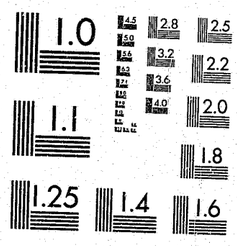

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Executive Summary

Beyond the Courtroom:
A Comparative Analysis of Misdemeanor Sentencing

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James K. Stewart
Director

Beyond the Courtroom:
A Comparative Analysis of Misdemeanor Sentencing

Executive Summary

Anthony J. Ragona
John Paul Ryan

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ABSTRACT

Misdemeanor courts have been infrequently studied, despite their central importance in law enforcement and social control. More than 90% of all criminal cases are heard by misdemeanor courts, thereby providing most of the general public with its only view of the criminal process.

Our study of four misdemeanor courts--Austin, Texas; Columbus, Ohio; Mankato, Minnesota; and Tacoma, Washington--is an attempt to compare the sentences imposed, the processes leading to sentencing, and the influence of the local political and economic environments surrounding the four courts. An eclectic methodological approach was utilized, including collection of data from random samples of individual defendant case files, interviews with key court and political actors, and surveys of local citizen attitudes about crime and punishment in the lower courts.

Fines are the most commonly-imposed sanctions in all four courts. Two-thirds or more of convicted defendants are required to pay some fine, ranging from a median of $150 in Austin to $50 in Mankato. Jail is used only very occasionally, except in Columbus where state law mandates incarceration for drunk driving. Generally, the two most critical factors affecting both the choice and severity of sanctions are the type of offense and the individual judge, but the relative influence of each varies from site to site.

Reliance on fines and other forms of economic punishment (e.g., court costs) across all the courts is by no means accidental or coincidental. Rather, the revenue-generating potential of misdemeanor courts and the prevalent modes of punishment appear substantially intertwined. Significant pressures for revenue-generation are documented in three of our sites. Judges are the most frequent targets of such pressure. Judges responded to these pressures differently in the several sites, usually depending upon the depth of the fiscal crisis facing local government. Judges more readily or eagerly acquiesced to pressures from county officials where local government (as in Tacoma) was severely and visibly strapped for funds.

Substantial use of revenue-generating punishments and often minimal use of costly rehabilitation programs do not, however, square with local community opinion. Citizens indicated much greater preference for treatment programs, counseling, and volunteer community work for misdemeanor defendants than what is currently available or used by the courts. Also, disagreement about the use of jail surfaced on a case-by-case basis. Citizens prefer to jail drunk drivers, but courts (excepting Columbus) prefer to jail those convicted of assault or theft.

Our findings suggest a need to re-think questions about the appropriate methods of court financing. If state financing of local courts is a trend, it is one fraught with new problems. Both the administration of justice and the financing of services have historically been local functions. A shift toward the state capitol would relieve local governments not only of fiscal pressures but also of many of the policy options associated with the administration of justice in municipal and county courts.

PART I

THE SETTING

In this Executive Summary, we summarize the observations, findings and conclusions from our study, Beyond the Courtroom: A Comparative Analysis of Misdemeanor Sentencing.* Broadly conceived, this study is a comparative analysis of the sentencing process in four misdemeanor courts--Columbus, Ohio; Austin, Texas; Tacoma, Washington; and Mankato, Minnesota. We examine (1) the extent to which these courts differ in the types and severity of the sentences imposed on criminal defendants, and (2) the factors accounting for these differences. It is our central hypothesis that a theory of sentencing must take into account not only what goes on inside of these courtrooms, but also what occurs outside of them. This requires an understanding of both the internal dynamics of courthouse justice and external factors beyond the courtroom which influence criminal court sentencing.

Comparative and case studies of felony court sentencing practices have become commonplace in recent years (see, e.g., Eisenstein and Jacob, 1977; Mather, 1979; Uhlman, 1979), yet lower criminal courts remain one of the least understood American judicial institutions (Alfini, 1980). Researchers seeking the glamorous, controversial, and timely topic have all too often avoided America's misdemeanor courts. While misdemeanor courts may be neither glamorous nor controversial, they continue to render decisions and impose sentences on a daily basis, which can and do significantly affect the lives of citizens. In fact, the 1967 Presidential Commission on Law Enforcement and the Administration of Justice estimates that more than 90% of all criminal cases handled in this country are adjudicated by these lower courts.

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*Available, upon request, from the National Criminal Justice Reference Service Document Loan Program, Box 6000, Rockville, Maryland, 20850. See Appendix A for an outline of the full study.

Yet, there have been no systematic comparative studies of misdemeanor court sentencing practices. Recent case studies have increasingly come to stress the importance of the community environment. In a study of the New Haven, Connecticut lower court, for example, Feeley (1979) found that defendants received few jail terms and small fines. By contrast, Ryan (1980) found jail terms and large fines to be typical of the sentences imposed by lower courts in Columbus, Ohio. Ryan (1980:105) suggests that these differences in sentence severity cannot be attributed to factors internal to the court, but appear to flow from differences in the local political culture:

> Why outcomes are more punishing in Columbus than in New Haven cannot be answered definitively. But differences in the political culture and structure of the two communities . . . clearly play a key role. The political culture of Columbus breeds a climate of severity. This is manifested in the institutional domination of the police in the lower court, in the Columbus police department's orientation to law enforcement rather than order maintenance, and in the community's expectations that traffic laws will be enforced. Moreover, judges in Columbus may be more responsive to community expectations of full enforcement and meaningful sanctions because they are elected locally and attached permanently to Columbus, unlike the rotating judges who serve the New Haven lower court. More precise linkages of the nexus between political culture and lower court outcomes must necessarily await comparative research.

How distinctive these local environments are, and precisely what it is about them that accounts for such differences remain largely unanswered questions. In this study, we examine several elements of community environment. We look at the ways in which our four communities vary with respect to resident attitudes toward crime and punishment. We also examine differences in the demographic structure of these communities. Finally, we examine the local economic climate, including the resources of local government, and the effect on the availability and use of sentencing alternatives.

