NEW DIRECTIONS IN PSYCHOLEGAL RESEARCH

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Prison or Mental Hospital: Factors Affecting the Processing of Persons Suspected of Being "Mentally Disordered Sex Offenders"

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The California Mentally Disordered Sex Offender (MDSO) Program is an example of the "rehabilitation through cure" approach to offenders that appear in some way "abnormal" or psychologically "maladjusted." More generally, the program is a reflection of the view that punishment should fit the offender, not the crime. The MDSO Programs in California and other states essentially make it possible for offenders convicted of any crime to be committed to the Department of Health and sent to a mental hospital for care and treatment for an indefinite period, instead of being sentenced under the applicable penal code provisions, if they are found to be "mentally disordered sex offenders." It is important to note that for a person to be suspected of being an MDSO, it is sufficient for him [1] to have

engaged in abnormal sexual activities or offenses in the course of committing the offense for which he is eventually convicted, even though the conviction may be for a nonsexual offense (cf. Dix, 1976).[2] The legal definition of MDSO reads as follows:

[A] "mentally disordered sex offender" [is] any person, who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others. Wherever the term "sexual psychopath" is used in any code, such term shall be construed to refer to and mean a "mentally disordered sex offender" (West's Annotated California Welfare and Institutions Code §6300).

MDSO programs are interesting, not only as examples of the differential processing of offenders on the basis of somewhat vague criteria (indeed, such programs have been criticized for a variety of other reasons, as noted, for example, by Dix, 1976; p. 233), but also with regard to the general issue of the diagnosis and prediction of "dangerousness" (e.g., Cocozza and Steadman, 1974; Kozol, Boucher, and Garofalo, 1972).

This chapter describes an effort to develop a rudimentary causal model dealing with the disposition of persons suspected of being MDSOs. The project is an example of the application of our general theoretical and methodological approach to judicial decision-making in a specific and circumscribed problem area. Therefore, before describing the details of the present project, it is necessary to outline first the main features of the more general approach.[3]

GENERAL THEORETICAL AND METHODOLOGICAL CONSIDERATIONS

The criminal justice system is often represented as having a structure that fully constrains the processing of a "case" in an objective and codified manner. An alternative view is that of a system which brings together a number of decision-making participants or "actors" (e.g., the felon, the beat patrolman, the district and defense attorneys, the jurors, the judge, the probation and parole officers, etc.) or classes of such participants. To a large extent, the pool of information available to each participant at various points in time, and especially the various participants' respective decision rules, are not specified by law. The law merely codifies the gross consequences of certain decisions and the general direction and temporal aspects of information flow. In short, we view the criminal justice system as a network of interconnected decision-makers who have discretionary powers and whose actions influence one another. Each participant is seen

as a decision-maker who must get information from several different sources, combine the different kinds of information according to some rule (whether implicit or explicit) and reach a decision. The decisions of a given class of participants often serve to influence the decisions of other participants. For example, in an earlier study (Ebbesen and Konečni, 1975), we discovered that in bail review hearings in San Diego county judges set bail by giving a large weight to the district attorney's recommendation (in dollars) who, in turn, based his recommendation largely on the severity of the crime; in other words, the judges' decisions seemed to be affected to a large extent by the decisions of the district attorneys.

Also, a decision made by one participant at one point in time often influences the decision of another participant many months later: In a study of sentencing of adult felons in San Diego county (Ebbesen and Konečni, 1976), it was found that the defendants' status with regard to being released on own recognizance vs. being released on bail vs. being kept in the cutody of the sheriff during the period prior to the plea-of-guilty or trial influenced, to a considerable extent, the eventual sentence (straight probation vs. probation with time in the custody of the sheriff vs. prison), even controlling factors such as the severity of the crime and prior record; thus, it could be argued that the bail decision made by one judge (or, rather, by the district attorney) influenced the sentencing decision made by another judge many months later. This example (many more could be given) supports our previously made suggestion that the criminal justice system can be profitably regarded as a network of interconnected decision-makers whose actions (decisions) influence one another. [Our work on sentencing is described in greater detail in Konečni and Ebbesen (in press—a) and Ebbesen and Konečni (1978). Our general approach is described in more detail in Konečni and Ebbesen (in press—b), Konečni and Ebbesen (1978), and Ebbesen and Konečni (in press).]

To understand the criminal justice system from the perspective described above requires that: a) the exact types of information available to each class of participants at each point in time be identified; b) the decision rules (i.e., the ways in which the different bits of information are weighted) be discovered for each class of participants and, potentially, for individual participants; and c) the interpersonal influence channels, both "overt" (i.e., specified by law) and "covert" (i.e., informally developed in the actual day-to-day administration of the law), be traced. The types of information available to each participant, as well as the communication channels between the participants, can be discovered by carefully observing the system. However, in order to discover the decision rules used by various classes of participants, it is necessary to analyze statistically the covariation between the information available to the participants and the

actual decisions that they reach. Once the communication channels and decision rules of various classes of participants are determined, it would essentially be possible to trace the operation of the entire system and predict with reasonable accuracy—possibly as early as the time of arrest—what the final disposition would be. The network of influence and communication channels, in combination with the decision rules at each "node" of the network, provide what amounts to a metatheory about the operation of the system under study. Such an empirically derived theory can be used to predict the behavior of both the entire system and each class of participants within the system.

In order to reach the objectives described above, we have undertaken an extensive data-gathering project in the various criminal justice agencies in San Diego county. Among the participants whose decision-making we have intensively studied so far have been police officers, district attorneys, defense attorneys, judges, and probation officers. Some of these results will be reported in the various chapters of Konečni and Ebbesen (in press—c). The MDSO project is thus only a small part of the ongoing, large-scale research activity.

Before turning to the details of this project, some additional considerations should be mentioned. Our theoretical/methodological orientation does not attempt to provide a "mediational" explanation for the decision rules used by the participants in the legal system. In other words, we do not attempt to explain, for example, a probation officer's decision-making behavior by postulating the operation of attributional processes, cognitive dissonance, or any other process currently in theoretical vogue. We do not question the *possibility* of generating "mediational" explanations for the decisions under study but merely doubt that they *add* anything to the ability to predict and understand the future behavior of the participants in the real legal system. The feeling of understanding that often accompanies such attempts to impose currently popular constructs on various kinds of social behavior may be illusory. Our past research suggests that there is a very weak relationship between the popularity of certain social-psychological constructs (e.g., "self-presentation," "attribution error," and so on) and their importance in terms of the *percent of variance for which they account* in the real-world decisions of participants in the legal system. Therefore, what we do is try to provide a descriptive (and usually quantitative) account of the covariation between the types of information presented to a participant and his/her decisions. It is clear that such an approach requires the collection of data in the actual settings in which legal decisions are being made daily. Such information cannot be obtained by laboratory studies of the decision-making behavior of undergraduates responding to fictitious, quasi-legal accounts of improbable cases on de-

pendent measures or dimensions that have little or no resemblance to those used by the participants in the real system (undergraduates, for example, often "sentence" fictitious "people" to prison on a scale from 0 to 25 years). Also, whereas the claim that a given laboratory study "has to do" with some aspects of the legal system gives the appearance of "applied importance" to that study, such a claim provides little in the way of a true understanding of the actual system's operation. The only way to reach the latter is to study the system *in vivo*. The generality of any laboratory finding is an *empirical* issue which can be established only by studying the system to which one hopes to generalize. Therefore, to the extent that one's goals are to understand the actual system and possibly feed information back to the participants, it would seem more reasonable to *begin* by studying the real-world system and then go back to the laboratory to study the specifics (given ample time, funds, and human resources), rather than *vice versa*. Given that funds, time, and manpower are typically in limited supply, it is reasonable to question the current practice where it seems that close to 95 percent of social psychologists' efforts are devoted to the study of jury decision-making, when it is well known that in many jurisdictions less than 2 percent of all arrested felons eventually have a jury trial; instead, over 85 percent of those who are convicted are convicted because the defendant has pleaded guilty to a charge! (Such considerations are, of course, given further weight when one considers the enormous problems of generalization from the simulated-jury studies even to the decision-making of real juries.)

Finally, we think that despite our reluctance to rely on social-psychological theoretical constructs, our approach is relevant not only to the psychology of law but also to social psychology. First, the information and the decisions being analyzed are the products of an intact and inherently interesting *social* organization; second, a major aspect of this entire system is that many decisions are the results, at least in part, of *social influence* (as, for example, when a defense and a district attorney attempt to influence each other in the course of plea bargaining, or when a defense attorney attempts to influence his client to plead guilty to X in order to obtain Y). Thus, the results of the research might provide information about the way in which bargaining and social influence processes actually take place in an obviously important social setting.

PROCESSING OF PERSONS SUSPECTED OF BEING MDSOs

A brief description of the legal/administrative apparatus used in the processing of persons suspected of being MDSOs might be helpful. Certain details of the description that follows are peculiar to San Diego county;

however, the general procedure is common to all counties in California. If there are reasons to suspect the defendant of being an MDSO, the defendant is first interviewed by psychiatrists. This interview always takes place after the plea or verdict of guilty and always prior to sentencing. In San Diego county, during the period in which the present study was being carried out (October, 1976 to June, 1977) the same three psychiatrists, appointed by the court, typically interviewed all suspected MDSOs in interviews ranging from 10 to 30 minutes in duration and taking place typically two to four days prior to the sentencing hearing. The defendant's complete file up to that time is available to the psychiatrists prior to and at the time of the interview. Notable in this file is the probation officer's report containing detailed information concerning the offense, plea bargaining, social factors, prior record, etc. This report thus contains information that would be found in the reports of non-MDSO cases. (More information on the contents of this report is provided below.) Questions asked by the psychiatrists in the interview are fairly routine, starting with the inevitable "Do you know why you are here?", then attempting to probe, in a cursory manner, into the early shaping of the defendant's current "psychodynamics" (e.g., "Has anyone ever told you, or do you remember, that when you were young you set fires to things or wetted the bed?"), probing into the defendant's more recent sexual and/or marital history (e.g., "How was your sex life with your wife?"), but focusing mostly on the circumstances of the abnormal sexual behavior that took place around the time of the offense for which the defendant was convicted. The defendant's answers are typically taken in shorthand by one of the psychiatrists. Following the interview, the psychiatrists file separate or joint reports (depending on whether they had individual or joint interviews with the offender; joint interviews/reports are more typical). These reports are filed with the court.

