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The Trial Process

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# The Trial Process

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Edited by

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PLENUM PRESS · NEW YORK AND LONDON

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Library of Congress Cataloging in Publication Data

Main entry under title:

The Trial process.

(Perspectives in law and psychology; v. 2)

Includes index.

1. Trial practice—United States—Addresses, essays, lectures. 2. Psychology, Forensic—Addresses, essays, lectures. 3. Criminal procedure—United States—Addresses, essays, lectures. I. Sales, Bruce Dennis. II. Series.

KF9656.A75T74

347.73'75

80-20487

ISBN 0-306-40491-5

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A Division of Plenum Publishing Corporation  
227 West 17th Street, New York, N.Y. 10011

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Printed in the United States of America

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# The Process of Sentencing Adult Felons

A CAUSAL ANALYSIS OF JUDICIAL DECISIONS

**EBBE B. EBBESEN and VLADIMIR J. KONEČNI**

[P]ersons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies.

*Model Sentencing Act, 1963*

## INTRODUCTION

If there is one conclusion about the United States criminal justice system with which most knowledgeable observers of the system would agree, it is that the sentencing of convicted felons is blatantly unfair. Not only does the average length of prison sentences given to offenders convicted of virtually identical crimes vary from one locale to another (see, e.g., Bottomley, 1973; Green, 1961; Hogarth, 1971; O'Donnell, Churgin, & Curtis, 1977), but different judges seem to give completely different sentences to the same offender. For example, in one instance (reported in O'Donnell *et al.*, 1977), after reading the same file describing characteristics of an offender and the nature of his criminal activity (transport-

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**EBBE B. EBBESEN and VLADIMIR J. KONEČNI** • Department of Psychology, University of California, San Diego, California 92037.

ing stolen securities across state lines), one federal judge imposed a three-year prison term while another released the offender with only one year of probation.

The existence of what appears to be great disparity in the sentencing practices of different judges, even within the same local criminal justice system, is a natural consequence of the absence of strict legal or procedural guidelines for sentencing. It is not that guidelines do not exist, because they do (e.g., the Model Penal Code, 1962; the Model Sentencing Act, 1963; the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, 1967; Senate Bill S. 2699). It is merely that most recent guidelines are based on the philosophy that punishments should fit the individual offender—and not merely the crime. Guidelines therefore provide judges with broad discretionary powers and allow them to consider any and all aspects of a given case which might be relevant in deciding how best to deal with individual criminals. For example, the Model Sentencing Act devised by the National Commission on Crime and Delinquency (1963) suggests that judges should impose long prison terms (e.g., 30 years) on dangerous offenders and lesser terms (including probation and fines in lieu of incarceration) on nondangerous offenders. However, the factors that are to be considered and the manner in which these factors are to be weighted and combined in deciding which offenders are dangerous or, if not dangerous, which should be fined and by how much, are left largely to the discretion of the judge.

Even the most recent attempts by the Congress to eliminate what is agreed to be a national scandal with regard to sentencing in the federal criminal justice system (see O'Donnell *et al.*, 1977) again resulted in establishing only very broad guidelines. Rather than focus on dangerousness, these guidelines proposed that judges base their decision on the following six criteria: (a) deterrence of other people from committing crime; (b) protection of the public from further criminal acts by the offender; (c) rehabilitation of the offender; (d) promotion of respect for the law through denunciation; (e) provision of just punishment for the offense; and/or (f) the relative gravity of the offense. Although the meanings of each of these criteria were carefully defined, the method by which a particular offender was to be evaluated against these criteria and the sentence then imposed was left to the judges' discretion. For example, judges are given complete discretion in deciding how such factors as the defendant's remorse, education, intention to improve, prior record, marital status, age, sex, race, history of drug use, employment opportunities, and so on are to be translated into the six criteria. In addition, even if such a translation were specified, the exact sentence (or even

range of sentences) to be given in the light of these criteria is a discretionary matter.

In short, although many sentencing guidelines have been proposed in an attempt to eliminate sentence disparity, all of them seem to accept Flood's (1963) claim (made in defense of the Model Sentencing Act) that, "any rational penal system must leave broad discretion in the hands of the judge." It is interesting that sentencing guidelines continue to give judges discretion in spite of well known and respected critics such as Judge Marvin E. Frankel, who argued that the

assertion that the trial judge has the unique and unreproducible advantages of seeing the defendant, "sizing him up" and possessing from daily exposure a seasoned wisdom in the use of such firsthand impressions [can be fairly described] as minor and largely phony. (cited in Kutak & Gottschalk, 1974)

#### EXPLANATIONS FOR SENTENCING DISPARITY

Most previous empirical studies of sentencing practices have focused on the question of disparity (for recent reviews, see Bottomley, 1973; Hogarth, 1971). Two opposing explanations for the existence of different patterns of sentencing across judges (and/or courts) have been offered. One places the primary cause of the differences in stable *individual difference characteristics* of the judges, for example, liberalism or conservatism, philosophies of sentencing, socioeconomic background, age, personality traits, and so forth. The other viewpoint argues that most, if not all, of the disparity in sentencing originates from an *unequal distribution of case characteristics* (e.g., types of offenses, prior records, social histories, employment opportunities, ethnic backgrounds) across judges either because lawyers "shop" for judges who they believe are sympathetic to their position or because there is variation in demographic and subcultural characteristics across the regions served by different courts.

Both of the above views can be restated in terms of the decision strategies of judges. The latter argues that judges employ very similar decision strategies, but reach different decisions because the characteristics of the cases on which they base their decisions vary from one judge (and/or locale) to the next. The other view assumes that judges employ very different decision strategies—because of stable individual differences—and therefore different judges should reach very different decisions even when confronted with identical cases.

While there is considerable evidence from studies done in several different countries suggesting that aspects of both explanations are probably correct (e.g., Carter & Wilkins, 1967; Gaudet, Harris, & St.

John, 1933; Green, 1961; Hogarth, 1971; Hodd, 1962; Nagel, 1962; Shoham, 1959), this research has not been specifically designed to investigate the exact nature of the decision strategies that guide judicial sentencing behavior. What features of cases do judges consider? Are such things as remorse, intentions to improve, mitigating circumstances, and appearance considered? How are the different factors weighted? Is prior record or severity of the crime more important? What are the causal connections among different decision-makers? Do the defense and district attorney arguments presented in sentence hearings influence the judges' decisions or do the attorneys adjust their arguments to be consistent with previously made preplea agreements?<sup>1</sup>

### THE PRESENT RESEARCH

Answers to the above questions can be obtained at the level of the individual judge, a particular court, or a broader geographical region. Once the decision strategies at any given level have been discovered, however, the question of disparity becomes secondary. Information about disparity emerges as a consequence of comparing the best fitting decision models across instances within a level. If the same decision model fits all instances equally well, then disparity is best explained by an unequal distribution of case factors over instances. In the work reported here, we shall concentrate on the court level for reasons that shall become obvious later in the chapter.

The purpose of this chapter is to describe the results of our efforts to develop a causal model of the decisions affecting the sentencing of adult felons in one court locale, namely San Diego County, California. This work is part of a larger project which deals with decision-making processes in the legal system, aspects of which we have described elsewhere (Ebbesen & Konečni, in press; Konečni & Ebbesen, this volume; Konečni & Ebbesen, in press). Because the details of the theoretical and methodological approach which guides our work is available in these sources, we will omit a discussion of them here and concentrate on our attempts to derive a predictively useful model of the sentencing process in this one location.<sup>2</sup>

<sup>1</sup>Although a large number of empirical studies have examined these issues with regard to jury decisions, almost all of these studies have employed simulation techniques. Since we have critically reviewed the utility of such studies elsewhere (e.g., Ebbesen & Konečni, 1980; Konečni & Ebbesen, p. 481, this volume), we have chosen to ignore these studies in this chapter.

<sup>2</sup>Although the data reported here were obtained only in San Diego County courts, there is ample reason to believe that the major features of our results will generalize to other large urban areas. Comparison of our findings with Carter and Wilkins (1967) supports this point.

## SYSTEM CHARACTERISTICS

Before describing the specifics of our work on sentencing, several characteristics of the system from which our sentencing data were obtained will be presented. These features of the system determined the nature and the number of the felony cases that were sentenced by superior court judges in San Diego County during the period of the present research.

## STATISTICAL DESCRIPTION

Figure 1 shows the method of disposition of all adult felony arrests (reported to the California Bureau of Criminal Statistics) made in 1976 and 1977 in San Diego County.<sup>3</sup> As can be seen, only a few of the felony arrests eventually resulted in a felony conviction. Most of the felony arrests were disposed of in other ways. Approximately 12% of those initially arrested were released at the police station and were therefore never formally "booked" in county jail. The county district attorney (or rather, his assistants) refused to file a felony complaint in some 54% of those cases in which a police agency formally requested that such a complaint be filed; for most (70%) of these refusals, however, a misdemeanor complaint was eventually granted. After a felony complaint had been filed, the defendants were formally charged in an arraignment hearing. A variable period of time passed, during which the defendants might have pleaded guilty to some of the charges (or a reduced charge) as a result of plea bargaining. For those defendants who did not plead guilty, a preliminary hearing was held in a lower court. Of the cases reaching this preliminary hearing stage, 42% were disposed of because the presiding judge decided either to dismiss (15.11%) or reduce to a misdemeanor (26.56%) the charges in the original complaint. The remaining 58% were transferred to superior court where an "information" formally indicting the defendant with one or more felony charges was filed. A little over 7% of these cases were dismissed, however, by a superior court judge (on review of material from the preliminary hearing). Less than 2% of those indicted were acquitted (either by a jury or a court trial). By far the majority pleaded guilty (78%) or no contest (6%). In short, only about 4700 of the original 24,200 felony arrests eventually resulted in a felony conviction.

Figure 1 also shows the frequency with which various sentence options were assigned to those individuals who were convicted of a felony. As can be seen, only a small percentage were sent to state prison

<sup>3</sup>Comparison of these data with the rest of the state shows that gross statistical characteristics of the San Diego criminal justice system are representative of other counties.

