..... 0
- NO..... 1
- NOT RELEVANT..... 8
- MISSING..... 9

P24 TYPE OF PRIOR RELATIONSHIP — 47-48
- SPOUSE..... 1
- EX-SPOUSE..... 2
- LOVERS (BOYFRIEND - GIRLFRIEND)..... 3
- PARENT - CHILD..... 4
- BROTHER - SISTER..... 5
- FRIENDS..... 6
- NEIGHBOR..... 7
- FELLOW EMPLOYEES..... 8
- RECURRENT BUSINESS ASSOCIATE..... 9
- CASUAL BUSINESS ASSOCIATE..... 10
- CASUAL ACQUAINTANCE..... 11
- EMPLOYER - EMPLOYEE..... 12
- LANDLORD - TENANT..... 13
- OTHER (SPECIFY)..... 14
- NOT RELEVANT (NO RELATIONSHIP)..... 88
- DON'T KNOW..... 99

INFORMATION ON INCIDENT

GENERAL INFORMATION ON SERIOUSNESS

INC01 IS THERE EVIDENCE OF INTOXICATION(INDUCED BY ALCOHOL AND/OR DRUGS)? — 49
- NO..... 0
- YES..... 1
- YES (UNCERTAIN HOW MUCH)..... 3
- DON'T KNOW..... 9

INC02-INC03 TYPE OF WEAPON (RECORD 2 MOST SERIOUS ONLY) — 50,51
- RIFLE, SHOTGUN, PISTOL..... 1 1
- KNIFE, SHARP INSTRUMENT..... 2 2
- BLUNT INSTRUMENT..... 3 3
- CHEMICALS OR EXPLOSIVES..... 4 4
- ARMS, LEGS, FEET, FISTS..... 5 5
- FEIGNED WEAPON..... 6 6
- NONE..... 7 7
- MISSING..... 9 9

INC04 USE OF WEAPON — 52
- WEAPON USED BY DEFENDANT TO INJURE/KILL VICTIM.... 1
- WEAPON PRESENT AND USED BY DEFENDANT TO THREATEN VICTIM..... 2
- WEAPON PRESENT ON DEFENDANT BUT NOT THREATENED.... 3
- WEAPON PRESENT ON DEFENDANT/USE UNCLEAR..... 4
- DEFENDANT FEIGNED WEAPON..... 5
- WEAPON USED BY CODEFENDAN/ACCOMPLICE..... 6
- WEAPON IN POSSESSION OF CODEFENDANT/ACCOMPLICE.... 7
- NO WEAPON INVOLVED..... 8
- MISSING/DON'T KNOW..... 9

INC05 WAS ARRESTING OFFICER ASSAULTED? 53
NO 1
YES, BUT NOT INJURED SERIOUSLY (CUTS,BRUISES) 2
YES, AND INJURED 3
DON'T KNOW 9

INC06 HOW MANY DEFENDANTS WERE INVOLVED? 54
CODE DIRECT _
8 OR MORE 8
DON'T KNOW 9

INC07 TIME OF INCIDENT _ _ _ _ 55-58
DON'T KNOW 9999

INC08 DAY OR NIGHT 59
AM 0
PM 1
NOT RELEVANT 9

INC09 LOCATION OF INCIDENT 60
PRIVATE RESIDENCE 1
COMMERCIAL ESTABLISHMENT 2
INDUSTRIAL BUILDING 3
STREET, ALLEY, PARKING LOT 4
PUBLIC PARK OR RECREATION AREA 5
OTHER PUBLIC AREA 6
OTHER PRIVATE AREA 7
NOT RELEVANT 8
DON'T KNOW 9

OFFENSES AGAINST PERSONS

INC10 EXTENT OF INJURY TO VICTIM 61
DEATH 1
SERIOUS BODILY INJURY-PERMANENT DAMAGE 2
INJURY REQUIRING HOSPITALIZATION, NON-PERMANENT DAMAGE 3
INJURY REQUIRING EMERGENCY HOSPITAL TREAMENT 4
SLIGHT INJURY, NO HOSPITAL TREATMENT REQUIRED 5
NO INJURY 7
NO PERSONAL VICTIM 8
MISSING/DON'T KNOW 9

INC11 IS THERE ANY INDICATION THAT THE ISSUE OF VICTIM PROVOCATION WAS RAISED? 62
YES 1
NO 2
NO PERSONAL VICTIM 8
MISSING/DON'T KNOW 9

OFFENSES AGAINST PROPERTY

INC12 VALUE OR ESTIMATED VALUE OF PROPERTY STOLEN OR DAMAGED (CODE IN 10'S) ($10=1; $100=10; ETC.) _ _ _ _ 63-66
MORE THAN $99,970 9997
NOT RELEVANT 9998
MISSING 9999

INC13 IS VALUE OF PROPERTY STOLEN ESTIMATED? 67
NO 0
YES 1
NOT RELEVANT 8

INC14 WAS VICTIM PRESENT? 68
NO 0
YES 1
NOT RELEVANT 8
DON'T KNOW 9

INC15 IF INCIDENT INVOLVED FRAUD OR DECEPTION, DOES IT APPEAR TO BE PART OF A CONTINUING SCHEME? 69
YES, ORGANIZED SCHEME 1
YES, LONE OPERATOR 2
YES, UNCERTAIN WHICH 3
NO, ISOLATED INCIDENT 4
NOT RELEVANT 8
DON'T KNOW 9

DRUG OFFENSES

INC16 TYPE OF DRUG INVOLVED 70-71
MARIJUANA (CANNABIS) 1
LSD - OTHER HALLUCINOGENICS 2
HEROIN - OTHER OPIATES 3
COCAINE 4
AMPHETAMINES - OTHER STIMULANTS 5
BARBITUATES - OTHER DEPRESSANTS 6
PCP - ANGEL DUST 7
OTHER #1 8
OTHER #2 9
NOT RELEVANT 88
DON'T KNOW 99

INC17 AMOUNT OF DRUGS 72-76
CODE DIRECT _ _ _ . _
99 OR MORE 999.0
NOT RELEVANT 998.0
DON'T KNOW 999.0

INC18 IS THE AMOUNT MEASURED IN 77
OUNCES 1
GRAMS 2
POUNDS 3
ITEMS (SUCH AS JOINTS, PILLS) 4
OTHER#1 5
OTHER #2 6
NOT RELEVANT 8
DON'T KNOW 9

D06 DECK # 02 1-2

D07-09 DEFENDANT ID (YEAR, CASE, DEFENDANT) _ _ _ _ _ _ 3,4-8,9

D10 COUNTY 10

EVIDENCE

V01 HOW MANY PEOPLE DOES IT APEAR CAN IDENTIFY THE PERPETRATOR? 11
CODE DIRECT _
NO ONE 0
7 OR MORE 7
NOT RELEVANT 8
MISSING 9

V02-EV04 WHO WERE THESE WITNESSES? 12,13, 14
THE VICTIM 1 1 1
FRIENDS OR RELATIVES OR EMPLOYEES OF VICTIM 2 2 2
UNACQUAINTED BYSTANDER 3 3 3
POLICE 4 4 4
CO-CONSPIRATOR (SOMEONE INVOLVED IN CRIME) 5 5 5
OTHER 6 6 6
NOT RELEVANT (NO EYE WITNESSES) 8 8 8
DON'T KNOW 9 9 9

V05 HOW MANY WITNESSES ACTUALLY MADE POSITIVE I.D.? (ON SCENE, PHOTO ID, LINE UP, ETC.)? 15
CODE DIRECT _
7 OR MORE 7
NOT RELEVANT (NO WITNESSES) 8
MISSING 9

V06-EV10 WHAT PHYSICAL EVIDENCE WAS AVAILABLE? 16,17, 18,19, 20
CONTROLLED SUBSTANCES 0 0 0 0 0
FINGERPRINTS 1 1 1 1 1
PROCEEDS FROM THEFT, ETC.,DAMAGED PROPERTY 2 2 2 2 2
MATERIALS USED TO DEFRAUD OR DECEIVE 3 3 3 3 3
INCRIMINATING POLYGRAPH RESULTS 4 4 4 4 4
WEAPON USED TO COMMIT CRIME 5 5 5 5 5
TOOLS USED TO COMMIT CRIME (INCLUDING HYPO NEEDLE,BURGLARY TOOLS) 6 6 6 6 6
OTHER 7 7 7 7 7
NOT RELEVANT (NONE) 8 8 8 8 8
DON'T KNOW 9 9 9 9 9

EV11-EV13	WAS THE 1ST (2ND, 3RD) PIECE OF EVIDENCE DIRECTLY TIED TO A SUSPECT.....1 1 1 INDIRECTLY TIED TO A SUSPECT.....2 2 2 NOT TIED TO A SUSPECT.....3 3 3 NOT RELEVANT (NO EVIDENCE).....8 8 8 DON'T KNOW.....9 9 9	21,22,23
EV14	WERE THERE MORE THAN THREE INDEPENDENT PIECES OF PHYSICAL EVIDENCE? YES.....0 NO.....1 NOT RELEVANT (NONE).....8 DON'T KNOW.....9	24
EV15	WERE LAB TESTS CONDUCTED FOR DRUG OFFENSE? NO..... 1 YES, RESULTS WERE NEGATIVE..... 2 YES, RESULTS WERE POSITIVE..... 3 NOT RELEVANT ..... 8 DON'T KNOW..... 9	25
EV16	WAS AN INCRIMINATING STATEMENT MADE BY THE SUSPECT? YES, ADMITTED CRIME..... 1 YES, BUT ONLY DAMAGING STATEMENT..... 2 NO..... 3 DON'T KNOW..... 9	26
EV17	DID A SUSPECT OFFER ANY ALIBIS? YES..... 0 NO..... 1 DON'T KNOW..... 9	27

