Federal Probation

JUNE 1985

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FEDERAL PROBATION QUARTERLY

Administrative Office of the United States Courts, Washington, D.C. 20544

SECOND-CLASS POSTAGE PAID AT WASHINGTON, D.C.
Publication Number: USPS 356-210

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME XLIX JUNE 1985 NUMBER 2

This Issue in Brief

Probation and Felony Offenders.—Author Joan Petersilia summarizes the major findings of a recent Rand study designed to discover whether felony probation presents unacceptable risks for public safety and, if so, what the system could do to overcome those risks. To this end, the study sought to establish how effective probation has been for a sample of felony probationers, to identify the criteria courts use to decide whether a convicted felon gets a prison or probation sentence, to discover whether the prediction of recidivism could be improved, and to see if the system could develop a felony sentencing alternative that poses less risk for public safety. The results show that two-thirds of those sentenced to probation in Los Angeles and Alameda, California, were arrested during a 40-month followup period. Given these findings, the author concludes that the criminal justice system needs an alternative form of punishment intermediate between prison and probation. The article recommends that programs incorporate intensive surveillance with substantial community service and restitution.

Prosecutors Don't Always Aim To Pleas.—Barbara Boland and Brian Forst examine a new data base on prosecution practices across the county, focusing on the prevalence of guilty pleas relative to trials. They find substantial variation in the number of pleas per trial from jurisdiction to jurisdiction; they also find evidence that this variation is driven substantially by differences in prosecution styles.

Explaining The Get Tough Movement: Can The Public Be Blamed?—This article assesses the common assertion that the current movement to get tough with offenders is a reflection of the puhlic will. Through an analysis of data collected in Texas, authors Francis T. Cullen, Gregory A. Clark, and John F. Wozniak discovered that citizens do indeed harbor punitive attitudes. However, the data also revealed that few citizens are intensely fearful of crime (a supposed cause of punitive attitudes) and that support for rehabilitation as a goal of corrections remains strong. Taken together, these findings suggest that the get tough movement can only partially be attributed to public desires. Instead, a full explanation must attend to the changing social context that not only shaped public views but also en-

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couraged politicians to champion a "law and order" policy agenda across the nation.

Assessing Treatment of the Offender: From Probation to Capital Punishment.—Debate surrounds the issue of effectiveness and/or appropriateness of the various options available in sentencing criminals. While there are many reasons for differences of opinions, the basic—and often most overlooked, according to author Philip E. Lampe—is the lack of official goals. The way a criminal is treated (means) should be guided by what the system hopes to accomplish (ends). It is impossible to assess the effectiveness of any form of treatment without considering it in relation to a specific goal. The author contends, therefore, that until the criminal justice system establishes official goals, no final assessment regarding treatment can be made.

Community Service: All Things to All People.—One of the more popular criminal justice system reforms today has been the introduction of community service. To advocates of competing penal philosophies, community service has been heralded as an innovative measure which incorporates elements of punishment, reparation, rehabilitation, and reintegration in equal force. Whether the objectives in these varying penal philosophies can adequately be achieved within the framework of community service is the focus of this article by David C. Perrier and F. Steven Pink. Apart from the debate concerning the range of objectives community service was originally designed to achieve, the authors hold that there is little doubt about its appeal to protagonists of competing philosophical perspectives.

The Effect of Casino Gambling on Crime.—The legalization of casino gambling is currently being considered by a number of states and cities as a way to improve the local economy without raising taxes. A significant encumbrance to its widespread adoption, however, has been the fear that the introduction of casinos will result in increased crime. Until now, no investigation has been rigorous enough to generate conclusive evidence to support this claim. Author Jay S. Albanese examines the relationship between casino gambling and crime in Altantic City, and accounts for the inconclusive findings of earlier work by controlling for the effects of increases in the population at risk, police manpower, and statewide crime trends. The author hopes that through such objective investigations, both legislators and the public can more confidently assess the benefits and liabilities of casino gambling.

The Alcoholic Bank Robber.—Authors Louis Lieberman and James F. Haran studied 500 bank robbers convicted between 1964 and 1976. Data collected from presentence investigations, probation department files, and the Federal Bureau of Prisons and other sources indicated that of those studied, 12½ percent were alcoholic, an additional 48 percent were moderate drinkers, and those remaining were abstainers at the time of their arrest. According to the authors, alcoholic bank robbers tended to be older, white, poorly educated, separated or divorced, and on welfare. They were less likely than moderate and nondrinkers to use marijuana or opiates. They were more likely to have had multiple prior convictions for both violent and property crimes than were moderate or nondrinkers. Other variables presented: religion, church attendance, mental health status, and cocaine and other illicit substance use.

The Cornerstone Program.—Author Gary Field describes Oregon's pre-release treatment program for chemically dependent, recidivist offenders and presents the results of client outcome studies. The treatment program, Cornerstone, is a 32-bed residential program lasting 6 to 12 months followed by 6 months of outpatient treatment. The client population is chronically disabled by both alcohol or drug history and by criminal history. The five major categories of treatment intervention used at the Cornerstone Program are a therapeutic community, treatment contracts, intensive counseling, life skill training, and community followup treatment. The author evaluates Program results in the areas of client self-esteem, symptomatology, knowledge learned, and subsequent criminal activity and prison recidivism. As a function of the treatment program, Cornerstone clients showed enhanced self-esteem, reduced psychiatric symptomatology, increased knowledge in critical treatment areas such as alcohol and drug abuse, reduced criminal activity, and reduced prison recidivism.

Probation and Parole in Canada: Protecting the Canadian Public?—Even if North Americans share basically many sociocultural values, Americans and Canadians are different in matters related to criminal justice, especially with regard to sentencing, probation, and parole. According to author Andre Normandeau, interviews with Canadian probation and parole officers, as well as correctional administrators, show that Canadians are not turning "to the right." There is no significant emphasis on control and punishment. In fact, Canadians still believe in rehabilitation and their mood and temper still meets Winston Churchill's test of civilization.

Media Magic, Mafia Mania.—The media are perhaps the most significant influence in shaping our attitudes about crime, criminals, and those charged with enforcing the law. Researchers have spent considerable time examining the media's role in reporting on violent behavior, and—while the results are at best inconclusive—it is clear that our attitudes (and perhaps even our behavior) can be attributed to what we read, hear, and see. In this article, authors Frederick T. Martens and Michele Cunningham-Niederer have examined the role of the print media in "reporting" organized crime. They found that the media's treatment of organized crime has, in effect, established as the dominant model of organized crime the so-called Mafia or La Cosa Nostra; that because New York is the media center of the world and because seven major organized crime families are situated in the northeast, the media in that region are most likely to print stories about organized crime; and that perhaps unconsciously, but more than likely, consciously, the terms "mob," "rackets," or "organized crime" are associated with persons of Italian-American ethnicity. According to the authors, the public policy implications that emerge from media coverage are often contradictory and may even enhance and embellish the omnipotent image of the Mafia.