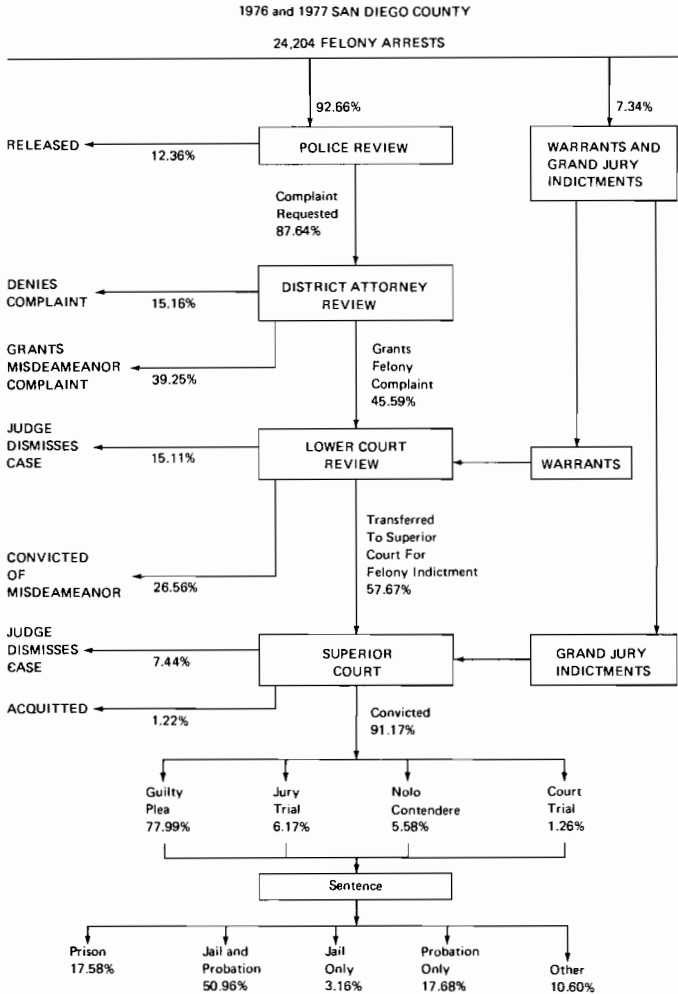


Fig. 1. The temporal flow and disposition of cases through the felony system in San Diego County, 1976 and 1977. Also shown is the percentage of cases that were disposed of in a particular way at each major decision point in the system. Note that the percentages are computed on the basis of the number of cases that enter a given decision point and not on the basis of the total number of felony arrests. Therefore, percentages sum to approximately 100% at each decision point.

(for an indeterminate period of time).<sup>4</sup> In terms of the 12,000 or so felony arrests made each year, only about 412 (or 3%) resulted in a state prison sentence. Most of the convicted felons (51%) were sentenced to a brief (less than a year and usually six months) confinement in the county jail facilities followed by a period of probation (often three years, including the time in county jail). Another 18% received straight probation with no confinement in either state prison or county jail. Another 10% were simply fined, received a brief jail term with no subsequent probationary period, or were sent to a mental hospital for observation and treatment as "mentally disordered sex offenders" (see Konečni, Mulcahy, & Ebbesen, 1980, for a discussion of the last category).

#### EVENTS PRIOR TO THE SENTENCING HEARING

To fully appreciate the nature of the sentencing process it is necessary to outline the sequence of events that typically occurs prior to the actual sentence hearing. As is obvious from the data in Figure 1, most felony convictions are obtained by a plea of guilty (or no contest) in exchange for a reduction in the number and/or severity of the charges against the defendant. Assistant district attorneys sometimes agree to take a particular stance at the sentence hearing (e.g., not to oppose "local time" or to agree with the probation department's recommendations), as well as or instead of agreeing to alter the charges. Occasionally, it is agreed that the felony conviction will be reduced to a lesser included charge (usually a misdemeanor) on satisfactory completion of the sentence. In short, it is rare that defendants are convicted of all (or even the same) charges for which they were originally arrested.

Another consequence of the fact that plea bargaining produces most of the felony convictions is that the presiding judge at the sentence hearing has had no opportunity to hear the facts of the case presented in adversary proceedings. In fact, virtually all of a judge's information about a case is typically obtained from reports given to him by other individuals in the criminal justice system (the probation officer, the district attorney, and the defense attorney). Witnesses are never directly called to testify at sentence hearings.

<sup>4</sup>Since the data reported here were collected, California changed from an indeterminate to a determinate sentencing system. In the indeterminate system, when a felon was sent to state prison, the state parole board determined the length of the prison term by deciding when to grant parole (see Garber & Maslach, 1977). In the newer, determinate system, the role of the parole authority has been greatly limited and the range between the minimum and the maximum term for various crimes has been substantially reduced. These changes did not affect the options available to the sentencing judge, however. Prison, county jail, and probation are still the major alternatives.

Several days after a defendant has been convicted of a felony (i.e., pled guilty) a date for the sentence hearing is set (several weeks hence) and a probation officer is assigned to investigate the case. This investigation results in a written report that is presented to the judge one or two days prior to the sentence hearing. The 8-15 page report usually contains the following sections:

1. Demographic characteristics (e.g., age, sex, race, religion, birthplace, etc.) of the defendant
2. The manner in which the defendant spent his or her time between arrest and conviction (e.g., the time the defendant already spent in custody and the amount of bail, if any)
3. A listing of the original charges against the defendant and their disposition as well as the status of codefendants and/or other cases still pending against the defendant
4. A verbatim account of the district attorney's preplea bargain agreement (if any)
5. A description of the acts which brought about the defendant's arrest (usually obtained from an arrest report written by a police officer), including a complete description of the losses incurred by any victims
6. The defendant's view of the criminal activity and explanation of and attitude toward the crime, the degree of responsibility the defendant assumes, why he or she feels probation should be granted, and what plans are expressed for the future
7. The prior record, including the disposition of previous charges even if they did not lead to conviction (even juvenile records are included if the probation officer feels this is appropriate)
8. The social background of the defendant (e.g., current marital status, number of children, educational background, employment history, and so on) in order to depict the defendant's character, attitudes, and beliefs
9. A description of letters obtained from psychiatrists, members of the defendant's family, the defendant's employer, and so on
10. An evaluation by the probation officer of all the facts of the case, including a consideration of aggravating and mitigating circumstances, the relationship between the present and prior offenses, the defendant's character and insight into his or her problem, the offense in relation to the defendant's personality, and the probable causes of the offense
11. (Most important) a *concrete recommendation* concerning the sentence, including such things as the details of probation restric-



tions, the length of confinement in county jail, the amount of a fine, etc.

The defense attorney may (but rarely does) submit a written report along with that supplied by the probation officer.

At the sentence hearing, an assistant district attorney, the defense attorney, and the judge discuss aspects of the case in an unstructured manner. The judge normally opens each discussion by making a few procedural remarks and by asking for comments. The attorneys then stress aspects of the case which favor the sentence options each prefers, sometimes arguing with each other or the judge about specific points another has raised. Although typically present in the court, the defendant and probation officer rarely speak except when the former acknowledges that he or she understands the nature of the charges against him or her and that he or she understands all of his or her rights. Most judges spend some time attempting to justify their sentence decision to the defendant, usually at the end of the hearing.

It is important to note that California law (Section 1192.5 of the Penal Code), specifically states that preplea bargain agreements made with the district attorney are *not* binding on the courts. In fact, sentence agreements made by the district attorney are usually stated with reference to the district attorney's behavior and not to the sentence (e.g., the district attorney agrees not to oppose local time or not to request more than three months custody). Furthermore, although the probation officers are aware of preplea bargain agreements, they are specifically instructed by administrative guidelines to base their recommendations on casework considerations, and not to "rubber stamp" preplea agreements.

The sentencing options available to the judge are:

1. To confine the offender to state prison for a period determined by state law
2. To confine the offender for a period to county jail (not to exceed twelve months including the time already spent in custody prior to conviction) and to follow this with a period of probation (not to exceed five years) in which restrictions are placed on the offender's activities in lieu of confinement (e.g., regular attendance in a drug or alcohol rehabilitation program might be required, association with known criminals might be forbidden, steady employment might be required, etc.)
3. To place the offender on probation with no period of confinement

4. To confine the offender to jail without following it by a period of probation
5. In the case of some younger offenders, to commit them to the California Youth Authority (a state detention system for younger convicted felons)
6. To fine the offender an amount not to exceed that prescribed by state law
7. To require that restitution be paid to the victim(s)
8. To commit the offender to a state mental hospital for observation and treatment

Fines and/or restitution can be included as conditions of probation or can be added independently of other aspects of the sentence. Being imprisoned in a state penitentiary, as opposed to a county jail facility, includes a loss of various civil rights. If an offender is granted probation, but does not conform to its conditions, probation can be revoked. If a defendant is convicted of more than one count, the judge can give separate sentences for each count and require that they be served consecutively or concurrently.

## THE PRESENT PROJECT

### OVERVIEW

As we have already noted, a characteristic feature of our work is its emphasis on decision-making (Ebbesen & Konečni, in press; Konečni *et al.*, 1980). In the present project this emphasis was translated into a concern for the decision strategy judges use in deciding how to match sentence options to individual offenders. More specifically, we hoped to discover (a) which of the many different kinds of information to which judges are exposed influence their final sentencing decisions, (b) what the relative importance of these different factors is, and (c) how these factors are arranged in a causal chain.

The general method used to achieve these goals was to analyze the covariation (over cases) between a large number of potential "predictors" and the final sentence decision. The first step, therefore, was to determine the sources of information available to judges prior to reaching their decision. Three general sources were isolated. The first comes about because judges are occasionally consulted prior to preplea agreements by both the assistant district and defense attorneys. This consultation is usually an informal one and takes place away from the public view, for example, in the judge's chambers. We were unable to

obtain access to these meetings, and therefore conclusions drawn from our findings may be limited in certain respects. The second general source of information is a file which the judge reviews one day prior to the hearing. It contains the probation officer's written report and a number of documents describing various procedural events (e.g., when the arraignment took place, the formal indictment, that a plea of guilty was entered, and so on). The last general source of information consists of the arguments, discussions, and recommendations presented by the opposing attorneys at the sentencing hearing.

The next step in our analysis was to develop coding instruments capable of representing the information contained in each of the latter two sources. As in all our work on the legal system, the coding instruments we employed were extensive and contained a large number of concrete classes of information, all closely tied to case characteristics that are emphasized and defined by the criminal justice system (in the Penal Code, for example). Thus, our analyses were based on a coding system that utilized content categories already in use in the actual legal system.

## METHOD

### *Sentence Hearing*

A time-sampling procedure was used to code the verbal exchanges in the sentence hearings. Trained observers recorded who was talking (the judge, the district attorney, the defense attorney, the defendant, or the probation officer) and the topic being discussed for every ten second period. The coders had a list of over 70 content categories (see Appendix 1 for a complete listing) printed on a reference sheet in front of them. The form on which observations were recorded consisted of a five-person by  $n$  time-interval matrix. The observer recorded an appropriate content code at the end of each ten-second interval in the row representing the person who was speaking. This procedure produced, for each sentence hearing, a string of codes indicating who talked, when, and about what.

Prior to the start of the sentence proceedings, the coders also rated (on ten-point scales) the appearance of the defendant (e.g., dress, grooming, attractiveness). Following the hearing the coders also rated the grammatical quality of the defendant's speech. Finally, they indicated whether the defendant appeared attentive or indifferent to the proceedings.

The reliability of different aspects of this coding system was assessed by requiring that two (and occasionally more than two) coders observe the same sentence hearings. These multiple-coder hearings

were obtained at several points throughout the two-year period during which data were being collected. This repeated reliability assessment controlled both for changes in a coder's category definition over time and the fact that many different (more than 30) coders were used. When two or more coders observed the same hearing, they sat at different locations in the courtroom so that intercoder influence would be minimized.