INFORMATION ON PROCESS

ARREST

DATE OF ARREST

AR01	MONTH (CODE DIRECT).....__ MISSING.....99	28-29
AR02	DAY (CODE DIRECT).....__ MISSING.....99	30-31
AR03	YEAR(CODE LAST TWO DIGITS).....__ MISSING.....99	32-33
	ARRESTING DEPARTMENT	
AR04	(CONSTRUCT A LIST).....__ DON'T KNOW.....99	34-35
AR05	TOTAL NUMBER OF CHARGES (CODE DIRECT)..... _ 8 OR MORE..... 8 DON'T KNOW..... 9	36
AR06	FIRST OFFENSE.....- - - - - - - - - - (CHAPTER, SECTION, SUBSECTION (NUMERICAL ONLY), SUBSECTION (ALL ALPHABETICS)) MISSING - DON'T KNOW 999 9999 99 9	37-46
AR07	SECOND OFFENSE.....- - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING DON'T KNOW.....999 9999 99 9	47-56
AR08	THIRD OFFENSE.....- - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING DON'T KNOW.....999 9999 99 9	57-66
AR09	FOURTH OFFENSE.....- - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING DON'T KNOW.....999 9999 99 9	67-76
AR10	PROSECUTOR ISSUING THE WARRANT.....__ DON'T KNOW.....99	77-78

ID11	DECK#.....03	1-2
ID12-14	DEFENDANT ID # (YEAR, CASE, DEFENDANT)_ - - - - - -	3,4-8,9
ID15	COUNTY .....-	10

INFORMATION ON BAIL

B01	DATE INITIAL BAIL WAS SET MONTH (CODE DIRECT).....__ MISSING.....99	11-12
B02	DAY (CODE DIRECT).....__ MISSING.....99	13-14
B03	YEAR (CODE LAST TWO DIGITS).....__ MISSING.....99	15-16
B04	TYPE OF BAIL ROR..... 10% DEPOSIT..... 1 SURETY..... 2 REFUSAL OF BAIL..... 3 CASH..... 4 CASH OR SURETY..... 5 OTHER..... 6 DON'T KNOW..... 7 9	17
B05	IF MONETARY BAIL WAS SET WHAT WAS AMOUNT (CODE IN $10).....- - - - $99,970 OR MORE.....9997 NOT RELEVANT.....9998 DON'T KNOW.....9999	18-21
B06	DATE UPON WHICH DEFENDANT WAS RELEASED ON THIS BAIL MONTH(CODE DIRECT).....__ NOT RELEVANT (D WAS NOT RELEASED ON THIS BAIL).....88 MISSING.....99	22-23
B07	DAY (CODE DIRECT).....__ NOT RELEVANT.....88 MISSING.....99	24-25
B08	YEAR (CODE LAST TWO DIGITS).....__ NOT RELEVANT.....88 MISSING.....99	26-27
B09	JUDGE AT INITIAL BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER)..... DON'T KNOW..... 99	28-29
B10	PROSECUTOR AT INITIAL BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER)..... NONE PRESENT..... 88 DON'T KNOW..... 99	30-31
B11	DEFENSE ATTORNEY AT INITIAL BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER)..... NONE PRESENT..... 88 DON'T KNOW..... 99	32-33
B12	DEFENSE ATTORNEY TYPE PUBLIC DEFENDER..... 1 RETAINED PRIVATE ATTORNEY..... 2 APPOINTED PRIVATE ATTORNEY..... 3 NO DEFENSE ATTORNEY..... 4 DON'T KNOW..... 9	34
B13	WAS THERE A SUBSEQUENT BAIL HEARING AT WHICH BAIL STATUS CHANGED? YES..... NO (LEAVE COL. 36 TO 59 BLANK).....0 UNCETAIN.....1 9	35
B14	IF THERE WAS A SUBSEQUENT BAIL HEARING AT WHICH BAIL STATUS CHANGED DATE OF THIS HEARING MONTH (CODE DIRECT).....__ NOT RELEVANT.....88 MISSING.....99	36-37

B15	DAY (CODE DIRECT).....__ NOT RELEVANT.....88 MISSING.....99	38-39
B16	YEAR (CODE LAST TWO DIGITS).....__ NOT RELEVANT.....88 MISSING.....99	40-41
B17	TYPE OF ACTION TAKEN ROR GRANTED..... 1 AMOUNT CHANGED..... 2 10% BOND SUBSTITUTED..... 3 SURETY BOND SUBSTITUTED..... 4 BAIL WITHDRAWN..... 5 CASH BOND SUBSTITUTED..... 6 OTHER..... 7 NOT RELEVANT..... 8 MISSING..... 9	42
B18	IF MONETARY BAIL WAS CHANGED WHAT WAS NEW AMOUNT (CODE IN $10)..... _ $99,970 OR MORE.....9997 NOT RELEVANT.....9998 DON'T KNOW.....9999	43-46
	DATE UPON WHICH DEFENDANT WAS RELEASED OR CONFINED ON THIS BAIL	
B19	MONTH (CODE DIRECT).....__ NOT RELEVANT (D NOT RELEASED OR CONFINED ON THIS BAIL).....88 MISSING.....99	47-48
B20	DAY (CODE DIRECT).....__ NOT RELEVANT.....88 MISSING.....99	49-50
B21	YEAR (CODE LAST TWO DIGITS).....__ NOT RELEVANT.....88 MISSING.....99	51-52
B22	JUDGE AT THIS BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER).....__ SAME AS AT PREVIOUS STAGE.....00 DON'T KNOW.....99	53-54
B23	PROSECUTOR AT THIS BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER).....__ SAME AS AT PREVIOUS STAGE.....00 NONE.....88 DON'T KNOW.....99	55-56
B24	DEFENSE ATTORNEY AT THIS BAIL HEARING CODE DIRECT (USE PERSONNEL ROSTER).....__ SAME AS AT PREVIOUS STAGE.....00 NONE.....88 DON'T KNOW.....99	57-58
B25	DEFENSE ATTORNEY TYPE PUBLIC DEFENDER..... 1 RETAINED PRIVATE ATTORNEY..... 2 APPOINTED PRIVATE ATTORNEY..... 3 NONE..... 4 DON'T KNOW..... 9	59
B26	WAS THERE ANY BOND RELATED INCIDENT NOT COVERED IN THE ABOVE QUESTIONS IN WHICH THE DEFENDANT'S BOND WAS REVOKED AND HE WAS INCARCERATED..... 1 THE DEFENDANT WAS RELEASED FROM CUSTODY..... 2 NEITHER OF THE ABOVE..... 8 DON'T KNOW, UNSURE..... 9	60
	INFORMATION ON LOWER COURT PROCEEDINGS	
LC01	TOTAL # OF CHARGES (CODE DIRECT)..... _ DON'T KNOW..... 9	61
LC02	CHARGES AT LOWER COURT STAGE IDENTICAL TO THOSE AT PREVIOUS STAGE YES..(LEAVE COL.63 TO 72 BLANK AND 11 TO 40)..... 0 NO..... 1 DON'T KNOW..... 9	62

LC03	FIRST OFFENSE.....- - - - - - - - - - - - (CHAPTER, SECTION, SUBSECTION (NUMERICAL) SUBSECTION (ALL ALPHABETICALS)) MISSING, DON'T KNOW.....999 9999 99 9	63-72
ID16	DECK #.....04	1-2
ID17-19	DEFENDANT ID# (YEAR, CASE, DEFENDANT).....- - - - - - - -	3,4-8,9
ID20	COUNTY	10
LC04	SECOND OFFENSE.....- - - - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING, DON'T KNOW.....999 9999 99 9	11-20
LC05	THIRD OFFENSE.....- - - - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING, DON'T KNOW.....999 9999 99 9	21-30
LC06	FOURTH OFFENSE.....- - - - - - - - - - - - SAME AS ABOVE.....000 0000 00 0 NOT RELEVANT.....888 8888 88 8 MISSING, DON'T KNOW.....999 9999 99 9	31-40
LC07	DATE OF FIRST APPEARANCE MONTH.....__ NOT RELEVANT.....88 DON'T KNOW.....99	41-42
LC08	DAY .....__ NOT RELEVANT.....88 DON'T KNOW.....99	43-44
LC09	YEAR.....__ NOT RELEVANT.....88 DON'T KNOW.....99	45-46
LC10	NUMBER OF APPEARANCES CODE DIRECT..... _ MORE THAN 7..... 8 DON'T KNOW..... 9	47
LC11	DATE OF LOWER COURT FINAL DISPOSITION MONTH.....__ NOT RELEVANT.....88 DON'T KNOW.....99	48-49
LC12	DAY.....__ NOT RELEVANT.....88 DON'T KNOW.....99	50-51
LC13	YEAR.....__ NOT RELEVANT.....88 DON'T KNOW.....99	52-53

LC14-LC17 DISPOSITIONS AT LOWER COURT.....	1	CHARGE# 2	3	4	
					54-55
					56-57
DISMISSED BY ORDER OF JUDGE.....	1	1	1	1	58-59
DISMISSED BY MOTION OF PROSECUTION.....	2	2	2	2	60-61
DISMISSED FOR WANT OF PROSECUTION.....	3	3	3	3	
ADQUITTED AFTER MISDEMEANOR TRIAL.....	4	4	4	4	
CONVICTED AFTER MISDEMEANOR TRIAL.....	5	5	5	5	
GUILTY PLEA TO MISDEMEANOR.....	6	6	6	6	
GUILTY PLEA TO FELONY.....	7	7	7	7	
SENT TO GRAND JURY OR TRIAL COURT.....	8	8	8	8	
ARD.....	9	9	9	9	
JUMPED BAIL.....	10	10	10	10	
PRELIMINARY HEARING WAIVED.....	11	11	11	11	
PRELIMINARY HEARING NOT CONDUCTED (INDICTED FIRST).....	12	12	12	12	
TAKEN UNDER ADVISEMENT.....	13	13	13	13	
OTHER.....	14	14	14	14	
NOT RELEVANT.....	88	88	88	88	
DON'T KNOW.....	99	99	99	99	