Probation and Felony Offenders

BY JOAN PETERSILIA
The Rand Corporation

The Rise In Felony Probation

OVER THE last two decades, several trends have converged to change the nation's probation population. Rising crime rates have led to public demand that criminals get harsher treatment; "just deserts" and incapacitation have displaced rehabilitation as the primary aim of corrections. Consequently, more felons are being imprisoned than ever before in our history. At the same time, budget limitations have made it impossible for prison construction to keep pace with felony convictions. Prison crowding has become so critical that the courts have increasingly used probation to catch the overflow. As Figure 1 shows, between 1974 and 1983, the prison population increased by 48 percent, but the probation population jumped by 63 percent.

The Research Context

Unfortunately, there has been little research on probation itself and virtually none on felony probation. A recent Rand Corporation study, funded by the National Institute of Justice, used data from California to look at basic assumptions about probation and its mission, to examine the public risks of putting felons on probation, and to consider alternative means of punishing them. This article summarizes the study findings.[1]

CHANGE IN U.S. PAROLE, PROBATION AND PRISON POPULATIONS, 1974-1983

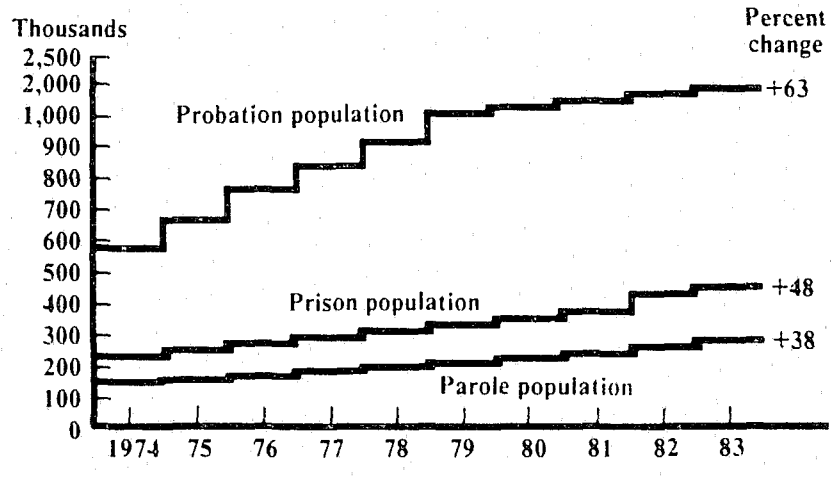


Figure 1

Probation sentences for adult felons have become so common that a new term has emerged in criminal justice circles: felony probation. Today, over one-third of the nation's adult probation population consists of persons convicted in Superior Courts of felonies (as opposed to misdemeanors). This phenomenon raises some serious questions. Probation was originally intended for offenders who pose little threat to society and were believed to be capable of rehabilitation through a productive, supervised life in the community. Given its intent and structure, can probation accommodate more serious offenders, supervise them properly, and keep them from committing more crimes? Understanding how well probation works for felons is a compelling public safety issue.

California's probation system is one of the largest in the nation and was once regarded as the most innovative. Most probation systems acrosss the country have experienced budget cuts because of fiscal limitations and the shift from rehabilitation to punishment. With Proposition 13 and other fiscal

***This research was featured by the National Institute of Justice as an NIJ Research in Brief (March 1985).**

[1]Complete results are contained in *Granting Felons Probation: Public Risks and Alternatives* by Joan Petersilia, Susan Turner, James Kahan, and Joyce Peterson, R-3186-NIJ, The Rand Corporation, January 1985. The report can be obtained by writing Rand, 1700 Main Street, Santa Monica, California, 90406.

constraints, California's probation agencies may have suffered the most severe cuts of all. Since 1975, the state's probation population has risen 15 percent, while the number of probation officers has fallen by 20 percent. In the same time period, the state has spent 30 percent more on criminal justice in general, but 10 percent less on probation. Under the circumstances, probation staffs have had to take on greater caseloads, often at the cost of supervising probationers less carefully. Its experiences should be instructive for other states.

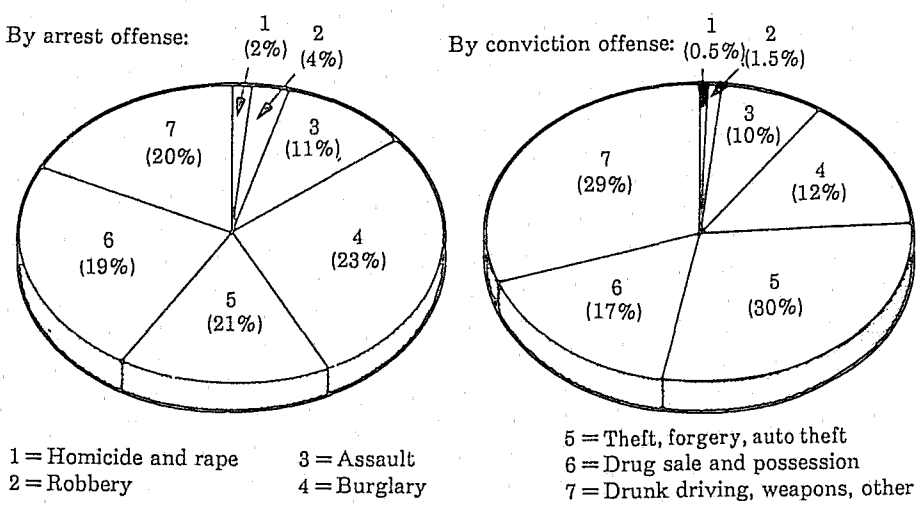
In California, 70 percent of all convicted offenders are granted probation. By 1984, 1 out of every 83 persons between the ages of 9 and 65, or 1 percent of the state's total population, was on probation. The group's size alone places a tremendous burden on probation agencies, and that burden is made heavier by the increasing number of serious offenders it includes. As Figure 2 shows, a significant proportion of all persons granted probation in 1983 had been arrested and convicted of serious crimes.

whether convicted felons go to prison or get probation?

- How accurately can statistical models predict which felons will recidivate and which will not?
- If the answers to these questions indicate that probation is not appropriate for most felons, can the system devise workable alternatives?

To answer these questions, the Rand study performed several types of statistical analyses on data for over 16,000 felons convicted in California's Superior Court during 1980, and recidivism data on a subsample of 1,672 who received probation in Los Angeles and Alameda counties. Because these counties have experienced severe budget cuts and growing caseloads, their recidivism rates may differ from those in counties that have more adequate budgets. Nevertheless, Los Angeles and Alameda supervise 43 percent of the California probation population, and their data provide a good base for addressing the issues surrounding probation as a sentencing alternative for adult felons.

ADULTS PLACED ON PROBATION
IN CALIFORNIA, 1983



Source: California Bureau of Criminal Statistics data. 1984

Figure 2

This situation requires that policymakers look closely at probation, at the public risks of probation for convicted felons and at possible alternative sanctions. In anticipation of the problems and questions that this policy debate will raise, Rand's study was designed to answer some basic questions about probation:

- How well do felons do on probation, measured in terms of rearrests, reconvictions, and incarceration?
- What criteria do the courts use to decide

Public Risks of Felony Probation

Felony probation presents a serious threat to public safety. Figure 3 suggests just how serious. Only 35 percent of the probationers managed to "stay clean," as far as official records indicate. During the 40-month period following their probationary sentence, 65 percent of the total sample were rearrested and 53 percent had official charges filed against them. Of these charges, 75 percent involved burglary/theft, robbery, and other violent crimes—the crimes most threatening to public safe-

ty. Fifty-one percent of the total sample were reconvicted, 18 percent were convicted of homicide, rape, weapons offenses, assault, or robbery, and 34 percent eventually ended up in jail or prison.