Several different indices of reliability were computed from these multiple observations. In general, indices based on gross characteristics of the sentencing hearings yielded very high agreement scores. For example, the observer's rankings of the five participants, in terms of the amount of time each spoke, agreed completely in over 99% of the paired cases. In addition, observers agreed as to the most frequently discussed topic in 95% of the paired cases.

We attempted to assess the reliability of the entire data record by matching the codes in each ten-second interval across the paired records. This procedure was abandoned, however, because the time at which a sampling period began and the onset of each new ten-second interval could not be adequately synchronized across observers in the courtroom setting while retaining independence among the observers. Instead, we analyzed the reliability of the various content categories by correlating the number of times that a given content code appeared in the paired data records. These yielded correlations ranging from .98 to .43 ( $n = 57$ ) with a median of .82 across the various categories. In general, the lower correlations were associated with the less frequently occurring content categories. The relative frequency with which different speakers preceded or followed each other was also examined. Correlations between paired observations on measures such as the relative number of times a defense attorney spoke after the judge versus after the district attorney yielded moderately high correlations (median  $r = .73$ ). In summary, the reliability of this content coding system was more than sufficient for the purposes of the analyses reported here.

### *Court Files*

A completely different coding instrument was developed for the file available to the judge prior to the sentence hearing (see Appendix 2). Trained coders obtained these files from the County Clerk's office within 30 days after a sentence decision.<sup>5</sup> Coders worked alone in the county

<sup>5</sup>It is of practical interest to note that the probation officers' reports were available to the public only during this thirty-day interval. We had expended considerable effort attempting to gain the cooperation of the probation department in conducting this research.

facilities transferring information in the file to our coding instrument. They coded such things as:

1. The date of the hearing
2. The judge's name
3. The probation officer's name
4. Demographic characteristics of the defendant
5. The original charges (on the arrest report)
6. The charges that the defendant was convicted of
7. Court-related data concerning prior custody, preplea agreements, bail, and such
8. Aspects of the crime (e.g., nature and numbers of witnesses and of types of physical evidence)
9. The content of the defendant's statement (e.g., the kinds of factors listed to explain the criminal activity)
10. Prior record
11. Employment and social history
12. Medical and psychiatric information
13. The number of lines the probation officer used to describe positive and negative aspects of the defendant in the evaluation section of the report
14. The details of the probation officer's sentence recommendation
15. Details of the final sentence

Details concerning charges and prior record were coded in terms of the California Penal Code. Rating scales were used to code such things as the degree of remorse, the apparent premeditation, the extent of admitted guilt and the intention to improve expressed by the defendant in his or her statement. Counts of the number of lines dedicated to various topics served as a reliable technique for coding other more variable content areas (see Konečni *et al.*, 1980, for a discussion of this procedure). Some content categories required that coders indicate which of a number of predefined topics were raised.

The reliability of aspects of this coding instrument was assessed by requiring all of the coders to code a common "test" case every few weeks. A different test case was used each time. The observers did not know which of the cases they were coding was a test case. Overall agreement was measured by computing response distributions (over the

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When it appeared that they were less than enthusiastic about providing assistance (by repeatedly noting various problems, such as a lack of funds, manpower, and space, or quasilegal restrictions on the information that they could make "public"), we circumvented the problem with the procedure described in the text.

15 or so observers who coded a common test case) for each item on the coding instrument. The distribution of responses to each item on the coding instrument was then computed. Reliability was consistently very high (i.e., a single-valued distribution was found) for such things as demographic characteristics of the defendant, charges, prior record, characteristics of the sentence, court-related data, and identification of the judge and probation officer. It was moderately high (a large mode for one response and one or two responses different from the modal one) for the items involving the counting of lines. Moderate reliability was achieved for items which required that coders select one or more responses from a preestablished list. The lack of agreement usually arose because some observers selected more response alternatives than others. For example, in listing mitigating factors, observers usually agreed completely on one factor, but occasionally disagreed as to a second factor. The average standard deviation on the ten-point rating scales was 1.02. There was virtually complete agreement (a mode of 97%), however, on almost all rating scales when reliability was assessed in terms of the end of the scale (favorable versus unfavorable to the offender) which the observers used. In summary, although certain types of information seemed to be slightly more reliably coded than others, the overall reliability of the coding instrument was extremely high.

### *Selection of Cases*

A total of over 400 sentence hearings were coded during 1976 and 1977. No data were collected during the summer months, nor during major holiday periods. Only hearings concerned with the first pronouncement of sentence were coded. Probation revocation hearings and such were not included in the data set. All of the first pronouncement cases heard by an observer were coded.

Over 1000 court files were also coded during the same two-year period. More files than hearings were coded because of the limited access to the latter. A coder had to be present when a hearing was in progress, whereas the files were available for several weeks and could be obtained at any time of day. We attempted to code those files for which sentence hearing data had already been collected before coding the files for which such data were unavailable.

## RESULTS

### *Characteristics of Sentence Hearings*

Before describing the relationships between various predictors and the final sentence decision, we shall give an overview of the kind of

events that occur in sentence hearings. To begin with, very few hearings lasted more than five minutes. During these brief hearings, the various participants discussed aspects of the case and proposed sentence options. Table I presents three different measures of the extent of participation of each major participant. Both in terms of percent of the total time that a participant spoke and in terms of the number of hearings in which at least one utterance was made, judges spoke most often, followed by defense attorneys, assistant district attorneys, probation officers, and offenders the least. On the other hand, as suggested by the mean length of utterance measure, when offenders did speak, they were likely to continue speaking for a rather long time. It is of interest to note that their speeches often came toward the end of the hearing as a result of the judges asking the offenders if they had anything to add to the hearing. When assistant district attorneys and probation officers spoke, their speeches tended to last for relatively brief periods of time. The general picture that emerges from these results is one in which either judges or defense attorneys were likely to be speaking, except toward the end of the hearing, when an offender occasionally took the judge's invitation to add a statement to the proceedings.

Table II presents the percent of time that each participant's discussion was concerned with six broad categories: (1) aspects of the sentence, (2) characteristics of the crime, (3) the nature of the offender's prior record, (4) social, employment, and family background and current status, (5) issues concerning drug and/or alcohol usage, and (6) the offender's attitude. As can be seen, the discussion about the specifics of the sentence tended to dominate the conversations of all participants except the offender. Not surprisingly, in comparison to the assistant

TABLE I. EXTENT OF VERBAL CONTRIBUTIONS OF PARTICIPANTS IN THE SENTENCE HEARING<sup>a</sup>

Measures of extent of participation	Participant				
	Judge	District attorney	Defense attorney	Offender	Probation officer
Average percent time speaking	42.2	13.0	38.4	2.8	3.2
Percent of cases in which at least one utterance was made	100.0	63.1	93.3	9.2	19.1
Mean length of utterance (in seconds)	18.1	10.2	19.1	25.9	8.2

<sup>a</sup>N = 404 cases.

TABLE II. PERCENTAGE OF TIME EACH PARTICIPANT SPOKE ABOUT VARIOUS ASPECTS OF THE CASE DURING SENTENCE HEARINGS

Aspects discussed	Participants <sup>a</sup>				
	Judge	Assistant district attorney	Defense attorney	Offender	Probation officer
Sentence	51.9	42.7	32.6	14.1	36.7
Crime	6.9	12.8	9.4	4.9	6.0
Prior record	4.5	7.9	8.5	1.7	8.0
Current personal & family conditions	5.6	3.8	17.5	27.7	7.7
Drug and alcohol problems	3.5	6.2	7.0	6.9	5.2
Offender's attitude	1.9	3.2	7.3	11.5	4.9

<sup>a</sup>The percentages do not add to 100% for a given participant because other categories are not presented (e.g., procedural issues).

district attorneys, the defense attorneys spent less time discussing the sentence and the crime and more time discussing the offenders' family and employment status. In the rare cases in which the offenders did speak, they tended to concentrate on their current family and personal situation and on their attitudes, and to ignore their prior records. It is of some interest to note how infrequently the judge spoke about the offender's attitude. Even though both the defense attorney and the offender spent a relatively high percentage of their time on this topic, judges tended to ignore it.

A finer analysis of the content of each of the participants' contributions was performed by comparing the percent of time that was spent discussing points that were favorable and unfavorable to the offender within some of the above categories. Table III presents these results. As would be expected, when the defense attorneys spoke, they tended to concentrate on points that were favorable to the offender. In all categories except drug and alcohol usage, the defense attorneys spent more than three times as much time discussing positive as negative aspects of the case. Assistant district attorneys, on the other hand, spent more of their time discussing negative aspects of the case, for example, that the crime was severe, that the prior record was recent and extensive and that previously committed crimes had been leniently punished. The judges' comments were mixed—negative comments dominated when crime and prior record were the topics, but positive comments were more likely when the offender's family, employment status, and attitude were the topics. It is of interest to note that all of the participants concen-



trated on negative aspects of drug and alcohol usage. Apparently, the defense attorneys employed a history of drug or alcohol usage either to justify the crime or to request that the sentence allow for treatment of the problem. The assistant district attorneys either agreed with the defense attorneys or used the same information to justify more severe sentences.

One feature of the above results which deserves emphasis is the fact that except for those topics rarely mentioned by the assistant district attorneys, the content of the judges' conversation seemed more like that of the assistant district attorneys than that of the defense attorneys. If the material discussed in the hearing serves a *causal* role in the judges' final sentence decisions, rather than providing a public display justifying *already made* decisions, then one might expect the judges' sentence decisions to be influenced more by the assistant district attorneys' than by the defense attorneys' arguments. The judge appears to reinforce arguments raised by the former more than those raised by the latter. It is also possible that much of what a defense attorney presents in the hearing is motivated by the need to appear competent to the defendant-client who has already admitted committing a crime. Since the guilt of the defendant is already established, the best the defense attorneys can do at the hearing is to mention as many favorable features of the case as

TABLE III. PERCENTAGE OF TIME EACH PARTICIPANT SPOKE ABOUT TOPICS FAVORABLE AND UNFAVORABLE TO THE OFFENDER WITHIN BROAD CONTENT AREAS

Content area	Relation to offender	Participants				
		Judge	Assistant district attorney	Defense attorney	Offender	Probation officer
Crime	Favorable	15.4	5.0	37.6	— <sup>a</sup>	—
	Unfavorable	38.2	38.4	8.3	—	—
Prior record	Favorable	34.0	16.3	62.0	—	—
	Unfavorable	53.1	53.1	20.1	—	—
Family	Favorable	90.2	—	89.1	—	—
	Unfavorable	9.8	—	10.9	—	—
Employment	Favorable	91.8	—	94.8	97.1	—
	Unfavorable	8.2	—	5.2	2.9	—
Attitude	Good	58.8	47.5	97.0	95.0	88.9
	Bad	41.2	52.5	3.0	5.0	11.1
Drugs & alcohol	Favorable	29.0	20.8	27.3	29.2	—
	Unfavorable	71.0	79.2	72.7	70.8	—

<sup>a</sup> A dash indicates there were too few observations on which to base meaningful statistics.

possible, whether reasonable or not. In tentative support of this view is the fact that defense attorneys are far more likely than assistant district attorneys to emphasize aspects of the offenders' social history and current status.