LC18	JUDGE AT LOWER COURT DISPOSITION	62-63
	CODE DIRECT..... __	
	SAME AS AT BAIL STAGE..... 00	
	DON'T KNOW..... 99	
LC19	PROSECUTOR AT LOWER COURT DISPOSITION	64-65
	CODE DIRECT..... __	
	SAME AS AT BAIL STAGE..... 00	
	DON'T KNOW..... 99	
LC20	DEFENSE ATTORNEY AT LOWER COURT DISPOSITION	66-67
	CODE DIRECT..... __	
	SAME AS AT BAIL STAGE..... 00	
	NOT RELEVANT, NONE PRESENT..... 88	
	DON'T KNOW..... 99	
LC21	DEFENSE ATTORNEY TYPE	68
	PUBLIC DEFENDER..... 1	
	RETAINED PRIVATE ATTORNEY..... 2	
	APPOINTED PRIVATE ATTORNEY..... 3	
	NO ATTNY..... 4	
	DON'T KNOW..... 9	

INFORMATION ON GRAND JURY STAGE

	DATE OF GRAND JURY DISPOSITION	
GJ01	MONTH.....__	69-70
	NOT RELEVANT.....88	
	DON'T KNOW.....99	
GJ02	DAY.....__	71-72
	NOT RELEVANT..... 88	
	DON'T KNOW..... 99	
GJ03	YEAR.....__	73-74
	NOT RELEVANT..... 88	
	DON'T KNOW..... 99	
GJ04	DISPOSITION	75
	TRUE BILL..... 1	
	NO TRUE BILL..... 2	
	OTHER..... 3	
	NOT RELEVANT..... 8	
	DON'T KNOW..... 9	
ID21	DECK #.....05	1-2
ID22-24	DEFENDANT ID# (YEAR, CASE, DEFENDANT)..... _ _ _ _ _ _	3,4-8,9
ID25	COUNTY ..... _	10

INFORMATION ON TRIAL COURT PROCEEDINGS

TC01	TOTAL # OF CHARGES (CODE DIRECT)..... _	11
	DON'T KNOW..... 9	
TC02	ARE CHARGES AT TRIAL COURT STAGE IDENTICAL TO THOSE AT PREVIOUS STAGE?	12
	YES..(LEAVE COL. 13 TO 52 BLANK)..... 0	
	NO..... 1	
	DON'T KNOW..... 9	
TC03	FIRST OFFENSE..... _ _ _ _ _ _ _ _ _ _	13-22
	(CHAPTER, SECTION, SUBSECTION (NUMERICAL ONLY), SUBSECTION (ALL ALPHABETICALS))	
	MISSING, DON'T KNOW.....999 9999 99 9	
TC04	SECOND OFFENSE..... _ _ _ _ _ _ _ _ _ _	23-32
	SAME AS ABOVE.....000 0000 00 0	
	NOT RELEVANT.....888 8888 88 8	
	MISSING, DON'T KNOW.....999 9999 99 9	
TC05	THIRD OFFENSE..... _ _ _ _ _ _ _ _ _ _	33-42
	SAME AS ABOVE.....000 0000 00 0	
	NOT RELEVANT.....888 8888 88 8	
	MISSING, DON'T KNOW.....999 9999 99 9	
TC06	FOURTH OFFENSE..... _ _ _ _ _ _ _ _ _ _	43-52
	SAME AS ABOVE.....000 0000 00 0	
	NOT RELEVANT.....888 8888 88 8	
	MISSING, DON'T KNOW.....999 9999 99 9	

TC07	WAS THERE A SUPPLEMENT FOR HABITUAL OFFENDERS FILED	53
	YES.....1	
	NO.....2	
	NOT RELEVANT.....8	
	DON'T KNOW.....9	
TC08	DATE OF FIRST APPEARANCE	
	MONTH.....	54-55
	NOT RELEVANT.....__	
	DON'T KNOW.....88	
	99	
TC09	DAY.....	
	NOT RELEVANT.....__	56-57
	DON'T KNOW.....88	
	99	
TC10	YEAR.....	
	NOT RELEVANT.....__	58-59
	DON'T KNOW.....88	
	99	
TC11	TOTAL NUMBER OF APPEARANCES	
	CODE DIRECT.....	60-61
	DON'T KNOW.....__	
	99	
TC12	DATE OF TRIAL COURT FINAL DISPOSITION	
	MONTH.....	62-63
	NOT RELEVANT.....__	
	DON'T KNOW.....88	
	99	
TC13	DAY.....	
	NOT RELEVANT.....__	64-65
	DON'T KNOW.....88	
	99	
TC14	YEAR.....	
	NOT RELEVANT.....__	66-67
	DON'T KNOW.....88	
	99	

TC15-TC18 DISPOSITIONS AT TRIAL COURT

	CHARGE# 1	2	3	4	
					68-69
					70-71
					72-73
DISMISSED BY ORDER OF JUDGE	1	1	1	1	74-75
DISMISSED BY MOTION OF PROSECUTION	2	2	2	2	
DISMISSED FOR WANT OF PROSECUTION	3	3	3	3	
ACQUITTED AFTER BENCH TRIAL	4	4	4	4	
ACQUITTED AFTER JURY TRIAL	5	5	5	5	
CONVICTED AFTER BENCH TRIAL	6	6	6	6	
CONVICTED AFTER JURY TRIAL	7	7	7	7	
GUILTY PLEA TO MISDEMEANOR	8	8	8	8	
GUILTY PLEA TO FELONY	9	9	9	9	
ARD	10	10	10	10	
DEFERRED PROSECUTION	11	11	11	11	
REMANDED TO LOWER COURT	12	12	12	12	
DELAYED SENTENCE	13	13	13	13	
OPEN	14	14	14	14	
JUMPED BAIL	15	15	15	15	
NOT RELEVANT	88	88	88	88	
DON'T KNOW	99	99	99	99	

TC19	JUDGE AT TRIAL COURT DISPOSITION	
	CODE DIRECT.....	76-77
	SAME AS AT PREVIOUS STAGE..... 00	
	DON'T KNOW..... 99	
TC20	PROSECUTOR AT TRIAL COURT DISPOSITION	
	CODE DIRECT.....	78-79
	SAME AS AT PREVIOUS STAGE..... 00	
	DON'T KNOW..... 99	
ID26	DECK #.....06	1-2
ID27-29	DEFENDANT ID# (YEAR, CASE, DEFENDANT)..... _ _ _ _ _ _	3,4-8,9
ID30	COUNTY..... _	10
TC21	DEFENSE ATTORNEY AT TRIAL COURT DISPOSITION	
	CODE DIRECT.....	11-12
	SAME AS AT PREVIOUS STAGE..... __	
	NOT RELEVANT, NONE PRESENT..... 88	
	DON'T KNOW..... 99	

TC22 DEFENSE ATTORNEY TYPE 13
- PUBLIC DEFENDER 1
- RETAINED PRIVATE ATTORNEY 2
- APPOINTED PRIVATE ATTORNEY 3
- NONE 4
- DON'T KNOW 9

INFORMATION ON LEGAL MOTIONS

LM01 TOTAL NUMBER OF WRITTEN DEFENSE MOTIONS FILED IN LOWER COURT 14
- CODE DIRECT _
- NONE 0
- EIGHT OR MORE 8
- DON'T KNOW 9

LM02 IN TRIAL COURT 15
- CODE DIRECT _
- NONE 0
- EIGHT OR MORE 8
- DON'T KNOW 9

LM03 WAS THERE A MOTION MADE TO QUASH THE ARREST 16
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM04 WAS THE MOTION 17
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM05 WAS THERE A MOTION MADE TO SUPPRESS A CONFESSION 18
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM06 WAS THE MOTION 19
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM07 WAS THERE A MOTION MADE TO SUPPRESS SOME PHYSICAL EVIDENCE 20
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM08 WAS THE MOTION 21
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM09 WAS THERE A MOTION TO SUPPRESS AN ID 22
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM10 WAS THE MOTION 23
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM11 WAS THERE A MOTION MADE TO SUBSTITUTE JUDGES 24
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL LEVEL 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM12 WAS THE MOTION 25
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM13 WAS THERE A MOTION MADE TO REDUCE BAIL 26
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM14 WAS THE MOTION 27
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM15 WAS THERE A MOTION MADE TO CONDUCT A MENTAL EXAMINATION 28
- NO 1
- YES, AT LOWER LEVEL 2
- YES, AT TRIAL COURT 3
- YES, AT BOTH LEVELS 4
- DON'T KNOW 9

LM16 WAS THE MOTION 29
- GRANTED AT THE LOWER LEVEL 1
- DENIED AT THE LOWER LEVEL 2
- GRANTED AT THE TRIAL LEVEL 3
- DENIED AT THE TRIAL LEVEL 4
- DENIED AT BOTH LEVELS 5
- DENIED AT LOWER LEVEL - GRANTED AT TRIAL LEVEL 6
- NOT RULED UPON 7
- NOT RELEVANT 8
- DON'T KNOW 9

LM17 WAS THERE AN APPEAL FILED 30
- NO 1
- YES, DEFENSE FILED 2
- YES, STATE FILED 3
- DON'T KNOW 9

LM18 WAS THE APPEAL 31
- GRANTED 1
- DENIED 2
- NOT RULED UPON YET 3
- NOT RELEVANT 8
- DON'T KNOW 9

INFORMATION ON SENTENCING

CHARGES AT SENTENCING — 32

S01 — WERE THESE CHARGES IDENTICAL TO THOSE AT PREVIOUS STAGE
- YES..(LEAVE COL. 33 TO 73 BLANK)..... 0
- NO..... 1
- DON'T KNOW..... 9

S02 — TOTAL NUMBER OF CHARGES (CODE DIRECT)..... _ — 33
- DON'T KNOW..... 9

S03 — FIRST OFFENSE..... _ _ _ _ _ _ _ _ _ _ — 34-43
(CHAPTER, SECTION, SUBSECTION (NUMERICAL ONLY), SUBSECTION (ALL ALPHABETICALS))
- MISSING, DON'T KNOW.....999 9999 99 9

S04 — SECOND OFFENSE..... _ _ _ _ _ _ _ _ _ _ — 44-53
- SAME AS ABOVE.....000 0000 00 0
- NOT RELEVANT.....888 8888 88 8
- MISSING, DON'T KNOW.....999 9999 99 9

S05 — THIRD OFFENSE..... _ _ _ _ _ _ _ _ _ _ — 54-63
- SAME AS ABOVE.....000 0000 00 0
- NOT RELEVANT.....888 8888 88 8
- MISSING, DON'T KNOW.....999 9999 99 9