The next step is a hearing in "psychiatric court." In San Diego county, psychiatric cases are processed within a single department of the Superior Court, and thus, during the period of the study, a single judge dealt with all persons suspected of being MDSOs. At the hearing, all three psychiatrists are typically present and available for cross-examination or judicial consultations. In the course of the hearing, they typically do not read from their reports. After the district attorney has read the report's diagnosis and recommendation, the report is entered into the record. If during the hearing a question arises about the recommendation or some other aspect of the report, the defense attorney or the judge or the district attorney can address a question to the psychiatrists; the psychiatrists never offer information during the hearing without being asked to do so. The MDSO

hearings usually last five–ten minutes. If the defense disagrees with the psychiatric diagnosis and/or recommendation, a defense psychiatrist and character witnesses may be called in and then the hearing is much longer (20–60 minutes); however, in over 90 percent of the cases, no defense psychiatrist is present nor is there opposition by the defense to the court-appointed psychiatrists' recommendation.

The psychiatrists' report filed with the court is typically one–two (single-spaced) pages in length. The letter may contain information about the defendant's appearance, prior record, past sexual experience, a description of the offense, and other information sometimes taken verbatim from the probation officer's report. The report invariably ends with a diagnosis (e.g., female paedophilia) and a statement that the defendant either is or is not an MDSO.

At the hearing, the judge may find that the defendant is indeed an MDSO or the defendant may be remanded (that is, judged not to be an MDSO and sent back to another department of the Superior Court for sentencing) or the case may be continued, pending more psychiatric information. If the defendant is found to be an MDSO, in San Diego county he is always sent to Patton State Hospital for indefinite commitment; if, on the other hand, the defendant is found not to be an MDSO, he is sentenced (in another department) under the applicable penal code provisions for the offense to which he has pleaded guilty or of which he has been found guilty. During the period of the study, California still had the indeterminate sentencing system; therefore, a defendant could be given either probation or probation with time in the custody of the sheriff or an indeterminate prison sentence specified by the penal code.

After commitment in Patton State Hospital, the defendant is returned to the trial court. He is then given either: a) not less than five years' probation; or b) is sentenced under the applicable penal code provision for the original conviction. The court's action generally depends on the recommendation that accompanies the defendant's release from Patton State Hospital. What is known as an A recommendation indicates that the defendant is not any longer a danger to the community and that although he may not be fully "cured," he is unlikely to profit from further treatment. A B recommendation, on the other hand, indicates that the defendant is unlikely to profit from further treatment but continues to be a danger to the community. Typically, if the release is accompanied by an A recommendation, the defendant is given five years' probation and released into the community; on the other hand, in cases with the B recommendation, the court either sentences the defendant under the applicable provisions or indefinitely commits him (to the Department of

Health or the Department of Corrections), implying that the court believes that the defendant continues to be dangerous and must be kept out of the community.

THE PRESENT PROJECT

General Considerations

We have already indicated our preference for studying the legal system *in vivo* and specified in some detail the reasons for such a preference. This is not to say, however, that we do not acknowledge a variety of problems often associated with research in the real world. Apart from the usually mentioned issues, there are additional problems with doing naturalistic research in the legal system. Some of these problems are uniquely associated with using observation as a research method.[4] When the archival-analysis approach is used, other problems arise and, in the case of the legal system, they often go beyond those often associated with this method (e.g., miscoding, selective coding, selective placement of information in the files, etc.). Namely, in studying the legal system, the issue of *access* to data is paramount, because so much of the information is not in the public domain and special permissions to carry out the research have to be obtained. Such permissions are often difficult to obtain even when the noble motives and competence of the researchers can be easily documented, and when elaborate procedures for preserving the anonymity of all concerned are devised; there is typically no standardized procedure for obtaining permission and therefore the decision is often at the discretion of one or another individual in the agency in question. Some of the reasons for the often observed reluctance to allow access to the data can be traced to a genuine concern for due process and the preservation of anonymity of the defendants; sometimes, the reasons can be traced to what seem like petty but are, in fact, insurmountable economic problems, such as shortages of resources, space, or personnel. (Do the clerks have the time to retrieve the files in addition to their other duties? Are there spare desks in the office for the researchers to use since the files cannot be taken out?) However, much of the reluctance is clearly due to the defensiveness and secretiveness that so often characterize large organizations and bureaucracies. These points, of course, should not be taken for more than they are—our subjective impressions and observations that are difficult to document. However, we think that these remarks might find a sympathetic ear or two among our colleagues in legal psychology, many of whom must have experienced similar difficulties.

One purpose of the above remarks was to draw the attention of our

present and future colleagues to the importance of describing the *reality* of the research process—an issue that is often glossed over; indeed, we feel that in legal psychology, in particular, an important aspect of graduate-student training ought to be the learning of skills (administrative, interpersonal, etc.) that would increase the probability of obtaining adequate access to elusive data (cf. Deutsch, 1975; p. 264).

Another purpose of the above remarks was to provide the reasons for certain obvious methodological limitations of the present project. Namely, only one person coded both the probation officers' reports and the letters which the psychiatrists filed with the court—the two main sources of data in the project. We hasten to add that, in this project, we met with extreme cooperativeness on the part of both the judge and the psychiatrists involved; nevertheless, for various administrative and interpersonal reasons, the permission was obtained for only one person to perform the coding.

Another obvious problem lies in the mentioned fact that the same judge and three psychiatrists dealt with all the cases during the period studied. Therefore, it is uncertain to what extent our results are generalizable either to other jurisdictions or to future MDSO-related decisions in San Diego county (following the eventual personnel changes). At least the latter problem could certainly not be remedied by us: Such is the way in which MDSOs are processed in San Diego county at this particular time. We hoped nevertheless that the research would be a useful first step in investigating the processing of MDSOs in a relatively large jurisdiction within a State that has perhaps the most developed MDSO program in the nation.

Method

Because of the project's preliminary nature, early on we decided to code only the information available from written documents (psychiatrists' letter, probation officers' report); thus, neither the contents of the psychiatric interview, nor the hearing in front of the judge were coded (although we attended many of these in order to acquaint ourselves in an informal way with their content). The next step in the research process was the definition of criterion variables (i.e., the participants' *decisions*). The project was concerned with the following three decisions: 1) The psychiatrists' diagnosis (eight categories, see Appendix 2); 2) the psychiatrists' classification of the defendant (MDSO vs. non-MDSO); and 3) the judge's ruling [MDSO (Patton) vs. non-MDSO (remanded) vs. continuance]. We were interested in which information contained in the mentioned written documents was strongly associated with ("predicted") these three se-

quential decisions. A related issue of interest was the association of certain diagnoses with the MDSO vs. non-MDSO classification of the defendant and, of course, the relationship between diagnoses and classification, respectively and the judge's ruling.

The next step was to define the "predictors" and develop the coding instruments. In line with our earlier research, a relatively large number of predictors of the various decisions was isolated; these predictors were to be coded either from the probation officer's report or from the psychiatrists' letter [5] and were to be as close as possible to the categories and dimensions used by the participants in the system being studied. In other words, we tried to minimize the extent of the "translation" from the categories used in the system to higher-level, abstract concepts or categories more common in social-psychological theories (this is evident in Appendices 1 and 2 which present our coding instruments). The reasons for this approach are simple: First, the research was preliminary and few guidelines, if any, existed as to the important predictors, optimal level of abstractness of the predictors, etc.; second, we were not aware of any reasonable theory or metatheory to guide us in the process of translation from concrete to abstract coding categories.

An additional decision was to use a modified content-analysis approach. More specifically, we identified parts (content *areas*) of the written documents to be used as predictors but ignored the specific, actual content. Thus, instead of the coding being based, for example, on the actual words and sentences in the documents (or the degree of extremity of the meaning), it consisted of recording the number of typewritten lines devoted to a discussion of a particular issue ("predictor"). This procedure was adopted in part because we felt that it was an adequate first step and, more importantly, because we had only one coder. Namely, we felt that the effect of unintentional coder bias could be minimized by having this person simply locate the predictor and count the number of lines devoted to it, rather than engage in far less reliable qualitative analyses (e.g., determining the "weight" of certain phrases, etc.). Moreover, we did code the general direction (positive vs. negative) of the comments in certain predictor areas. For example, in coding the number of lines devoted in the psychiatrists' letter to the defendant's description of the offense, negative and positive feelings about the offense (i.e., remorse vs. no remorse) were separately coded. Finally, for certain categories such as prior record (as described in the probation officer's report), the number of lines devoted to the description of prior record was in fact completely redundant with the number of prior convictions (i.e., one line per conviction).