A different aspect of the conversation taking place during the sentence hearing concerns its temporal flow—who speaks in response to whom. Table IV presents the results of an analysis of the conditional probabilities of one participant speaking (i.e., being sampled) after another. The first row shows that defense attorneys were the most likely to speak after judges. The next row indicates that judges were more likely to speak after assistant district attorneys than were defense attorneys. This latter result may reflect the previously noted fact that the content of the judges' conversations matched that of the assistant district attorneys. The judges were possibly repeating points raised by the assistant district attorneys and agreeing with them. As shown in the third row, judges were also more likely to follow the defense attorneys than were any of the other participants; but assistant district attorneys also spoke after about a third of the occasions that defense attorneys had spoken. Overall, and not surprisingly, a judge was the most likely participant to speak after every other participant. To summarize, the pattern of conversation seems to be dominated by the following sequence: Judge to the defense attorney and either directly back to the judge or indirectly back to the judge through the district attorney. The defense attorneys rarely spoke after the assistant district attorneys.

With regard to the sentence hearing, it appears from the results reported above that the adversary posture of the district and defense attorneys common to trial procedures is retained in the conversations in the sentence hearing. Except possibly when drugs or alcohol are in-

TABLE IV. LIKELIHOOD THAT A PARTICIPANT WILL SPEAK AFTER ANOTHER PARTICIPANT

Preceding participant	Following participant				
	Judge	Assistant district attorney	Defense attorney	Offender	Probation officer
Judge	—	.180	.558	.161	.101
Assistant district attorney	.499	—	.183	.110	.208
Defense attorney	.459	.337	—	.071	.133
Offender	.362	.160	.251	—	.228
Probation officer	.547	.128	.209	.115	—

volved, these participants do not seem to be seeking a mutually agreed on sentence that would be most beneficial to the offender and society. Instead, arguments seem directed to the judge in an apparent attempt to portray the offender in a negative (the district attorney) or a positive (the defense attorney) light. It also seems that the judge is likely to agree with the picture of the offender's criminal history that is painted by the assistant district attorney but also agree with the defense attorney's description of the offender's personal, family, and employment background.

### *Characteristics of Offenders*

The majority of the offenders in our sample were male (86%) and Caucasian (51%). The next most frequent racial category was Black (30%). Mexican-Americans constituted about 15% of the sample. The age distribution reflected county-wide criminal statistics (as did the other characteristics), namely, about 12% were below 20 years of age, slightly over 63% were between 20 and 29, 14% were between 30 and 39 and only 8% were 40 or above.

### *Predictors of the Sentence Decision*

Because sentences typically consisted of several interrelated parts, it was not possible to construct an obvious scale of sentence severity. For example, probation not only varied in length, but the conditions of probation also differed from one case to the next. It is difficult to generate reasonable rules to decide whether a sentence of four months on probation with the restriction that a firearm not be in the offender's possession, or a sentence of five months with the restriction that certain places (e.g., bars) not be frequented, is more severe. It was similarly difficult to balance time on probation against time in county jail. For these and other reasons, all of the analyses reported here are in terms of four major sentence categories: (1) prison as prescribed by law, (2) some time in a county jail facility (in addition to time already spent prior to sentencing), almost always followed by a probationary period, (3) probation in lieu of any incarceration, and (4) all others (commitment to a mental hospital, a fine with no time in jail or on probation).

After examining the simple relationship between all of the possible predictors of sentencing that we coded and the actual sentence, we discovered that most of the factors were not associated in a statistically significant manner with the final sentence decision. For example, offender variables, such as race, sex, religion, age, education, and marital background were unrelated to the final sentence. This was especially

true when factors such as the type of crime and the extent of the offender's prior record were statistically controlled. Similar results emerged for aspects of the sentence hearings. Although judges tended to give somewhat lighter sentences (fewer impositions of prison or county jail time) in those cases in which the assistant district attorney and the defense attorney raised more positive than negative points, such differences disappeared when we controlled for the type of crime and the extent of prior record. Factors relating to specific features of the criminal activity and the offender's justification for the crime were also not associated with the sentence. In fact, it was possible to ignore the relationships between all but four of the predictors and the final sentence and lose little in terms of ability to predict the judge's sentence. The four factors which accounted for almost all of the systematic variation in the sentence were: the type of crime, the extent of the offender's prior record, the status of the offender between his arrest and conviction (i.e., was he released on his own recognizance, free on bail, held in jail, or originally in jail and then released on bail), and the probation officer's sentence recommendation. We shall examine each of these in turn.

Table V shows the relationship between the type of crime (classified

TABLE V. RELATIONSHIP BETWEEN TYPE OF CRIME (CONVICTED) AND SENTENCE DECISIONS

Type of crime	Sentence			
	Prison	County jail and probation	Probation only	Other
Possession of drugs (112) <sup>a</sup>	9 <sup>b</sup>	58	28	5
Sexual perversion (18)	11	56	33	0
Forgery (97)	18	47	35	0
Theft (231)	13	62	20	5
Burglary (234)	12	64	20	4
Sale of drugs (59)	14	54	29	3
Assault and battery (30)	13	67	13	7
Robbery (107)	29	62	8	1
Possession of deadly weapon (32)	30	55	15	0
Rape (17)	24	59	6	11
Armed robbery (26)	46	54	0	0
Homicide(21)	62	29	10	0

Note. Ordering of crimes based on average ratings of severity by the judges who were observed in sentence hearings.

<sup>a</sup> Numbers in parentheses are number of cases in each crime category.

<sup>b</sup> Percent of cases in each crime category receiving the specified sentence.

TABLE VI. RELATIONSHIP BETWEEN NUMBER OF PREVIOUS FELONY CONVICTIONS AND SENTENCE DECISIONS

Number of previous felony convictions	Sentence			
	Prison	County jail and probation	Probation only	Other
None (300) <sup>a</sup>	7.2	56.0	34.0	2.8
One (140)	11.2	63.3	25.5	0
Two (91)	11.1	69.8	15.9	3.2
Three (96)	20.9	55.2	14.9	9.0
Four (79)	31.5	53.7	11.1	3.7
Five or more (218)	29.3	57.3	8.7	4.7

<sup>a</sup>Numbers in parentheses are the number of cases in each prior record category.

into slightly broader categories than specified by the Penal Code) for which the offender was convicted—in cases of multiple crimes the most severe was used—and the imposed sentence. As can be seen, the likelihood of the different sentence options changed as the crimes became more severe,<sup>6</sup> [ $\chi^2(22) = 102.8$ ,  $p < .0001$ , ignoring the "other" category].<sup>7</sup> The probability that a prison sentence was imposed increased, and the likelihood of straight probation, with no period of incarceration, decreased. Except for homicide, the probability of offenders receiving "local time" remained relatively constant. Apparently, the judges simply shifted their decision criteria downward as severity increased.

The relationship between the extent of the offender's prior record and the sentence is shown in Table VI. Approximately 63% of those in the sample had been convicted of at least one felony prior to the one being studied. The effect of these prior convictions on sentencing was substantial [ $\chi^2(10) = 102.4$ ,  $p < .0001$ , ignoring the "other" category]. The likelihood that a prison sentence would be imposed increased as the number of prior felony convictions increased. In addition, the probability of straight probation decreased as prior record increased. It is of interest to note that while the relative frequency of prison sentences had its most rapid rise between two and four prior convictions, the relative frequency of straight probation decreased most rapidly between zero

<sup>6</sup>The ordering of these crime categories from least to most severe was based on independent ratings of the severity of each category obtained from the same judges whose decisions are presented here.

<sup>7</sup>The "other" category was not included in these analyses because of the small number of observations in some of the cells.

TABLE VII. RELATIONSHIP BETWEEN OFFENDER STATUS (BETWEEN ARREST AND CONVICTION) AND SENTENCE DECISIONS

Offender status	Sentence			
	Prison	County jail and probation	Probation only	Other
Released on own recognizance (195) <sup>a</sup>	4.6	59.0	35.9	.5
Released on bail (92)	13.0	60.9	23.9	2.2
Held in jail, then released on bail (113)	9.7	54.9	29.2	6.2
Held in jail (280)	27.1	58.6	9.3	5.0

*Note.* The sample size is smaller in this table than in the previous ones due to missing data concerning offender status.

<sup>a</sup>Numbers in parentheses are the number of cases in each status condition.

and two prior convictions. This result suggests the possibility that different decision criteria (or processes) were being used in selecting prison as an option than in selecting straight probation.<sup>8</sup>

Table VII presents the highly significant relationship between the offender's status (between arrest and conviction) and the judges' sentence decisions [ $\chi^2(6) = 81.1$ ,  $p < .0001$ , ignoring the "other" category]. Those offenders who spent the time between their arrest and conviction released on their own recognizance were less likely to receive prison sentences and more likely to receive straight probation than those offenders who spent this time in jail. Those who were eventually able to pay bail and thereby obtain their release from custody were midway between the two other categories.

The last major predictor of the sentence decisions was the probation officer's recommendation. Table VIII shows the relationship between the probation officers' recommended sentences and the actual sentences the judges finally imposed [ $\chi^2(4) = 806.7$ ,  $p < .0001$ , ignoring the "other" category]. Judges and probation officers agreed on the sentence in over 80% of the cases. When they disagreed, the judges tended to be more lenient (9.6%) rather than more severe (6.1%). [ $\chi^2(1) = 3.3$ ,  $p < .05$  (ignoring the other category)].

<sup>8</sup>More specifically, it might be that judges evaluate the case in terms of it fitting into the probation only (or prison) category, and then, if not, decide whether prison (probation only) should be imposed. If the case failed to match either alternative some brief time in county jail would then be the option by default.

*Causal Analysis of Sentence Decisions*

There are, of course, many possible explanations for the results presented thus far. Consider first the strong relationship between the offender's status and the sentence (Table VII)—a result which would be inconsistent with most sentencing guidelines. One explanation for this result assumes that the status of the offender is a true causal factor in the judges' decisions—variation in status causes variation in the judges' sentence decisions. Another reasonable possibility is that the offender's status is highly associated with other factors which are the real causal variables, such as the severity of the crime and the extent of the prior record. One way to obtain evidence about whether these three case factors independently contributed to the decision is to examine the relationship between each factor and the sentence holding the other two factors constant. Table IX presents the results of such an analysis in which, to increase the number of observations per cell, three levels of crime severity and two levels of prior record were defined. For the crime factor, the lowest level included possession of drugs, sexual perversion, forgery, and theft; the middle level included burglary, sale of drugs, assault and battery, and robbery; and the top level included possession of a deadly weapon, rape, armed robbery, and homicide. The two levels of prior record were defined as from zero to two convictions and greater than two convictions (up to as many as 28 in one instance!). Finally, the bail and the jail-then-released-on-bail categories were combined into one category: released on bail at some point before the sentence hearing.

