

PROCEEDINGS OF

THE NATIONAL CONFERENCE ON PUNISHMENT FOR CRIMINAL OFFENSES

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EDITOR'S NOTE

The editor has made minor editorial changes to those chapters that were originally presented as speeches at the National Conference on Punishment for Criminal Offenses, where these speeches had to be transcribed from tape recordings. These changes included such things as paragraph structure, sentence length, and elaboration of name references. Added material appears in brackets [].

SECTION I

INTRODUCTION

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 1

OPENING REMARKS

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Chapter 1--Opening Remarks

This National Conference on Punishment for Criminal Offenses could not be more in keeping with the top priority of President Reagan and the Department of Justice, one established long ago. In fact, just recently President Reagan once again sent Congress a legislative proposal that underscores the depth of his commitment to address some of the major issues of concern within the criminal justice system. The administration's new criminal justice reform act encompasses three measures: first, the exclusionary rule; second, writs of habeas corpus; and third, capital punishment. Now all of these measures are of critical importance in battling crime and improving the operation of the criminal justice system. Under the new crime package, reliable evidence of guilt could no longer be thrown out of court because of innocent error by law enforcement officers carrying out searches and seizures. Building upon the Supreme Court precedent established in the United States v. Leon, and keeping with the rule of mouth followed in two U.S. Circuits, evidence would be admissible if an officer acted in reasonable good faith that his conduct was consistent with the law. The bill would also curb the abuse of state prisoners seeking Federal writs of habeas corpus almost without limitation. State court judgments and proceedings would receive the deference they are due as long as they are reasonable and consistent with due process. Finally, the bill would establish a clearly enforceable capital sanction for especially hideous crimes including murder, espionage, treason, and causing the death of another person while engaged in a continuing illegal drug enterprise. Strict procedures to avoid the constitutional infirmities found by the Supreme Court in Furman v. Georgia would be codified then in statute.

When President Reagan transmitted the reform act to Congress, he restated his long-held belief that government's most fundamental responsibility is the protection and security of its people. In the area of law enforcement this critical priority has been reflected in the unprecedented commitment of resources under this administration to combat the scourge of drug trafficking and drug abuse and our recent major advances in an on-going effort against organized crime and important initiatives against white collar crime. He further noted that effective enforcement, however, will depend upon the legislative will to provide the tools needed to get the job done. I might just add that at the ceremony where the President signed the transmittal to the Congress, along with the Attorney General, many state and local law enforcement officials and victims of crime were present.

We're all indebted at the Department, and I think more generally all of us in the law enforcement community at the state and local levels, as well, to the Bureau of Justice Statistics and Bowling Green State University in Bowling Green, Ohio for conducting this conference to take an in-depth look into the various areas that influence determinations of punishment for criminal offenders. I'm sure the discussions concerning the implications of public policy for punishment and prison growth will be beneficial for all of us here and for those to whom we return and relay the message of the conference. But as I mentioned to Steve [Schlesinger, Director, Bureau of Justice Statistics] last night, I am sorry that I personally won't be able to be here for both days of the conference because the schedule of topics to be discussed is indeed most impressive, and congratulations to Chris and Steve for that.

I know that no matter where Assistant Attorney General [Richard] Abell goes, whether it be meetings back in Washington, recent conferences in

London, or travels in Alaska just a short while ago, whenever the subject of criminal offenses is discussed, concerns are raised about prison and jail capacity problems. In fact, a recent survey of law enforcement executives, court and correctional officials found unanimous agreement that the most serious problem facing the criminal justice system is prison and jail capacity. This problem is severe and pervasive, but I think it is critical that we be determined not to allow the capacity problem to affect judgments about who should be incarcerated. As the constant demand for more prison beds collides with limited correctional resources, we are forced to confront the issue at the Federal, state, and local levels. Four out of five states have been found to be operating prison facilities under conditions that violate the Eighth Amendment. Courts have placed entire state correctional systems in receivership, appointed masters to operate state systems, and ordered the early release of thousands of offenders. The courts have even threatened some state officials with fines and jail terms for noncompliance with orders to relieve prison conditions.