Because of our interest in identifying predictors in those sections of the probation report in which the defendant was directly quoted (e.g., the

reasons the defendant gave for committing the crime), these parts of the report were coded in a somewhat different way. As can be seen in Appendix 1, we were interested in the extent to which the defendant appeared to admit having committed the crime (as judged by the coder on a 10-point scale), how the defendant "explained" his behavior, and what extenuating circumstances, if any, he mentioned. In particular, the coder listed both "short-term" factors that were "external" to the defendant, not "under his control" (e.g., peer pressure) and long-term external factors (e.g., chronic unemployment). In addition, the coder listed "internal" factors (where the "locus of causality" for the behavior is seen as being within the defendant), again both short-term ones (e.g., being drunk or in pain) and long-term ones (e.g., drug addiction, alcohol, having long-term emotional problems).

Whereas the proponents of attribution theory might argue that these variables (internal vs. external locus of control; short-term vs. long-term factors) are derived from a general attribution-theory perspective, in our opinion this would simply mean claiming undue credit for age-old folk wisdom (or lack of it) that has, more importantly, been incorporated into almost all penal codes. That is to say, we know of no legal codex, ancient or modern, which does not take into account the causes and circumstances of the crime (into which the above-listed factors clearly translate). Be that as it may, whether such factors are considered "attributional" neither increases nor decreases, from our point of view, the inherent interest of treating them as predictors of the criterion decisions we studied.

Many of the predictions were similar to those in the coding instrument that we used in our studies of sentencing. However, we should emphasize that whereas in those studies many coders were used and estimates of coder reliability were obtained, in the present project we had no way of ascertaining or eliminating possible coder bias and related methodological problems.

The project was carried out during the period from October of 1976 to June of 1977. A total of 113 cases, all involving male defendants suspected of being MDSOs, was coded; this represented almost the total MDSO caseload in San Diego county during the duration of this study.

RESULTS

An essential first step is to examine the relationship between the three principal decisions, Psychiatric Diagnosis X Psychiatric MDSO vs. non-MDSO Classification X Judge's Verdict (Patton State Hospital vs. Remand vs. Continuance). These results are presented in Table 5.1.

Upon examining the breakdown of cases within individual decisions,

Table 5.1. Breakdown of the sample in terms of psychiatric and judicial decisions.

| | | | | Psychiatric Diagnosis | | | | | | |
		No Label	Homo-sexuality	Female Paedo-philia	Male Paedo-philia	Anti-social Persona-lity	Sexual devia-tion	Female & Male Paedo-philia	Schizo-phrenia	Total
MDSO	Patton	0	1	2	1	2	16	2	2	26
	Remand	0	0	0	0	1	0	0	0	1
	Continuance	0	2	0	0	0	5	2	0	9
		0	3	2	1	3	21	4	2	36
non-MDSO	Patton	0	0	0	0	0	0	0	0	0
	Remand	33	1	3	0	30	9	1	0	77
	Continuance	0	0	0	0	0	0	0	0	0
		33	1	3	0	30	9	1	0	77
Total		33	4	5	1	33	30	5	2	113

Psychiatric Classification — *Judge's Verdict*

Note—In many cases a defendant received more than one diagnostic label. The data in this table are based on the *first* in a string of labels.

one finds, for Psychiatric Diagnosis, that 33 cases (29 percent) had no diagnostic label attached to them; another 33 received the label "anti-social personality;" another approximate one-third was labeled "sexual deviation" (30 cases, 27 percent); and the remaining 17 cases (15 percent) received a variety of labels, including homosexuality, paedophilia, and schizophrenia. With regard to the Psychiatric Classification, 36 cases (32 percent) were classified as MDSOs, whereas the remaining approximate two-thirds were judged to be non-MDSOs. Finally, with regard to the Judge's Verdict, 26 cases (23 percent) were sent to Patton; 78 cases (69 percent) were remanded back to the original trial department; and the remaining nine cases (8 percent) were continued pending further psychiatric information.

When the three decisions are examined jointly, a very simple pattern emerges. In virtually all of the 66 cases (58 percent of the sample) in which the diagnosis was either "antisocial personality" or no diagnostic label was attached, the defendant both a) received the non-MDSO classification by the psychiatrists *and* b) was subsequently remanded back to the trial department by the judge; only two of these 66 cases were sent to Patton State Hospital.

The only other diagnostic category with a sizable number of cases was "sexual deviation" (see Table 5.1). In this category, there was an MDSO vs. non-MDSO split of some magnitude (21 of the 30 "sexual deviants," 70 percent, were classified as MDSOs; the remaining nine cases were classified as non-MDSOs). However, whereas the great majority of the "sexual deviants" who had been classified by the psychiatrists as MDSOs were sent by the judge to Patton (16 of 21, 76 percent; the remaining five cases were continued), none of those who had been classified as non-MDSO were sent there—every single one was remanded to the trial department (the relevant $\chi^2 = 29.50, df = 2, p < .001$). From this example, it would appear that when a psychiatric diagnosis does not entirely reduplicate the MDSO vs. non-MDSO classification, the judge's decision is nevertheless highly predictable from the psychiatric classification. In fact, it can be seen from Table 5.1 that of a total of 36 cases classified as MDSO, only one was remanded; of the 77 cases classified as non-MDSO, every single one was (the relevant $\chi^2 = 108.45, df = 2, p < .001$).

Some additional remarks are in order regarding diagnostic categories. As a footnote to Table 5.1 points out, in many cases a defendant received more than one diagnostic label; the diagnostic categorization presented in Table 5.1 is based on the *first* label in cases where there was a string of labels. Upon examining this issue more closely, one finds that among the non-MDSOs, a sizable majority (64 of 77, 83 percent) received only one label (typically "antisocial personality") or no label at all. Among the

MDSOs, on the other hand, only 25 percent of the cases (nine of 36) had only one label; all the rest had two labels (26 of 36, 72 percent), with the exception of one man who had three ($\chi^2 = 36.73$, $df = 2$, $p < .001$).

When one examines the number of diagnostic labels attached to "sexual deviants," an interesting finding emerges. Among the cases in which "sexual deviation" was the first label (30 cases; see Table 5.1), all of the 21 cases classified as MDSOs received two diagnostic labels; in contrast, among the 9 non-MDSO "sexual deviation" cases, there was an even split between those who received only one label (4 cases) and those who received two (five cases; the relevant $\chi^2 = 10.77$, $df = 2$, $p < .01$). However, a different picture is obtained when one examines the 15 cases (see Table 5.1) which had homosexuality (four cases), female paedophilia (five), male paedophilia (one), and female-and-male paedophilia (five) as the first label—in other words, cases which had a more specific sexual-deviation label as the first label (rather than "sexual deviation" itself). For these 15 cases, the results are exactly opposite: All five non-MDSO cases had two labels and eight out of ten MDSO cases had only one label ($\chi^2 = 11.42$, $df = 2$, $p < .01$). In other words, a person diagnosed as "sexual deviation; female paedophilia" is highly likely to be classified as an MDSO and thus be sent by the judge to Patton State Hospital. In contrast, a person diagnosed, for example, as "male paedophilia; schizophrenia" is likely to be classified as a non-MDSO and subsequently remanded, despite the fact that the first label is an example of sexual deviation.

Several early conclusions could be drawn from the data we have presented so far (these conclusions will be elaborated in the Discussion section). First, it would seem that the judge exercised very little discretion in these cases; in fact, he appeared to be little more than a rubber stamp for the psychiatric recommendation; in short, the judge's removal from the decision-making chain would have little effect on the processing of MDSO cases.[6]

A related preliminary conclusion that can be drawn on the basis of the above data is that a relatively simple "model" can describe the processing of cases from the point in time when the diagnosis is given to the time when the verdict is reached by the judge. Certain kinds of diagnostic labels used by the psychiatrists reliably predict whether they will classify the offender as an MDSO (although there is some "noise" when "sexual deviation" is the first diagnostic label attached), and this classification almost perfectly predicts whether the judge will send the offender to Patton or remand him to the trial court. In other words, once the diagnosis and, especially, the MDSO/non-MDSO classification has been reached,

the manner in which the offender will spend the next few years of his life has also been determined.

The remainder of the Results section will be devoted to a quantitative elaboration of the causal model. Several groups of analyses were carried out, including attempts to predict: a) the psychiatric diagnostic label from the contents of the probation officer's report; b) the MDSO/non-MDSO classification from the probation officer's report; c) the judge's verdict from the probation officer's report; d) the psychiatric diagnostic label from the contents, length, etc., of the letter prepared by the psychiatrists for the judge; e) the MDSO/non-MDSO classification from the psychiatrists' letter; and f) the judge's verdict from the psychiatrists' letter. Because of the almost perfect agreement between the MDSO/non-MDSO classification and the judge's verdict, analyses c) and f) were redundant with analyses b) and e), respectively, and the former two will, therefore, not be discussed any further. In addition, because only three of the diagnostic categories (no label, "antisocial personality," and "sexual deviation") had a large number of cases, and because in only one of these categories ("sexual deviation") there was a sizable split in terms of the MDSO/non-MDSO classification, analyses that used the psychiatric diagnosis as the criterion [a) and d) above] typically produced results and led to conclusions that were similar to those reached by analyses that used the MDSO/non-MDSO classification as the criterion [b) and e) above]. For this reason, the results concerning the psychiatric diagnosis and those concerning the MDSO/non-MDSO classification are not reported separately but rather in a mixed sequence. Analyses that used predictors from the probation officer's report are reported first, followed by analyses that used predictors from the psychiatric letter; only relationships that were statistically significant at least at the .05 level are reported and discussed. Finally, statistical tests and tables are provided only for the most important results.