Making the Prison/Probation Decision

These high recidivism rates naturally raise questions about what criteria the courts use to decide whether a convicted felon receives a prison or proba-

FELONY PROBATION RECIDIVISM RATES
(40-MONTH FOLLOWUP)

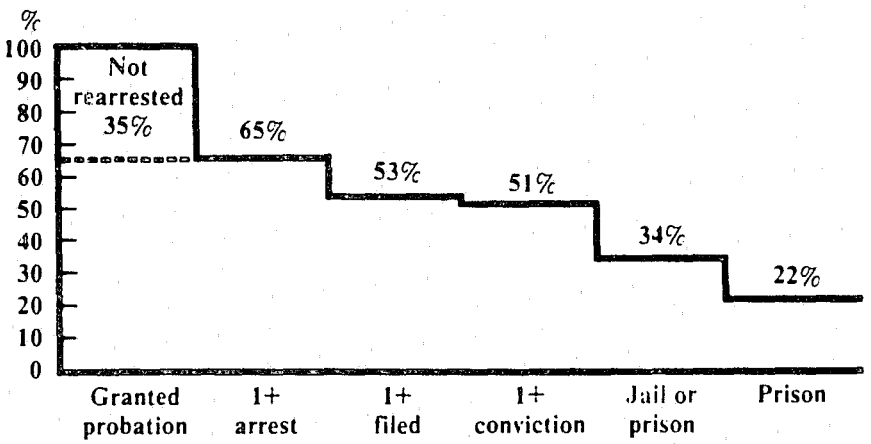


Figure 3

The data also showed that offenders originally convicted of property crimes (burglary, theft, forgery) were the most likely to recidivate, followed (at some distance) by those who were convicted of violent and drug offenses. Only 33 percent of the property offenders had no subsequent arrests, while about 40 percent of the drug and violent offenders managed to stay clean.

The study also found some other important facts about the probationers. With the exception of drug offenders, they were most often rearrested and convicted of the same crimes they had originally been convicted of. Property offenders tended to be rearrested more quickly than those originally convicted for violent crimes or drug offenses. The median time of first *filed* charge (not first arrest) was 15 months for drug offenders, 5 months for property offenders, and 8 months for violent offenders. However, as Figure 4 shows, both property and violent offenders either committed new crimes or "retired" after 2 years, while drug offenders continued at a linear rate—that is, during the followup, a roughly equal number returned to crime each month. Consequently, we do not know what the rate of recidivism for drug offenders would be beyond 40 months. Also, we cannot be sure that the recidivism rate for drug offenders would in the longer term remain lower than the rates for property and violent offenders.

CUMULATIVE PERCENT OF PROBATIONERS WITH FILED CHARGES DURING FOLLOWUP MONTHS, BY ORIGINAL CONVICTION CRIME

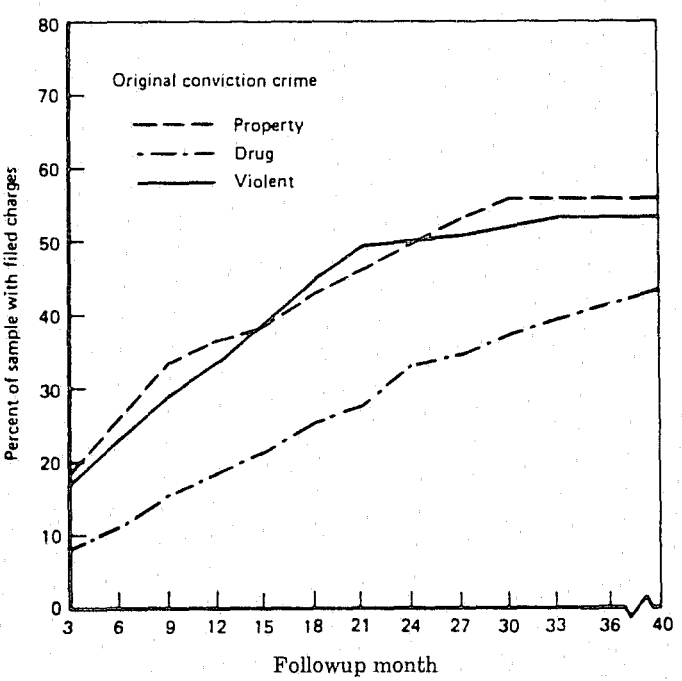


Figure 4

tion sentence. Statistical analyses in the study show a high correlation between prison sentences and certain basic factors of the case that reflect an offender's criminality:[2]

- having two or more conviction counts
- having two or more adult prior convictions
- being on parole or probation when arrested
- being a drug addict
- being armed
- using a weapon
- seriously injuring the victim.

The California Penal Code (Section 1202d) states that such factors should be weighed before an offender is granted probation, and the courts do appear to consider them. For all offenses except assault, offenders who had three or more of these characteristics had an 80 percent probability of going to prison, regardless of the type of crime for which they were currently convicted. Because correctional facilities are strained to capacity, prisons appear to be increasingly reserved for "career criminals."

However, when the study attempted to "predict" which sentence the offenders would receive, 20 to 25 percent of offenders in the sample received sentences at odds with their "statistically-predicted" sentence. These findings suggest that—in terms of their crimes or criminal records—many of the felony probationers cannot be distinguished from their counterparts who went to prison.

Predicting Recidivism

To determine what factors were associated with rearrest, reconvictions, and convictions for violent crime, the study created a hierarchy of information levels similar to the hierarchy that the court uses in the prison/probation decision.[3] The levels reflected (1) type of conviction crime, (2) prior record, drug and alcohol abuse, income, (3) sentence recommendation and special circumstances from the presentence investigation (PSI), and (4) demographics (age, race, education) and living situation.

Regression analyses identified the following characteristics as most significantly related to recidivism:

- **Type of conviction crime.** Property offenders had the highest rates of recidivism.
- **Number of prior juvenile and adult convictions.** The greater the number, the higher the probability of recidivism.
- **Income at arrest.** Regardless of source or amount, the presence of income was associated with lower recidivism.
- **Household composition.** If the offender was living with spouse and/or children, recidivism was lower.

These factors were equally strong predictors of rearrest, reconviction, and reconviction for violent crime. Nevertheless, as Figure 5 shows, having the information contained in the four levels did not make the statistical prediction of rearrest a great deal better than chance. For the total probation sample, knowing the type of conviction crime improved over chance by only 2 percent. Considering information on prior criminal record, drug and alcohol use, and employment made the prediction 11 percent more accurate than chance. However, adding demographics increased accuracy only 2 percent more—for a total of 69 percent in predicting rearrests. The study's predictions for reconvictions were only 64 percent accurate, while those for violent crime reconvictions were 71 percent accurate. Thus, using the best statistical models and a wealth of information on offenders, we could not predict recidivism with more than 71 percent accuracy.