We explore these issues by utilizing a mixture of quantitative data drawn from individual defendant case files, field interviews with court and political personnae, and responses to a mail survey of citizens in our four sites. In Part I, we examine the extent to which these courts vary with respect to the types of cases brought before them, the characteristics of case processing, and the sanctioning alternatives available. Part II examines closely the sentencing practices of these four courts. We focus on the factors affecting the types of sentences imposed in the four courts as well as the severity of the sanctions imposed. In Part III, we move our analysis beyond the confines of the immediate courtroom. We survey citizen attitudes in the communities served by these courts and examine the economic environments of the counties within which these courts are located.

In our concluding chapter, we attempt to integrate our analysis within the courtroom with our view beyond the courtroom. We assess the implications of our findings for the future of misdemeanor courts. Finally, we offer some thoughts for future sentencing research and for questions of public policy and reforms.

The Work of the Four Courts

Jurisdiction of the courts. All of the four courts under study are lower courts that hear--in addition to some range of minor civil cases--a variety of misdemeanor and traffic offenses. The Blue Earth County Court in Mankato, Minnesota has original jurisdiction for misdemeanors throughout the county. The maximum sentence is 90 days in the county jail and/or a $500 fine. No other court in the county hears such cases. The Franklin County Municipal Court in Columbus, Ohio likewise has exclusive jurisdiction over misdemeanors throughout the county. Maximum sentence is one year incarceration in the county jail and/or a $1,000 fine. The Travis County Courts-at-Law in Austin, Texas have concurrent jurisdiction

over misdemeanors throughout the county with other specialized and limited jurisdiction courts. Maximum sentence in the Travis County Courts-at-Law is one year incarceration and/or a $1,000 fine. Finally, Pierce County District Court No. 1 in Tacoma, Washington has jurisdiction over misdemeanors in most parts of the county. Maximum sentence in the Pierce County District Court is six months incarceration and/or a $1,000 fine.

Mix of offenses. All four courts hear a substantial number of drunk driving cases, ranging from 25% in Mankato to 35% in Austin. Everywhere, judges and attorneys consistently recognized the central place that drunk driving cases occupy. Lesser traffic offenses comprise a large share (nearly half) of the dockets in Mankato and Tacoma, but a much smaller share in the Columbus and Austin courts. Theft cases represent at least 10% of the docket in all of the courts except Tacoma, where some theft cases are heard in other lower courts. Assault cases comprise a substantial share of the docket in Columbus, but not elsewhere. Each court hears a variety of other criminal offenses, including drug possession, alcohol violations, vandalism, prostitution, bad checks, and disorderly conduct, in proportions reflective of local enforcement policies and lifestyles.

Court personnel. Three of the four courts have small benches. Three judges sit in Blue Earth County Court in Mankato, four judges in the Travis County Courts-at-Law in Austin, and five judges in the Pierce County District Court No. 1 in Tacoma. The Franklin County Municipal Court in Columbus, by contrast, has thirteen judges. The prosecutor's offices for these courts vary from a large fifteen attorney office in Columbus to a one-person office in Mankato. Austin and Tacoma fall in between, each having about six or seven prosecuting attorneys working in the misdemeanor area.

The structure and utilization of defense attorney services vary sharply among the four courts. For indigent defendants, all of the courts except Austin provide public defender representation. The defender offices range from fifteen full-time attorneys in Columbus to three part-time attorneys in Mankato. Austin, by contrast, utilizes a system of assigned counsel. The size and influence of the private bars run the gamut from very small in Mankato to very large in Austin. In Mankato, there are fewer than one-hundred attorneys in practice. Only a handful do a substantial amount of criminal work, and most of these depend upon civil cases to make a livelihood. Austin, by contrast, has a large number of attorneys, many of whom concentrate in the criminal area. The private bars of Columbus and Tacoma fall in-between these two extremes of size and degree of criminal specialization. Representation of misdemeanor defendants was nearly complete in Columbus and Austin (90% +), substantial in Tacoma (53%), but only occasional in Mankato (32%).

All four courts have active probation departments which, in some combination, prepare presentence reports, supervise misdemeanants, and refer defendants in need of alcohol, drug, or other counseling to appropriate public or private agencies. The emphases differ, however, from community to community. In Austin, presentence report work has recently been cut back in misdemeanor cases in the name of economy. In Columbus, presentence investigation is still a major probation department activity. The Tacoma probation department is of a much smaller scale than Austin or Columbus, having about seven probation officers who primarily engage in "brokering" services rather than individualized supervision (see Grau, 1981). Finally, Mankato has the smallest probation department, with but two full-time officers who do primarily presentence investigations.

Defendants. Defendants in these four courts reflect a variety of citizens and walks of life; certainly, they are a much more heterogeneous sampling than in felony courts. Although predominantly male, defendants span the range of ages, occupations, and life-styles, particularly in traffic offenses. Citizens arrested for traffic offenses including drunk driving represent nearly all walks of life in the four communities. By contrast, defendants in minor criminal offenses such as assaults, disorderly conduct, public drunkenness, prostitution and the like represent more selective slices of the citizenry, in terms of age, economic stability and well-being, and lifestyle.

Methods of case disposition. There are common as well as idiosyncratic elements across the four courts in their methods of case disposition. Three of the four courts--all except Tacoma--disposed of most of their misdemeanor cases by guilty plea, ranging from 51% in Columbus to 69% in Mankato. Likewise, all the courts except Tacoma reflect a low trial rate, and in all four courts the jury trial rate for the periods sampled does not exceed 2%. Dismissals, too, play a significant role in each of the courts, ranging from a low of 15% in Mankato to a high of 38% in Columbus. And bond forfeitures are used to dispose a small proportion of (usually minor) cases in all the courts. Thus, there are some striking commonalities in case disposition practices across these courts.