Predictors from the Defendant's File (Including the Probation Officer's Report)

Statistical analyses revealed that only a few aspects of the probation officer's report were useful predictors of either the psychiatric diagnosis or of the MDSO/non-MDSO classification. It was found that probation officers provide longer descriptions of the offenses committed by those people who eventually become classified as MDSOs by the psychiatrists. For example, of the 36 MDSOs, only one had his offense described by the probation officer in less than 25 lines, whereas 18 had their offenses de-

scribed in over 50 lines of text. In contrast, of the 77 people who were eventually classified as non-MDSOs, 28 had their offenses described in under 25 lines and only nine in over 50 lines. In addition, in the MDSO cases, in comparison to the non-MDSO ones, the probation officers' summary evaluation and discussion of prior record were both significantly longer; there was significantly more discussion of the negative aspects raised in the various letters written to the judge about the defendant by the people in the community; and there was significantly less discussion of the offender's "intention to improve" (all of the above effects were significant at the .01 level). As it turned out, however, all of the above factors were also statistically related to what we think is the major predictor of both the psychiatric diagnosis and MDSO/non-MDSO classification, *prior convictions of the defendant for sexual offenses.*

Table 5.2 presents the breakdown of the sample in terms of the psychiatric diagnosis, MDSO/non-MDSO classification, and prior convictions for sexual offenses. As can be seen from this table, and more clearly from Tables 5.3 and 5.4 for the three most frequently used diagnostic labels only (no label, "antisocial personality," and "sexual deviation"), the label "sexual deviation" is significantly more frequently associated with prior convictions for sexual offenses than are no-label and "antisocial-personality" categories ($\chi^2 = 12.21, df = 4, p < .05$; see Table 5.3). Similarly, people who ended up being classified as MDSOs were significantly more likely to have prior convictions for sexual offenses than were those eventually classified as non-MDSOs ($\chi^2 = 32.38, df = 2, p < .01$; see Table 5.4). When one considers the 30 cases with the "sexual deviation" label (the only category with a substantial MDSO/non-MDSO split), every single one of the nine cases who were eventually classified as non-MDSOs had no prior convictions for sexual offenses; in contrast, of the 21 "sexual deviation" cases who were eventually classified as MDSOs, 17 (18 percent) had at least one prior conviction for a sexual offense (see Table 5.2). In summary, the diagnosis "sexual deviation" is largely dependent on prior convictions for sexual offenses and very rarely leads to the MDSO classification unless there is a record of prior convictions for sexual offenses.

Tables 5.5, 5.6, and 5.7 illustrate the fact that prior *sex-related* criminal record, rather than overall prior record, is the critical factor. Table 5.5 presents the breakdown of the sample in terms of the psychiatric diagnosis, MDSO/non-MDSO classification, and *all* prior convictions (both for sexual and non-sexual offenses). The major difference between the results presented in this table and the data in Table 5.2 is in the nine "sexual deviation" cases which were eventually classified as MDSOs. From Table 5.5, one sees that four of these nine cases had a prior criminal

Table 5.2. Breakdown of the sample in terms of psychiatric diagnosis, MDSO/non-MDSO classification, and prior convictions for sexual offenses.

Psychiatric Classification

Number of prior sex-related convictions

				Psychiatric Diagnosis				
		No Label	Homo-sexuality	Female Paedo-philia	Male Paedo-philia	Anti-social Person-ality	Sexual devia-tion	Female and Male Paedo-philia	Schizo-phrenia
MDSO	0	0	1	1	0	1	4	0	1
	1–4	0	2	0	1	2	12	2	1
	5 and over	0	0	1	0	0	5	2	0
non-MDSO	0	27	1	2	0	24	9	1	0
	1–4	4	0	0	0	4	0	0	0
	5 and over	2	0	1	0	2	0	0	0

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Table 5.3. Association of psychiatric diagnosis with prior convictions for sexual offenses (for the three most frequent diagnostic categories only).

Number of prior sex-related convictions	Psychiatric Diagnosis		
	No Label	Antisocial Personality	Sexual Deviation
0	27	25	13
1–4	4	6	12
5 and over	2	2	5
			96

Table 5.4. Association of MDSO/non-MDSO classification with prior convictions for sexual offenses (for the three most frequent diagnostic categories only).

Number of prior sex-related convictions	Classification	
	MDSO	non-MDSO
0	5	60
1–4	14	8
5 and over	5	4
		96

record but were nevertheless judged to be non-MDSOs (Table 5.2 shows that none of these cases, however, had prior convictions for *sexual* offenses). In other words, the relationship between overall prior record and the psychiatric diagnosis and classification is not as strong as the relationship discussed above between prior convictions for sexual offenses and the psychiatric diagnosis and classification.

The above conclusion is further substantiated by the data in Tables 5.6 and 5.7. The data in Table 5.6 show that although the proportion of ''sexual deviation'' cases with some criminal record is relatively greater (in comparison to the proportion of ''sexual deviation'' cases with some prior sex-related convictions in Table 5.3, which leads to a χ^2 of 15.61 for the data in Table 5.6, as opposed to a χ^2 of 12.21 for the data in Table 5.3), the data presented in Table 5.7 show that it is only the *non*-MDSOs who had the proportionately greater number of overall prior convictions (in comparison to the proportion of non-MDSOs with prior sexual-related convictions in Table 5.4, which leads to a χ^2 of 22.86 for the data in Table 5.7, as opposed to a χ^2 of 32.38 for the data in Table 5.4).

The argument that prior sex-related criminal record is the key predictor

Table 5.5. Breakdown of the sample in terms of psychiatric diagnosis, MDSO/non-MDSO classification, and all prior convictions (for sexual and non-sexual offenses).

Psychiatric Classification	Number of prior convictions	No Label	Homo-sexuality	Female Paedo-philia	Male Paedo-philia	Anti-social Person-ality	Sexual devia-tion	Female & Male Paedo-philia	Schizo-phrenia
						Psychiatric Diagnosis			
MDSO	0	0	0	0	0	0	4	0	0
	1–4	0	3	0	1	3	12	2	2
	5 and over	0	0	2	0	0	5	2	0
non-MDSO	0	25	1	2	0	22	5	1	0
	1–4	5	0	0	0	6	4	0	0
	5 and over	3	0	1	0	2	0	0	0

Table 5.6. Association of psychiatric diagnosis with prior convictions (for sexual and non-sexual offenses) for the three most frequent diagnostic categories only.

| | **Psychiatric Diagnosis** | | |
	No Label	Antisocial Personality	Sexual Deviation
Number of prior convictions 0	25	22	9
1–4	5	9	16
5 and over	3	2	5
			96

Table 5.7. Association of MDSO/non-MDSO classifications with prior convictions (for sexual and non-sexual offenses) for the three most frequent diagnostic categories only.

| | **Classification** | |
	MDSO	non-MDSO
Number of prior convictions 0	4	52
1–4	15	15
5 and over	5	5
		96

of the psychiatric diagnosis and classification is further strengthened by the fact that this factor is strongly associated with each of the five significant variables from the probation officer's report that were discussed earlier (i.e., length of the description of the offense, length of the evaluation, length of the discussion of the prior record, etc.). Tables 5.8 and 5.9

Table 5.8. Association of prior sex-related criminal record and length of probation officers' descriptions of the offense (for 30 "sexual deviation" cases only).

| | **Length of description of offense (number of lines in the P.O. report)** | | |
	0–25	26–50	50 and over
Prior convictions for sexual crimes NO	2	9	2
YES	0	7	10
			30

Table 5.9. Association of prior sex-related criminal record and length of probation officers' references to negative aspects of personal letters sent to the judge concerning the defendant.

Prior convictions for sexual offenses		Length of negative references to letters (number of lines in the P.O. report)		
		0–1	2–4	5 and over
	NO	11	2	0
	YES	6	6	5
				30

illustrate this point for two of the mentioned variables (taking into account the 30 ''sexual deviation'' cases only). From Table 5.8, it is clear that the probation officers' descriptions of the offense tend to be significantly longer for people with prior sex-related criminal records ($\chi^2 = 7.18$, $df = 2$, p $< .05$). Table 5.9 shows that probation officers tend to make significantly more references to the negative aspects of personal letters sent to the judge concerning the defendant when it is a question of people with prior convictions for sexual offenses ($\chi^2 = 8.08$, $df = 2$, p $< .05$).

Predictors from the Psychiatrists' Letter

The fact that prior sex-related criminal record is a strong predictor of the psychiatric diagnosis and classification is particularly important because this kind of information about the defendant is available very early in the processing of a case, in fact, before the defendant has ever committed the offense under consideration. In other words, a meaningful prediction about the outcome of a case can, generally speaking, be made long before the probation officer's interview with the defendant and the filing of the probation officer's report and, especially, before the court psychiatrists' interview with the defendant and the hearing before the judge. In a sense, strong predictors that occur very early in the sequence of events—such as prior sex-related criminal record—almost eliminate the need for information that becomes available at stages that are temporally far closer to the final verdict in the processing of a case but is nevertheless highly correlated with the earlier information. For example, coding the hearing before the judge would seem to have little utility for the purpose of prediction, given that the judge very closely follows the psychiatric MDSO/non-MDSO recommendation made several days earlier. Similarly, if the psychiatric diagnosis and recommendation can be reliably predicted on the basis of information available even before the commission of the

offense, the content of the psychiatric interview with the defendant assumes a secondary importance at best.[7]

In view of these considerations, the predictors isolated from the second of the two written documents coded for each case in the present project—the psychiatrists' letter—are somewhat less important than was originally expected, because the information from the letter is available only concurrently, rather than before, the diagnosis and the MDSO/non-MDSO classification (which are typed at the end of the letter). Nevertheless, some of the results of our content analysis of psychiatrists' letters are intriguing, regardless of these letters' predictive utility. More specifically, Table 5.10 presents a summary of the way in which psychiatrists' letters that conclude with a non-MDSO classification differ in form and content from the letters that conclude with an MDSO classification.