As can be seen by examining the number of cases that fell into each cell (in the parentheses in Table IX), the likelihood that an offender was in jail just prior to the hearing was indeed related to the severity of the

TABLE VIII. RELATIONSHIP BETWEEN THE PROBATION OFFICERS' SENTENCE RECOMMENDATIONS AND THE JUDGES' SENTENCE DECISIONS (NUMBER OF CASES)

Probation officers' sentence recommendations	Judges' sentence decisions			
	Prison	County jail and probation	Probation only	Other
Prison	103	32	5	2
County jail and probation	15	396	42	4
Probation only	1	34	143	1
Other	4	11	6	23

TABLE IX. PERCENTAGE OF PRISON SENTENCES AS A FUNCTION OF OFFENDER'S STATUS, PRIOR RECORD AND SEVERITY OF THE CRIME

Number of prior felony convictions	Severity of crime	Status between arrest and conviction		
		Released on own recognizance	Released on bail	Held in jail
Zero to two	Low	1.3 <sup>a</sup> (76) <sup>b</sup>	4.5 (67)	5.9 (51)
	Moderate	6.1 (49)	11.5 (52)	11.5 (52)
	High	0 (19)	25.0 (12)	45.7 (35)
More than two	Low	3.2 (31)	13.3 (30)	25.8 (62)
	Moderate	21.4 (14)	31.6 (19)	37.0 (54)
	High	0 (5)	23.1 (13)	63.3 (30)

<sup>a</sup>The percentages represent the proportion of the total in each cell that were sent to prison.

<sup>b</sup>Numbers in parentheses are the total number of offenders in each cell.

crime and to prior record. Those with more extensive prior records and those who were convicted of more severe crimes were relatively more likely to be in jail. Nevertheless, those offenders who were in jail were more likely to be sent to prison than those who were not in jail even when they were convicted of similar crimes and had similar prior records. That is, the relationship between status and judicial sentencing does not appear to be a spurious one.

The results reported in Table IX also suggest that the relationships between the crime and the sentence, and between prior record and the sentence, are not due to their being confounded with status nor with each other. The likelihood of a prison sentence increased as prior record increased even for offenders convicted of similar crimes and having the same status. A similar pattern emerged for the relationship between crime and sentence holding prior record and status constant. In fact, there was an interaction between the three factors such that the relationship between any one of the factors and the sentence increased as the "severity" of either of the other two factors increased. Apparently, the importance of any one factor increased as the "severity level" of the other factors increased. We shall return to these interactions later.

The results in Table IX can also be used to obtain a very rough

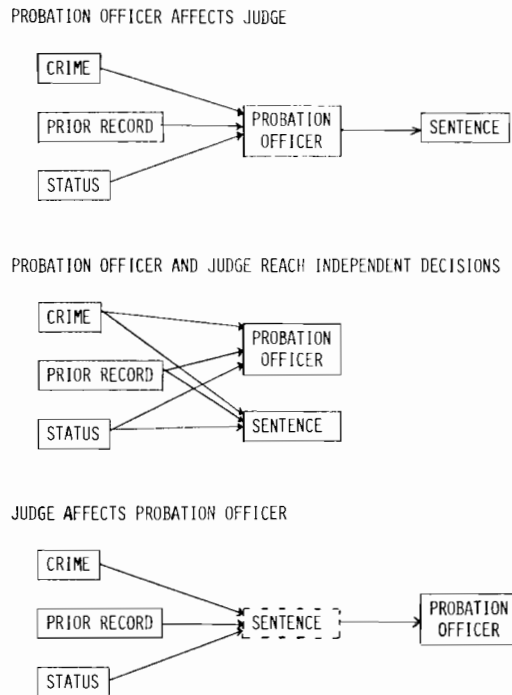


estimate of the relative importance of the three factors by comparing the impact each had (averaged over levels of the other two factors) on the sentence. Based on this analysis, it seems that the extent of the offender's prior record (which ranged from 12.4% to 24.3% prison) and the severity of the crime (which ranged from 9.0% to 26.2% prison) were more or less equally important. Interestingly enough, status (ranging from 5.3% to 31.5% prison) seemed to be the most important of the three factors in determining the rate of prison sentences.

The above results by no means establish the causal role of crime, prior record, and status. They merely suggest that whatever their causal roles might be, their relationships to sentencing are probably independent of each other. In fact, in the context of the high agreement between the judges and the probation officers (Table VIII), several different and quite reasonable causal models can be generated. It is conceivable that all four predictors are differentially associated with some unmeasured factor which is the single real causal variable. Alternatively, the four factors might be correlated with several different causal factors, each to a varying degree. While these explanations cannot be discounted, it is difficult to imagine what these other causal factors might be, given the number of variables examined in our work. Still another view is that these four factors are independently evaluated cues in the judge's decision and are therefore all causally important.<sup>9</sup>

A somewhat different view of the sentencing process assumes that the variables are related to each other in a causal chain (Heise, 1975). Thus, it might be that only one or two of the four factors are direct causes of the sentence and that other factors are causes of these causes. Several temporal features of the system make certain chains less likely than others. For example, it is always the case that prior record, status, and severity of the charge at conviction are determined earlier in time than the probation officer's recommendation and the judge's sentence. While it is possible to construct a view of the system in which the final sentence causes, say, prior record (for example, via selective reporting or alteration of rap sheets on the part of probation officers), the occurrence of activities such as these was very unlikely in the studied circumstances. Accepting the temporal order of events, for the moment at least, as pertinent causal evidence, it is possible to construct several reasonable causal models relating the five variables to one another. Figure 2

<sup>9</sup>This view is equivalent to that often assumed by researchers employing factorial-designs in simulation research. The decision-maker is assumed to evaluate and weigh each cue in isolation of the others (see Ebbesen & Konečni, 1980, for additional discussion of this point).



**Fig. 2.** Three causal chain models for the relationship between severity of the crime, extent of prior record, the offender's status between arrest and conviction, the probation officer's sentence recommendation, and the actual sentence imposed by the judge. The arrows represent the existence and direction of causal relationships between pairs of variables.

presents a diagrammatic representation of three such models. In the top model, prior record, severity of crime, and status are assumed to be direct causes of the probation officer's recommendation, but these variables are assumed to have no direct causal link to the sentence decision. Instead, it is assumed that the judge responds only to the probation officer's recommendation. In this model the relationships reported in Table IX would be the indirect result of the fact that the probation officer's recommendation was caused by the crime, prior record, and status.

The second model proposes that the three early case factors have direct effects on both the probation officer's recommendation and the judge's decision, but the decisions of one participant are not causally related to those of the other. In this view, the high agreement shown in Table VIII between the probation officer and the judge is assumed to be a spurious consequence of the fact that both the judges' and the probation

officers' decisions are being caused in the same manner by the same set of variables.

The third model actually reverses what might be assumed initially to be the temporal order of events and argues that the probation officer's recommendation is directly caused by the judge's sentence, which is, in turn, caused by the three case factors. One reasonable interpretation of this temporal reversal is to assume that the judge is committed to a specific sentence agreement made between the district attorney and the defense attorney in exchange for a plea of guilty. That is, even though the Penal Code specifically states that neither the judge nor the probation officer is bound by such agreements, judges may nevertheless follow them. If probation officers are aware of this, they may be motivated to match and justify these sentence agreements and therefore may write their reports and recommendations in anticipation of the judges' decisions.

Each of the above causal models implies that the observed cell frequencies in the five-way data table (severity of crime  $\times$  extent of prior record  $\times$  status  $\times$  probation officer recommendation  $\times$  actual sentence) should be due to a particular set of "main" and "interaction" effects. Consider, for example, the first model in Figure 2. This model assumes that there is an association between the severity of the crime and the nature of the probation officer's recommendation and that any relationship between the severity of the crime and the judge's sentence decision can be fully explained by this association. In the language of contingency tables, the observed frequencies in the three-way classification table (crime  $\times$  probation officer's recommendation  $\times$  actual sentence) should be completely predicted from the following two-way tables: crime  $\times$  probation officer's recommendation and probation officer's recommendation  $\times$  actual sentence. It should not be necessary to know the relationship between crime and actual sentence. When similar logic is applied to the remaining variables, it follows that the pattern of frequencies in the five-way table should be predictable, according to the first model, from the knowledge of the five "main" effects (e.g., how many of each type of sentence are given, how many offenders have been convicted of the various types of crime, and so on) and from four two-way interactions: crime  $\times$  probation officer's recommendation; prior record  $\times$  probation officer's recommendation; status  $\times$  probation officer's recommendation; and probation officer's recommendation  $\times$  sentence.

This hypothesis can be made quantitatively explicit in several different ways. We prefer the method used by Goodman (1972, 1973). Specifically, each "effect" can be represented in a log-linear model in which parameters for the main and interaction effects add to (or subtract

from) the odds (in logarithms) of an observation (a case) falling into a given cell in the five-way data table. For the first model in Figure 2, this equation would be as follows (using Goodman's notation):

$$G_{ijklm} = \theta + \lambda_i^{\text{crime } (C)} + \lambda_j^{\text{prior record } (PR)} + \lambda_k^{\text{status } (S)} + \lambda_l^{\text{probation officer } (PO)} \\ + \lambda_m^{\text{judge } (J)} + \lambda_{il}^{C \times PO} + \lambda_{jl}^{PR \times PO} + \lambda_{kl}^{S \times PO} + \lambda_{lm}^{PO \times J} \quad (1)$$

where  $G_{ijklm}$  is the logarithm of the predicted frequencies in a given cell in the five-way table,  $\theta$  is a parameter introduced to insure that the sum of the predicted frequencies add to the actual number of observations,  $\lambda_i^{\text{crime } (C)}$  is the logarithm of the "main effect" of crime on the expected odds that observations will fall in the cells within the five-way table (and similarly for the other main effect parameters) and  $\lambda_{il}^{C \times PO}$  is the logarithm of the "interaction effects" of crime and probation officer on the expected odds, and so on. Once estimates for these parameter values are obtained, they and Equation 1 can be used to obtain predicted cell frequencies for all of the cells in the five-way table. The fit of the model to the data can be assessed by a  $\chi^2$  goodness-of-fit statistic or a  $\chi^2$  based on the likelihood-ratio statistic (see Goodman, 1972). Both of these are computed by contrasting the predicted with the actual cell frequencies. These  $\chi^2$  values, as well as estimates for the  $\lambda$  parameters, were obtained, in our work, from a computer program available from Goodman (see Goodman, 1972 for a description).