It is interesting to compare the factors that predict the prison/probation decision with those that predict recidivism. There is not as much correspondence as one might expect. The only factor that strongly predicts both the decision to imprison and recidivism is prior adult criminal convictions. Prior juvenile convictions, while a very strong predictor of recidivism, were not particularly influential in the sentencing decision. Most of the other factors important to the imprisonment decision, such as weapon use and victim injury, failed to significantly predict recidivism. Likewise, factors that predicted recidivism, such as living situation and monthly income, failed to influence the imprisonment decision. These differences undoubtedly reflect the trend in the California sentencing system toward a "just deserts" model, where sentencing is based primarily on the crime and prior criminal record, and not on factors necessarily associated with recidivism.

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[2]After controlling for the basic facts of the case, researchers also performed analyses to determine whether the manner in which the case was officially processed by the courts made a difference in the prison/probation decision. The analyses revealed that having a private attorney and obtaining pretrial release could reduce a defendant's chances of imprisonment, whereas going to trial (as opposed to plea bargaining) generally increased that probability. These "process" variables significantly affected the prison/probation decision even after all the basic factors had been statistically controlled—that is, when all the offenders are statistically "interchangeable" except for their court handling by the court.

[3]The Rand data contained over 235 information items, including extensive information about the offenders' criminal, personal, and socioeconomic characteristics.

STATISTICAL ABILITY TO CORRECTLY PREDICT REARRESTS

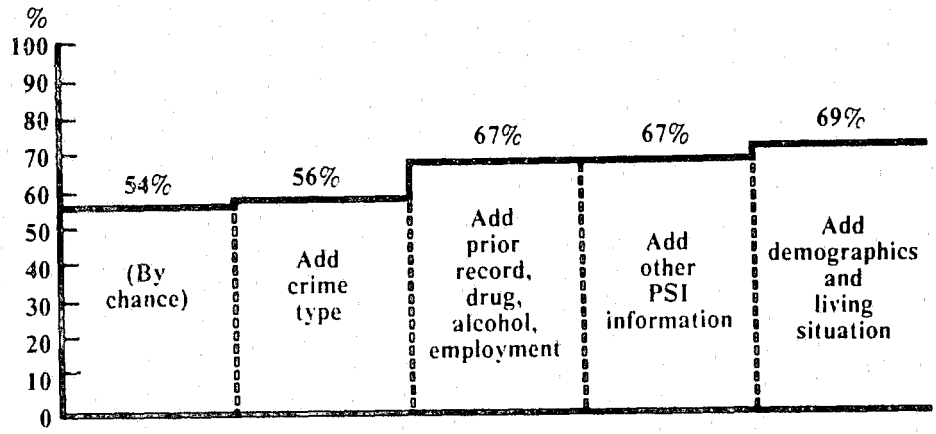

Figure 5

Figure 5 also reflects some important facts that the study discovered about presentence investigations (PSIs). Like many of their counterparts across the nation, probation agencies in Los Angeles and Alameda counties spend almost half their time and resources preparing PSIs. In California, PSIs routinely include very detailed offender and offense information, plus judgments made by the probation officer concerning special aggravating or mitigating factors (e.g., offender is remorseful, has health problems, testified against accomplices). As Figure 5 shows, this *additional* information from the PSI did not improve the recidivism prediction, once the analysis controlled for the offender's background and criminal history (which also comes from the PSI).

Moreover, the study found that, contrary to common belief, the courts do not necessarily follow the PSI's sentence recommendation. In the two counties, the PSI had recommended prison for 31 percent of the offenders who got probation. Although this tendency to override the PSI recommendation merits more study, it may reflect the courts' awareness that PSIs aren't necessarily accurate in predicting recidivism. In the probationer sample, 63 percent of the people they recommended for probation were rearrested, compared with 67 percent of those they recommended for prison (see Figure 6). Similar results were obtained for reconvictions and reconvictions for violent crimes. *In only a few instances did the offenders they recommended for probation behave significantly better than those they recommended for prison.*[4]

RELATIONSHIP BETWEEN PSI SENTENCE RECOMMENDATION AND RECIDIVISM (ALL OFFENDERS COMBINED)

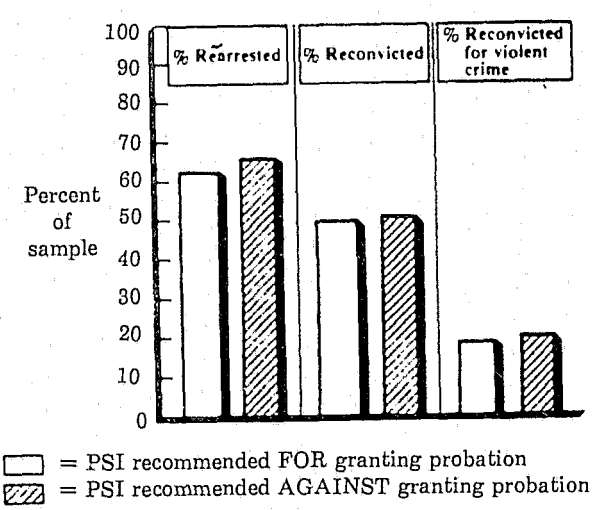

Figure 6

The problems with predicting recidivism prompted the analysts to approach the prison/probation decision from the opposite direction: is it possible to identify convicted felons who have a relatively *high* chance of succeeding on probation, and are there enough of them to significantly reduce the prison population without jeopardizing public safety? The study created a statistical model, based on regression analyses, of "good prospects" for probation.

[4]These findings on PSIs should be interpreted cautiously. The PSIs examined were prepared in counties where officials admit to having less than adequate time to prepare proper reports. Under these conditions, it is not surprising that the PSI information does not adequately distinguish recidivists. In less burdened counties, the "predictive" quality of the PSI might be higher.

This model used characteristics common to probationers who had no new convictions to see how many prisoners would have had a 75 percent chance of successful probation. Unfortunately, only about 3 percent of California's 1980 "incoming" prisoner population qualified. This result reinforces the study's general finding that very few adults convicted of felonies in Los Angeles and Alameda counties are good candidates for probation, as it is now administered.

This conclusion is not intended as an indictment of the probation departments. With their reduced budgets and mountainous caseloads, they cannot supervise probationers much more closely. However, even if they could, routine probation was not conceived or structured to handle serious offenders. And, what is worse, these offenders seem to have crowded out the traditional probationer population—first offenders, petty thieves, drug offenders, and disrupters—many of whom evidently see the system's "indifference" as encouragement to commit more serious crimes. Prior Rand research has shown that believing they can "get away with it" is characteristic of career criminals. (Petersilia, 1977)

Finding Alternatives

The criminal justice system is facing a severe dilemma. Probation caseloads are increasing at the same time that budgets are shrinking. Nevertheless, probation will probably be used for still more convicted felons because of prison crowding and the lack of funds to build more prisons. Most of the felony probationers in the Rand study failed on probation, and it seems unlikely that the courts can improve their ability to predict recidivism, given current information and methods. Further, very few offenders now entering prison are good prospects for traditional probation.