Now there are many areas on the Federal level that are being pursued in an effort to address this national problem. Federal Prison Industries, for example, on whose board [Assistant Attorney General] Rick Abell serves, is looking into ways to improve and expand prison industries with a goal to drastically reduce the number of repeat offenders. From this program we hope the prisoners will learn a trade and earn some money, so while still in prison they can better pay fines and penalties and especially restitution to victims of crime. Later, when released from prison, they can return to society with some funds and perhaps be better able to resist the temptation to return to the predatory life of crime.

We are also trying to help state and local officials address their prison and jail capacity problems through our construction information exchange program. This program was developed by the Office of Justice Programs/National Institute of Justice for the purpose of centralizing and sharing information about constructing prisons and jails. This program gives officials who built the prisons and jail facilities an opportunity to share their success stories with their colleagues in other states so that they can learn from each other and avoid repeating past mistakes. Through the National Information Exchange, the Federal government is the resource, while the state and local officials are the experts. I think very much in keeping with the spirit of the Federalists, the states thereby are able to perform their rightful role, their intended role as the great laboratories of experimentation. Our agency is also involved with the Federal program to transfer or convey to the states surplus real or related personal property to help state and local correctional agencies in coping with prison and jail capacity problems. In addition, OJP's Bureau of Justice Assistance, along with NIJ, is helping states with problems with their technical assistance programs.

In spite of our prison capacity problems or perhaps, to some extent, because of high prison capacity, we have seen that BJS's National Crime Survey reveals that the rate of violent crime in America has fallen substantially during the 1980's after having risen moderately throughout the 1970's. We are making progress. In looking at our prison capacity problems and punishment for criminal offenders, it is perhaps also important to consider the statistics for actual time served in prison. In 1983 the prisoners released from state prisons had served a median of one year and seven months, including credit for jail time. By offense, the median time

served for those released was: murder--six years and seven months; manslaughter--two years and eight months; rape--three years and eleven months; robbery--two years and six months; aggravated assault--two years; burglary--one year and five months; larceny--one year; auto theft--one year and three months; forgery, fraud and embezzlement--one year and three months. Those released from prison to the community who had received a maximum sentence of life in prison had a median time served of ten years and nine months. The median time served of one year and seven months for all offenses is just about what prisoners have been serving since 1926. But this stability, for those released over time, is quite remarkable because today's prison population is considerably more violent than that of the past. In 1982, one-third of all exiting prisoners had been convicted of a violent crime. In 1933, it was one-fifth. Yet median time served in 1982 was actually one month less than in 1933. So for this to be the case, crime-for-crime, offenders must be serving less time than they did before.

Later on this morning I will participate in a small way in the workshop on public opinion about the crime and punishment severity report of the national survey, the very important study that Chris Dunn and Joseph Jacoby performed at Bowling Green State University and which Joe Bessette [Deputy Director] and others at BJS have been praising at this conference and elsewhere. Now for those of you who won't be able to attend that workshop, and I understand there's two going on at the same time so there's some competition for it, I would encourage you to get a copy of the executive summary of the report which may be available in the packet. The data certainly underscores the discrepancy between what the public believes are appropriate punishments and the punishments that are actually received.

Because BJS supported this research, a nationwide press release was distributed yesterday by the department giving information about the national survey. I know for a fact that newspapers around the country have already had stories appearing in their papers about the survey, and I would expect many more to follow. This project is just one example of how the Bureau of Justice Statistics has been successfully reaching out, particularly in the last few years under the stewardship of Steve Schlesinger [Director, BJS], to every state and local government across the country to disseminate the latest statistical data on issues relating to criminal justice at all levels of government.

Now as you are aware, President Reagan and the administration are diligently working to find ways to reduce the Federal deficit. But a major criterion used when determining whether or not the Federal government should continue a program is whether or not that function can be performed at the state level. Quite appropriately, all Federal expenditures should be evaluated through the prism of federalism.