Since each of the models in Figure 2 fits a different set of parameters to the five-way table, it is possible to compare the relative fits of the different models by comparing the  $\chi^2$  values that result from each. In fact, as in multiple regression, one can determine whether the addition of more (or different) hypothesized causal pathways provides additional explanatory power. The basic idea is to determine whether the quality of

TABLE X. VALUES OF  $\chi^2$  RESULTING FROM FITTING SEVERAL DIFFERENT CAUSAL MODELS TO THE SENTENCING DATA

Model	Degrees of freedom	$\chi^2$ likelihood-ratio	p level
Five factors independent	205	669.11	<.0001
Probation officer and judge independent	181	410.52	<.0001
Probation officer causes judicial decision	189	136.44	>.5
Judicial decision "causes" probation officer	189	146.02	>.5

Note.  $\chi^2$  values represent likelihood ratio estimates.

the fit is significantly improved by adding parameters to a less general model. The least general, or constraining, model is one which assumes that all of the five factors are unassociated with each other, that is, are completely independent.

Table X presents the results of fitting the various models to a five-way data table in which the levels of the factors were defined as follows: (a) crime and prior record as in Table IX; (b) status as in Table VII; and (c) probation officer recommendation and judicial decision as in Table VIII, with the exception that the "other" category was eliminated (due to its infrequent use). This yielded a  $3 \times 2 \times 4 \times 3 \times 3$  classification table with a total of 216 cells. The first row in Table X shows the likelihood-ratio  $\chi^2$  value for the model that assumes all of the factors are independent of each other. As can be seen, the  $\chi^2$  is very large, indicating that the cell frequencies predicted by this model were very different from those actually obtained, or alternatively, that the factors were significantly associated with each other. The degrees of freedom were computed by subtracting the number of parameters (11) that were estimated in fitting the independence model to the data structure from the total number of cells (216). The next row shows the fit of the second model depicted in Figure 2—the judge and the probation officer reach independent decisions based on the same three factors. As can be seen, whereas this model does provide a significantly better fit of the data [ $\chi^2(24) = 258.59$ ,  $p < .0001$ ] than the complete independence model, it still leaves much unexplained "variance" (the resulting  $\chi^2$  test of fit is significant). The third row presents the results for the first model in Figure 2—crime, prior record, and status cause the probation officer's recommendation, which in turn causes the judge's decision. With a decrease in the number of parameters estimated (over the previous model), this causal model actually provides a far better fit of the data—the fit is so good, in fact, that the predicted frequencies were not significantly different from the obtained frequencies ( $p < .50$ ). Taken by itself this result provides support for the causal model which assumes that judges base their decisions entirely on the probation officers' recommendations.

The fourth row in Table X provides the results of a test of the last causal model depicted in Figure 2, which assumes that judicial decisions cause the probation officers' recommendations. Note that this model also does a more than satisfactory job of accounting for the data. However, with the same number of degrees of freedom as the model which assumes that the probation officer recommendations cause judicial decisions, a slightly less complete account of the data was obtained. In fact, since an identical number of parameters was used in the two models, the one providing the better fit is clearly to be preferred no matter how small

the advantage. The conclusions from the analyses thus far, then, are that the causal model which assumes that the three case factors cause the probation officer's recommendation, which in turn causes the judge's decision, provides a satisfactory explanation of the data and is to be preferred over the other two models.

Several additional models should be considered before this one is accepted, however. For example, it is possible that any one (or more) of the three prior factors may have a direct causal influence on the judge's decision over and above the influence of the probation officer's recommendation. One can intuit this idea by adding to the first model in Figure 2, direct links between any one of the three prior case factors and the sentence. The utility of these additional links can be tested by using the same modeling procedures already described. If the added link is useful, it should decrease the  $\chi^2$  value (compared to the model without the link) by a significant amount.

The addition (to the model which assumes that the probation officer recommendation causes the judicial decision) of a direct link between severity of crime and the judge decreased the  $\chi^2$  by a nonsignificant amount [ $\chi^2(4) = 6.78, p < .10$ ], as did a link between prior record and the judge [ $\chi^2(2) = 4.43, p < .10$ ]. However, a direct link between the offender's status and the judge produced a significant increase in the ability of the model to fit the data [ $\chi^2(6) = 22.00, p < .005$ ].

In summary, the probation officer's recommendation appeared to have a direct causal influence on the judge's decision. The relationships between the judicial decision and the crime and between that decision and prior record (reported in Tables V and VI) seem to be entirely due to the fact that the probation officers adjust their recommendations to these factors and the judges then follow the probation officers' recommendations. While a similar pattern held for the offender's status, it also seemed that this factor has some additional, though very small, direct influence on the judge. The form of this influence can be appreciated by examining the relationship between status and the final sentence, while holding the probation officers' recommendations constant. Table XI presents the sentence decisions of judges as a function of the offender's status only for those instances in which the probation officer recommended a sentence which included some time in county jail followed by a period of probation (the single most frequent recommendation). As can be seen, the likelihood of the judges' disagreeing with the probation officers' recommendations by imposing a prison sentence was very slightly higher for offenders held in jail than for offenders who were released on their own recognizance. Moreover, there was a stronger tendency for judges to be more lenient by not requiring a period of

TABLE XI. PERCENTAGE OF JUDICIAL SENTENCE DECISIONS AS A FUNCTION OF OFFENDER STATUS, GIVEN THAT THE PROBATION OFFICER RECOMMENDED TIME IN COUNTY JAIL FOLLOWED BY PROBATION

Offender status	Judicially imposed sentence		
	Prison	County jail and probation	Probation only
Released on own recognizance (126) <sup>a</sup>	1.6	82.5	15.9
Released on bail (115)	4.3	83.5	12.2
Held in jail (135)	4.4	94.1	1.5

<sup>a</sup>Numbers in parentheses are total number of cases.

incarceration in the county jail when the offender had been released on his or her own recognizance than when he or she was held in jail [ $\chi^2(4) = 18.42, p < .005$ ].

Even though the results presented thus far suggest that a causal model which assumes that the probation officer's recommendation influences the judge's decision is to be preferred over one which puts these variables in the reverse causal order, it is still conceivable that the preplea agreement is the primary causal agent. For example, judges may assume that the probation officers write their recommendations to match the agreements. If judges also want to match these agreements, they could then do so merely by following the probation officers' recommendations. Alternatively, the high agreement between the two participants may be a result of the facts that both the judge and the probation officer independently decide to match the preplea agreement and that the preplea agreement varies with the severity of the crime, prior record, and status.

One way to test these ideas is to examine the relationship between the probation officers' recommendations and the judges' decisions when no preplea agreement has been reached (actually when none has been officially documented either by the probation officer or the court). Both of the above models predict that the agreement between the judge and the probation officer should be considerably reduced under these conditions. Table XII presents the results of this analysis. As can be seen, the identical relationship between the two participants was found when no preplea agreement had been made as when such an agreement was reached. Judges still imposed the same sentence that probation officers recommended in over 80% of the cases [ $\chi^2(4) = 284.08, p < .0001$ ].

If most of the variation in judicial decisions is due to the probation

TABLE XII. RELATIONSHIP BETWEEN PROBATION OFFICERS' RECOMMENDATIONS AND JUDGES' SENTENCE DECISIONS WHEN NO PREPLEA BARGAIN AGREEMENT WAS MADE

Probation officers' recommendations	Judges' decisions		
	Prison	County jail and probation	Probation only
Prison	18.8	5.3	.4
County jail and probation	1.2	45.7	5.7
Probation only	0.0	3.3	19.6

Note:  $N = 245$ .

officers' recommendations, then a full causal account of the sentencing process should include a model for the causes of the probation officers' recommendations. This issue can be examined using log-linear model fitting procedures. Not unexpectedly, given the high agreement between the probation officer and judge, the probation officer's recommendation seems to be caused by the severity of the crime, prior record, and status. The data in the previously described five-way table were collapsed across the judicial sentence factor producing a 3 (crime severity)  $\times$  2 (prior record)  $\times$  4 (status)  $\times$  3 (probation officer recommendation) contingency table. A log-linear model which assumed that the four factors were independent of each other fit the data very poorly [ $\chi^2(63) = 228.38, p < .0001$ ]. A model which assumed that the three case factors each had a direct effect the probation officers' recommendations provided a substantially improved fit of the data [ $\chi^2(51) = 90.17, p < .0006$ ]. However, there was still enough unexplained "variance" to question this model's utility.

It will be recalled that several of the case factors seemed to interact in their "effects" on the final sentence (see Table IX). When all three interaction components were included in the direct-cause model above, the fit was significantly improved—so much so that the model left only a nonsignificant residual [ $\chi^2(18) = 22.31, p = .22$ ]. To determine which of the three 2-way interactions contributed to this improvement, the "effect" of each one was examined separately. Only the interactions between prior record and status [ $\chi^2(9) = 29.65, p < .01$ ] and between prior record and crime [ $\chi^2(6) = 15.87, p < .05$ ] significantly enhanced the fit of the model.

In summary, the probation officers' recommendations were satisfactorily explained by a model which assumed that prior record, crime, and



status caused the probation officer's recommendation and that the effect that crime and status had on the likelihood of a severe recommendation was enhanced by the extent of the offender's prior record.

### *Disparity over Judges within the San Diego System*

We noted earlier that our results would be limited to an analysis at the court level. Our reason for doing this in the context of so much professional interest in the question of disparity in sentencing practices should now be obvious. First, we were able to provide a satisfactory causal account of sentencing at the court level without including a factor for judge. If the decisions of different judges had been influenced by different factors, we probably would not have been as successful in fitting the data as we were. Second, and far more important, the high agreement between judges and probation officers and the fact that the judges' decisions seem to be causally influenced by the probation officers' recommendations imply that whatever judicial disparity might exist may well be due to the probation officers providing different judges with different types of recommendations.

The above ideas were assessed first by noting that there was little variation in the degree to which different judges agreed with probation officer recommendations. Over the eight judges who supplied most of the data for this study, the range was from 93% to 75%, with a median of 87%.

The second approach was to determine whether differences between judges, in overall sentencing rates, could be accounted for by differences in the rate at which the various sentence options were recommended to the judges by probation officers. Table XIII shows, in the first column, the variation over judges in their rate of imposing prison sentences. As can be seen, there was indeed considerable variation over judges in the rate at which they imposed prison sentences—from 8.8% for one judge to 33.3% for another. However, this disparity seems to be due in large part (if not completely) to the fact that probation officers varied the rate at which they recommended prison sentences across judges (the second column in Table XIII). In fact, the rank order correlation between the recommended and imposed rates was .905 ( $z = 2.39, p < .01$ ). Furthermore, a similar pattern of overlap between imposed and recommended sentences involving probation only (columns three and four in Table XIII) was found ( $r = .833, z = 2.05, p = .02$ ), even though the rank order correlation between the rate at which different judges imposed prison and the rate at which they imposed probation only was not quite significant ( $r = -.595, z = 1.57, p > .05$ ). In short, if true

TABLE XIII. PERCENTAGE PRISON AND PROBATION ONLY SENTENCES IMPOSED BY AND RECOMMENDED TO DIFFERENT JUDGES

Judge	Percentage prison sentences		Percentage probation only sentences	
	Imposed	Recommended	Imposed	Recommended
A	33.3	33.3	9.5	4.8
B	28.1	37.7	16.7	22.8
C	25.0	16.7	27.7	16.7
D	22.0	16.0	22.0	18.0
E	21.7	21.7	15.9	17.4
F	16.7	12.5	12.9	16.4
G	11.9	9.4	29.2	23.9
H	8.8	5.9	29.4	44.0

disparity (different sentences for identical cases) does exist, there is considerable evidence that its cause may rest in the decision strategies of the probation officers rather than in the strategies of the judges. All of the judges seem to follow the same basic decision rule, impose the sentence that the probation officer recommends and occasionally moderate it by the offender's status.