Psychiatrists' letters which concluded with an MDSO recommendation were significantly longer than were letters that concluded with a non-MDSO recommendation. Although the two groups of letters, leading to different recommendations, did not differ from each other in terms of the amount of space devoted to a relatively large number of predictors that we examined, in most cases in which a significant difference was found, it was in the direction of the MDSO letter containing a longer discussion of the factor under consideration than did the non-MDSO letter.

Table 5.10. Formal aspects of the psychiatrists' letters as a function of the MDSO/non-MDSO classification.

Letters that conclude with an MDSO classification devote more space to a discussion of:	Letters that conclude with a non-MDSO classification devote more space to a discussion of:
1. Defendant's physical appearance 2. Family history 3. Childhood experiences 4. Negative aspects of prior life-style 5. Past sexual experiences of defendant 6. Prior sex-related criminal record 7. Negative aspects of current status 8. Arrest report 9. Results of psychological assessment (from the P.O. report) 10. Psychological interpretation of offense 11. Feelings of indifference toward offense 12. Various outside sources of information (defense psychiatrist, relatives, district attorney, police, victims, etc.) 13. Negative future prospects	1. Positive aspects of letter from employer 2. Positive aspects of current status (employment, marriage)

Note: All effects are statistically significant at least at .05.

An examination of the entries in Table 5.10 reveals a relatively coherent pattern. In the case of people whom they intended to classify as MDSOs, the psychiatrists dealt significantly more with "psychodynamic" issues (e.g., childhood experiences, family history, results of psychological assessment, and psychological interpretation of offense) and with the sexual aspects of the defendant's offense, prior crimes, and general life-style (e.g., past sexual experiences of the defendant, prior sex-related criminal record, etc.). In general, there was a considerable tendency to impute negative habits, intentions, and motives to the defendant classified as an MDSO and to evaluate his prior life-style, current status, and future prospects negatively (e.g., negative aspects of prior life-style, negative aspects of current status, negative future prospects, feelings of indifference towards the offense, defendant's physical appearance). There was also a tendency to directly quote more, and generally rely more on, the evidence from a variety of outside sources (e.g., arrest report, results of psychological assessment, information from the defense psychiatrists, victims, etc.). It almost appears as if the psychiatrists perceived a greater need to substantiate their MDSO than their non-MDSO classifications, presumably either because the psychiatrists believed that the MDSO classification is more controversial, or because they thought that such a classification would have more severe consequences for the defendant (for example, in terms of the duration and quality of incarceration). This issue will be raised again in the Discussion section.

Predictors Derived from the Defendant's Description of the Offense and His Stated Reasons for His Behavior

As was previously mentioned, in certain sections of the probation report the defendant was directly quoted. This fact made possible an examination of the extent to which offenders who differed in terms of the psychiatric diagnosis and classification also differed in terms of a) admission to have committed the crime, and b) explanations for the behavior (including extenuating circumstances). As it happened, no differences were obtained for the "admit-guilt" factor; therefore, the remaining discussion will be limited to the reasons which the defendants gave for committing the crime.

Table 5.11 presents the percentage of people in each of the three most frequently used psychiatric diagnostic categories who listed at least one reason for their offense that could be classified in one of the four following classes of reasons: External Short-Term, External Long-Term, Internal Short-Term and Internal Long-Term (also see Appendix 1). Overall, short-term reasons were given significantly more often than long-term

Table 5.11. Percent of offenders in the three most frequently used diagnostic categories who gave external/internal, short-term/long-term reasons for their offense.

| | | | Psychiatric Diagnosis | | |
			None	Antisocial Personality	Sexual Deviation
Reasons for the offense	External	Short-term	40	48	44
		Long-term	10	6	23
	Internal	Short-term	28	36	57
		Long-term	20	30	52

Note: See Appendix 1 for the complete list of reasons within each of the four classes (e.g., "external short-term").

reasons and this difference was particularly pronounced for external factors. Looking at the sample as a whole, short-term external factors were about equally likely to be listed as were short-term internal factors; the least used category of reasons was the long-term external factors. More interestingly, people subsequently diagnosed as "sexual deviants" were significantly more likely than the no-label and "antisocial-personality" people to list at least one classifiable reason for their crime. As can be seen from Table 5.11, this difference was mainly due to the "sexual deviants" significantly greater propensity to list internal factors, both long-term and short-term.

When one examines the actual reasons listed within the four classes of reasons by people with different diagnostic labels, the following findings are obtained. With regard to the *external short-term* reasons, both the no-label and the "antisocial-personality" people gave almost exclusively the "just happened" and "the situation presented itself" reasons, whereas the "sexual deviants" tended to use a greater variety of reasons, including "outside pressure," "just happened," "family problems," and "the situation presented itself" (see Appendix 1). Whereas both the no-label and the "antisocial-personality" people very rarely listed any *external long-term* factors, the "sexual deviants," when they used reasons from this category, tended to list "social pressures" and "chronic family problems." For *internal short-term* reasons, the no-label people listed exclusively the "was drunk" and "was on drugs" reasons, whereas the "antisocial-personality" people listed exclusively the "was drunk" and "was out of control" reasons but seldom cited the influence of drugs. "Sexual deviants," on the other hand, tended to give a large variety of

reasons including "was drunk," "was confused," "was angry," and ·
"heard a voice." Finally, for *internal long-term* factors, the no-label
people cited exclusively alcoholism and drug addiction, whereas both the
"antisocial-personality" and "sexual deviation" people used a variety of
categories, except that the sexual deviants were especially likely to men-
tion long-term emotional problems.

With regard to the relationship between psychiatric classification
(MDSO/ non-MDSO) and the use of various classes of reasons, it was
found that people who were eventually classified as MDSOs did not differ
from the non-MDSOs in the use of either short-term or long-term external
factors. About 30 percent of the people in each group gave the "it just
happened" and "the situation presented itself" external short-term rea-
sons (few people in either group gave external long-term reasons). For
internal short-term factors, the non-MDSOs gave exclusively "was
drunk" (18 percent) and "was on drugs" (10 percent) reasons; in contrast,
the MDSOs gave a variety of internal short-term reasons, including "was
confused" (17 percent), "was angry" (14 percent), "was on drugs" (9
percent), "was drunk" (3 percent), "was out of control" (8 percent), and
"a voice commanded me" (8 percent). Finally, for internal long-term
factors, the non-MDSOs gave almost exclusively chronic alcoholism and
drug addiction as reasons, whereas the MDSOs gave most frequently
"chronic emotional problems" (15 percent) and "loneliness" (8 percent)
as reasons for the offense; interestingly enough, only 5 percent gave "sex
life dissatisfaction" as a reason.

In summary, people who were eventually diagnosed as "sexual
deviants" (and were therefore more likely than people with other diagnos-
tic labels to be classified as MDSOs) tended to give a greater number and a
greater variety of reasons for their offense. The variety was manifested
both in terms of the number of classes of reasons used and in terms of the
kinds of reasons given within classes. The most frequent reasons given
were internal in nature and within this class were equally likely to be
short-term and long-term, including reasons such as "chronic emotional
problems" (the most frequently given reason), "was confused," "was
angry," etc.; alcoholism, drug addiction, and sexual dissatisfaction were
infrequently given as reasons.

DISCUSSION

Our results allow the formulation—at this point still tentative—of a causal
model of the processing of persons suspected of being mentally disor-
dered sex offenders in San Diego county. Perhaps the most remarkable
thing about the emerging model is that it is quite simple. Of the hundreds

of individual predictors and their interactions that we examined, only very few reached the statistically significant level of association with the criterion variables. Perhaps this should not have come as a surprise, because we have repeatedly found in our work on other legal decisions (e.g., bail-setting, sentencing, etc.) that simple models, consisting of few factors (some of which are often extralegal) account for a large proportion of the variance in the criterion decisions. Thus, it would seem that despite the protestations that "every case is different," that "the complexity of cases and decisions defies the possibility of scientific analysis," that "every participant in the system has a unique contribution to make and is not replaceable by an equation," etc., which we have so often heard from judges and other participants in the legal system, the decisions in this system are just as predictable by a simple model as are those in other domains that have been mapped by logical/quantitative analyses. It also seems to us that the outcome of our projects, including the present one, justifies the type of data we collect and the overall methodological and metatheoretical approach.

Let us briefly summarize the main characteristics of the emerging model. If a person suspected of being an MDSO (because of the type of offense committed or the circumstances under which it was committed) has no prior sex-related criminal record, he is very likely to be diagnosed by the psychiatrists as having an "antisocial personality" or to be given no diagnostic label at all. In either case, the probability is high that the psychiatrists will classify him as a non-MDSO, following which he will almost automatically be remanded to the trial court by the judge.[8] If, on the other hand, a person suspected of being an MDSO has a prior sex-related criminal record, he is likely to be diagnosed as a "sexual deviant" and almost certainly receive another, more specific, sex-related diagnostic label, after which the chances are very high that he will be classified as an MDSO and then almost automatically be sent to Patton State Hospital by the judge. The importance of prior sex-related criminal record is underscored by the fact that all of the individuals in the sample who had been diagnosed as "sexual deviants," but who had no prior convictions for sexual offenses, were classified as non-MDSOs and therefore remanded to the trial court by the judge, rather than sent to Patton State Hospital.