Nevertheless, the degree of plea negotiations preceding the entry of guilty pleas differs markedly from court to court. Active plea negotiations, including charge reductions, are frequent in Columbus and include defense attorney, prosecutor, and, sometimes, judge. Charge reductions are particularly common in drunk driving cases in Columbus, where the statute provides for a mandatory three-day jail term for defendants convicted of drunk driving (see Ryan, 1980). The presence of defense attorneys, whether public or private, also provides an atmosphere

conducive to plea negotiations in Columbus that contrasts with, say, Mankato. There, many fewer defendants are represented by counsel, and local prosecutors in Mankato have been adamant in their refusal to negotiate with unrepresented defendants. Tacoma is much like Columbus with respect to frequent charge reductions, especially in drunk driving cases. In Austin, nearly every defendant is represented, yet few charge reductions appear in our case file data. Our interviews and observations suggest, however, that sentence bargaining--not charge bargaining--is the prevalent mode of plea negotiation activity, which typically takes place between prosecutor and defense attorney without judicial participation.

Adjudication of guilt. In all four courts, the majority of cases that proceed beyond arraignment result in a conviction. But this ranges from a low of 58% in Tacoma--where defendants were often acquitted in an abbreviated bench trial known as "reading on the record"--to a high of 82% in Mankato, where dismissals are relatively infrequent. Only a slightly larger percentage (61%) were convicted in Columbus, where dismissals are common in the numerous assault cases. Almost three-fourths (72%) of defendants were convicted in Austin.

The conviction rates for these four courts also include bond forfeitures, which comprised anywhere from 4% to 9% of the total dispositions. Bond forfeitures usually occur where the defendant fails to appear for trial or sentencing. The court, then, merely closes the case by calling for forfeiture of the bond (Feeley, 1979:139, refers to this as "a standard device for 'paying fines' in many of the nation's traffic courts"). But in Columbus, bond forfeitures also occur where the defendant is present. Here, it is used as a means of disposing cases upon agreement of both sides, analogous to plea bargaining (Ryan, 1980).

Differences in the practices that take place in arraignment court impact upon local conviction rates. In Austin, nearly every case proceeds beyond arraignment, due in large part to pressures from a private bar actively seeking clients. By contrast, large numbers of defendants plead guilty to misdemeanor offenses at arraignment in the other three courts. Estimates run upwards of 50% in Tacoma, and as high as 75% in Mankato. Thus, it is likely that the conviction rates for the totality of misdemeanor cases differ somewhat, though not sharply, from our samples of post-arraignment cases in these courts.

Available sanctions. There are generally a wide range of sanctions available to most misdemeanor courts, and these four misdemeanor courts are no exception. Unlike felony courts which hear mostly serious cases, the comparatively minor infractions that typically comprise the world of misdemeanor courts permit utilization of fines, jail terms, probation, community service restitution, victim restitution, and the imposition of court costs. In addition, community treatment programs--for alcohol or drug abuse--and safe driver programs may also be utilized as "punishment" for the wayward. The combinations in which sanctions and treatment programs may be utilized provide further variety to misdemeanor court sentencing (Ryan, 1980).

Still, fines play a predominant role in the four courts we studied (Table 1). Fines, either by themselves (Mankato and Tacoma) or in combination with probation (Austin) or jail (Columbus and Austin), are the primary method of punishment. In all four courts, approximately two-thirds or more of all convicted defendants pay a fine of some amount. Jail is not too often utilized, particularly in Tacoma and Mankato where traffic offenses comprise nearly one-half the docket. Probation is extensively used in Austin, frequently used in Columbus (figures not available), but not often used in Mankato or Tacoma. Community service restitution is occasionally used in Mankato and Tacoma, increasingly in Austin, but not at all in Columbus.

Table 1 The Four Courts: Utilization of Sanctions

	Austin Texas	Columbus Ohio	Mankato Minnesota	Tacoma Washington
Probation	15.0%	NA	5.6%	3.0%
Jail	6.7	5.1	10.7	4.2
Fine	6.7	57.2	62.7	54.4
Fine & Probation	49.0	NA	4.4	4.8
Fine & Jail	22.2	29.6	2.0	3.2
Other Combinations	.4	—	4.8	2.1
None of above	--	8.1*	9.8**	28.3***
N****	(1,216)	(1,281)	(803)	(565)

*Includes fines and jail terms suspended in their entirety; possibly also probation sentences, for which data are unavailable.

**Includes fines and jail terms suspended in their entirety, as well as community work and counseling/treatment programs.

***Includes frequently high amounts of court costs imposed in lieu of fines, as well as community work.

****Excludes convictions by bond forfeiture, where punishment is tantamount to a fine.

Summary

That courts, including misdemeanor courts, vary across jurisdictions has by now become a commonplace empirical finding in the social science and criminal justice literatures. The four lower courts under study here, and their communities, also vary across a range of environmental and organizational dimensions. Many of the differences in the courts are, in part, a function of differences in community size. Mankato and surrounding Blue Earth County are small in population, part of rural America. Thus, the low (serious) crime rate, substantial traffic docket, and handful of judges, prosecutors, and defense attorneys who do the work of the lower court are to be expected. Likewise, the populous, metropolitan character of Columbus and surrounding Franklin county contributes to a large, differentiated work force handling the more heterogeneous minor criminal docket of its lower court. Between these two extremes, the Tacoma and Austin courts share some features in common such as organizational scale. But the Tacoma court is really more like the court in Mankato and the Austin court is more like the court in Columbus, probably because the Austin population base is as highly urban as in Columbus, whereas the substantial rural flavor of the county surrounding the city of Tacoma parallels Mankato.