S06 — FOURTH OFFENSE..... _ _ _ _ _ _ _ _ _ _ — 64-73
- SAME AS ABOVE.....000 0000 00 0
- NOT RELEVANT.....888 8888 88 8
- MISSING, DON'T KNOW.....999 9999 99 9

DATE OF SENTENCING — 74-75

S07 — MONTH..... __
- NOT RELEVANT.....88
- DON'T KNOW.....99

S08 — DAY..... __ — 76-77
- NOT RELEVANT.....88
- DON'T KNOW.....99

S09 — YEAR..... __ — 78-79
- NOT RELEVANT.....88
- DON'T KNOW.....99

ID31 — DECK #.....07 — 1-2

ID32-34 — DEFENDANT ID# (YEAR, CASE, DEFENDANT)..... _ _ _ _ _ _ — 3,4-8,9

ID35 — COUNTY..... _ — 10

S10-12 — FORMS OF SENTENCE LEVIED IN THIS CASE — 11,12,13

PENITENTIARY COMMITTMENT	1	1	1
LOCAL JAIL COMMITTMENT	2	2	2
PROBATION	3	3	3
PERIODIC IMPRISONMENT	4	4	4
WORK RELEASE	5	5	5
FINE	6	6	6
RESTITUTION	7	7	7
OTHER	8	8	8
DON'T KNOW	9	9	9

S13 — IF SENTENCE IS TO A STATE (NOT A LOCAL) INSTITUTION WHAT IS THE INSTITUTION? (USE STATE LIST OF INSTITUTIONS)..... __ — 14-15
- DON'T KNOW.....99

S14 — IF THE DEFENDANT IS TO BE INCARCERATED ARE THE TERMS TO RUN CONCURRENTLY FOR — 16
- ALL CHARGES..... 1
- JUST 1 AND 2..... 2
- JUST 1 AND 2 AND 3..... 3
- NOT RELEVANT..... 8
- DON'T KNOW..... 9

S15 — IF SENTENCE IS FINE WHAT IS TOTAL AMOUNT — 17-20
(CODE IN $10'S)..... _ _ _ _
- $99,997 OR MORE.....9997
- NOT RELEVANT.....9998
- DON'T KNOW.....9999

S16 — IF SENTENCE IS RESTITUTION WHAT IS TOTAL AMOUNT — 21-24
(CODE IN $10'S)..... _ _ _ _
- $99,997 OR MORE.....9997
- NOT RELEVANT.....9998
- DON'T KNOW.....9999

S17 — WERE COURT COSTS LEVIED AGAINST DEFENDANT — 25
- YES.....1
- NO.....2
- NOT RELEVANT.....8
- DON'T KNOW.....9

S18 — WHAT WAS AMOUNT OF COSTS — 26-29
(CODE IN $10'S)..... _ _ _ _
- NOT RELEVANT.....8888
- DON'T KNOW.....9999

SENTENCE LENGTH NUMBER 1

S19-S26

	CHARGE 1		2		3		4		
	YRS	MO	YR	MO	YRS	MO	YR	MO	
MINIMUM LENGTH.....	__	__	00	00	00	00	00	00	30-31, 32-33, 34-35, 36-37, 38-39, 40-41, 42-43, 44-45
SAME AS FIRST.....	..	..	00	00	00	00	00	00	
97 OR MORE YEARS.....	97	97	97	97	97	97	97	97	
NOT RELEVANT.....	98	98	98	98	98	98	98	98	
DON'T KNOW.....	99	99	99	99	99	99	99	99	

S27-S34

MAXIMUM LENGTH.....	__	__	__	__	__	__	__	__	46-47, 48-49, 50-51, 52-53, 54-55, 56-57, 58-59, 60-61
SAME AS FIRST.....	..	..	00	00	00	00	00	00	
97 OR MORE YEARS.....	97	97	97	97	97	97	97	97	
NOT RELEVANT.....	98	98	98	98	98	98	98	98	
DON'T KNOW.....	99	99	99	99	99	99	99	99	

S35 — IS THIS LENGTH FOR — 62
- PENITENTIARY OR JAIL..... 1
- PROBATION..... 2
- PERIODIC IMPRISONMENT..... 3
- WORK RELEASE..... 4
- OTHER..... 5
- DON'T KNOW..... 9

SENTENCE LENGTH NUMBER 2

S36-S43

	CHARGE 1		2		3		4		
	YRS	MO	YR	MO	YRS	MO	YR	MO	
MINIMUM LENGTH.....	__	__	00	00	00	00	00	00	63-64, 65-66, 67-68, 69-70, 71-72, 73-74, 75-76, 77-78
SAME AS FIRST.....	..	..	00	00	00	00	00	00	
97 OR MORE YEARS.....	97	97	97	97	97	97	97	97	
NOT RELEVANT.....	98	98	98	98	98	98	98	98	
DON'T KNOW.....	99	99	99	99	99	99	99	99	

D36 — DECK#.....08 — 1-2

D37-39 — DEFENDANT ID# (YEAR, CASE, DEFENDANT)..... _ _ _ _ _ _ — 3,4-8,9

D40 — COUNTY..... _ — 10

S44-S51

MAXIMUM LENGTH.....	__	__	__	__	__	__	__	__	11-12, 13-14, 15-16, 17-18, 19-20, 21-22, 23-24, 25-26
SAME AS FIRST.....	..	..	00	00	00	00	00	00	
97 OR MORE YEARS.....	97	97	97	97	97	97	97	97	
NOT RELEVANT.....	98	98	98	98	98	98	98	98	
DON'T KNOW.....	99	99	99	99	99	99	99	99	

S52 IS THIS LENGTH FOR — 27
- PENITENTIARY OR JAIL..... 1
- PROBATION..... 2
- PERIODIC IMPRISONMENT..... 3
- WORK RELEASE..... 4
- OTHER..... 5
- DON'T KNOW..... 9

S53 JUDGE AT SENTENCING — 28-29
- CODE DIRECT (USE PERSONAL ROSTER)..... __
- SAME AS AT PREVIOUS STAGE..... 00
- DON'T KNOW..... 99

S54 PROSECUTOR AT SENTENCING — 30-31
- CODE DIRECT (USE PERSONAL ROSTER)..... __
- SAME AS AT PREVIOUS STAGE..... 00
- DON'T KNOW..... 99

S55 DEFENSE ATTORNEY AT SENTENCING — 32-33
- CODE DIRECT (USE PERSONAL ROSTER)..... __
- SAME AS AT PREVIOUS STAGE..... 00
- NONE..... 88
- DON'T KNOW..... 99

S56 DEFENSE ATTORNEY TYPE — 34
- PUBLIC DEFENDER..... 1
- RETAINED PRIVATE ATTORNEY..... 2
- APPOINTED PRIVATE ATTORNEY..... 3
- NONE..... 4
- DON'T KNOW..... 9

INFORMATION ON LATERAL PROCEEDING AGAINST DEFENDANT SAMPLED

S57 IF THERE IS ANY INDICATION OF ADDITIONAL CHARGES PENDING FROM OTHER INCIDENTS, HOW MANY..... — 35
- NO INDICATION OF OTHER CHARGES..... 0
- 7 OR MORE..... 7
- UNCLEAR..... 8
- DON'T KNOW..... 9

S58 WHAT WAS MOST SERIOUS ADDITIONAL OFFENSE — 36-45
- _ _ _ _ _ _ _ _
- NOT RELEVANT.....8888 8888 88 8
- MISSING.....9999 9999 99 9

S59-S60 WHAT IS ID# OF THE OTHER CASE (YEAR, NUMBER)..- _ _ _ _ _ — 46, 47-51

S61 WERE THESE ADDITIONAL CHARGES RESOLVED IN A PLEA BARGAIN PACKAGE INVOLVING THE — 52-53
- SAMPLED OFFENSE..... 1
- RESOLVED IN A SEPARATE PLEA BARGAIN..... 2
- DISPOSED OF IN A SEPARATE TRIAL..... 3
- STILL PENDING AT TIME OF SAMPLED CASES DISPOSITION. 4
- NOT RELEVANT (NO OTHER OFFENSES)..... 88
- DON'T KNOW HOW THEY WERE DISPOSED OF..... 99

S62 WAS A PRESENTENCING REPORT COMPLETED — 54
- YES..... 1
- NO..... 2
- DON'T KNOW..... 9

PROSECUTOR'S RECOMMENDATION

S63-S65 PROSECUTOR'S INITIAL PLEA OFFER — 55-56, 57-58, 59-60

	S63	S64	S65
NO PLEA OFFER MADE	0	0	0
REDUCED CHARGE	1	1	1
PENITENTIARY COMMITTMENT	2	2	2
LOCAL JAIL COMMITTMENT	3	3	3
PROBATION	4	4	4
PERIODIC IMPRISONMENT	5	5	5
WORK RELEASE	6	6	6
FINE	7	7	7
RESTITUTION	8	8	8
DROP CHARGES	9	9	9
DROP HOA PROCEEDINGS	10	10	10
OTHER	11	11	11
NOT RELEVANT	88	88	88
DON'T KNOW	99	99	99

PROSECUTOR'S INITIAL SENTENCE RECOMMENDATION FOR PLEA

SENTENCE LENGTH NUMBER 1

S66-S67 — YRS MO — 61-62, 63-64
- MINIMUM LENGTH..... __ __
- 97 OR MORE YEARS..... 97 97
- NOT RELEVANT..... 98 98
- DON'T KNOW..... 99 99

S68-S69 — YRS MO — 65-66, 67-68
- MAXIMUM LENGTH..... __ __
- 97 OR MORE YEARS..... 97 97
- NOT RELEVANT..... 98 98
- DON'T KNOW..... 99 99

S70 IS THIS LENGTH FOR — 69
- PENITENTIARY..... 1
- JAIL..... 2
- PROBATION..... 3
- PERIODIC IMPRISONMENT..... 4
- WORK RELEASE..... 5
- OTHER..... 6
- NOT RELEVANT..... 8
- DON'T KNOW..... 9

SENTENCE LENGTH NUMBER 2

S71-S72 — YRS MO — 70-71, 72-73
- MINIMUM LENGTH..... __ __
- 97 OR MORE YEARS..... 97 97
- NOT RELEVANT..... 98 98
- DON'T KNOW..... 99 99