The probation report and the psychiatrists' letter for people who are eventually diagnosed as "sexual deviants" and classified as MDSOs are somewhat different from the documents for people who are not thus diagnosed and classified. In the case of MDSOs, the probation officers tend to write longer overall evaluations, longer descriptions of the offense and of prior record, and to be more negative, by referring more frequently to the

negative aspects of personal letters concerning the defendant and to the lack of the defendant's intention to improve. These MDSO/non-MDSO differences in the length and content of the probation officers' reports are echoed in the letters written by the psychiatrists. As summarized in Table 5.10, the MDSO letters tend to be longer, more negative, more "psychological" in tone (including a good deal of jargon), and with more apparent intent to substantiate the recommendation by reference to other sources (e.g., police officers, victims, results of the formal psychological assessment).

Nevertheless, it may well be that the differences in the length, content, and emphasis of the probation officers' reports and psychiatrists' letters for the MDSO and non-MDSO cases—interesting as they are from several points of view—are quite irrelevant to the basic underlying causal sequence. After all, the processing of persons suspected of being MDSOs can be summarized by the following simple causal sequence: a) prior sex-related criminal record leads to b) the psychiatric diagnosis and classification as "sexual deviation" and MDSO, respectively, resulting almost automatically in c) the judge's verdict that the defendant be sent to Patton State Hospital. In this view, differences in the content of probation reports and psychiatrists' letters merely serve to: justify an already formed conclusion based on prior sex-related criminal record; give the appearance of complexity to the processing of MDSOs; and smooth out the rough edges of the causal sequence.

As we pointed out in the Results section, the fact that the information concerning the main predictor—prior sex-related criminal record— temporally precedes the commission of the offense under consideration makes prediction of the final disposition particularly easy. This fact and the simplicity of the causal model outlined above lead us to two straightforward, though at this point still tentative, conclusions: a) as far as MDSO processing is concerned, the judge may serve as little more than a rubber stamp for the psychiatric diagnosis and MDSO/non-MDSO classification; b) the psychiatric diagnosis and classification (which, as we have seen, are largely redundant with each other) to a very high extent eventually depend on a factor known well before the compilation of the probation report (with its costly and time-consuming investigations, interviews, and paper-shuffling) and, especially, before the relatively lengthy (and therefore costly) interview which the court psychiatrists have with the offender. Indeed, to the extent that psychiatrists are basing their recommendations on such an easily observed and agreed upon factor as prior sex-related criminal record, their usefulness in the processing of persons suspected of being MDSOs would appear to be rather limited.

Of course, none of the above in any way implies "foul play" on the part

of the judges and other participants in the system when they claim that every case is different, that a scientific/quantitative analysis of their decisions is impossible and that, generally, they are indispensable. In part, such statements may stem from a lack of understanding of the methods of behavioral science. Besides, a judge may well subjectively *believe* that he is responding to various multi-faceted and complex aspects of the case (e.g., each type of information from the probation report and psychiatrists' letter, the various behaviors of the defendant during the hearing, etc.) and combining these many bits of information in a complex, configural manner that is aided by his judicial training, experience, skill, and wisdom. Similarly, the psychiatrists may well *believe* that their diagnostic and classification decisions are based on the information in the probation officer's report and the answers to their questions that the defendant gives in the interview. Finally, the probation officer may *believe* that his recommendation and evaluation could not be made without a great deal of footwork and the collection of information from a variety of sources. However, the complexity of these people's thoughts and cognitive operations at various points in the decision-making process, as well as their beliefs about the "true" causes of their behavior, should not be uncritically accepted as representing the real causal sequence. As we have seen, a rather different model emerges when an outside observer of the participants' behavior systematically examines the covariation between the participants' decisions and the information available to them at each point in the decision-making process. It would be a relatively simple matter for the participants in the system to achieve the same goal by keeping data on themselves, but this idea is not generally regarded with favor in legal circles. For such an idea to gain acceptance, one would need a dramatic change in the curricula of law schools and the adoption of a different world view and view of science on the part of legal practitioners.

It seems to us that the operation of the legal system could be made more effective, faster, simpler, and certainly far less costly. To do so, the system would have to give up its obsession with ritual procedures and antiquated views of "human nature;" with rules and hearings that are a self-serving show for the public, rather than necessary for furthering justice; with spreading the responsibility across many participants for what are claimed to be complex—but in reality emerge as very simple— decisions, while at the same time, the participants in the system attempt to promote their status and insure that the operation of the system is not subject to public or scientific inquiry. Such concerns could be profitably replaced by a concern for the discovery of the *de facto* causes of legal decisions, for base-rates, for appropriate data collection, for internal checks, and for the application of modern behavioral science, in general.

By examining what actually determines legal decisions (as opposed to what the participants *think* determines them), a quantitative approach can achieve two additional, important goals: a) a system that is more *fair*, in the sense that similar crimes, committed under similar circumstances, by similar people, with a similar prior record would, in fact, be punished similarly, rather than subject to "noise" introduced into the system by the differences among judges and other practitioners in views, values, and assumptions; and b) a system that is more *just*, in a sense that it would be possible to determine whether particular legal decisions indeed reflect the kinds of factors that both the participants in the system and, especially, the public feel these decisions *should* reflect (unlike the present situation, where the participants and the public may be under the impression that a particular factor is being taken into account when it, in fact, is not). Thus, a quantitative approach does not impose values on the legal system and the public; rather, it may help determine whether legal decisions do actually reflect certain factors and general values that the participants in the system and the public find desirable.

Despite some of the criticisms expressed earlier in this section, the emerging model of the processing of persons suspected of being MDSOs does appear, from several points of view, to be reasonable. In the first place, it seems intuitively acceptable for prior sex-related criminal record to be a major determinant of MDSO classification, especially given the laws presently on the books; second, unlike our work on bail-setting, sentencing, and other legal decisions, the present project has revealed few, if any, *extralegal* determinants of the processing of MDSOs. Moreover, it could be argued that the psychiatrists must be doing something right in their diagnosis and classification when one considers the fact that "sexual deviants" and MDSOs do give different explanations for their behavior than do the non-MDSOs and that the types of explanation they predominantly give (internal long-term factors, such as chronic emotional problems) seem congruent with the eventual psychiatric diagnosis and classification. However, this last point can be interpreted in several different ways. For example, since the psychiatrists' decisions occur after and with a full knowledge of the offenders' attributions, one could argue that the psychiatrists are merely following the offenders' own "recommendation," rather than reaching an independent judgment. One version of this interpretation would be that the offenders' attributions determine the psychiatrists' classification and that this causal factor is independent of prior, sex-related criminal record. Another version of the same general interpretation is that the attributions are not a causal factor, independent of prior, sex-related criminal record, because the offenders—being themselves fully aware of their prior, sex-related criminal record—merely re-

late what they think would be the causes of the behavior of a person with such a record. Finally, it is possible that the offenders' attributions—whether or not they influence the psychiatrists and whether or not they are a causal factor, independent of prior sex-related criminal record—find their way into the probation report only because probation officers feel that these attributions fit the picture of an offender with a prior, sex-related criminal record. In fact, it is possible that the probation officers intentionally (or unintentionally) *elicit* different explanations for the offense from offenders with, as opposed to those without, a prior, sex-related criminal record. In this last version, the prior, sex-related criminal record of the offender again emerges as the sole causal factor, in that it causes the probation officers to elicit certain kinds of explanations from the offenders and to quote these in the reports.

In summary, while the issue remains unresolved as to whether the offenders' stated explanations for their behavior: a) *validate* the psychiatrists' diagnosis and classification; b) *cause* the diagnosis and classification independently of prior, sex-related criminal record; or c) are merely an *irrelevant consequence* of prior, sex-related criminal record, the points made earlier in the Discussion section should not obscure the fact that the causal sequence that we suggest underlies the current processing of MDSOs contains intuitively acceptable and no extralegal factors.

The reasons for two other aspects of the psychiatrists' behavior remain unclear. The first of these is the finding that almost all of the cases that had a very specific sexual-deviation label, such as "male paedophilia" (as opposed to the general "sexual deviation" label) as the first label and a non-sexual-deviation label, such as "schizophrenia," as the second label were eventually classified as non-MDSOs. This was in contrast to cases where the first label was "sexual deviation" and the second label was some specific sexual-deviation label, such as "male paedophilia," most of which were classified as MDSOs. It is almost as if the non-sexual-deviation second label offset the effect of the first label with regard to the MDSO classification; however, the small number of cases involved precludes a more conclusive analysis of this issue.

The second issue concerns the psychiatrists' previously discussed apparent motivation to substantiate MDSO classifications to a greater extent than the non-MDSO ones, and generally to be far more negative in their descriptions of MDSOs' personality, habits, life-style, past and present behavior, and future prospects. As we mentioned earlier, one possible reason for this behavior on the part of the psychiatrists may be that they regard the MDSO classification as technically more controversial or challengeable; another possibility is that the psychiatrists believe that the consequences for the defendant would be far more severe in the case of

MDSO classification and that therefore the classification has to be better justified. Regardless of whether either of these two alternatives is correct, it is of considerable interest to examine briefly what happens to people classified as MDSOs and therefore sent to Patton State Hospital. Fortunately, some information concerning this issue is available in an article by Dix (1976).