The situation demands that the system rethink its response to felony probationers. Without alternative sanctions for serious offenders, prison populations will continue to grow and the courts will be forced to consider probation for more and more serious offenders. Probation caseloads will increase, petty offenders will be increasingly "ignored" by the system (possibly encouraging recidivism), and recidivism rates will rise. Present difficulties result from the fact that the criminal justice system has never developed a spectrum of sanctions to match the spectrum of criminality. Some believe that the U.S. overutilizes imprisonment because it is virtually the only severe punishment that remains. There is a critical need to establish a greater array of sentencing options. However, new options must be restrictive enough to ensure public safety. One promising approach being tried in Georgia and New Jersey is intensive surveillance programs (ISPs). The New Jersey ISP keeps offenders under strict curfew, requiring them to be in their homes from 10 p.m. to 6 a.m. Participants must also maintain employment, receive counseling, provide community service, submit to random urine testing for drugs, and make restitution to their victims. NIJ is sponsoring an evaluation of the program, and preliminary results are encouraging. Of the 226 persons who have participated in the program during the past 14 months, 29 (13 percent) have been returned to prison—only 1 for an indictable offense. Most of the violations were curfew and drug-related (Pearson, 1985).

Intensive surveillance programs cost $3,000 to $5,000 per offender per year, as compared to about $1,600 for each person on probation and $14,000 for each offender in prison. To help pay for these programs, some states have begun to collect probation supervision fees from the felons themselves. Georgia's ISP is basically self-supporting, and during its first year of operation, collected about $650,000 in probation supervision fees (Erwin, 1983). Other states are developing risk-prediction models that identify "low-risk" probationers needing minimal supervision, thus allowing more resources to be applied to high-risk individuals.

Given problems of prison crowding and the risks of felony probation, intensive surveillance may well be one of the most significant criminal justice experiments in the next decade. If ISPs prove successful, they will restore probation's credibility and reduce inprisonment rates, without significantly increasing crime. Most important, since such programs require that offenders be gainfully employed, functioning members of a community, they offer the prospect of rehabilitating some of the offenders who participate.

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Prosecutors Don't Always Aim to Pleas

BY BARBARA BOLAND AND BRIAN FORST*
INSLAW, Inc.

ONE OF the more controversial features of the criminal justice system in the United States is plea bargaining.[1] The Constitution guarantees the right to trial by jury and protects against self-incrimination, yet pleas of guilty, not trials by jury, have long been the more common means of criminal case conviction.[2] The Director of the Administrative Office of the U.S. Courts reports that for the year ended June 30, 1984, 71 of every 100 felony and serious misdemeanor cases filed in Federal district courts ended in a guilty plea or nolo contendere, while only 13 ended in trial (10 guilty verdicts and 3 acquittals).[3] Guilty pleas outnumber trials by more than 5 to 1 at the Federal level and by about 10 to 1 at the state and local level.

A popular explanation for the predominance of guilty pleas is the pressure of heavy caseloads. Given the high crime rates and the enormous volume of cases that urban courts must contend with, the only way to dispense justice at all, it is argued, is by inducing the mass of defendants to plead guilty in return for a promise of leniency. Guilty pleas are typically thought to be the defendant's "payment" for accepting the prosecutor's offer to reduce the seriousness of charges or to recommend a lenient sentence to the judge.

Some view the idea of inducements by prosecutors to encourage guilty pleas as violations of both the fifth and sixth amendments, while others view the very same inducements as excessive leniency that violates the constitutional protection of domestic tranquility. Victims often see plea bargaining as a practice that further removes them from the criminal justice system. Many see it as an "under-the-table" procedure that serves primarily to undermine respect for the criminal justice system.

Despite the many facets of controversy surrounding plea bargaining, there has been relatively little quantitative analysis of either its causes or consequences. A major reason for this is insufficiency of data. This article presents results of an analysis of a recently assembled Bureau of Justice Statistics (BJS) data base to enhance our understanding of the guilty plea process. The data are from the BJS project on the Prosecution of Felony Arrests.[4] The data in this article cover 14 state and local jurisdictions, all with populations of 200,000 or more. In each jurisdiction, the data were obtained from a computer-based management information system called PROMIS (Prosecutor's Management Information System). The data refer to cases initiated in 1980 or 1981.

It is important to clarify at the outset that this article focuses directly on the ratio of pleas to trials and only indirectly on the process of plea negotiation or "plea bargaining," per se. It has been discovered previously that even in jurisdictions where the practice of plea negotiation is abolished, roughly 80 percent of all convictions are still obtained by way of pleas rather than trial verdicts.[5] The majority of pleas in the United States may involve no negotiation at all.

It is evident, at the same time, that the choice to engage in plea negotiation is controlled largely by the prosecutor and, as the data presented below reflect, that vast differences in the ratio of pleas to trials across jurisdictions reflect primarily differences in prosecution policy. Thus, while this data base was not designed to permit an exhaustive analysis of plea bargaining, it does nonetheless provide an opportunity to examine a variety of issues that are central to why defendants plead guilty at a higher rate in some jurisdictions than in others.

Pleas, Trials, and Caseloads

Perhaps the most basic statistic about plea bargaining is the ratio of pleas to trials. In theory the decision to plead guilty or go to trial is that of the defendant, but the decision is often affected by the prosecutor's plea offer and ultimately by the sentence the defendant expects to receive if he pleads guilty. The ratio of pleas to trials indicates how these individual decisions, taken collectively, are made. This ratio is presented for 14 jurisdictions in Table 1.

***The authors wish to acknowledge the following for their helpful comments: Albert Alschuler, Carla Gaskins, Benjamin Renshaw, William Rhodes, Stephen Schulhofer, Jeffrey Sedgwick, Bruce Taylor, Charles Wellford, and representatives of the participating study jurisdictions.**

[1] The term "plea bargaining," at one time reserved exclusively for pleas of guilty following negotiations with the prosecutor, now is commonly applied to all pleas of guilty. It is clarified later in this article that many pleas do not involve bargaining.

[2] Albert Alschuler, "Plea Bargaining and Its History," *Columbia Law Review*, 1979, *79;* Lawrence M. Friedman, "Plea Bargaining in Historical Perspective," *Law and Society Review*, 1979, *13;* Milton Heumann, *Plea Bargaining*. Chicago, Illinois: University of Chicago Press, 1978.

[3] The remaining dispositions (16 of every 100) were dismissals. Director of the Administrative Office of the U.S. Courts, *Annual Report*. Washington, DC, 1984, Table D4.

[4] Barbara Boland and Elizabeth Brady, *The Prosecution of Felony Arrests 1980*. Washington, DC: Bureau of Justice Statistics and INSLAW, forthcoming.

[5] Michael L. Rubenstein, Stevens H. Clarke and Teresa J. White, *Alaska Bans Plea Bargaining*. Washington, DC: U.S. Department of Justice, 1980.

The median ratio of pleas to trials among these 14 jurisdictions is 11 pleas for every trial. Around this average, however, there exists a great deal of variation. Three jurisdictions have more than 20 pleas for every trial, while three others have only 4 or 5 pleas per trial. Clearly, some jurisdictions are more inclined to dispose of cases by trial than others. What accounts for this difference in the use of trials?