The work accomplished through BJS can only be performed on a national level. None of the states has the capability to collect statistics from all the other states, analyze and publish data, and disseminate to all the other states. I want to add that inasmuch as BJS is one of the main components within the Office of Justice Programs, I know that the Assistant Attorney General [Richard Abell] takes particular pride in the volume of top quality work that is accomplished by such a relatively small number of people in a relatively small agency using a relatively small amount of Federal funds. Their successes have been impressive and to have done it with the limited resources, although the budget has been rising, but still limited resources,

has been somewhat of a Washington success story. In addition to collecting, analyzing, publishing and disseminating statistical information on crime, BJS provides financial and technical reports to state statistical and operating agencies, and I suppose that many of you are directly familiar with these important services. It analyzes national information policy on issues such as privacy, confidentiality, and security of criminal justice data and interstate exchange of criminal records. The Bureau has developed more than two dozen data collection series using a variety of methods including household interviews, censuses, sample survey of criminal justice agencies, prisoners and inmates, and compilations of administrative records. During the last fiscal year, 1986, BJS prepared and disseminated 34 reports and data releases. So to me, there is no better example than BJS to show how Federal funds can be used effectively to reach out to all sectors of the government and public. It gathers information and informs the public, enabling all of us to better understand the legitimate needs, problems, and solutions within the criminal justice system.

This conference is certainly one of the valuable tools that BJS is using to gather information. The task for us in the next couple of days is perhaps best illustrated by a little verse from the poet, William Gilbert.

"My object all sublime
I shall achieve in time
To make the punishment
Fit the crime."

I will be waiting to hear about your deliberations from Steve Schlesinger and I know that Rick Abell would have welcomed your thoughts directly as well. You are the professionals at the cutting edge of a monumental public policy debate. Your work will have consequences and I'm sure you will do it quite well.

SECTION II

PUNISHMENT PREFERENCES

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 2

THE NATIONAL PUNISHMENT SURVEY: DESCRIPTION AND RESULTS

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Introduction

The increasing demand for space in prisons is mostly a reflection of recent changes in punishment policies. By increasing statutory minimum sentences, reducing discretionary parole release, and imposing mandatory sentences, the states and the federal government have succeeded in imprisoning offenders for longer periods. There is considerable uncertainty surrounding the benefits of this costly policy change--costly for both imprisoned offenders and the taxpaying public. We cannot resolve that uncertainty here; but we can advance the discussion on why we punish in the ways and amount we do. We can help to answer the questions: What does the public want our courts to do with criminal offenders, and what does the public think will be accomplished by punishing those offenders in various ways?

There is ambiguity over the purposes prison sentences (for that matter, any form of punishment) ought to serve. Does the public want criminals to suffer for what they have done? Has retribution completely dethroned rehabilitation, in the mind of the public, as the major purpose of punishment? What about deterrence? Most discussion about deterrence has centered on the death penalty. Does the public believe a prison sentence deters--either the offender who serves the sentence or prospective offenders?

Is there consensus on the form and amount of punishment that ought to be imposed for specific offenses? What things about a

crime do people consider important in choosing a punishment and in determining the reason for punishing offenders?

The study reported here is designed to help answer these questions.

The Survey

Between August and October 1987 we conducted a public opinion survey of American adults. This survey of a national sample of 1,920 adults, was conducted by telephone by the Population and Society Research Center of Bowling Green State University. The Center used a Microcomputer-Assisted Telephone Interview procedure to carry out this survey. This procedure involved programming a set of microcomputers to dial the respondent's phone number and present each question in turn to the interviewers, who read the question from the screen and recorded the responses directly on the computers. Interviews lasted an average of 30 minutes apiece.

The Respondents

The interview sample were selected from two computerized telephone lists purchased from a commercial sampling firm. One list was stratified to be representative of all states, while one list was intensively sampled areas of the country with high concentrations of minority residents. About 1,200 respondents came from the first list and 720 from the second. The second list was required to obtain a large enough sample of minority

respondents to permit intensive analysis of their responses.