S73-S74 — YRS MO — 74-75, 76-77
- MAXIMUM LENGTH..... __ __
- 97 OR MORE YEARS..... 97 97
- NOT RELEVANT..... 98 98
- DON'T KNOW..... 99 99

S75 IS THIS LENGTH FOR — 78
- PENITENTIARY..... 1
- JAIL..... 2
- PROBATION..... 3
- PERIODIC IMPRISONMENT..... 4
- WORK RELEASE..... 5
- OTHER..... 6
- NOT RELEVANT..... 8
- DON'T KNOW..... 9

ID41 DECK#.....09 — 1-2

ID42-44 DEFENDANT ID# (YEAR, CASE, DEFENDANT).....- _ _ _ _ _ — 3,4-8,9

ID45 COUNTY..... — 10

S76 FINE AMOUNTS (CODE IN $10'S) — 11-14
- $99,997 OR MORE.....- _ _ _ _
- NOT RELEVANT.....9997
- DON'T KNOW.....9999

S77 RESTITUTION AMOUNT (CODE IN $10'S) — 15-18
- $99,997 OR MORE.....- _ _ _ _
- NOT RELEVANT.....9997
- DON'T KNOW.....9999

MISCELLANEOUS INFORMATION

MISC01-MISC02 IF THERE WAS A SECOND DEFENDANT INVOLVED IN THIS CRIME WHO WAS INDICTED SEPERATELY INDICATE HIS ID#..... — 19, 20-24
- NOT RELEVANT.....- _ _ _ _
- DON'T KNOW.....8 88888
- 9 99999

MISC03-MISC04 IF THERE WAS A THIRD DEFENDANT INVOLVED IN THIS CRIME WHO WAS INDICTED SEPERATELY INDICATE HIS ID#..... _ _ _ _ 25, 26 -30
NOT RELEVANT.....8 88888
DON'T KNOW.....9 99999

MISC05 IS THERE ANY INDICATION THAT THE GUILTY PLEA WAS A 'BLIND PLEA' (I.E., NO AGREEMENT) 31
YES..... 1
NO..... 2
NOT RELEVANT (NO GUILTY PLEA)..... 8
DON'T KNOW, UNCERTAIN..... 9

MISC06 IF THERE WAS A 'BLIND PLEA,' IS THERE ANY INDICATION THAT THE STATE 'STOOD MUTE' AT SENTENCING (I.E., MADE NO RECOMMENDATIONS, DID NOT ARGUE AGGRAVATING CIRCUMSTANCES) 32

MADE NO SENTENCING RECOMMENDATIONS ONLY..... 1
DID NOT ARGUE AGGRAVATING CIRCUMSTANCES ONLY..... 2
DID NEITHER OF ABOVE..... 3
NOT RELEVANT..... 8
DON'T KNOW, UNCERTAIN..... 9

ISC07 IF COUNSEL WAS ASSIGNED, HOW MUCH WAS HE REIMBURSED (CODE IN $10 INCREMENTS)..... _ _ _ 33-35
NOT RELEVANT.....888
DON'T KNOW.....999

ISC08 WAS THE SENTENCE SUSPENDED 36
YES, EVERYTHING.....1
YES, JUST THE TIME TO BE SERVED IN CONFINEMENT.....2
YES, JUST THE PROBATION PART.....3
YES, JUST THE FINE.....4
YES, SOME OTHER COMBINATION.....5
NOT RELEVANT.....8
DON'T KNOW.....9

APPENDIX VI

Derivation of the Attitudinal Composites

The "Belief In Punishment" Scale

Repeated attempts at analyzing various combinations of punishment related variables resulted in a single factor solution (Table VI-1). It should be stressed that while a unidimensional solution (eigenvalue = 4.6) is produced, the factor loadings are not exceptionally high. None is as high as .7 although several come close. The correlations ranged from .21 to .56, although most were between .35 and .45.

Several explanations may account for the somewhat weak structure underlying the "Belief in Punishment" composite. It may be due to the fact that criminal court actors in different roles view the sentencing process in fundamentally different terms. To examine this possibility, the punishment related variables were factor analyzed separately for each of the three roles. This procedure did not produce clear-cut results. The various loadings for the different roles tended to be weaker overall than the loadings reported in Table VI-1. However, no distinctively different patterns emerged in any of the three separate analyses. The reason for the weaker overall loadings may well be that by separating the different actors, the range of variation in each of the individual variables was significantly reduced, which in turn weakened the correlations. Defense attorneys generally tended toward one extreme, prosecutors to the other, with judges in the middle. When the whole population is analyzed together, a stronger and more parsimonious solution results.

A second plausible explanation for the somewhat weak structure of the punishment variables is that the analysis suffers from conceptual ambiguities concerning the structure of views toward punishment.

Table VI-1
Factor Loadings for
Criminal Justice Attitude Variables and
"Belief in Punishment" factor

Variable	Factor Loading	Interpretation of Factor Loading
CJ02	.62	Agree that punishment of criminals is required as repayment of debt to society.
CJ03	.64	Agree that probation should only be given to first offenders.
CJ06	.69	Agree that criminal rehabilitation advocates do not weigh seriousness of crime enough.
CJ11	.61	Agree that frequent use of probation wrongly minimizes gravity of crime committed.
CJ18	.52	Agree that failure to punish crime amounts to a license for it.
CJ22	.45	Agree that prisons should be places of punishment.
CJ23	.68	Agree that people charged with serious crimes should be kept in jail until trial.
CJ24	-.54	Disagree with the idea that sentencing according to individual need rather than on basis of the crime is important.
CJ27	.64	Agree criminals should be punished for crime whether or not punishment benefits criminal.
CJ28	-.64	Disagree that people with prior record but strong tie to community should not be detained prior to trial.
CJ30	-.67	Disagree that present treatment of criminals is too harsh.

These views may be common across roles yet more complex than we realized when the questions were assembled. If the eleven items loading on the factor reported in Table VI-1 have a common element, it is that the various items touch upon the respondents' belief in punishment as a tool to deal with criminal defendants. As such, they tap a very broad dimension. Two items (CJ23, CJ28) deal with pretrial detention, so the composite does not relate simply to sentencing. It does not really tap respondents' belief in the effectiveness of punishment in deterring crimes nor does it necessarily say anything about who the respondents blame for the acts of the defendant. Viewed in their entirety, the questions seem to indicate that the factor simply measures the respondents' belief about whether punishment (incarceration in particular) is an appropriate way to give defendants their "just desserts."

Although it is fairly general, the "Belief in Punishment" scale is appropriate for a study such as this, and the parsimonious nature of the factor solution may prove very beneficial in later analyses, which will become quite complex. The rather weak loadings suggest that views on sentencing may be more complex than the single factor solution indicates. Future analyses may want to devote more resources at the item formulation stage to the strong possibility that punishment views are multidimensional. Belief in the effectiveness of incarceration, the accountability of defendants for their actions, the importance of simple incapacitation, and other dimensions may be fertile grounds for investigation.

The "Regard for Due Process" Scale

The results of the factor analysis for the due process items were much stronger and more straightforward than those for the punishment items. These results are reported in Table VI-2. Not only are the factor loadings considerably stronger, all three items designed to tap views on due process "hung together" (eigenvalue = 1.6). The interpretation of the composite also seems to be rather straightforward. Those scoring high on the scale reflect a greater concern with the procedural rights of the accused. They tend to support the Supreme Court's decisions expanding defendants' rights. In addition, they seem to be more concerned with threats to individual liberties than with threats to the community.

Table VI-2
Factor Loadings for
Criminal Justice Attitude Variables and
"Regard for Due Process" Factor

Variable	Factor Loading	Interpretation of Factor Loading
CJ09	.85	Agree that Supreme Court's decisions expanding defendant's rights are basically sound.
CJ17	.55	Agree that it is better to free the guilty than convict the innocent.
CJ19	-.74	Disagree that court decisions protecting rights which might harm community should be curtailed.

The "Concern for Efficiency "Scale

The factor analysis of the variables tapping views on efficiency did not yield particularly strong results. While four of the five efficiency items did yield a single factor solution with a minimally acceptable eigenvalue score (eigenvalue = 1.0), the individual factor loadings are only moderate (Table VI-3). This notwithstanding, the factor analysis does perform a useful function here. It reduces the various items into a single composite with a straightforward interpretation. Clearly, people scoring high on this composite evidence a high regard for efficiency and little tolerance for people or procedures that hamper the efficient processing of criminal cases.

Table VI-3

Factor Loadings for
Criminal Justice Attitude Variables and
"Concern for Efficiency" Factor

Variable	Factor Loading	Interpretation of Factor Loading
CJ04	.49	Believe that in handling cases efficiency is an end in itself.
CJ12	.54	Agree that court practices hampering expeditious processing of cases should be modified.
CJ25	-.42	Disagree with the idea that programs which speed up the litigation process produce unjust and improper resolutions to criminal cases.
CJ26	.51	Agree that criminal courts should be run like a business.

APPENDIX VII

Derivation of the Operating Style Composites

After extended consideration we chose an aggregated approach to analyzing the Q-Sort data, thereby eliminating a whole set of analytical problems. Nonetheless, we still encountered a number of methodological problems which we could not decide on an a priori basis. This led us to develop and compare different approaches to the data.

One problem dealt with the issue of across evaluator comparability. Evaluators were asked to rank individuals on a scale from 1-5. But we had no way of knowing whether the evaluators' "internal scales" were similar. Some may evaluate most individuals around a score of "two," while others may consistently evaluate the same set of individuals at about "3." To examine the nature and implications of any problems emanating from this possibility, two sets of mean scores were produced. One set was derived simply by computing the mean score for each person evaluated on each question. "Raw scores" were used to compute these means. A second set of means was computed by averaging scores that had been standardized by evaluator. This set controlled for the evaluator comparability problem because each of the scores used in the computation of the standardized mean was expressed in terms of its deviation from the individual evaluator means. In other words, standardized scores were used to calculate these means. Both the raw and standardized means were then used in separate factor analyses to produce separate measures of operating style.