TABLE 1. NUMBER OF PLEAS PER TRIAL, CASELOADS, AND CRIME RATES (BASED ON ALL FELONY ARRESTS)+

Jurisdiction	Pleas per trial	Pleas and trials	Index crime rate++	Population
Geneva, IL	37	680	6,400	278,000
Manhattan, NY	24	17,033	13,800	1,428,000
Cobb County, GA	22	1,456	8,800	298,000
Littleton, CO	19	699	8,400	330,000
Golden, CO	18	1,129	5,200	374,000
Rhode Island	15	3,250	9,100	947,000
Colorado Springs, CO	12	809	8,200	317,000
St. Louis, MO	10	2,533	14,300	453,000
Salt Lake City, UT	9	1,338	11,700	619,000
Lansing, MI	8	1,057*	6,300	272,000
Tallahassee, FL	7	684	12,000	202,000
Washington, DC	5	4,024	10,000	638,000
New Orleans, LA**	4	3,103	9,600	557,000
Portland, OR**	4	2,986	11,200	563,000
Jurisdiction median	11	1,400	9,400	414,000

+See methodological note at end of this bulletin.

++The index crime rate is the number of serious crimes (including murder, rape, aggravated assault, burglary, larceny, motor vehicle theft, and arson) reported per 100,000 residents. The numbers shown refer to the largest city (or cities) within each jurisdiction.

*Estimate of 1,057 pleas and trials is based on the proportion of 2,403 felony arrests filed and the proportions of filed felony cases that were disposed as guilty pleas and trials.

**Approximately half the trials in New Orleans and Portland are bench trials. When bench trials are excluded, both jurisdictions still have a plea to trial ratio below the 14-jurisdiction median.

These data suggest that the conventional explanation of high crime rates and the press of heavy case loads may not be sufficient. Among the high plea jurisdictions (those with plea-to-trial ratios above the median), four are suburban jurisdictions (Cobb County, Geneva, Golden, and Littleton) with generally lower crime rates and average or below average case loads. Similarly, among the high trial jurisdictions, three (New Orleans, St. Louis, and Washington, DC) are inner city jurisdictions with high crime rates and above average caseloads. For these 14 jurisdictions, with the exception of Manhattan, there does not appear to be a strong association between size of the case load and the plea-to-trial ratio. These data, however, do not control for the availability of resources. High plea jurisdictions, regardless of the absolute size of caseloads, may have fewer resources to process each case.

Variation in the plea-to-trial ratio is less pronounced at the Federal level, but it exists nonetheless. The Fifth Circuit (Louisiana, Mississippi, and Texas) has 8.7 pleas per trial, while the neighboring Sixth Circuit (Kentucky, Missouri, Ohio, and Tennessee) has 5.8; West Virginia Southern has 9.9 pleas per trial, while neighboring Virginia Western has only 4.2.[6] Because the Department of Justice allocates resources to the Federal districts in such a way that accounts for the size and complexity of case loads, these differences may result primarily from factors other than resources and case loads.

Pleas and Case Selectivity

Stronger than the relation between plea-to-trial ratios and case loads is the relation between plea-to-trial ratios and arrest rejection rates. Jurisdictions that have a high fraction of trials tend to be more selective in the early stages of prosecution. This can be seen by dividing the 14 jurisdictions shown in the previous table in 2 equal size groups—those with 12 or more pleas per trial (the "high plea" jurisdictions) and those with 10 or less (the "high trial" jurisdictions). The total number of cases rejected or dismissed, shown in Table 2 (based on the nine jurisdictions for which data on rejections and dismissals were available), is similar among the high plea and high trial jurisdictions, but the high trial jurisdictions reject a higher fraction of cases before filing. Stated another way, jurisdictions that turn away more cases at the screening stage generally appear to be more inclined to take cases to trial.

TABLE 2. PERCENT OF FELONY ARRESTS REJECTED OR DISMISSED IN HIGH PLEA AND HIGH TRIAL JURISDICTIONS*

	Percent rejected	Percent dismissed	Total
Four high plea jurisdictions	6%	41%	47%
Five high trial jurisdictions	27%	22%	49%

*Percentages shown are averages for the jurisdictions rather than for the cases in those jurisdictions taken collectively.

Why do the high trial jurisdictions reject more cases at screening? One explanation is that dropping cases prior to court filing frees up court resources for more trials. Another explanation is the prosecutor's policy. The minimum legal standard for filing charges is "probable cause," but in some jurisdictions the prosecutor's screening and charging policy is based on the more stringent trial standard of "guilt beyond a reasonable doubt." In those jurisdictions, cases are not filed unless the evidence,

[6] *Annual Report*, op. cit (note 3), Table D6.

both physical and testimonial, is considered sufficient to prove guilt at trial. Vigorous efforts are made before filing to determine, for example, whether victims and witnesses will be available and willing to testify at trial. If they will not return to court to testify or do not want the case to proceed, charges will not be filed. Once cases are filed under this charging policy, prosecutors can insist that defendants plead to the top charge or go to trial.

Pleas to Top Charge

Are the high plea jurisdictions necessarily more lenient? Given the notion that guilty pleas are supposed to be the result of promises of leniency by the prosecutor, high plea jurisdictions might be expected to grant charge reductions more frequently than high trial jurisdictions. One readily available indicator of charge reduction is the rate at which defendants who plead enter a plea to the top charge. The percentages of pleas to the top charge in the felony courts of three high plea and five high trial jurisdictions are shown in Table 3. Pleas to the top charge are significantly more prevalent in the high trial jurisdictions (the average for five jurisdictions was 68 percent of all pleas) than in the high plea jurisdictions (47 percent).

TABLE 3. PERCENTAGE OF GUILTY PLEAS TO THE TOP CHARGE IN FELONY COURT*

	Three high plea jurisdictions	Five high trial jurisdictions	All eight jurisdictions
Pled to top charge	47%	68%	60%
Pled to lesser charge	53%	32%	40%
	100%	100%	100%

*Percentages shown are averages for the jurisdictions rather than for the cases in those jurisdictions taken collectively.

What is equally interesting is that, contrary to the coventional view of plea bargaining, most defendants in the jurisdictions studied plead guilty to the top charge filed by the prosecutor. This result is not unique to the eight jurisdictions in Table 3. Similar data on felony court dispositions for 15 jurisdictions show that in each of 11 of the 15, close to 60 percent or more of the guilty pleas are to the top charge.[7]

[7] Boland and Brady. The 15 jurisdictions include the 8 in Table 3 plus 7 others. The additional seven were not included elsewhere in this article because plea and trial data were available only for felony court dispositions.

[8] In some jurisdictions the dropping of lesser charges can remove the risk of sentence "enhancements." A felony gun possession charge, for example, is a common lesser charge that authomatically adds time to the sentence in many jurisdictions.

Of course, a plea to the top charge does not necessarily imply the absence of negotiation or concession. In some jurisdictions—St. Louis, for example—the prosecutor's plea offer may focus on the sentence recommendation to the judge rather than the charge. In other jurisdictions—including Manhattan and Rhode Island—judges routinely participate in plea negotiations; the major focus of those discussions is also on the sentence rather than the charge, and the key participants are the judge and the defense attorney.