PART II

SENTENCING: COURTROOM INFLUENCES

The Choice of Sanctions

Misdemeanor courts impose a range of sanctions upon convicted defendants. We briefly described some of the more frequent sanctions, such as fines, jail terms, and probation, in Part I of our study. In Part II, we analyze why one type of sanction is imposed instead of another. In particular, we measure quantitatively the influence of the type of offense, the judge before whom sentencing takes place, and a number of other case characteristics (e.g., presence of a defense attorney, mode of disposition, number of charges) on the choice of sanction. We then examine the severity of sanctions imposed.

In exploring the basis for the choice of sanctions imposed upon convicted defendants, we confined our multivariate analysis to the three most prevalent types of sanctions--fine, jail, and probation--and their combinations. In all four courts, we found that defendants are pigeon-holed according to the offense with which they were charged. Drunk driving and traffic cases nearly always result in a fine, possibly along with jail or probation. By contrast, theft and other miscellaneous criminal offenses much less often result in a fine; more common is the use of jail or probation. The decision not to use a fine in many minor criminal cases may stem from a philosophy that such offenses are "too serious" to be treated merely with a fine, that offenders are in need of ongoing counseling or supervision, the practical realization that many defendants cannot afford to pay a fine, or some combination of these. The linking of sanctions with types of offenses is most pronounced in Austin.

The role of the individual judge varies much more sharply from one court to another. In Austin, where prosecutors and defense attorneys work out most details of sentencing, the judge appears to matter little. In Mankato, the individual judge matters little because the small, three-judge bench has consciously striven for internal consistency through mutual discussions. In Tacoma, where prosecutorial inexperience in trial courtrooms and negotiation sessions has encouraged active judicial scrutiny of plea bargains and sentences, differences amongst the court's judges have emerged. And in Columbus, where the court is populated by thirteen judges, different judicial philosophies about sentencing are an acknowledged and accepted state of affairs.*

The Severity of Sanctions

Determining the severity of a sentence becomes problematic when multiple sanctions are imposed or in comparing one type of sanction (e.g., fine) with another (e.g., jail). It is not readily clear, for example, whether a $300 fine or 3 days in jail is the more severe. Nor is it clear how severe a sentence that mixes six months probation with a $50 fine actually is. The units of measurement are not readily comparable, and there is no standard equation that can translate jail days into dollars.

A number of researchers have addressed this thorny issue through some sort of scaling technique. The Administrative Office of the U. S. Courts (1972) introduced a severity scale (ranging from 0 to 50), as a way of comparing sentences across federal district courts. Subsequently, researchers adopted or modified that scale for felony court sentencing in the states (see, e.g., Uhlman, 1979). Feeley (1979), in his study of the New Haven lower criminal court, developed a five-point

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*For a fuller discussion of the choice of sanctions, see Ragona and Ryan (1983)

scale for sentence severity. Though suited to misdemeanor court dispositions and less arbitrary than the Administrative Office scale, Feeley's scale nevertheless discriminates fines only into categories above and below $50. Also, the limited, ordinal character of his scale is not ideally suited to the regression analysis presented (Feeley, 1979:140).

Given the limitations of prior research efforts, we have adopted the posture of analyzing the severity of sanctions individually (see also Ryan, 1980), with special attention to the widely varying amounts of fines in the courts studied. We also examine fine levels when combined with jail terms or probation, to determine whether the presence of additional sanctions enhances, ameliorates, or makes no difference in the severity of fine levels. Analyses are presented for all cases as well as for drunk driving cases separately. By focusing on drunk driving cases, we are able to control for the courts' widely varying dockets. The result is an in-depth look at the most prevalent, and probably the most serious, offense these four courts handle.

Fine levels varied, in their central tendency and distributions, across the courts. Austin exhibited the most uniformly high fines (median = $150), followed by Columbus (median = $100). Fines in Mankato and Tacoma were typically lower, but there was a significant percentage of very high fines in Mankato. The composition of the courts' dockets was one major factor accounting for these differences. The substantial minor traffic caseload in Mankato and Tacoma partially accounted for the generally lower fines in these courts.

The differential use of other sanctions was also a confounding factor. Fines in drunk driving cases in Columbus, for example, were relatively low compared with Mankato or Tacoma, but short jail terms were much more frequently imposed in these cases in Columbus (usually, by mandate of state law). Thus, it is difficult to conclude which (if any) of the four courts are tougher in drunk driving cases, let alone in the full range of cases that these courts handle.

Within the four courts, the sources of sanctions in fine levels paralleled those in the choice of sanctions. The type of case was a strong predictor of fines. In each court, DWI cases received the highest fines, often by a wide margin; in several courts, minor traffic cases received substantially the lowest fines. The individual judge, too, accounted for some differences in fine levels, notably in the Tacoma and Columbus courts. Thus, our findings with respect to sentence severity--at least, severity of fines--are quite similar to those regarding the choice of sanctions.

In our description and analysis of sentencing practices inside the courtroom, some of the variation within each of the four courts was explained by reference to the type of offense, secondarily to the individual sentencing judge, and marginally to an assortment of other case-related characteristics. This is so both for the choice of sanction and for its severity.

Variations across the four courts were much less satisfactorily explained. The (differing) mix of each court's docket accounts for some of this variation, but much remains. Also, there are some striking similarities across the four courts, such as the prevalent use of fines, not readily accounted for by the types of factors we initially examined. In order to reach a comparative-based explanation, we moved beyond the courtroom to the communities in which these courts are located. More particularly, we turned to the political and economic environments within which the lower courts sentence their defendants. This neglected arena of inquiry provides, we think, the basis for better understanding of why criminal courts do what they do.

PART III

SENTENCING: COMMUNITY INFLUENCES

In Part III of our study, we examined influences outside the courtroom to determine their effect on sentencing practices in each of the four courts. In particular, we surveyed citizen attitudes in the communities served by these courts and examined the varying economic environments of the counties within which these courts are located.