A second problem was the possibility that a given individual was evaluated very differently by evaluators who occupied different roles. To deal with this we developed a role specific approach to the

analysis of the Q-Sort data in addition to a general, across role approach. The reasons for developing this approach will be clearer once the general approach is more fully described.

Operating Styles - A General Approach

Table VII-1 reports the results of the factor analyses used to produce the "Judge's Responsiveness" measure; the results are based on means derived from both the raw and standardized scores. As Table VII-1 shows, the structure of the results is very similar for both, even though the analysis using the standardized scores is somewhat stronger. What both analyses show is that the qualities of informality, accommodativeness, and reasonableness "hang together" quite tightly. The factor loadings are quite high--, in the .6 to 1.0 range--, with accommodativeness being the most important variable. Table VII-2 reports the results of the factor analysis used to produce the "Judge's Involvement" composite. Again the structure of the results is similar for both the raw and standardized mean variables. Here, however, the results for the raw score variables are somewhat stronger. The results are not quite as strong as those for "Judge's Responsiveness" but the factor loadings, especially for the raw mean variables are still quite respectable (.56 - .94).

Table VII-3 reports the results of the factor analysis used to construct the "Attorney Responsiveness" composite, again, using both the raw and standardized mean variables. As before, the structure of the loadings is remarkably similar. Moreover, both represent very solid analyses. The loadings are all above .90 except for the

predictability variable, i.e., trustworthiness, accommodativeness, and informality all play a similar role in the construction of "Attorney Responsiveness."

Operating Styles---A Role Specific, Aggregated Approach

While the results reported in the previous section represent a parsimonious and reasonable first attempt at defining important dimensions of operating style, one rather obvious and potentially troublesome problem exists. The general approach combines the evaluations of people from different roles into one overall measure of a given individual's responsiveness, trial competence, involvement, etc. This may be perfectly acceptable, but it rests on two assumptions that need to be clear. The first is that people in each role (judges, prosecutors, defense attorneys) view the various dimensions and subdimensions of operating style similarly, i.e., that trustworthiness, informality, accommodativeness, etc. play a similar role in the way each set of participants views responsiveness. The second assumption--and it derives from the first--is that individuals across different roles will evaluate a given individual similarly. That is, both judges and defense attorneys in a given county will evaluate prosecutor X's responsiveness in a similar manner. If that is not the case, some serious bias could result. If judges and defense attorneys evaluate prosecutors in a systematically different way, a prosecutor's aggregated score, which is a mean, will normally be biased toward the defense attorneys' view since we interviewed far more attorneys than judges. Moreover, the nature of the bias may vary from county to county depending upon the ratio of judges to attorneys.

To examine this problem, the evaluation data were recalculated so that a mean was derived for each variable by role. For example, prosecutor means on each of the eight variables were recalculated using only judge evaluations and only defense attorney evaluations. Thus for each set of participants two sets of means were calculated. Only the raw scores were used in these calculations. Eliminating the standardized scores simplified matters greatly and at minimal cost. Using this approach, the two sets of measures produced highly similar results.

The correlations for the separate means are reported in Tables VII-4 and VII-5. For the judicial evaluations there are some high (.81) to moderate (.43) correlations. The correlations tend to be higher on more objective questions (activeness, trial preference) and lower on those tapping social relations (accommodativeness, reasonableness). They do not appear to be high enough overall, however, to overcome the criticism that individuals in different roles evaluate judges differently. Moreover, the correlations are even lower when attorneys are evaluated. While the highest correlations in Table VII-5 deal with a fairly objective trait, "Trial Competence," there are also some extremely low correlations (.07, .15), and even one negative one. This suggests, of course, the need to examine the various evaluations in a role specific manner.

The Judges Data

Table VII-6 reports the results of the factor analysis for the role specific "Judge Responsiveness" variables. Two things stand out. First, the same variables "hang together" in the role specific

analyses as in the general ones. Second, the factor loadings across the prosecutor and defense attorney variables are remarkably similar. This suggests that both sets of participants tend to view this attribute in a similar way. Moreover, the similarity of results in the three samples indicates that the responsiveness measure is fairly stable. When looked at in connection with the correlations reported in Table VII-4, however, the results suggest that prosecutors and defense attorneys may rank the judges differently even though they define responsiveness similarly. This in itself may prove to be useful information.

Table VII-7 reports the results of the role specific factor analyses for the involvement variables. The results here are not quite as similar to the general analysis as those reported in Table VII-6. The active variable is again the most central variable as was in the attorney analysis (Table VII-7, col. 3). However, the loading of the informality variable for prosecutors is somewhat weaker than the original loadings, as is the loading for the trial preference variable for defense attorneys. The results suggest that the notion of informality is somewhat more central to a defense attorney's definition of involvement than it is to that of a prosecutor. Similarly, a judge's trial preference is more important to a prosecutor than a defense attorney. However, the differences are not so great as to suggest that the concept of involvement is not shared by both defense attorneys and prosecutors. Obviously the measure used here is not as stable as the responsiveness measure.

Table VII-8 reports the correlations between the role specific composites and the general composites. Without exception, the correlations among the composite scores are much higher than those among the individual variables reported in Table VII-4. What appears to be happening is that more disagreement emerges across roles when individuals are ranked on individual attributes. When all of the attributes defining a more abstract concept are considered together, the differences across roles are significantly reduced. Thus the correlations between defense attorney and prosecutor evaluations of judge responsiveness, involvement, and docket concern are .54, .76, and .52, respectively. Moreover, when the general composites are compared with the role specific ones, the correlations are all in the .7 to .8 range. This indicates, of course, that the general composites are not badly flawed and may, in the interest of parsimony, well be acceptable indicators of the various concepts.

The Attorney Data

Table VII-9 and VII-10 report the results of the role specific analyses of responsiveness for both prosecutors and defense attorneys. A comparison of columns 1 and 2 with column 3 in each table demonstrates that, with one exception, the role specific analyses are again very similar to the general results. The sole exception is the informality variable for judges, in the case of both prosecutors and defense attorneys. Obviously, because of their role, judges do not view informality to be as central to the notion of responsiveness as attorneys do. Most prosecutors and defense attorneys, in most situations, would undoubtedly be as informal in dispositional discus-

sions as the judge would permit. It provides them with some insights into the judge's attitude toward a case and gives them valuable information as to their options. thus, from the judge's vantage point, the an attorney's informality may be more of a constant, and therefore less relevant, than among attorneys.

Tables VII-11 and VII-12 report the correlations between the role specific composites for the prosecutors and defense attorneys, respectively. Much the same pattern emerges here as emerged with respect to the judge correlations. The extent of disagreement across roles is much less for the composites than for the individual evaluation variables. The exception is prosecutor responsiveness. Judges and defense attorneys clearly evaluate individual prosecutors differently. The correlation between the two role specific composites is only .29. Moreover, as feared, the general responsiveness measure for prosecutors is largely determined by defense attorney evaluations. The defense attorney measure is virtually identical to the general responsiveness measure (r= .96), while the judge measure is much less strongly correlated (r= .51). The correlations among the other role specific composites and the general composites rang from .76 to .98, with most in the .8 to .9 range.

Table VII-1

Results of Factor Analyses for "Judge's Responsiveness"

Variable	Factor Loadings for Raw Mean Variables	Factor Loadings for Standardized Mean Variables	Interpretation of Factor Loading
Informality	.60	.72	Attorneys feel it is easy to deal with the judge informally.
Accommodativeness	1.0	1.0	Attorneys feel that the judge is willing to be accommodating and helpful with their problems.
Reasonableness	.68	.80	Attorneys feel that the judge can be persuaded to change his mind.
Eigenvalue	1.8	2.1	

Table VII-2

Results of Factor Analyses
for "Judge's Involvement"

Variable	Factor Loadings for Raw mean Variables	Factor Loadings for Standardized Mean Variables	Interpretation of Factor Loading
Informality	.56	.41	Attorneys feel it is easy to deal with the judge informally.
Active	.94	.90	Attorneys feel that the judge plays an active role in the disposition of a case.
Preferences	.59	.48	Attorneys feel that the judge tries to avoid trials whenever possible.
Eigenvalue	1.5	1.2	

Table VII-3

Results of Factor Analyses
for "Attorney Responsiveness"

Variable	Factor Loadings for Raw Mean Variables	Factor Loadings for Standardized Mean Variables	Interpretation Factor Loading
Trustworthiness	.91	.93	Others feel this attorney is trustworthy and keeps his word.
Accommodativeness	.95	.96	Others feel this attorney is willing to be accommodating and helpful with their problems.
Predictability	.62	.58	Others feel that this attorney is very predictable in how he handles his cases.
Informality	.92	.94	Others feel it is easy to deal informally with this attorney.
Eigenvalue	3.0	3.0	

Table VII-4

Correlations Between
Prosecutor and Defense Attorney
Evaluations of Judges

Familiarity	.43 (53)
Informality	.56 (53)
Activeness	.81 (53)
Predictability	.44 (53)
Trial Preference	.68 (53)
Accommodativeness	.46 (53)
Reasonableness	.47 (53)
Overall Assessment	.53 (53)
Docket Concern	.52 (53)

Table VII-5

Correlations Between
Judge Evaluations and Prosecutor
(or Defense Attorney) Evaluations
of Prosecutors (or Defense Attorneys)

	Prosecutor as Evaluatee	Defense Attorney as Evaluatee
Familiarity	.29 (94)	.44 (171)
Trial Competence	.64 (94)	.61 (171)
Trustworthiness	.26 (94)	.58 (171)
Accommodativeness	.25 (94)	.46 (171)
Predictability	.15 (94)	.32 (171)
Informality	.07 (94)	.25 (171)
Importance	.43 (94)	.44 (171)
Overall Assessment	.44 (94)	-.35 (171)

Table VII-6

Results of Role Specific Factor Analyses
of "Judge Responsiveness"

Variable	Factor Loadings for Prosecutor Evaluations	Factor Loadings for Defense Attorney Evaluations	Factor Loadings for Combined Roles (Raw Mean Variables)
Informality	.68	.62	.60
Acommodativeness	.86	1.0	1.0
Resonableness	.64	.73	.68
Eigenvalue	1.6	1.9	1.8

Table VII-6

Results of Role Specific Factor Analyses
of "Judge Responsiveness"