Evidence that the probation officers did not, to a large degree, consider who the judge was in reaching their recommendations comes from the fact that we were able to explain most of the variation in their recommendations with crime, prior record, and status. We did not need to include a factor for the judge. Apparently, the differential recommendation rates reflect the fact that different judges tend to be exposed to different kinds of cases. We are presently exploring this issue in further depth.

## DISCUSSION

The purpose of this chapter was to describe, in a tentative way, a causal model for the sentencing process in San Diego County. Based on the results presented here, we can now do that. Given that an adult defendant has been found guilty of a felony (most likely because he or she has pleaded guilty), the severity of that felony, the extent of the offender's prior record, and his or her status seem to determine the probation officer's recommendation. This recommendation then seems to determine the final sentence that is judicially imposed, moderated

slightly by the offender's status. The content of the arguments raised in the sentence hearing, while also influenced by the crime and prior record, themselves do not seem to have an independent causal influence on the nature of the sentence that is imposed. Background factors and offender characteristics, such as age, race, sex, appearance in court, education, marital status, employment opportunities, and so on, also play a minor role, if any, in the final decision. If disparity across judges does exist, it seems likely that it does so because probation officers vary their recommendations across judges and not because different judges are influenced by different factors in their decisions.

#### FITTING THE PUNISHMENT TO THE INDIVIDUAL

Several aspects of these general findings should be explored. Of initial interest is the apparent failure of sentences to be individualized to the extent that is implied by the philosophy that the punishment should fit the individual. The fact that offender characteristics and social background seemed to play no important role in the sentences that were imposed even though (a) sentence guidelines imply that such factors should play a role, (b) probation officers are required (by administrative policy) to dedicate much of their probation report to the consideration of such factors, and (c) the defense attorneys spent much of their time in sentence hearings raising points related to these factors, suggests that "individualized justice" is a myth at least as far as the sentencing process is concerned. The factors that did account for the probation officer's recommendation—crime, status, and prior record—are not the kinds of individualized information that one would normally consider to obtain a picture of the offender's psychological makeup.

The utility of basing decisions on these three factors (or any others for that matter) depends on the extent to which they predict accepted criteria, such as deterrence and rehabilitation. In fact, the only way in which individualized justice could succeed in the context of accepted criteria is if the predictors of the criteria (whatever they may be) were to be used as guides in reaching the decisions. Such information simply does not exist in the case of sentencing (however, see Gottfredson, Wilkins, & Hoffman, 1978, for such an example in the federal parole system).

#### THE ROLE OF SENTENCE HEARINGS

It is interesting to examine the function that sentence hearings play given that their content does not seem to influence the judicial sentence decision. Do defense attorneys realize that the time they spend describ-

ing the offender's attitude and background has little effect on the sentence? If they are aware of their impotence, then one explanation for their behavior in court is that it supplies their clients with "evidence" that they are doing a good job. The absence of a trial in most cases may make such concerns on the part of the defense attorney that much more prominent. The in-court behavior of the assistant district attorneys, who do not have a client present in sentence hearings, could be interpreted to mean that they know that crime and prior record are far more important factors in the sentence decision than offender characteristics. They spend much more time on the former than they do on the latter.

The judge's role in the sentence hearing also seems to be "staged." While judges give the appearance of considering all sides by discussing issues raised by both attorneys and by responding to the defense attorney points, their final decision seems to have little to do with this banter. It is conceivable that many of the judge's comments are given more to justify an already made decision and to create an image of care, concern, and thoughtfulness, than to search for new information which might affect the final decision.

#### STATUS AS A CAUSAL VARIABLE

Although much, if not all, of the discussion that takes place in the sentence hearings seems to play no causal role in the judges' sentence decisions, specific features of particular cases do seem to have influential effects. The fact that one of the three case factors which best predicted the final sentence was the offender's status may seem strange on first consideration. There are, however, several reasonable explanations for this finding. One is that status may serve, because of the nature of its associations with other factors (especially offender characteristics), as a reliable summarizer of a large number of factors only some of which have relevant values for any given case. In other words, it may be that status is not a true causal factor in the probation officer's recommendation, but is spuriously associated with the recommendation because it is highly correlated with many other factors, any one of which, when considered individually, only accounts for a very small portion of the variation.

Although we were not able to assess this model directly (due to the need for a very large number of cases), its plausibility is diminished somewhat by previous work we have done on bail setting practices in San Diego (Ebbesen & Konečni, 1975). In that research, we discovered that the amount of bail a judge set depended directly on the assistant district attorneys' recommendation, which, in turn, depended on the

severity of the arrest charges. Prior record, "local ties" (including offender characteristics such as length of residence in the area, marital status, and employment), and the defense attorney recommendation all played largely insignificant roles. In the likely possibility that the ability of an offender to afford bail (and thereby obtain release from jail) depends on the amount of bail that is set, then these results suggest that the offender's status does not reflect, to any large degree, offender characteristics. If anything, it is an indicator of the severity of the charges for which the offender was originally arrested. In short, our previous findings not only cast doubt on the earlier explanation, they suggest another, namely, that the impact of status may be due to its being highly associated with arrest charges. If the probation officer responded to these charges, as well as to the final charges on which a conviction was obtained (recall from Figure 1 the many places in which major alterations in charges can occur as the defendant proceeds through the system), or if he or she used status as a direct estimate of the severity of the original charges, status would indeed emerge as a significant predictor of the sentence.

A somewhat different explanation for the "status effect" emphasizes a different aspect of the system. To write their reports, probation officers must interview the offenders. It is conceivable that the impressions of offenders that probation officers obtain vary with the conditions of the interviews. Having to interview the offender in jail may not only be uncomfortable and inconvenient, but may also present the offender in his or her worst light. Offenders may also behave differently depending on the circumstances of the interview. Those who have been released on their own recognizance may feel confident about the outcome of their case and be better able to influence the probation officer's opinion.

#### DECISION COMPLEXITY

Whatever the correct explanation for the role that status seems to play in the sentencing process, the fact that one needs to know so few variables to account for the final decision is of interest in itself. Along with other major decision points in the criminal justice system (see, e.g., Garber & Maslach, 1977), the sentencing decision has often been described as a highly complex one (Hogarth, 1971). If "complex" means that a large number of factors are taken into account, then the present results, along with other work we and others have done on multiattribute decision problems (Carroll, in press; Ebbesen & Konečni, 1975, 1980; Ebbesen, Parker, & Konečni, 1977; Konečni *et al.*, 1979; Phelps &

Shanteau, 1978) provide strong evidence to the contrary and suggest that what appear to be complex decisions often are based on only a few factors. Claims to the contrary by the decision makers do not seem to reflect the facts (Konečni & Ebbesen, in press).

As we have discussed elsewhere (Ebbesen & Konečni, 1980; Konečni & Ebbesen, this volume), the fact that judges think, or speak, about a large number of different factors prior to reaching a decision may have nothing to do with the causal processes that control their decisions. Although the phenomenological experience may be one of great complexity, the decision process may be quite simple.

### DISPARITY

While individual judges clearly differed in the rate at which they imposed various sentence options, these differences seemed to occur not because different judges used different decision strategies, but rather because the rate of recommended sentences varied across judges and all judges followed these recommendations to similar degrees. Several explanations can be given for these findings. Probation officers might adjust their decision criteria according to the judge. That is, different judges could have different reputations among probation officers and the latter may construct their recommendations accordingly. This seems unlikely, however, given the fact that the judge was not needed as a predictor to account for probation officer recommendations.

Another explanation assumes that the differential recommendation rates were due to differences in the distribution of case characteristics across judges. If this explanation is correct, it is of some interest to ask why different judges within the same county were exposed to different types of cases even though most seemed to employ the same decision strategy. One answer might be that defense attorneys base their impressions of each judge's decision strategy on prior observations of the judge's behavior in the sentence hearing and not on knowledge of the covariation between potential predictors and the sentence decision. If so, they might develop incorrect beliefs about the relative leniency of the judges and "shop" on the basis of those beliefs. Since all of the judges would actually be using similar decision strategies, these beliefs and the consequent feelings that the best judge was selected would be difficult to disconfirm. The judge's in-court behavior would support the choice and the decision would be as expected.

Whatever the correct explanation, it does appear from the results presented here that the emphasis given to the issue of disparity both in support of new guidelines and in empirical work may be misplaced. Far

greater attention should be directed at the probation officer's decision process. If the agreement between judges and probation officers reported here and elsewhere (Carter & Wilkins, 1967) is best explained by the probation-officer-causes-judicial-decision model, as seems likely in our case, then judicial disparity is not the problem it has been claimed to be.

## APPENDIX 1

### CATEGORIES USED IN CODING THE CONTENT OF CONVERSATIONS IN SENTENCE HEARINGS

- I. Specific details of current crime
- II. Severity of crime
  - A. Severe felony
  - B. Minor felony
- III. Degree of involvement in crime
  - A. General
  - B. Primary
  - C. Secondary
- IV. Prior record
  - A. Extensive and continuous
    - 1. Punished severely
    - 2. Punished leniently
  - B. Some prior record
    - 1. Recent
    - 2. Not recent
  - C. No prior record
- V. Employment
  - A. Current Status
    - 1. Employed
      - a. Employer supportive
      - b. Employer not supportive
    - 2. Unemployed
  - B. Future
    - 1. Possibility of future employment
    - 2. Loss of current job likely
- VI. Education
  - A. Currently enrolled
  - B. Presently not enrolled
  - C. Has plans to enroll
- VII. Family
  - A. Parents
    - 1. Supportive
    - 2. Not supportive
  - B. Spouse and/or children
    - 1. Need defendant home
    - 2. Do not need defendant home

- C. Relatives
  - 1. Supportive
  - 2. Not supportive
- VIII. Community ties
  - A. Active participant in community affairs
  - B. Uninvolved in community affairs
  - C. Community detrimental to defendant
- IX. Physical health
  - A. Good
  - B. Bad
- X. Religion
  - A. Extensive history
  - B. Little or none
- XI. Drugs and alcohol
  - A. Drug use
    - 1. Current and frequent
    - 2. Past but not recent
    - 3. Possible renewed involvement
    - 4. Current but is attempting to quit
    - 5. No known use
  - B. Alcohol
    - 1. Current and frequent
    - 2. Past but not recent
    - 3. Possible renewed involvement
    - 4. Current but is attempting to quit
    - 5. No known use
- XII. Attitude
  - A. Cooperative and shows attempts to improve
  - B. Uncooperative
- XIII. Sentence
  - A. Prison
    - 1. Yes
    - 2. No
  - B. Custody (in local jail)
    - 1. Yes
    - 2. No
    - 3. Length
  - C. Probation
    - 1. Yes
    - 2. No
    - 3. Length
  - D. California Youth Authority
    - 1. Yes
    - 2. No
  - E. Restitution
    - 1. Yes
    - 2. No
  - F. Fine
    - 1. Yes
    - 2. No