Community Attitudes Toward Crime and Punishment

In examining community attitudes toward crime and justice, we sought to discover the amount and types of congruence between local attitudes toward punishment and lower court sentences in these communities. Though surveys of public opinion on crime and punishment have been undertaken (see, e.g., Blumstein and Cohen, 1980; Thomas et al., 1976; Grindstaff, 1974; Rossi et al., 1974; Gibbons, 1969), this is one of the first instances where attitudes and court sentences from the same local jurisdictions have been compared.

We tapped community attitudes through a questionnaire mailed to a random sample of households in the four counties whose courts we have previously described. The response rate to the survey was remarkable by almost any standards. More than 50% of the households in three of the four communities responded--65% in Mankato, 55% in Columbus, 51% in Austin. Only in Tacoma did the response fall below half, 43%. These response rates compare well with surveys of judges and other public figures reported in the literature (see, e.g., Ryan et al., 1980). Equally important, the respondents to our survey appear to be quite representative of their communities, based upon available Census Data.

Relatively little congruence between citizen attitudes and court sentences emerged from our data analysis. In absolute terms, the percentage of citizens who would fine, jail, or impose other sanctions upon convicted defendants in drunk driving, shoplifting, and assault cases varies sharply from the sentences that the local court actually imposed.

The strongest congruences between what courts do and what citizens think they should do occurs in the minor traffic offense area--speeding. 80% or more of all speeders are fined in each of the courts, and roughly 80% or more of citizens in each of the communities think speeders should be fined. Equally compelling, neither courts nor citizens believe in the frequent application of other sanctions in speeding cases. Strongest citizen support emerges for driver improvement programs, and it is these that are typically most likely to accompany fines in the few instances where courts employ more than one sanction.

Significant disparities occur between courts and citizens in drunk driving cases. In general terms, citizens in our four communities would "throw the book" at drunk drivers, imposing upon them an array of sanctions. Courts, by contrast, are more selective in the actual use of sanctions. The sharpest differences appear in the utilization of fines and jail terms. In all four courts, nearly every defendant receives some fine, but only about two-thirds or slightly fewer citizens would fine defendants. A significant minority of the populace in each community would, instead, suspend the license of convicted drunk drivers and send them to treatment programs. Correlatively, though, a significant minority--also about one-third--of each community would send drunk drivers to jail. Yet two of the courts--Mankato and Tacoma--rarely jail drunk drivers, and Austin does so only slightly more often. Only in Columbus does the percentage of defendants jailed for drunk driving roughly match the percentage of citizens who would send drunk drivers to jail.

Sharp differences also occur in shoplifting cases. In the most general terms, courts impose predominantly punitive sanctions--fine and jail--whereas the citizenry favors much greater use of restitution to the victim (store), counseling for defendants, and community service work. The latter is used by the Mankato and Tacoma courts in theft cases but not nearly with the frequency the citizenry favors, and community service is not at all utilized in theft cases in Columbus or Austin. Likewise, there is strong citizen support for counseling but little use by the courts.

Disparities in assault cases generally parallel those in shoplifting cases. Except in Mankato, the courts fine defendants much more frequently than would the citizenry. Likewise, the courts generally jail defendants in assault cases more often than citizens would. Indeed, in one of the few statistically significant differences among community attitudes toward punishment, citizens in Mankato and Tacoma would send assault defendants to jail less often than citizens in Columbus and Austin. Yet it is precisely in Mankato and Tacoma where assault defendants are <u>most</u> likely to go to jail.

In a more comparative vein, there is some evidence for a relationship between community attitudes and court sanctions. The most punitive citizenry appears to be Columbus, favoring more jail, less treatment programs, and less community service work. Likewise, the court most likely to send a defendant to jail is the Columbus one. By contrast, Mankato citizens seem to be the least supportive of jail and more supportive of treatment programs and community work. Similarly, the Mankato court employs treatment programs more often and jail less often than the other courts. Nevertheless, the number of cases in this comparison is small (n = 4), the differences are generally not large, and information about the use of sanctions (particularly, treatment programs) by courts is sometimes sketchy.

Furthermore, the aggregate preferences of citizens regarding the use of such sanctions as jail mask differences on a case-by-case basis that are not consistent with court use of these sanctions.

In sum, there are both similarities and differences in court sentencing practices across the four courts that cannot be explained by the highly similar moral climates of the four communities. With the few exceptions already noted, citizens in Austin, Columbus, Mankato, and Tacoma generally feel much the same about which types of sanctions should be used in punishing misdemeanor defendants. But lower courts appear to be responsive to factors other than public opinion. One such factor, we found, is the local economic environment.

The State of the Fiscal Economy

Criminal justice agencies rely on public funds to support their daily activities. In most states, this means primarily local (county) funding (Baar, 1975). Thus, the availability of county funds, or more broadly, the strength of the local economic environment, becomes a potentially critical factor affecting local courts. We explore this nexus for Pierce county (Tacoma), Travis county (Austin), and Blue Earth county (Mankato),* in general terms and specifically with respect to sentencing.

A severe fiscal crisis in the Pierce County government and the resultant pressures upon the court to generate revenue have significantly altered the sentencing practices of the Tacoma court. Caught between the simultaneous and conflicting demands of the state and county to raise revenues, the judiciary has altered the use of fines imposed. In an attempt to keep court-generated revenues within the county, fines have increasingly come to be replaced by "court costs"

*Limited budgetary resources precluded the study of Columbus, Ohio's local economic environment.

which, unlike fines, remain entirely within the coffers of county government. These efforts, though, have served to further exacerbate the fiscal problems of the state. In so doing, they have indirectly contributed to deteriorating conditions within the county jail, for overcrowding in state correctional facilities has spilled over into all local county jails. As a result, judges have begun to search for alternatives to jail, but the viability of alternatives is, in turn, reduced by county efforts to save money through personnel cutbacks, such as in probation.