Attorneys also may agree to dismiss counts or lesser charges outright, rather than reduce charges, if the defendant will plead to the top charge. Since judges usually give concurrent rather than consecutive sentences, it is not clear with this type of bargaining that the defendant, in fact, normally receives a reduced term of incarceration.[8]

In still other jurisdictions the prosecutor's plea offers are not "negotiated" but are presented to the defense on a take-it-or-leave-it basis. This is the case in New Orleans. The office plea position in each case is determined at the time of screening by one of the screening assistants, usually an experienced prosecutor, before contact with the defense. Trial attorneys who handle cases after they are filed in court are not allowed to reduce charges or make sentence recommendations. If defendants do not plead to the charges as filed, assistants are required to take the case to trial. Some defendants are allowed to plead to a reduced charge when the evidence deteriorates (e.g., when a witness changes his or her testimony) or when new evidence indicates that such a reduction is legally warranted, but this is not common and requires a written explanation by the trial assistant.

In many jurisdictions charge reductions represent an unknown mixture of evidence weaknesses and concessions. The precise mix is difficult to establish analytically because of limitations in measuring the quality of evidence for each charge in each case.

Guilty Pleas and Sentences

A more direct way to address the issue of leniency and plea bargaining is by relating plea rates to the severity of sentences. Table 4 presents data on the fraction of convicted defendants sentenced to prison or jail in five high plea and four high trial jurisdictions. The five high plea jurisdictions are slightly more likely to sentence convicted defendants to prison or jail, but they do sentence a smaller fraction of those convicted to prison (defined here as a year or more of incarceration). For the high plea jurisdictions, an average of 18 percent of the convictions result in a prison sentence, as opposed to a 24 percent average for the high trial jurisdictions. The

differences in imprisonment rates are slight for the violent crime of robbery, but more pronounced for the less serious property crimes of burglary and larceny. While these findings may suggest a direct relation between pleas and sentences, it should be noted that other factors may explain the association: the unique nature of crime, the extent of recidivism, public opinion in each jurisdiction, and so on.

TABLE 4. PERCENT OF FELONY OR MISDEMEANOR CONVICTIONS (ON ORIGINAL FELONY ARRESTS) RESULTING IN PRISON OR JAIL SENTENCES*

	Five high plea jurisdictions	Four high trial jurisdictions
All Crimes		
Prison or jail	45%	42%**
Prison	18%	24%
Robbery		
Prison or jail	74%	64%**
Prison	54%	53%
Burglary		
Prison or jail	52%	48%**
Prison	21%	29%
Larceny		
Prison or jail	38%	36%**
Prison	9%	17%

*Percentages shown are averages for the jurisdictions rather than for the cases in those jurisdictions taken collectively.

**Total incarceration rates are calculated with three jurisdictions; one could not be included because of insufficent data.

When sentences are measured as a fraction of all arrests rather than convictions (Table 5), high trial jurisdictions also show a slightly higher fraction of long-term incarcerations and a slightly lower fraction of any incarceration. While these results are not definitive, largely because the numbers of jurisdictions in each group are small, they may suggest that punishment tends to be more certain in high plea jurisdictions and more severe in high trial jurisdictions.

TABLE 5. PERCENT OF ARRESTS RESULTING IN PRISON OR JAIL SENTENCES*

	Three high plea jurisdictions	Two high trial jurisdictions
Prison or jail	27%	18%
Prison	9%	11%

*Percentages shown are averages for the jurisdictions rather than for the cases in those jurisdictions taken collectively.

Pleas and Time in the System

Another factor that is understood to be related to pleas of guilty is the length of time that cases are in the court. One of the principal reasons given for plea bargaining is that it enables the prosecutor to expedite the flow of convictable cases through the court. The data clearly show that guilty pleas are more quickly disposed than trials. The time from arrest to disposition is longer for cases that go to trial than for cases in which defendants plead guilty in all jurisdictions shown in Table 6. The amount of additional time required for trials varies considerably, however, among jurisdictions: In New Orleans, Portland, and St. Louis, trials take an additional month to 6 weeks to process, while in Manhattan and Washington, DC, trials take approximately 5 to 6 months longer to dispose than pleas.

TABLE 6. MEAN NUMBER OF DAYS FROM FELONY ARREST TO PLEA OR TRIAL, ALL FELONY ARRESTS FILED

Jurisdiction	Plea/ trial ratio	Mean days from arrest to Plea	Trial	Difference	Mean days from arrest to all post filing dispositions
Geneva, IL	37	109	175	66	108
Manhattan, NY	24	88	274	186	101
Golden, CO	18	146	214	68	162
Colorado Springs, CO	12	126	189	63	131
St. Louis, MO	10	195	237	42	195
Salt Lake City, UT	9	121	211	90	124
Washington, DC	5	127	267	140	130
New Orleans, LA	4	78	122	44	85
Portland, OR	4	84	109	25	86

It is also noteworthy that speedy dispositions overall do not appear to be related to whether the jurisdiction has a high plea rate. The jurisdictions with the shortest time intervals from arrest to disposition, Portland and New Orleans, are in fact high trial jurisdictions. The average time from arrest to disposition is even less for the high trial jurisdictions when arrests rejected at screening are included, since arrest rejections tend to be more prevalent in those jurisdictions.

Summary and Implications

Most convictions do not follow a trial. Prior studies report plea-to-trial ratios of about 10 to 1; among the non-Federal jurisdictions sampled here, pleas outnumber trials by 11 to 1. These data, however, suggest something else: The process of obtaining convictions by plea varies substantially from jurisdiction to jurisdiction, defying any

singular concept of the plea "bargaining" process. Jurisdictions vary greatly, especially in the rate at which they dispose of cases through trial. In some jurisdictions there are more than 20 pleas for every trial, while in others, 1 in only 4 or 5 cases goes to trial. Federal districts fall generally toward the low end of this range—from 4 to 10 pleas per trial.

These results, when combined with earlier ones on the plea-to-trial ratio in jurisdictions that do not engage in plea negotiation,[9] suggest that the plea-to-trial ratio is not likely to fall much below 4 to 1 even in jurisdictions where prosecutors do not negotiate with defendants. The jurisdictions with higher ratios tend to engage more in negotiation, as evidenced by the generally lower percentages of pleas to the top charge in the high plea jurisdictions.

The data from these jurisdictions also suggest, contrary to a common belief, that the majority of felony pleas are to the top charge. While sentence concessions and the dropping of less serious charges may accompany many of these pleas, it does not appear to be the case that most pleas are to "lesser" charges. Some jurisdictions routinely reduce the top charge in accepting a guilty plea, but the majority of felony court pleas in the jurisdictions sampled were pleas to the top charge.

These findings raise important questions about the nature of plea bargaining. Specifically, what practices and policies underlie the observed differences in the use of trials and what are the consequences for the outcomes of cases?