After the respondents were told the purpose of the study they were asked several demographic questions. Table 1 presents the distribution of characteristics of our respondents and compares this distribution to the U.S. population. As Table 1 shows, the interview sample fairly well approximates the age, income and regional distribution of the adult U.S. population; but deviates somewhat on sex, race and educational attainment. Females are overrepresented in the sample, which is most likely a reflection of the higher proportion of females who are at home and available to answer the telephone. Blacks and other non-whites are overrepresented in the sample, due to our intentionally oversampling geographical areas with high concentrations of non-whites. Finally, our sample is, on the whole, better educated than the U.S. population, with college educated people overrepresented and people with less than a high school diploma underrepresented.

To correct for the disparity in the sex, race and education distribution of the interview sample, relative to the adult U.S. population, we have weighted cases in the sample on these three characteristics. The distribution of responses to our questions should, therefore, closely approximate the attitudes of a representative cross-section of American adults.

Factorial Design

Each respondent was presented with eight short crime

scenarios or vignettes. These vignettes contained information about the type of crime, the amount of harm, and characteristics of the offender and victim. Each vignette was uniquely constructed by computer from a set of dimensions and levels within dimensions (see Appendix A). For example, the computer would first select one choice (or level) from within the dimension "Offender Age." In our design there were eight possible choices. Let's say in one case the computer randomly chose "28 year old,". Next the computer would choose from the dimension "Offender Sex". Here the choices were either male or female. Let's say in this case the computer chose "male". The third dimension was "Crime Type". Our design included 24 different offenses, including a variety of larcenies, burglaries, robberies, assaults, forcible rapes, drug offenses, and drunk driving offenses.

The computer would randomly select one of these crime types, append the type to the information about offender age and sex previously selected and then select levels from dimensions characterizing the victim and the offender's prior criminal record.

The dimensions included in this study are, with few exceptions, "legally relevant variables"--characteristics which judges and parole boards may consider when evaluating a case for sentencing or parole. The major exceptions are offender and victim sex, which we included to make the scenarios more believeable. We knowingly excluded characteristics which are

probably important to the public in evaluating a case for punishment (e.g. socioeconomic characteristics of offender and victim), but which could not legally be part of the sentencing decision. We did decide to include sex of offender and victim, because we believed that respondents would find it easier to imagine a "male" or "female" rather than a "person" committing an offense. We were also interested in the effect of offender's and victim's sex on attitudes toward punishment.

The construction of each vignette involved selection of one level from each of twelve dimensions. Though each vignette was only a short paragraph, the number of possible unique combinations of elements exceeded 1.5 billion (i.e the product of the number of levels in all dimensions).

This "factorial design" has three major advantages over traditional survey models. First, it permits inclusion of far more experimental conditions for subjects to evaluate than a traditional interview schedule design, in which all respondents are asked an identical set of questions.

Second, the random selection of vignette elements avoids a common obstacle encountered in most research in criminal justice--high levels of correlation among the independent variables. Typically characteristics like number of prior offenses and age are so highly correlated that it is difficult to determine which one is most important in some decision maker's disposition. Factorial design eliminates this intercorrelation problem by randomizing combinations of elements. The selection

of one offender characteristic has no bearing on the selection of subsequent characteristics.

Our interview design deviated slightly from a completely randomized design; we excluded a small number of specific combinations of levels because they would not occur in real life. For example, if the offender's age was 14, we did not permit him or her to have a criminal history involving six prior convictions for violent offenses. We chose to accept the low intercorrelations these exceptions would introduce in exchange for preserving the realism of vignettes.

The third major advantage of a factorial design is that it permits determination of the relative importance to the respondents of all the different elements included in all the dimensions. For example, in analyzing the responses we should be able to compare the importance or weight attributed to an offender's age, say, relative to the amount of injury sustained by the victim in the respondents' decision of how long the offender's prison sentence should be.

In relation to each vignette, respondents were asked a number of questions to solicit their opinions regarding the seriousness of the offense, the appropriate penalty and the reasons for selecting the penalty.

Crime Seriousness

To facilitate comparison with national data, the Sellin-Wolfgang offense seriousness rating scheme was selected.