Fiscal constraints within Travis County have contributed to the problems faced by the county jail in Austin. Insufficient revenues to upgrade the jail have permitted serious deficiencies within the facility, thereby reducing the likelihood of jail sentence recommendations by a prosecutor's office which dominates the sentencing decision in Austin. Fiscal constraints have also altered probation in Travis County. The more costly "team concept" has given way to the more efficient--but perhaps less effective--individual approach to probation.

Mankato courts have been the least affected by economic pressures. Blue Earth County has yet to feel the pinch of increasing fiscal constraints. Nevertheless, the state of Minnesota--like most states--is feeling the pinch, and so strategies for coping with such possibilities are beginning to emerge. As yet, such constraints have not significantly affected sentencing in Mankato. But the future of community service, probation, and some treatment programs are by no means secure in the Mankato court.

Jails*

Conditions within Travis County Jail in Austin were deplorable by almost any standard. A federal lawsuit was pending against the county because of these conditions, and a federal court had ruled in 1974 that conditions within the jail

*Limited budgetary resources precluded the study of Columbus, Ohio's local jails.

violated inmates' rights under the First, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. Conditions within the jail had not improved markedly between 1975 and 1982. At the time of our interviews, the County Commissioners were unavailable, but could be found in meetings regarding the continuing pressure by the federal courts to bring the Travis County Jail in line with constitutional rights.

The Pierce County Jail in Tacoma also faced problems. Though no law suits were pending against the county jail, overcrowded facilities resulted in inmates being released before the completion of their sentences. Some defendants sentenced to county jail were never admitted, due to overcrowding.

By contrast, Blue Earth County Jail in Mankato was recognized as the finest facility in southern Minnesota. Overcrowding was no problem. Indeed, the facility was being used to house defendants sentenced to jail by courts in adjacent counties.

Conditions within the Austin and Tacoma County jails had significant effects on court practices. Judges in both communities felt pressured to keep the jail populations down. In Austin, these pressures resulted in changes in custody and sentencing practices. Austin defendants who might otherwise have been detained were being released on personal recognizance. And sentence recommendations made by the prosecutor's office were being modified in light of the jail situation. The impact of the changes in recommendations assumed all the more meaning in light of the Austin judiciary's willingness to "rubber stamp" such recommendations.

Tacoma judges were especially outspoken in their frustration with the conditions of the county jail. Judges felt their sentences were being overruled by executive actions, and they felt that their own credibility was being undermined in the eyes of the populace. Judges often modified jail sentences after some time had been served. Alternatives to incarceration were actively sought. One Tacoma judge noted, "I'm looking for reasons not to send somebody to jail."

PART IV

SUMMARY AND IMPLICATIONS

We have presented a multi-faceted view of the sentencing process in four lower criminal courts, stretching from the shores of Tacoma, Washington to the streets of Columbus, Ohio. The question of why one defendant is sentenced in a particular way and another defendant differently is tackled first. We analyze sentencing practices within four courts, emphasizing the role of legal and, to a lesser extent, extra-legal factors. Then, we address why defendants as a whole are sentenced in particular ways in one community but differently in others. This leads to a structural, or macro-level, perspective, in which we examine the influence of the political and economic environments surrounding these four courts. This dual approach to studying sentencing yields a more satisfactory response to questions of both differences and similarities across the four lower courts.

Summary and Conclusions

Despite our ability to explain some, and occasionally much, of the variation in sentencing practices within these four courts, we share with Feeley (1979) some uneasiness about the completeness of a quantitative analysis of individual defendant sentences. Feeley's response was to utilize a qualitative approach to describe the process by which defendants came to be adjudicated and sentenced within the New Haven court. Our response, likewise, was to adopt primarily a qualitative approach but to direct our efforts beyond the courtroom, to the larger community in which these courts function. There is ample evidence for the hypothesis that the community influences courts and the administration of justice (see, e.g., Baar, 1975; Levin, 1977; Eisenstein and Jacob, 1977; Kritzer, 1979; Ryan et al., 1980), though little systematic testing has been done to date.

Finding little evidence for the influence of community attitudes about crime on lower court sentencing, we turned to the economic environment of the communities. Here, we struck the proverbial "pay dirt." Though our analysis is necessarily preliminary because it rests on interview data, not on actual numbers about the fiscal or budgetary picture, we believe the convergence of perceptions among a variety of court, court-related, and political actors lends credence to our interpretations and conclusions.

Quantitative analyses revealed heavy reliance on the use of fines in all four courts. We believe this is no accident or coincidence. Nor do we see this phenomenon to be the result either of lofty penological considerations or a response to community values. Instead, we interpret the prevalent use of fines to reflect "economic realities"--that is, taking advantage of the opportunity to raise revenue for local (county) government. Fines can be seen as another local tax--in this instance, on minor illegal behavior. Local county boards impose this tax, which is politically acceptable to the populace because the amount is relatively small, the principle is "user-based," and the users constitute a small and unpowerful portion of the total population.

Revenue generation takes place within quite different political and economic contexts, however. For one thing, the locales themselves vary in how dependent they are--or choose to be--on court-imposed fines, fees, and costs. Economic conditions, themselves, may not be comparable. Tacoma's county government, for example, was mired in a financial crisis far deeper than Austin or Mankato's. Correspondingly, expectations about the courts being "self-sustaining" in Tacoma contrasted with more modest visions of revenue-capability in Austin and Mankato. The source of pressures, however direct or subtle, also varied. The county board provided the (heavy) pressure in Tacoma and the (very mild) pressure in Mankato. But in Austin pressure came from the probation department, because the judicially-

imposed monthly assessment of $15 accompanying probation went directly to the probation department rather than to the county general fund.