By the time of Dix's study (summer of 1974), none of the 30 MDSOs committed in 1967 to the State hospital (Atascadero State Hospital in Dix's case) were still hospitalized. Dix discovered that none had been retained longer than two years and approximately one-half had been discharged within one year. Only six out of 30 were returned with a *B* recommendation (i.e., the defendant is unlikely to profit from further treatment but continues to be a danger to the community), and, moreover, these cases remained in the hospital for a very short period of time, certainly much shorter than the remaining 24 cases that had been returned with an *A* recommendation (i.e., the defendant is not any longer a danger to the community). The 24 cases returned with the *A* recommendation, none of which—to emphasize this point again—remained in the hospital over two years, were typically not sentenced under the applicable penal code provisions following their release from the hospital but were instead immediately released into the community with a five-year probation term. Dix then proceeded to compare the treatment of these 30 MDSOs to persons who had been processed through alternative programs (i.e., originally classified as non-MDSOs and remanded to the trial court to be sentenced under the applicable penal code provisions). On the basis of the data in his Tables V, VI, and VII (pp. 239–240), Dix justifiably concludes that "many offenders who were processed as MDSOs would have been institutionalized significantly longer, had they been sentenced to imprisonment under the penal code provision" (p. 238). Thus, to the extent that any aspect of the psychiatrists' behavior is governed by the belief that the MDSO classification leads to more severe consequences for the defendant, this would mean that they were relying on a belief not based on facts. People classified as MDSOs are returned to the community after a shorter period of time than those classified as non-MDSOs (at least in California); moreover, it is highly likely that their treatment in the hospital is preferable from several points of view to the treatment that they would receive in jail or prison. It would be highly interesting to find out whether judges, psychiatrists, defense attorneys, and, above all, the defendants themselves are aware of these facts, and whether their behavior is governed by them.

Ironically, on the basis of Dix's findings and those in the present project, the following bit of advice could be given to persons suspected of

being MDSOs regarding the optimal defense strategy. After committing and being arrested for an offense of the type that would likely lead to the suspicion that the defendant were an MDSO, he should (unless, of course, he already has a prior, sex-related criminal record) get himself released on bail and quickly commit additional sex-related crimes. Such behavior would presumably sufficiently impress the psychiatrists and the judge to classify the defendant, after he has been convicted, as an MDSO and to send him to the hospital, from which he would have a 50 percent chance of emerging within a year.

One final point is in order, concerning the validity of the proposed model of MDSO processing. As is the case with other legal decisions that we have examined, it is highly likely that the model is the least applicable for the most "visible" cases: These cases receive a lot of publicity and are characterized by other extraneous factors which make them atypical along many dimensions. It is, therefore, important to realize that our intention was to develop a model that successfully deals with the "run-of-the-mill," everyday cases that never reach even the back sections of local papers and yet are, because of their sheer frequency, perhaps more important in the long run than the "special" cases.

One such special case that recently received a great deal of publicity was that of the renowned film director, Roman Polanski. The reasons for the fact that our model almost certainly would not apply to this case should be obvious when one contrasts the characteristics of a modal, obscure MDSO case with the following features of the Polanski case: [9] a) a deluge of provocative newspaper headlines about the case; b) the judge (Laurence T. Rittenband) held press conferences about the case, gave interviews to popular magazines, such as *People,* and made numerous public announcements, including statements that Mr. Polanski did not belong in this country, that his sentence would be shorter if he agreed to be deported, etc.; c) the judge, on one hand, received highly favorable descriptions of Mr. Polanski's character from well-known Hollywood producers and actors and, on the other hand, received a flood of mail from "concerned citizens" of the "I hate Polanski and people like him" variety; d) the judge received requests from multi-millionaires, such as the film producer Dino De Laurentis, to let Polanski finish a film in Tahiti; e) the newspapers tried to outguess each other on a daily basis about Mr. Polanski's whereabouts and published accounts about his having been seen in Germany, etc.; f) the crime for which Mr. Polanski was convicted, "unlawful sexual intercourse" (Section 264 of the State of California Penal Code; this offense used to be known as "statutory rape"), is not considered a crime in thirteen States of the Union, and only 44 people were convicted of this crime in 1976 in all of Los Angeles County; g) Mr. Polanski had no prior criminal record, sex-related or otherwise, the pros-

ecutrix was described by the judge as a "not . . . inexperienced and unsophisticated girl," and yet Mr. Polanski was suspected of being an MDSO and sent to the Chino facility for a diagnostic study to be done on him.

In a sense, the Polanski case illustrates not only why it would be unreasonable to expect our model to be applicable to "special" cases, but also raises more general questions about the sometimes arbitrary nature of MDSO classification and processing. Finally, it highlights the role of the media in misinforming the public about the operation of the legal system. By being exposed only to sensationalist accounts of Perry-Mason-type cases, the public gets an entirely distorted picture of how modal cases are handled. Hopefully, the present chapter corrects this biased view by providing a more accurate description of MDSO processing.

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APPENDIX 1.

The coding instrument and levels of variables used in the statistical and computer analyses for the DEFENDANT'S FILE (available to the psychiatrists and the judge).

Date: _____ Court: _____ MH#: _____
Judge: _____ D.A. _____ Examining psychiatrists:
                                                                       1. _____
                                                                       2. _____
                                                                        3. _____

Number of lines devoted to describing the following categories:

1. PROBATION OFFICER'S REPORT: # of pages: (1–3=1, 4–5=2, 6–up=3)
   a. custody data: (0–1=1, 2–2, 3–up=3)
   b. related court date: (0–3=1, 4–6=2, 7–up=3)
   c. plea-bargain: (0–3=1, 4–6=2, 7–up=3)
   d. offense described: (0–25=1, 26–50=2, 51–up=3)
   e. defendant's statement: (0–25=1, 26–50=2, 50–up=3)
   f. prior record: (0–1, 1–4=2, 5–up=3)
   g. social factors: (0–10=1, 11–20=2, 21–up=3)
   h. probation adjustment: (0–5=1, 6–10=2, 11–up=3)
   i. additional information: (0–15=1, 16–30=2, 31–up=3)
   j. evaluation: (0–12=1, 13–20=2, 21–up=3)
   k. recommendation: (0–5=1, 6–10=2, 11–up=3)
2. COMPLAINT: actual # of pages
               actual # of copies
               # of lines: (0–5=1, 6–15=2, 16–up=3)
               charges: (0–3=1, 4–6=2, 7–10=3, 11–14=4, 15–up=5)
3. DOCKET: actual # of pages
               actual # of copies
               # of lines: (1–5=1, 6–10=2, 11–up=3)
4. RECEIPT ON TRANSFER: # of copies: (0–1=1, 2–3=2, 4–up=3)
                               # of lines: (1–5=1, 6–15=2, 16–up=3)
5. INFORMATION: actual # of pages
                 actual # of copies
                 # of lines: (0–20=1, 21–40=2, 41–up=3)
   a. charges: (0–1=1, 2–4=2, 5–up=3)
   b. victim's state: b. (0–5=1, 6–10=2, 11–up=3)
   c. police report: (0–5=1, 6–10=2, 11–up=3)

6. CHANGE OF PLEA FORM: (0–4=1, 5–8=2, 9–up=3)
7. ORDER ADJOURNING PROCEEDINGS AND CERTIFYING ALLEGED MDSO
   FOR EXAM AND HEARING:
       actual # of copies
8. PERSONAL LETTERS ABOUT THE DEFENDANT: [total] (0–5=1, 6–10=2, 11–
   up=3)
       a. positive: (0–3=1, 4–7=2, 8–up=3)
       b. negative: (0–1=1, 2–4=2, 5–up=3)
NOTE FOR CODERS: If info is available and it is *objective* then write "obj" next to scale
                          or in appropriate slot.
9. DEFENDANT'S STATEMENT AND/OR INTERVIEW INFORMATION (information
   in quotes or "the defendant said that . . .")
       a. Is section filled out? 0=NO, 1=YES
       b. To what degree does the defendant admit having committed the crime(s)? (for each
          charge if appropriate)
                           (0–33mm=1, 34–67mm=2, 68–100mm=3)

   Admits |--| Denies
   Completely | | Completely

       c. How does the defendant "explain" his behavior? Were there any extenuating circum-
          stances?
          1) External factors not under the defendant's control: *Short-Term*
            (i)   none
            (ii)   outside pressure
            (iii) "it just happened"
            (iv) situation presented itself
            (v)   family problems
          2) External factors not under the defendant's control: *Long-Term*
            (i) none
            (ii)   chronic social pressure (subculture)
            (iii) chronic family problems
          3) Internal factors not under the defendant's control: *Short-Term*
            (i)   none
            (ii)   drunk
            (iii) on drugs
            (iv) confused
            (v)   angry
            (vi) out of control, on an impulse
            (vii) auditory hallucination ("heard a voice")
          4) Internal factors not under the defendant's control: *Long-Term*
            (i)   none
            (ii)   drug addiction
            (iii) alcoholism
            (iv) addiction and alcoholism
            (v)   sex-life dissatisfaction
            (vi) homosexuality
            (vii) loneliness
            (viii) frequent auditory hallucinations ("voices")
            (ix) chronic emotional problems

APPENDIX 2.

The coding instrument and levels of variables used in the statistical and computer analyses for the PSYCHIATRISTS' LETTER (available to the judge).

Date: _____ Court #: _____ MH#: _____

Judge: _____ D.A. _____ Examining psychiatrists:

1. _____

2. _____

3. _____

Number of lines devoted to describing the following categories.