This procedure involved asking the respondent to give a number representing the seriousness of an offense relative to a standard offense with a specific score (i.e. "What number would you give this situation [just described] to show how serious YOU think it is compared to the bicycle theft with a score of 10?"). We replicated much of the methodology of the National Survey of Crime Severity (NSCS), in which some 52,000 people were surveyed by the Bureau of the Census in 1977 as a one-time add-on to the National Crime Survey.

Our procedures differed in several important ways from the NSCS:

1. In the NSCS respondents were interviewed mostly face-to-face; our interviews were conducted by phone.
2. The NSCS included the crime severity questions as part of a victimization survey, to which many respondents had replied one or more times before; our study of crime seriousness and punishment preferences did not include questions on victimization and involved only one contact with each respondent.
3. In the NSCS only the type of offense and the amount of loss or harm was given; we included information about the offender and victim.
4. In the NSCS respondents each rated the seriousness of 26 crimes chosen from a set of 206 offenses; our respondents each gave opinions about eight offenses chosen from a set

of 74 crimes, most of which were taken from the NSCS.

Despite these differences, our methods approximated the NSCS sufficiently closely to produce quite comparable results.

Punishment Preferences

After a respondent rated the seriousness of a vignette, he or she was asked a series of questions to determine the respondent's preference for the punishment the offender should receive, if the offender were caught and convicted. Rather than make the offender choose one punishment from memory or from a list, we offered, serially, all the commonly available punishments--incarceration, probation, fine, restitution and (for homicide offenses) the death penalty. From this list, respondents could choose as many types of punishment as they wished. If they chose incarceration, they were offered the choice of continuous or periodic sentences and asked how long the prison or jail sentence should be. If they chose a fine, they were asked how large the fine should be. For one of the vignettes respondents were asked what impact on the economic well-being of the offender they intended the fine to have.

Purpose of Punishment

For two of the eight vignettes each respondent was asked a series of questions to elicit the reason he or she had selected the particular punishment for that offense. The overall length of the interview obviated including these questions for every vignette.

The most common contemporary purposes of punishment were phrased in nontechnical language--deterrence (special and general), rehabilitation, retribution, desert, incapacitation, religious morality, and boundary setting. The respondent was asked how important each of these purposes was in his or her selection of the punishment for that particular offense.

Results

Crime Seriousness

A major concern of this study was whether it would be possible to add information to the crime vignettes used in the National Survey of Crime Severity without confusing respondents in their task of rating crime seriousness. In Table 2 our respondents' crime seriousness scores are compared with the scores for comparable offenses in the NSCS.

The first and perhaps most important observation regarding these offense seriousness scores is that they are ranked according to commonsensical notions about crime seriousness: The more money taken in a theft, the higher the average seriousness score; the more severe the injury resulting from an assault, the higher the seriousness score.

The comparison between our survey and the NSCS results shows clear similarities between the two sets of scores. Within each offense type (e.g. larceny, assault, etc.) offenses are rank ordered identically in both studies. The major difference is that our respondents gave consistently lower scores for all offenses. The reason for this difference is not clear.

Punishment Type

All Offenses

The most preferred punishment type, over all offenses, is a jail or prison sentence. Some 71 percent of respondents chose that sentence. People tended to combine other types of punishment with imprisonment. Probation (30 percent of responses), a fine (24 percent) and restitution (35 percent) were common "add-ons". It is clear, however, that these alternatives to imprisonment were not generally preferred as substitutes for imprisonment. As Table 3 shows, probation was selected as the most severe penalty in only 17 percent of all cases. Fines and restitution were chosen as the most severe penalty in only 4 percent of all cases.

The death penalty was an optional choice for only three of the 24 offense types--the homicides associated with assault, robbery and forcible rape offenses. Capital punishment was chosen as the preferred penalty by 36 percent of respondents who were offered vignettes with homicide offenses.

Punishment Type By Offense Type

There was considerable variability of the preferred form and amount of punishment according to the type of offense. With only one exception--pettit larceny of property worth \$10--the majority of respondents favored a prison or jail term for all offenses (see Table 4). Imprisonment is more strongly favored for violent sex offenses than for any other category of offenses; all the forcible rape offenses elicited imprisonment as the preferred punishment from over 94 percent of respondents.