Judicial responses to these pressures also differed from locale to locale. Judges in Tacoma acquiesced; indeed, they actively shuffled fines and court costs so as to improve the economic position of the county vis-a-vis the state. Austin judges, too, acquiesced to these pressures, albeit somewhat more reluctantly and less consistently. They did, for example, waive the probation fee on occasion for poor or nearly-indigent defendants, much to the chagrin of the probation department. By contrast, Mankato judges consistently resisted pressures to raise additional revenue. They rejected the suggestion of adopting court costs (Mankato currently imposes no court costs other than for partial reimbursement for use of the public defender's office). Perhaps because of this firm judicial opposition, Mankato was the only site where we found evidence that the targets of pressure extended beyond the court. There, some informants thought the police might be under some pressure to raise more revenue for the county, citing as evidence periodic blitzes of drunk driving arrests and traffic violations.

Counties were not the only level of government strapped for funds. States, too, were far from fiscal security, further jeopardizing the economic viability of their local governments. Interestingly, states sometimes used local courts as sources of generating revenue for other, criminal justice-related programs. The state of Washington was particularly active in this regard. Assessments in five and ten dollar amounts were piled on top of defendant fines to help pay for statewide programs for traffic safety education and police training, among other things. In Texas, state-imposed assessments on fines in the local courts helped to raise the money to pay for state matches to federal grants awarded to local courts. In Minnesota, the legislature was debating, but had not yet passed, a measure similar to Washington-style assessments for police training and victim assistance programs.

The other side of revenue generation is cost control. Reducing expenditures has become a common theme at all levels of government--federal, state and local--and throughout the private economy. Courts, too, have not escaped from cost-control techniques and budgetary cutbacks. Probation departments, in particular, have been the targets of personnel cutbacks. Austin and Tacoma have been hit particularly severely; in Austin, more than two dozen probation officers were laid off within an eighteen month period.

The withdrawal of federal programs and funds has also affected these courts. The demise of the Law Enforcement Assistance Administration (LEAA) and the emaciation of the Comprehensive Employment Training Act (CETA) have been largely responsible for the diminution of federal government contributions. The Austin court was especially reliant on LEAA in a number of programmatic areas, including court administration, forensic services, and probation. One result was an elimination of the professional-level court administration position in favor of an upgrading of lower level, clerical personnel. For probation, the result was severe cutbacks in staff along with the elimination of the Austin court's innovative "team" concept. The Mankato and Tacoma courts have utilized CETA personnel to varying degrees. Their elimination in Mankato could threaten the court's currently-extensive use of community service work, because in the past CETA personnel have administered that program. Perhaps surprisingly, Tacoma seems to have anticipated the decline of CETA by developing strategies to incorporate either the tasks they performed or the personnel themselves into the mainstream of the bureaucracy. Still, the severe pressures on local government in Tacoma could lead to further cutbacks in the Tacoma court support staff.

Several implications for misdemeanor court sentencing and the administration of justice appear on the horizon, given the "economic realities" of these three communities. First, the treatment-rehabilitation ethic--so widely prevalent

in American penology--appears to be in jeopardy in the nation's lower criminal courts. At a time when money is tight, priorities are being re-examined. Policy-makers see little in the way of political constituencies behind rehabilitation programs, though the public itself is not uniformly skeptical (based upon our survey responses). Furthermore, criminal justice research has found less than resounding evidence of the success of rehabilitative approaches (see, e.g., Martinson, 1975). Probation, in particular, appears on the verge of being dismantled in misdemeanor courts, and community service restitution may be crushed in its infancy. General treatment programs, such as for drug or alcohol-related offenses, may survive only if user costs are greatly increased or if existing local welfare and human service bureaucracies absorb criminal justice system defendants.

Secondly, the use of jail for convicted misdemeanants may become a luxury of the past. Except where state law mandates short-term incarceration (as increasingly appears to be the case with drunk drivers), the discretionary use of jail may be rare indeed. If our locales are at all representative, many local jails are teeming with felony defendants who either have been convicted and sentenced or are in custody awaiting trial. With serious crime on the increase and measures to limit bail opportunities widespread in the states, we can only expect the pressures from felony defendants on county jails to grow worse. In hard ecomonic times, and especially in places whose jails are already overcrowded, misdemeanor defendants are likely to be the beneficiaries. If defendants cannot be jailed and treatment programs diminish, fines will become the staple of punishment in the lower courts to a degree even greater than the current situation. This may not necessarily lead to much more revenue, however. Rather, difficulties in collection from poor and transient defendants may result (Hillsman et al., 1982).

Criminal court proceedings have often been likened to morality plays (Erikson, 1966; Bennett and Feldman, 1981). But we have found that the

proceedings are "played" before a backdrop of politics and economics, in which judicial discretion in sentencing will be increasingly curtailed. Appellate court decisions, legislative actions, and scarce budgetary resources are becoming major contributing factors to this process. Federal court decisions limit the use of overcrowded or unsafe jails, incarceration of defendants unable to pay fines, and incarceration of defendants without counsel. At the state level, legislators are becoming increasingly restive over the public outrage at drunk driving. The result probably will be tougher statutes that (like Ohio's) mandate incarceration--even if for a short period--of defendants convicted of drunk driving. Though charge reductions will always be potentially available to circumscribe legislative intent, this too may be more difficult to accomplish under the glare of increased visibility. Finally, scarce budgetary resources at the federal, state, and local levels are likely to impair the use of treatment programs and other costly-to-administer sentencing options such as community work. In short, judges in the lower courts--for better or worse--will find it increasingly difficult to do what they would really like to do with the defendants who come before them.

More generally, what is threatened is the quality of judicial independence, long revered as the hallmark of American justice. The Constitution's idea of separation of powers seems, with little doubt, violated by pressures upon the courts from legislative sources to raise more money and from executive sources to forego the professional, technical, and support staff needed to implement alternative sentencing options. Most judges in these courts believed this, as did some--but not all--other court participants. On the other hand, there may be only a fine line between judicial independence and judicial hegemony. Political theorists and commentators (Abraham, 1981) continue to argue that the legislature's "power of the purse" is one of its few effective checks against a wild or overbearing judiciary. Whether the courts should be treated at budget time like every other

agency or in a special category reflective of their status as a separate branch of government is a question being hotly debated in local communities these days. The lack of consensus on this issue among policy-makers only parallels the lack of consensus in the polity at large.