The data suggest some tentative explanations. The high trial jurisdictions appear to differ from the high plea jurisdictions in several important respects:

- they tend to be more selective in the early stages of prosecution, rejecting cases at higher rates (27 percent, as a group) than the high plea rate jurisdictions (6 percent);
- they appear to be less likely to reduce the top charge when accepting pleas of guilty than are the high plea rate jurisdictions;
- while they may produce slightly fewer incarcerations per arrest, the high trial jurisdictions tend to produce more long-term imprisonments per arrest, and more per conviction, than do the low trial rate jurisdictions; and
- because the high trial jurisdictions tend to reject arrests at a significantly higher rate than the high plea jurisdictions, it appears that the practices and outcomes of these jurisdictions are driven by policy, no less than by resource availability.[10] If resource shortages are greater in the high plea jurisdictions, it is not clear why those same jurisdictions tend to file arrests in court at a substantially higher rate than the high trial jurisdictions.

In short, some jurisdictions have a criminal case processing policy designed to weed out all but highly convictable arrests before they are filed in court, to limit plea bargaining on those that are filed, and to bring cases to trial routinely whenever the defendant does not plead as charged. Those jurisdictions bring arrests to trial at a higher rate and obtain more long-term sentences per conviction than the high plea jurisdictions. The high plea jurisdictions, on the other hand, tend to accept arrests at a higher rate, engage more often in plea negotiation, and obtain more incarcerations (especially more short-term jail sentences) per arrest than the high trial jurisdictions. Thus, the high trial jurisdictions tend to have an implicit policy of relatively severe sanctions, while the high plea jurisdictions appear to have one of somewhat more certain sanctions.

Which system is better? That is a matter of opinion. Negotiated pleas appear to be an exedient for obtaining more convictions and incarcerations; such pleas may be more supportive of the court's utilitarian goals, such as community protection. Pleas without negotiation, on the other hand, are more consistent with the strict adjudication model of justice, and the longer sentences associated with nonnegotiated pleas produce a degree of retribution as well.

What is especially clear, in any event, is that "plea bargaining" is a misnomer as it is commonly applied to all pleas of guilt. Even in jurisdictions where plea bargaining is restricted, about 80 percent of all convictions are still pleas. Most offenders prefer to spare themselves the burdens of trial and the risk of an "enhanced" sentence when their guilt is not subject to question. In the 14 non-Federal jurisdictions studied, about 60 percent of all indicted defendants who pleaded guilty did so to the top charge filed by the prosecutor. While many of those pleas may have involved sentence concessions, the common view of armed robbers routinely having their charges lowered to attempted robbery or less in most jurisdictions is not supported by the facts.

As more data become available, it will be possible to validate these findings. More detailed data, and

[9] Rubenstein, et al.

[10] A similar conclusion has been reached recently by Stephen Schulhofer: "Plea bargaining is not inevitable. In most American cities, judges and attorneys have *chosen* to process cases that way." (Emphasis is in the original.) Schulhofer, "Is Plea Bargaining Inevitable?" *Harvard Law Review*, 1984, 97, p. 1107.

data from other jurisdictions and later periods, can be used also to address several related issues:

- By jurisdiction and offense, to what extent do concessions result from charge reductions rather then direct sentence reductions?
- What is the average concession, by offense, under each system?
- What role do resource constraints (i.e., prosecutors, judges, defense attorneys, and courtrooms per case) play in the plea process?
- To what extent is the plea process shaped by regional, demographic, and urban-rural variation?
- Does the plea process work differently in states with determinate sentencing systems? in states with guidelines?
- To what extent are plea agreements overturned by parole boards that base release decisions on the "real" offense rather than the offense of conviction?
- How do guilty pleas entered in Federal courts differ from those in state and local courts?

Popular public misconceptions about the plea process may also be held to some extent by those who engage in the process. Further analysis of these issues may help to inform and thus improve the process by which convictions are obtained in the courtroom.

The process of obtaining guilty pleas is, of course, subject to abuses against both defendants and victims. It is especially abusive when it is conducted in an unevenhanded way. One way to make the process more evenhanded is to include, in the current wave of legislation to develop sentencing guidelines, provisions to reduce sentences by given published amounts when a plea is entered by the defendant. The alternative of attempting to ban concessions for pleas of guilty is not likely to succeed; it is almost impossible for the court to effectively monitor the prosecutor's exercise of discretion in filing and dropping charges.

Granting concessions for pleas of guilt is a practice that is likely to survive any legislation that aims to eliminate it. It is a justifiable practice as long as defendants who are truly innocent are presented with a greater incentive to allow their innocence to prevail in the courtroom than to plead guilty to a crime they did not commit.

METHODOLOGICAL NOTES

1. The calculation of the plea-to-trial ratio is based on all felony or misdemeanor guilty pleas and trials resulting from a felony arrest. This departs from the standard measure used by prosecutors—pleas and trials obtained only in the felony court. In a number of jurisdictions, however, half or more of the convictions following felony arrest are to misdemeanors in the misdemeanor court. Because jurisdictions vary considerably in the extent to which felony arrests are carried forward to the felony court, to derive comparable cross-jurisdiction statistics requires counting both misdemeanor and felony convictions.

The sample of 14 jurisdictions included in Table 1 was selected because it was possible in each jurisdiction to trace all felony arrest convictions, and thus include both felony and misdemeanor convictions as well as long- and short-term incarcerations in a number of jurisdictions. Subsequent tables do not include all 14 jurisdictions because not all variables of interest could be measured for every jurisdiction.

2. The "high plea" and "high trial" partitioning of jurisdictions used in most of the tables presented here was designed primarily to achieve two objectives: to present more clearly and simply the findings obtained from a more sophisticated analysis and to preserve some degree of anonymity among the participating jurisdictions. Analyzing data for the individual jurisdictions tends to produce stronger results because the simple grouping into high plea and high trial jurisdictions loses the variation of relevant factors within the two groups. This can be seen by dividing the tables into five divisions. In Table 3, for example, the difference in pleas to the top charge between the high plea and high trial jurisdictions is 21 percentage points. If we redefine "high plea" as 18 pleas per trial or more and "high trial" as 8 pleas per trial or less, thus dividing the Table 1 study jurisdictions into 3 roughly equal-size groups rather than 2, the difference grows appreciably: 63 percent of all pleas in the high trial jurisdictions are pleas to the top charge, while only 31 percent of all pleas in the high plea jurisdictions are pleas to the top charge—a 32 percentage point difference under this finer grouping system.

3. Because each jurisdiction maintains a different data set, jurisdictions were frequently omitted from the various tables. Most of the jurisdictions, for example, do not maintain data on incarcerations; only five are reported in Table 5. It is possible that missing data biases some of the results, although the direction of any such bias is not evident. Data were missing for the high trial jurisdictions at about the same rate as for the high plea jurisdictions.

4. The results reported here are also subject to potential biases inherent in simple bivariate analysis. Controlling for other variables and for "feedback" effects (e.g., by using a multivariate structural equation technique) could produce different results. The results of Table 4, for example, could suggest that more long-term imprisonment tends to result from a strategy of screening more cases out and taking more to trial; alternatively, they could suggest that crime mix differences from jurisdiction to jurisdiction cause some jurisdictions to have higher trial rates and more long-term imprisonments and others to have higher plea rates and more overall incarcerations. Disaggregating sentence differentials by pleas and trials in each jurisdiction could provide further insights into the effects of plea policies on sanctions.