Within offense categories imprisonment was uniformly more strongly favored for more serious offenses; for example 78 percent favored a prison term for larceny of property worth \$10,000, compared to 55 percent favoring a prison term for a larceny of \$50 worth of property. This pattern is consistent across all offense types.

The death penalty, reserved for three homicide offenses, was most preferred (42 percent) for forcible rapes resulting in death, compared to robberies resulting in death (37 percent) and fatal assaults (30 percent).

Repeating the pattern over all offenses, no alternative to imprisonment was preferred over imprisonment as the most severe penalty for any offense (see Table 5). The most popular application of probation as the most severe sanction was for a \$10 larceny (35 percent), \$10 burglary (33 percent), and cocaine use (35 percent). Even in these cases imprisonment was by far more commonly chosen as the most severe punishment type an offender should receive. Fines and restitution did not exceed 20 percent--for the \$10 larceny--of the most severe punishments for any offense.

Sentence Length by Offense Type

The average prison sentence lengths presented in Table 6 are remarkable for their magnitude. The shortest average sentence for any offense--for burglary of a building netting \$10--earned a 27 month prison sentence. Drunk driving without an accident

received an average sentence over 27 months.

At the other extreme were the violent assaults resulting in the death of the victim. When sentences of "life" and "death" were included (as 40 year sentences), the average sentences for the three fatal assaults was between 30 and 35 years.

Within each category of offenses--property theft, burglary, robbery, etc.--there is a consistent pattern of more harmful offenses receiving longer average sentences.

Despite this pattern, the dispersion of these sentence preferences among respondents is high. Standard deviations are greater than the sentence lengths themselves for three-fourths of the offense types, indicating that there is little agreement on the most appropriate sentence length for any given offense. People agree on which offenses should be more severely punished, and that the punishment should usually involve imprisonment, but they do not agree on the length of the prison term.

Sentence Length and Offense Seriousness

This is the first national study to combine both the Sellin-Wolfgang offense seriousness rating scheme and a measure of preferred punishment. For each offense type respondents gave both an offense seriousness score and, if they chose a prison term, a preferred length of confinement. In Table 7 the means for these two measures are presented together by offense type. The arithmetic mean or average is given for sentence length, while the geometric mean is given for the seriousness score. The

geometric mean is the antilog of the sum of the logs of the seriousness scores. The geometric mean is the appropriate measure of central tendency for ratio scale scores, and tends to reduce the effect on the mean of outliers in the distribution.

Examination of the rank ordering of sentence length and seriousness score shows that offenses were ranked identically on both measures through the first 11 offenses. There is some variability in the rank ordering below that, though the overall pattern is that offenses with higher average sentence lengths were also viewed as being more serious.

The bivariate correlation between sentence length and seriousness underscores the strength of this relation. Fully 92 percent in the variation in sentence length is explained by variation in offense seriousness, when only the means of these two quantities are considered. [Note that this analysis does not consider variation among respondents. The correlation coefficient of these two variables across respondents is much lower--.34.] People want non-serious offenses punished with shorter sentences, and serious offenses punished with longer sentences.

Respondent Characteristics

Respondents do vary somewhat systematically on the type and amount of punishment they prefer according to their personal characteristics (see Table 8). Young adults are slightly less punitive than older adults. Respondents in the 25-34 age range

were less likely to choose imprisonment than are 65-74 year-olds. Among those who did choose imprisonment, 35-44 year-olds chose sentences 10 percent below average, while 55-64 year-olds chose sentences 13 percent above average (see Table 9).

Male and female respondents did not vary significantly on the types of sanctions they chose or on the lengths of prison sentences.

Sentence types and lengths varied in interesting ways according to the race of respondents. Whites were more supportive of applying the death penalty, but otherwise they were no more punitive than black respondents. Whites and blacks chose other penalties in about equal proportions and gave nearly equal prison sentence lengths.