Implications for Research

Our findings and conclusions have implications for several bodies of research. For sentencing research, we would suggest a closer look at the variables comprising standard quantitative analyses. The research reported here strongly indicates that contextual factors qualify or alter the meaning of variables. This is particularly true with respect to sanctions. For example, fines have typically been used to connote the economic penalty imposed upon convicted defendants. But we have found the increasing import of court costs, especially in Tacoma where they are often being used in lieu of fines. The meaning of probation is also changing, as departments move increasingly to unsupervised probation in the wake of personnel cutbacks. Jail terms, too, become ambiguous when there is no certainty, as in Tacoma, that they can or will be executed. These are but a few of many examples that emerge from our comparative field-based research. For every effort we made to insure comparability from site to site in the meaning of key variables, we found disturbing loose ends that could not readily be tied together. Future research, even case-studies, should pay closer attention to what sentencing and related variables actually mean. In particular, qualitative methods should be used to supplement quantitative analyses wherever possible (see also Feeley, 1979; Mather, 1979).

Much research has taken place during the past decade on the influence of legal versus extra-legal factors on sentencing. Those interested in extra-legal influences have examined such offender characteristics as age, race, gender, and socio-economic status to determine whether disparities in treatment existed

between classes of defendants. The research in this area has yielded some important findings, but not without much methodological debate (Spohn et al., 1981). Thus, we think that some resources should be redirected toward the study of macro-level influences. Our research indicates that cross-community variations in sentencing are not well-explained either by differences in legal factors such as the type or seriousness of offense or differences in the demographic backgrounds of defendants. Rather, sentencing variations are responsive to environmental conditions. The economy is but one of several possible areas of research, and ours is but a first look at economic factors. The potential for theoretical contributions to our understanding of justice seems much greater, at this point in time, by moving systematic empirical inquiry beyond the courtroom.

Finally, our research may speak in a limited way to the community/political culture literatures of sociology and political science. Communities may not be so distinctive in their political cultures--in their values and attitudes about politics and public policies (like crime)--as previously supposed. It has been commonplace to attribute unexplained or peculiar differences in sentencing to the--usually unknown--normative climates of communities (see, e.g., Levin, 1977; Wheeler et al., 1982). But our research points, in a preliminary way, to consensual attitudes about crime and punishment across four communities quite disparate in their demography and geography. Attitudes about drunk driving, shoplifting, assault, and speeding are almost invariant from one community to another.

Policy Implications

Our research also has a range of policy implications. Rather than making specific policy recommendations about the operation of the lower criminal courts, we instead map out implications for several not-so-obvious policy areas.

The first concerns research and implementation of sentencing guidelines. In an effort to reduce wide judicial differences in sentencing at the felony level, formal quantitative guidelines were developed, tested, and implemented in several federal district courts (see Kress, 1980). The purpose of the guidelines was to establish a precise range of acceptable sentences for different categories of offenders and offenses. The sentences were developed from penological considerations--rehabilitation, punishment and deterrence in some combination. Likewise, some states have recently begun to develop and implement guidelines for their felony, and occasionally, lower courts (see Criminal Courts Technical Assistance Project, 1980). Guidelines serve a useful purpose in the sentencing process, even if their use is only voluntary or selective. But such guidelines will need to become increasingly sensitive to the implications of "economic realities," if they are to be at all realistic. Judges do not sentence defendants to jail or prison merely, as one put it, to "hear their vocal cords operate." Resource availability at the state and local levels will have to be factored into the equations that develop what kinds and how much of sentences will be imposed. In particular, input from sheriffs and corrections officials will be essential.

A second area of policy implications focuses on the methods for court financing. As a response to reform pressures for the unification of state courts, local financing of courts has been urged to give way to state-level financing (see, e.g., Berkson and Carbon, 1978). Baar (1975:116-17) observed a small trend toward increased state financing of courts in the early 1970s. What would be the implications for political and economic considerations, if such a trend were to continue or accelerate?

Many reformers regard locally-financed courts akin to political cesspools in which judicial independence is severely compromised. Shifting the budgetary battleground to the state level, however, would seem to do little more than shift

the arena--but not particularly the amount or intensity--of politics. In fact, we know sufficiently little about these political processes that only sheer speculation is possible. But we do know that state financing is no panacea for the woes of interest group pluralism or the complexities of federalism. Local county board members would lose control not only of expenditures (which they might gladly yield) but also of revenue. As one consequence, locales whose courts are effective at revenue-generating might find themselves helping to fund poor counties in other parts of their state, if some kind of per capita factor were to prevail in the state allocation process. Indeed, the uncertainties of interest group politics at the state level are such that substantial resistance to state financing can be expected. Thus, local politics will continue to flourish in most states, where courts remain primarily financed from local treasuries.

Concluding Note

Our study of sentencing in four lower criminal courts accomplishes several important goals. It is the first comparative study of what can accurately be called "America's most neglected courts" (President's Commission on Law Enforcement and the Administration of Justice, 1967). The four courts we studied are quite different in many aspects of their sentencing practices. These differences--identified in some detail--indicate the value of multi-site studies and, thus, the limitations of case studies. Another key goal was to expand the object of analysis beyond the confines of the courtroom or the courthouse. We examine community influences--both political and economic--on the aggregate sentencing features of each court. Yet more remains to be done. Much of our research was necessarily exploratory and limited. We hope to lay some groundwork for future studies of lower criminal courts and to provide alternative directions for analyses of the adjudication and sentencing processes.

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Appendix A

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