- G. Rehabilitation potential
  - 1. Good
  - 2. Bad
- H. Search and seizure rights
  - 1. Retained
  - 2. Forfeited
- I. Restrictions on probation
  - 1. Travel
  - 2. Employment
  - 3. Education
  - 4. Drug and/or alcohol testing
- XIV. Comments about PO report
  - A. Agrees with recommendation
  - B. Disagrees with recommendation
- XV. Other

## APPENDIX 2

## THE CODING INSTRUMENT USED IN THE ANALYSIS OF COURT FILES

(Note: If information is not available *leave blank.*)

## I. BACKGROUND

- A. Date \_\_\_\_\_ Coder's name \_\_\_\_\_ Court # \_\_\_\_\_ DA File # \_\_\_\_\_  
 Dept. \_\_\_\_\_ Prob. Off. (name/sex) \_\_\_\_\_  
 Hearing date \_\_\_\_\_ Judge \_\_\_\_\_
- B. Information about defendant  
 Sex (M or F) \_\_\_\_\_ Age of defendant \_\_\_\_\_ years  
 Race \_\_\_\_\_ Religion (copy from PO report) \_\_\_\_\_

## II. CHARGES: (PC #, Include verbal description if available)

(Obtain from court record folder: "Disposition of Arrest and Court Action," ignore section "D," unless no "C" entry)

Arrest Report:  
 Prob. Off. Rep:  
 Charges dismissed:  
 (if any)

## III. COURT-RELATED DATA

- A. Custody data: Period between convicted-committed \_\_\_\_\_ months  
 Status: On bail (how much?) \_\_\_\_\_; *or*; jail (how long?) \_\_\_\_\_  
 (Try "Bail Unit Report" in Court Record Folder; fill in both, if relevant.)
- B. Preplea bargaining activity (what does the DA agree to and/or oppose?):  
 (important because PO reads this and may use it in his recommendation.)

---

How Convicted

- C. Plea \_\_\_\_\_; Court Trial \_\_\_\_\_; Jury Trial \_\_\_\_\_; Other \_\_\_\_\_

IV. PROBATION OFFICER'S REPORT

- 1. *Offense* (only; read and then make judgment; DO NOT LEAVE BLANK—there are 3 of these)

Negativity Rating

Bad \_\_\_\_\_ Good

- 2. *Evidence* (indicate for *each* charge, if possible)

Charge(s):	Physical evidence	Eyewitnesses	Circumstantial
(list)	(specific list)	(police/other/none)	evidence
			(strong/weak)

include  
dismissed  
ones

NOTE: If info is available and it is *objective* then write "obj" next to scale or in appropriate slot. This applies to most scales.

- 3. *Defendant's statement and/or interview* (information in quotes or "the defendant said that...")

a. Is section filled out? (yes/no) \_\_\_\_\_

b. To what degree does the defendant admit having committed the crime(s)? (for each charge if appropriate)

Admits completely \_\_\_\_\_ Denies completely  
(Leave blank if no info.)

c. How does defendant "explain" his behavior? What are extenuating circumstances?

1. External factors not under defendant's control. List short-term factors (Ex: peer pressure, needed to go home)

\_\_\_\_\_

List long-term factors (Ex: Unemployed)

2. Internal factors not under defendant's control. List short-term factors (Ex: drunk, in pain)

\_\_\_\_\_

List long-term factors (Ex: insanity, emotional problems)

3. Degree of premeditation

A lot \_\_\_\_\_ None

4. How much weight does PO claim defendant gives to his intention to improve?

A lot \_\_\_\_\_ None

Number of unique actions PO uses to justify claim as to defendant's intention to improve. \_\_\_\_\_

5. How much weight does PO claim defendant gives to family reasons?

A lot \_\_\_\_\_ None

6. How much weight does PO claim is given to potential profit from therapy and/or counseling?

A lot \_\_\_\_\_ None

7. How much remorse does PO claim defendant shows?

A lot \_\_\_\_\_ None

- 8. How cooperative/uncooperative does PO claim defendant was? (*do not leave blank*)  
 Very cooperative \_\_\_\_\_ Very uncooperative \_\_\_\_\_
- 9. List defendant's actions brought in to justify probation request (e.g., enrolled in school, got a job, got married)

4. Prior record: [List charges (PC #s and verbal descriptions) and disposition as given in FBI and CII reports; note discrepancies, if any.]

Juvenile Record: *Itemize* (but, if not available indicate whether PO says extensive or slight or nothing)

Adult Record: *Itemize*  
 (Check "Bail Unit Report" in Court Record Folder and list discrepancies. Note if there is no Bail Unit Report.)

Does PO merely describe prior record or is more added?  
 (describe/more) (circle one)

If more, is additional information

Positive \_\_\_\_\_ negative  
 toward \_\_\_\_\_ toward  
 defendant \_\_\_\_\_ defendant

(Rate in center if neutral)

PO: claims that defendant

Claims \_\_\_\_\_ Admits  
 innocence \_\_\_\_\_ guilt for  
 for previous \_\_\_\_\_ previous  
 crimes \_\_\_\_\_ crimes

Does PO mention mitigating circumstances for *previous* crimes?  
 Yes \_\_\_\_\_ No \_\_\_\_\_

5. *Social factors*

*Prior probations*

Number (or Yes/No) of juvenile probations \_\_\_\_\_ and total length (if known) \_\_\_\_\_  
 Number (or Yes/No) of adult probations \_\_\_\_\_ and total length, if known: \_\_\_\_\_  
 (a) actually served \_\_\_\_\_ and/or (b) sentenced \_\_\_\_\_

*Employment*

Employed at time of arrest? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Has he been steadily employed in the past? Yes \_\_\_\_\_ No \_\_\_\_\_  
 How long since previous employment? \_\_\_\_\_ months.  
 Employed after arrest? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Occupation (and when):

Mother, father of sibling in S.D. County? Yes \_\_\_\_\_ No \_\_\_\_\_

Length of time in San Diego County? \_\_\_\_\_

(If not on PO Report try "Bail Unit Report" in Court Record Folder.)

Finance (his pay) \_\_\_\_\_ Education level (grade) \_\_\_\_\_

Narcotics (can be answered from info in any section): (Yes/No) \_\_\_\_\_

Alcohol \_\_\_\_\_ Drugs \_\_\_\_\_

*Answer Yes/No (Where appropriate)*

Presently married \_\_\_\_\_ Living with spouse \_\_\_\_\_ No. of children \_\_\_\_\_

Previous marriage \_\_\_\_\_ No. of children from previous marriage \_\_\_\_\_

How many (unique) extenuating circumstances does PO mention (if any)?

Family \_\_\_\_\_ Other People (non-family) \_\_\_\_\_ Environmental \_\_\_\_\_

(Answer within context of "Social Factors" only—even if conflict elsewhere.)

How sympathetic does PO seem? (DO NOT LEAVE BLANK)

Very sympathetic \_\_\_\_\_ Very unsympathetic

6. *Medical information*

a. Was defendant interviewed by psychiatrist (or psychologist)?

Yes \_\_\_\_\_ No \_\_\_\_\_

b. What was the label used to describe patient (i.e., diagnosis)?

\_\_\_\_\_

c. Does PO seem to make any use of the results of this interview?

Yes \_\_\_\_\_ No \_\_\_\_\_

d. Other \_\_\_\_\_

7. *Additional information* (Starred items in ea. section should sum to total no. of lines in ea. section)

\*a. Number of lines which describe positive aspects of defendant. \_\_\_\_\_

\*b. Number of lines which describe negative aspects of defendant. \_\_\_\_\_

\*c. Number of lines which are neutral towards defendant. \_\_\_\_\_

d. Count the number of unique points raised and classify into:

1. Statements favorable to defendant. \_\_\_\_\_

2. Statements unfavorable to defendant but *discounted* by PO. \_\_\_\_\_

3. Statements unfavorable to defendant. \_\_\_\_\_

4. Statements favorable to defendant but *discounted*. \_\_\_\_\_

8. *Evaluation* (Starred items in ea. section should sum to total no. of lines in ea. section)

\*a. Number of lines which describe positive aspects of defendant. \_\_\_\_\_

\*b. Number of lines which describe negative aspects of defendant. \_\_\_\_\_

\*c. Number of lines which are neutral towards defendant. \_\_\_\_\_

d. Count the number of unique points raised and classify into:

1. Statements favorable to defendant. \_\_\_\_\_

2. Statements unfavorable to defendant but *discounted* by PO. \_\_\_\_\_

3. Statements unfavorable to defendant. \_\_\_\_\_

4. Statements favorable to defendant but *discounted*. \_\_\_\_\_

V. SENTENCE RECOMMENDATION: (What does PO recommend?)

1. Number of years and months (minimum and maximum if appropriate) in:

a. Prison (or prescribed by law) \_\_\_\_\_

b. Probation (county jail or sheriff's custody, total time) \_\_\_\_\_

c. Probation (total time) \_\_\_\_\_

d. Credit for days served \_\_\_\_\_

e. Other (circle): CYA, Chino, Diagnostic Study, (write in other) \_\_\_\_\_

2. Special conditions

Tests (list) \_\_\_\_\_

Fines (amount) \_\_\_\_\_

Restitution to victim (type and amount) \_\_\_\_\_

How many visits to Probation Officer per month? \_\_\_\_\_

Employment \_\_\_\_\_

Therapy \_\_\_\_\_

Travel restrictions \_\_\_\_\_

Social restrictions \_\_\_\_\_

Drug-related restrictions (indicate "Standard" if standard restrictions used)

Other (e.g., "Waived 4th amendment" for allowing search)

VI. ACTUAL SENTENCE: (obtain from Probation Order or "Disposition of Arrest and Court Record" or "Criminal Minutes"—all in Court Record Folder; note where obtained.)

1. Number of years and months (minimum and maximum if appropriate) in:

- a. Prison (or as prescribed by law) \_\_\_\_\_
- b. Probation (county jail or sheriff's custody, total time) \_\_\_\_\_
- c. Probation (total time) \_\_\_\_\_
- d. Credit for days served \_\_\_\_\_
- e. Other (circle): CYA, Chino, Diagnostic Study, (write in other) \_\_\_\_\_

2. Special conditions

- Tests (list) \_\_\_\_\_
- Fines (amount) \_\_\_\_\_
- Restitution to victim (type and amount) \_\_\_\_\_
- How many visits to Probation Officer per month? \_\_\_\_\_
- Employment \_\_\_\_\_
- Therapy \_\_\_\_\_
- Travel restrictions \_\_\_\_\_
- Social restrictions \_\_\_\_\_
- Drug-related restrictions (indicate "Standard" if standard restrictions used)

Other (e.g., "Waived 4th amendment" for allowing search)

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