Variable	Factor Loadings for Prosecutor Evaluations	Factor Loadings for Defense Attorney Evaluations	Factor Loadings for Combined Roles (Raw Mean Variables)
Informality	.68	.62	.60
Acommodativeness	.86	1.0	1.0
Resonableness	.64	.73	.68
Eigenvalue	1.6	1.9	1.8

Table VII-7

Results of Role Specific Factor Analyses
of "Judge Involvement"

Variable	Factor Loadings for Prosecutor Evaluations	Factor Loadings for Defense Attorney Evaluations	Factor Loadings for Combined Roles (Raw Mean Variables)
Informality	.29	.54	.56
Activeness	1.0	.91	.94
Trial Preference	.61	.38	.59
Eigenvalue	1.45	1.25	1.5

Table VII-8

Correlations Between
the Role Specific and General Composites
for the Judge Measures

	Judge's Responsiveness-- General	Judge's Responsiveness-- Defense Attorney's View	Judge's Responsiveness-- Prosecutor's View
Judge's Responsiveness-- General	1.0 (53)	.83 (54)	.83 (54)
Judge's Responsiveness-- Defense Attorney's View		1.0 (53)	.54 (53)
Judge's Responsiveness-- Prosecutor's View			1.0 (53)

	Judge's Involvement-- General	Judge's Involvement-- Defense Attorney's View	Judge's Involvement-- Prosecutor's View
Judge's Involvement-- General	1.0 (53)	.96 (54)	.92 (54)
Judge's Involvement-- Defense Attorney's View		1.0 (53)	.76 (53)
Judge's Involvement-- Prosecutor's View			1.0 (53)

Table VII-8 (continued)

Correlations Between
the Role Specific and General Composites
for the Judge Measures

	Judge's Docket Concern-- General	Judge's Docket Concern-- Defense Attorney's View	Judge's Docket Concern-- Prosecutor's View
Judge's Docket Concern-- General	1.0 (53)	.91 (53)	.82 (54)
Judge's Docket Concern-- Defense Attorney's View		1.0 (53)	.52 (53)
Judge's Docket Concern-- Prosecutor's View			1.0 (53)

Table VII-9

Results of Role Specific Factor Analyses
for "Prosecutor Responsiveness"

Variable	Factor loadings for Judge Evaluations	Factor Loadings for Defense Attorney Evaluations	Factor Loadings for Combined Roles (Raw Mean Variables)
Trustworthiness	.84	.89	.91
Accommodativeness	.88	.95	.95
Predictability	.61	.69	.62
Informality	.26	.99	.92
Eigenvalue	1.9	3.1	3.0

Table VII-10

Results of Role Specific Factor Analyses
for "Defense Attorney Responsiveness"

Variable	Factor Loadings for Judge Evaluations	Factor Loadings for Prosecutor Evaluations	Factor Loadings for Combined Roles (Raw Mean Variables)
Trustworthiness	.91	.92	.91
Accommodativeness	.85	.94	.95
Predictability	.59	.45	.62
Informality	.46	.92	.92
Eigenvalue	2.1	2.8	3.0

Table VII-11

Correlations Between
the Role Specific and General Composites
for the Prosecutor Measures

	Prosecutor's Responsiveness-- General	Prosecutor's Responsiveness-- Judge's View	Prosecutor's Responsiveness-- Defense Attorney's View
Prosecutor's Responsiveness- General	1.0 (96)	.51 (96)	.97 (96)
Prosecutor's Responsiveness- Judge's View		1.0 (96)	.29 (94)
Prosecutor's Responsiveness- Defense Attorney's View			1.0 (96)

	Prosecutor's Trial Competence-- General	Prosecutor's Trial Competence-- Judge's View	Prosecutor's Trial Competence-- Defense Attorney's View
Prosecutor's Trial Competence- General	1.0 (96)	.79 (96)	.98 (96)
Prosecutor's Trial Competence- Judge's View		1.0 (96)	.64 (94)
Prosecutor's Trial Competence- Defense Attorney's View			1.0 (96)

Table VII-12

Correlations Between
the Role Specific and General Composites
for the Defense Attorney Measures

	Defense Attorney's Responsiveness-General	Defense Attorney's Responsiveness-Judge's View	Defense Attorney's Responsiveness-Prosecutor's View
Defense Attorney's Responsiveness-General	1.0 (171)	.76 (171)	.96 (171)
Defense Attorney's Responsiveness-Judges' View		1.0 (171)	.56 (171)
Defense Attorney's Responsiveness-Prosecutor's View			1.0 (171)

	Defense Attorney's Trial Competence-General	Defense Attorney's Trial Competence-Judge's View	Defense Attorney's Trial Competence-Prosecutor's View
Defense Attorney's Trial Competence-General	1.0 (173)	.81 (172)	.95 (173)
Defense Attorney's Trial Competence-Judge's View		1.0 (173)	.61 (171)
Defense Attorney's Trial Competence Prosecutor's View			1.0 (173)

APPENDIX VIII

Derivation of the Conservativism Rankings

Two different ranking measures of a representative's voting pattern were used to derive a raw " Conservativism score." The rankings of the Americans for Democratic Action (ADA) were used as a measure of liberal tendencies, and the rankings of Americans for Constitutional Action (ACA) were used as a measure of conservative tendencies.[1] Neither measure could be used independently because the components of the two rankings are not identical. One moderately liberal representative (ADA ranking of 70) may be ranked very low on the ACA scale (10, for example) while another with an identical ADA ranking may have a considerably higher ACA ranking (30, for example). To adjust for this possibility a composite ranking was constructed by subtracting an individual's ADA ranking for a session of Congress from his ACA ranking (both range from 0 to 100). This resulted in a raw "Conservatism" measure which had a possible range of -100 (very liberal) to 100 (very conservative).

While these raw "Conservativism" scores were rough indicators of a county's ideological leanings, geo-political factors made them incomparable. Congressional districts are not congruent with our counties and frequently include parts of several counties. Therefore, a person could be elected to Congress with only a small portion of the vote in any given county. This causes problems because two counties may be represented by someone with raw "Conservativism" scores of 75, where one county gave him 75% of its vote while the other gave only 40%. To correct this, the "Conservativism" score given a representative for a session of Congress was adjusted by multiplying it by the

proportion of the county's vote he received in the next election, if he ran. If he did not run, his rate totals in the last election were used as the weighting factor.

The raw "Conservativism" ranking, the percent of the vote received in the county, and the weighted measure are reported in Table VIII-1. Oakland has two scores because it is split into parts of two different districts, the 18th and 19th. To obtain Oakland's overall score these two scores were averaged, a legitimate procedure because the raw number of votes cast in each district in Oakland is relatively close. The average of the weighted and unweighted scores of the five sessions is reported in Table 3-5.

We realize that there are a number of difficulties with using this approach to measure political ideology. One could argue, for example, that many people who vote for a candidate are not fully familiar with the candidate's political views, much less his ACA or ADA ranking. Moreover, even if voters are generally familiar with the candidate's views, the proportion of the vote may not be an accurate measure of support for that ideology: it would depend upon the views of the opponent. The more different the views of the opponent, the more meaningful the weighting factor. For example, in a highly conservative county where two highly conservative candidates split the vote, the procedure outlined here would underestimate the county's conservatism.

One could, of course, counter these arguments in a number of ways. With respect to the lack of knowledge, one could argue that political leaders involved in recruiting candidates are familiar with

Table VIII-1

Summary of Data used to Compute
Average Conservativism Rankings

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)		Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
				18th	19th					
1972				54	54					
Conservativism Ranking	57	90.5	-44			51	40.5	73.5	74.5	-31.5
Proportion of County Vote in Election	.73	.65	.75	.52	.71	.54	.60	.61	.71	.73
Weighted Conservative Ranking	41.6	58.8	-33	28	38.3	27.5	24.3	44.8	52.9	-23
1974										
Conservativism Ranking	32.5	85	-45	92	38.5	20	51	55.5	47.5	-58
Proportion of County Vote in Election	.66	.54	.80	.52	.63	.47	.60	.61	.49	.55
Weighted Conservative Ranking	21.4	46	-36	47.8	24.2	9.4	30.6	33.9	23.3	-32
1976										
Conservativism Ranking	63.5	70.5	-46	-75.5	55.5	62.5	-57.5	75.5	60	-50.5
Proportion of County Vote in Election	.74	.56	.74	.68	.65	.53	.59	.56	.47	.44
Weighted Conservative Ranking	47	39.5	-34	-51.3	36	33.1	-34	42.3	-28.2	-22.2
1978										
Conservativism Ranking	52	66.5	-27.5	-45	60.5	37	-31.5	71.5	12	-13
Proportion of County Vote in Election	.75	.64	.76	.73	.72	.47	.47	.74	.47	.61
Weighted Conservative Ranking	39	42.5	-21	-33	43.6	17.4	-14.8	52.9	5.6	-8
1980										
Conservativism Ranking	58	79	-48.5	-65	62	-67	-36.5	86.5	-31.5	6
Proportion of County Vote in Election	.77	.61	.64	.66	.73	.53	.53	.74	.58	.41
Weighted Conservative Ranking	44.6	48	-30	-43	45.3	-35.5	-19.3	64.0	-18.27	2.5

the candidates' views and their compatibility with the district. This argument fades in situations where a candidate has a long history of electoral support in a county. This is relevant because most of the counties studied here were represented by long-term representatives. All but Kalamazoo, Dauphin, and Erie were represented by people who had served at least four terms (Erlenborn, Michel, Price, Broomfield, Blanchard, Traxler, Schulze). The representative from Erie and Dauphin twice won reelection. The second argument is more difficult to counter because little is known of the views of the representatives' opponents. However, given the longevity of most of these representatives, it would be a dubious campaign strategy on the part of their opponents to run an ideological clone.

1 The data are reported in the Almanac of American Politics 1974, 1976, 1978, 1980, 1982, Michael Barone and Grant Vjifusa (Washington: Barone and Co., 1974, 1976, 1978, 1980, 1982).

APPENDIX IX

Raw Data For Section on Political Linkages

Table IX-1

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Number of commercial television stations in county	0	3	0	2*	1	1	0	3	3
Number of county-wide papers	0**	1	2	0**	1	1	0**	1 (morning & after-noon editions)	1 (morning & after-noon editions)

*While the broadcast facilities of two stations are located in Oakland, the county is not the sole focus of local news coverage.