1. DEFENDANT'S APPEARANCE: [total] (0=0, 1=1, 2–up=2)
   a. physical: [bodily] (0=0, 1=1, 2–up=2)
   b. subjective impression: [dressed, groomed] (0=0, 1=1, 2–up=2)
2. DEFENDANT'S DESCRIPTION OF OFFENSE: [total] (1–15=1, 16–30=2, 31–up=3)
   a. details: [planning, procedure] (0–15=1, 16–30=2, 31=up=3)
   b. feelings about offense: [total] (1–2=1, 3–4=2, 5–up=3)
      1) negative [remorse] (0–1=1, 2–3=2, 4–up=3)
      2) positive [no remorse] (0–1=1, 1=2, 2=3)
      3) indifferent: (0–2=1, 3–4=2, 5–up=3)
      4) admits guilt: (0–1=1, 2–4=2, 5–up=3)
3. PRIOR RECORD: [total] (0–5=1, 6–10=2, 11–15=3, 16–20=4, 21–25=5, 26–up=6)
   a. criminal: (0=1,1–4=2, 5–up=3)
   b. MDSO-related: (0=1, 1–4=2, 5–up=3)
4. PRIOR LIFE STYLE: (0=1, 2–3=2, 4–up=3)
   a. negative: (0=1, 1–3=2, 4–up=3)
   b. positive: (0=1, 1–3=2, 4–up=3)
5. PAST SEXUAL EXPERIENCE OF DEFENDANT: [total] (0–2=1, 3–5=2, 6–up=3)
   a. defendant offers info.: (0–1=1, 2–3=2, 3–up=3)
   b. defendant responds to psychiatrists' questions: (0–2=1, 3–6=2, 7–up=3)
      1) childhood: (0–1=1, 2–3=2, 4–up=3)
      2) adulthood: (0–2=1, 3–4=2, 5–up=3)
6. CURRENT STATUS OF DEFENDANT: [job, school, etc.; total] (0–2=1, 3–4=2, 5–up=3)
   positive [stable, etc.] (0=1, 1–2=2, 3–up=3)
   negative [unstable . . .] (0–1=1, 2–3=2, 4–up=3)
7. FUTURE STATUS OF DEFENDANT: [total] (0=1, 1=2, 2–up=3)
   a. defendant's desires for future: (0=1, 1=2, 2–up=3)
   b. probation officer's evaluation of future prospects: (0=1, 1=2, 2–up=3)
8. PROBATION OFFICER'S REPORT INFORMATION: [taken directly from report total] (0–15=1, 16–30=2 31–up=3)
   a. description of offense: (0–15=1, 16–30=2, 31–up=3)
   b. psychological assessment: (0=1, 1=2, 2–up=3)
   c. physical description: (0=1, 1=2, 2–up=3)
   d. family history: (0=1, 1=2, 2–up=3)
   e. Probation Officer's recommendation: (0=1, 1=2, 2–up=3)
9. PSYCHIATRISTS' EVALUATION OF OFFENSE: [total] (0=1, 1–20=2, 21–up=3)
   a. interpretive statements [interprets acts psychologically] (0=1, 1–20=2, 21–up=3)
   b. offers new information about offense (0=1, 1–4=2, 5–up=3)
   c. implies "force" (0=1, 2–4=2, 5–up=3)
   d. implies drug-related factors (0=1, 1–4=2, 5–up=3)
10. OTHER SOURCES OF INFORMATION: [total] (0=1, 1–10=2, 11–up=3)
    a. defense psychiatrist's report (0=1, 1–10=2, 11–up=3)
       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
    b. police reports (0=1, 1–10=2, 11–up=3)

       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
  c. District Attorney's file (0=1, 1–10=2, 11–up=3)
       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
  d. victim's statement (0=1, 1–10=2, 12–up=3)
       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
  e. defendant's employer (0=1, 1–10=2, 11–up=3)
       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
  f. defendant's relatives (0=1, 1–10=2, 11–up=3)
       1) positive (0=1, 1=2, 2–up=3)
       2) negative (0=1, 1=2, 2–up=3)
11. PSYCHIATRISTS' DIAGNOSIS AND RECOMMENDATION: [total]
  a. diagnosis [number of labels]
    labels: 1. none
          2. homosexuality
          3. female paedophilia
          4. male paedophilia
          5. antisocial personality
          6. sexual deviation
          7. female & male paedophilia
          8. schizophrenia
  b. recommendation [actual number of lines]
    classification: 1. non-MDSO
               2. MDSO
12. JUDGE'S SUBSEQUENT DECISION
  1. Remand
  2. Patton State Hospital
  3. Continuance

FOOTNOTES TO CHAPTER 5

[1]Throughout this paper, we refer to people suspected of being MDSOs as men. This is not sexist usage but reflects the curious fact that an enormous proportion of what are these days considered "sex crimes" (and MDSO activities) are carried out by men.

[2]As an example, in California in 1976 (according to the State of California Bureau of Criminal Statistics), over 15 percent of the felons classified as MDSOs were eventually convicted of non-sexual offenses, such as burglary, robbery, and assault.

[3]Dix (1976) recently published a very valuable article examining the California MDSO program; however, he focused mostly on what subsequently happens to people originally found to be MDSOs (duration of confinement, recidivism, etc.). In contrast, one of the major aspects of our work is the attempt to identify predictors of the MDSO/non-MDSO decision within a more general causal-analysis framework. In addition, Dix looked at relatively few factors and drew conclusions in an informal manner rather than on the basis of statistical analyses of the data.

[4]Observation was one of several methods we used in our studies of sentencing (Ebbesen and Konecni, 1978; Konecni and Ebbesen, in press—a). It was used to record the events in the sentencing hearing (who spoke, how long, what about, after whom, etc.), as well as to code variables, such as the defendant's appearance, attractiveness, articulateness, etc. We might note that none of the latter, defendant-associated variables were useful predictors of the sentence. This is instructive when one considers that "attractiveness of the defendant" is one of the favorite variables used in social-psychological laboratory experiments on various aspects of the legal process.

[5]It should be noted that the probation officer's recommendation at the conclusion of the report was *not* treated as a predictor. This may appear odd, given the great value of the probation officer's recommendation as a predictor of the *sentence* (in non-MDSO adult-

felony cases). However, in MDSO cases, probation officers typically do not openly suggest either a diagnostic label or the MDSO/non-MDSO classification; instead, they conclude the reports by some variation of the following (in a paedophilia case): "If the court finds that X. is not an MDSO, then I nevertheless respectfully recommend that a condition of probation be that X. must not be in the company of minors below age Y."

[6]One could plausibly argue that the psychiatrists' recommendations are such as they are because the psychiatrists correctly anticipate what the judge would do anyway and are also for some reason motivated to maximize agreement with the judge. A similar argument can be raised in the case of sentencing decisions (e.g., Ebbesen and Konečni, 1978; Konečni and Ebbesen, in press—a), where a high agreement between the probation officers' recommendations and the judges' sentencing decisions has been observed. In the case of sentencing, however, auxiliary data that were available suggested relatively strongly that of the various possible causal models, the correct one was that which proposed that the probation officers' recommendations were "causing" the judges' sentences. Unfortunately, in the present case, such auxiliary data were not available. Nevertheless, the psychiatrists' (assumed or real) far greater expertise in diagnosing and prognosticating "mental disease," coupled with the fact that their recommendations temporally precede the judge's verdicts, leads one to the tentative conclusion that the judge's behavior is "caused" by the psychiatric recommendation, rather than vice versa. This issue is, of course, quite separate from the question of the causes of the psychiatric recommendation itself, which, therefore, also indirectly influence the judge's verdict.

[7]It should be noted that the proposed model is concerned with the operation of the *system* and not with the actual steps taken by individual decision makers in reaching their decisions. For example, our model does not deal with the judge's thought content and processes nor with the documents and information he *actually* scans prior to reaching the decision. The judge may well look only at the psychiatrists' letter and not even attend to documents that contain information about the defendant's prior convictions for sex crimes. That prior sex-related criminal record predicts the judge's verdict so accurately is presumably a consequence of the fact that to whatever information the judge attends and is influenced by (for example, in the psychiatrists' letter), is highly correlated with prior, sex-related criminal record. Therefore, we are not able to specify the extent to which the predictive accuracy of our model would be changed by removing some of the information currently at the judge's disposal. For example, some might argue that the costly psychiatric interviews (and thus the psychiatrists' letters) could be painlessly eliminated from the MDSO-processing system, because the information about the defendant's prior, sex-related criminal record is quite sufficient for accurate prediction. Such a step could, however, potentially decrease the accuracy of the model if the judge—in the absence of the psychiatrists' letter—began to attend to, and be influenced by, *other information* and documents in the file that are *less well correlated* with the prior, sex-related criminal record. In fact, removal or addition of *any* of the sources of information currently available to the judge, whether they be presently correlated with the final MDSO classification or not, might well alter the operation of the system. Needless to say, such a change in the causal sequence could easily be detected by a project similar to the present one, and the judge could be advised accordingly. He would then have the choice of adjusting his decisions, so that they would be more similar to those before the elimination of psychiatric interviews by, for example, attending directly to information about the defendant's prior, sex-related criminal record.

[8]One might ask how a person ever acquires a sex-related prior record. One plausible answer is that when an overwhelming amount of evidence exists concerning the role of the defendant's sexual abnormality in his criminal actions (in terms of the number of charges, counts, or the type of activity in which the defendant engaged), he receives a sexual deviation label and is classified as an MDSO, even in the absence of prior convictions for sexual offenses. In our sample, there were four such cases (see Table 5).

[9]Most of our information comes from personal communications on February 24 and March 2, 1978 with attorney Douglas Dalton (of the Los Angeles law firm of Hodge and Dalton) and from a brief (No. A334 139, "Statement of disqualification for cause of judge"), which attorney Dalton filed on behalf of Mr. Polanski. We would like to thank attorney Dalton for giving us a copy of the brief and other information and to gratefully acknowledge his cooperation in this matter.