**Several community papers exist but the market is dominated by major metropolitan papers (Chicago, Detroit, or Philadelphia).

Table IX-2
Newspaper Coverage of Crime and Courts
(Average daily rate of appearance)

Type of Story*	Dupage (Ring)	Peoria (Autonomous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autonomous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autonomous)	Erie (Declining)
Crime Reports	.10	.67	.19	.28	.16	.29	.59	.70	.75
Individual Crimes	.10	.56	.15	.15	.07	.13	.85	2.05	.99
Court Actions	.08	.80	.11	.28	.12	.19	.40	1.06	.54
Prosecutor	.01	.03	.02	.08	.01	.01	.03	.09	.09
Police	.03	.30	.10	.05	.01	.10	.17	.35	.20
Jail	---	.19	.01	.02	.03	.02	.23	.29	.05
Judges	---	.03	.01	---	---	---	.08	.20	.12
Defense	.01	.01	.004	---	---	---	0	.02	.04
Totals	.37	2.59	.59	.87	.41	.75	2.35	4.76	2.81

Notes:
1 Newspapers surveyed: Suburban Tribune and Daily Journal
2 Newspaper surveyed: Peoria Journal Star
3 Newspapers surveyed: News Democrat and St. Louis Post-Dispatch
4 Newspaper surveyed: Oakland Press
5 Newspaper surveyed: Kalamazoo Gazette
6 Newspaper surveyed: Saginaw News
7 Newspapers surveyed: Mercury, Times-Herald, and Today's Post
8 Newspapers surveyed: Harrisburg Detroit and Harrisburg Evening News
9 Newspapers surveyed: Erie Times and Erie Morning News

* Totals do not include editorials or letters to the editor.

Table IX-3

Political Competitiveness, Measures, Selected Elections

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Average margin of victory in last three elections for:									
Statewide candidates									
Governor	49	22	9	21	24	6	12	16	10
Senator	25	15	23	11	11	11	28	28	11
Legislative district candidates									
Representative	29	1	16	9	25	2	23.8	22	11
Senator	32	10	30	11*	36*	48*	31	23**	8**
Countywide criminal justice offices									
Sheriff	20	37	3	10	22	22	25	21	3
Prosecutor	35	18	20	25	25	12	25	32**	22
Overall average margin	32	17	17	15	24	17	24	24	11

*Indicates results of only one election reported.
**indicates results of only 2 elections reported.
Source: America Votes, Richard Scammon, et al.; telephone and mail surveys to various county offices.

Table IX-4
Level of Community Involvement by
Judges and Prosecutors

	DuPage (Ring)	Peoria (Autono-mous)	St. Clair (Declin-ing)	Oakland (Ring)	Kalamazoo (Autono-mous)	Saginaw (Declin-ing)	Montgomery (Ring)	Dauphin (Autono-mous)	Erie (Declin-ing)
Percent of life residing in county	39 (22)	56 (9)	78 (9)	55 (24)	36 (14)	58 (16)	78 (14)	90 (90)	66 (20)
Extent of local involvement (number of local activities)	1.4 (2.3)	1.9 (9)	2.4 (10)	2.4 (24)	2.8 (12)	3.4 (16)	2.8 (21)	2.9 (9)	4.3 (15)
Average rank across the two measures	1.5	3	5	3	3	6	6	7.5	7.5

Appendix X

Report of the Sentencing Regression by County

CONTINUED

Table X-1
Report of Regression Results for Case Attributes and Trial

	R^2 N of Cases*	Intercept	OFFSER1	OFFSER2	OFFSER3	TRIAL	OFFSER1*TRIAL	OFFSER*TRIAL	OFFSER3*TRIAL
DuPage (Ring)	(.60, 572)	3.7	1.04 **(64;.50)	-.10 (1;-.03)	-.31 (.66;-.07)	1.86 (2.3; .05)		2.33 (39.5;.29)	1.53 (14;.35)
Peoria (Autonomous)	(.85, 689)	6.51	-.79 (2.7;-.66)	.08 (11; .07)		-9.3 (13;-.10)	.58 (70;.38)		
St. Clair (Declining)	(.87, 799)	2.18	-.05 (.42;-.04)	.13 (9.3;.04)	.59 (377.7;.28)	.37 (.05;.004)	.91 (479.2;.59)		
Oakland (Ring)	(.60, 710)	-.30	.74 (53.7;.38)	.02 (.03;.006)	.66 (19.5;.12)	-16.85 (13.9;-.14)	.67 (26.4;.25)	2.73 (67.0;.27)	4.58 (101.6;.27)
Kalamazoo (Autonomous)	(.61, 561)	-12.91	.91 (85.2;.59)	.60 (24.5;.16)		-3.41 (.57;-.02)		1.21 (18.3;.13)	
Saginaw (Declining)	(.61, 462)	-4.93	.81 (230.5;.49)	.12 (2.9;.05)	.001 (.00;.00)	12.30 (8.4;.09)			30.02 (609.9;.24)
Montgomery (Ring)	(.43, 584)	.83	.22 (10.5;.18)	.23 (5.3;.09)	-.39 (6.8;-.09)	.80 (.72;.03)			2.53 (15.6;.15)
Dauphin (Autonomous)	(.86, 746)	2.47	-1.02 (16.9;-.94)	.26 (26.1;.08)		-.29 (.06;-.005)			
Erie (Declining)	(.59, 417)	1.57	.05 (.21;.03)	.53 (14.0;.14)	.71 (7.3;.09)				

* These data reflect the R^2 and N for the entire model not just the variables reported in this table.
** The terms in parentheses report F values and beta weights respectively.

Table X-1 (cont.)
Report of Regression Results for Case Attributes and Trial

	WEAP	WEAP*OFFSER1	INJURY	BW	PHYSEVID	PHYSEVID*TRIAL	DVREL	DVREL*OFFSLR1
DuPage (Ring)								
Peoria (Autonomous)					.08 (.19;.01)	5.9 (43;.20)	-.64 (-.48;-.01)	-.23 (-18;-.14)
St. Clair (Declining)	-1.21 (1.1;-.02)	.41 (264;.33)		5.18 (11.9;.05)				
Oakland (Ring)	-7.08 (3.6;-.08)	.28 (7.5;.18)	7.89 (11.2;.11)				4.37 (3.3;.06)	-.51 (14.1;-.18)
Kalamazoo (Autonomous)	-7.08 (3.6;-.08)	.28 (7.5;.18)	7.89 (11.2;.11)					
Saginaw (Declining)			1.59 (2.4;.05)	13.80 (9.8;.09)				
Montgomery (Ring)	.55 (.86;.04)	-.36 (17.1;-.22)						
Dauphin (Autonomous)	.25 (7.9;.23)			2.74 (6.4;.04)	.003 (.001;.001)	1.24 (8.8;.05)		
Erie (Delining)	.28 (.03;.01)	.49 (13.3;.22)						

Table X-2

Report of the Regression Results for Defendant Attributes

	CRIMRCD	CRIMRCD*OFFSER1	OTHIND	CONFINED	CONFINED*OFFSER1	RACE	RACE*OFFSER1	SEX	SEX*OFFSER1	YNG
DuPage (Ring)	1.03 *(14.8;.11)			.58 (.54;.02)	.54 (17.2; .17)					
Peoria (Autonomous)	2.35 (24;.10)	.12 (19;.12)	.67 (11;.05)	3.39 (14;.08)	.38 (33;.29)			-3.85 (2.5;-.05)	1.19 (6.1;1.0)	-1.57 (4.7;-.03)
St. Clair (Declining)	2.64 (30.2;.08)			2.88 (7.5;.04)	.47 (155.9;.25)					-2.20 (6.3;-.03)
Oakland (Ring)	6.72 (64.6;.20)					-1.24 (.36;-.02)	.33 (8.1;.13)			
Kalamazoo (Autonomous)	4.28 (14.9;.11)		2.06 (4.6;.06)	15.46 (44.9;.21)						
Saginaw (Declining)	4.47 (11.0;.11)			11.58 (27.1;.17)						
Montgomery (Ring)	.45 (2.4;.06)	.27 (33.2;.24)		-1.36 (3.8;-.09)	.61 (43.7;.42)					-5.74 (7.7;-.09)
Dauphin (Autonomous)				5.24 (56.7;.13)	.57 (32.4;.51)			-1.60 (6.8;-.04)	.78 (19.1;.72)	
Erie (Declining)	-.98 (.87;-.05)	.51 (22.0;.25)		-1.68 (.73;-.04)	1.18 (70.3;.47)					

* The terms in parentheses report F values and beta weights respectively.

Table X-3

Report of Regression Results for Intermediate Actions

	DELAY	DELAY*OFFSER1	DELAY*OFFSER1*TRIAL	MOTIONS	MOTIONS*OFFSER1	MOTIONS*OFFSER1*TRIAL	MONEY	CHANGE
DuPage (Ring)	.001 *(.28;.02)	-.002 (19.7;-.27)		.52 (2.6;.06)	-.31 (12.;-.16)		-4.96 (85;-.27)	
Peoria (Autonomous)				.21 (.38;.01)	-.06 (23.3;-.21)		-4.47 (35.2;-.10)	
St. Clair (Declining)				.44 (2.9;.03)	-.07 (62.8;-.26)		-1.74 (3.7;-.03)	
Oakland (Ring)				3.63 (8.8;.11)	-.16 (5.5;-.16)	.18 (6.6;.15)		.22 (8.2;.07)
Kalamazoo (Autonomous)	.01 (1.9;.05)	-.001 (27.1;-.25)		4.04 (3.7;.07)	-.24 (11.8;-.15)		-9.10 (10.0;-.09)	
Saginaw (Declining)								.29 (71.6;.27)
Montgomery (Ring)				.68 (20.2;.15)			-1.02 (5.9;-.08)	
Dauphin (Autonomous)	-.01 (5.8;-.04)	.002 (6.4;.33)		.93 (9.2;.05)				
Erie (Declining)								

* The terms in parentheses report F values and beta weights respectively.

END