Respondents with less education tended to favor imprisonment more than those with more education. Sentence lengths varied irregularly with educational attainment. Respondents with the most education favored the shortest sentences.

Neither choice of sanction type nor average sentence length varied significantly by family income. The same was true of geographical region.

Offender and Victim Age and Sex

The vignettes contained a variety of kinds of information about the offender and victim. Among these characteristics were the age and sex of offender and victim. Very young offenders were treated relatively leniently by the respondents: 14-year-old

offenders were more likely to receive probation (46 percent) than a sentence of imprisonment, though 38 percent of the respondents favored imprisonment even for these young offenders. Among other age groups, younger (18-year-olds) and the oldest (65-year-old) offenders were slightly more likely to be granted probation.

Sentence length (see Table 12) varied little by age of offender, except that 18-year-olds received sentences about 12 percent below average.

The evidence from our respondents indicates that, even when sexual assaults are removed from the analysis, male offenders are viewed as requiring more punitive sanctions than are female offenders. Males are more likely to be recommended for a prison sentence and to receive sentences which are 12 percent longer than sentences of females.

Though the variation of sanction types by age of victim was significant, there was no clear pattern of change by age. Variation of sentence length by age was clearer: Offenders who victimized the youngest (age 14) and oldest (age 75) victims received the longest sentences.

The finding of more severe sanctions for male than for female offenders, reported above, was reversed for sex of victim. When sex offenses were excluded from the analysis, offenders who victimized females were viewed as requiring slightly more punitive sentences than those whose victims were male.

Differences by sex and age of victim and offender in

preferences for the death penalty were significant only for offender characteristics. Youthful offenders (age 14 and 18) and females were seen as less appropriate for execution than were older offenders and males. No significant differences existed by age and sex of victim.

Offender's Personal Background

Information was included in the vignettes on the offender's employment history, mental condition, and use of alcohol and drugs. All three of these issues were important for respondents in their determination of the type of punishment offenders should receive, though not for the prison sentence lengths they chose (see Tables 11 and 13).

Offenders who earned their living mostly through crime more often received prison sentences than did employed or unemployed offenders. Offenders who were identified as having a mental illness were less likely than other offenders to receive imprisonment. Offenders who committed their crimes to buy drugs were slightly more likely to receive prison terms than were other offenders.

Offender's Criminal History

Four types of information were given regarding the prior criminal record of offenders: Prior convictions for violent offenses and for property offenses, number of previous prison or jail sentences, and total time spent in prison in all previous

sentences. All of these characteristics were related to punishment types and prison sentence lengths.

There was a consistently increasing proportion of offenders who received prison sentences as the number of prior convictions increased. This pattern was less marked for both the number of previous prison sentences and total period previously imprisoned. Sentence length was most affected by extremes of numbers of convictions, previous prison sentences and lengths of previous imprisonments. The greatest of these effects was for offenders who had served a total of 10 years in prison on previous convictions. The average sentence for these offenders was 26 percent above the overall average.

Our respondents, overall, chose quite punitive sanctions. Having done so, the distinctions they drew among offenders, based on prior criminal record, were not large.

Analysis of "Legally Relevant Variables"

Courts and parole boards may legally consider only a limited range of characteristics in their deliberations regarding the appropriate sentence to apply. Among the characteristics they may consider are the present offense, criminal history, employment record, drug and alcohol abuse. They may not generally base their decisions on such qualities as age, sex or race. We have therefore isolated the "legally relevant variables" in the study and performed a multiple regression to determine the relative importance of these variables in the

process of choosing prison sentence lengths. The results are presented in Tables 14 and 15.

All the variables in the analysis, with the exception of the offense seriousness score, were categorical. We constructed "dummy" variables from these categorical variables. The dummy variables have a value of 1 if the characteristic is present, and zero if it is absent. Through the dummy multiple regression we can compare the relative importance of these characteristics. In dummy regression for each original variable one value is chosen as a reference category and excluded from the analysis. All regression coefficients are then compared to this reference category.

Because all the standardized regression coefficients (beta) for the dummy variables are "standardized", with mean of zero and standard deviation of 1, we can interpret their relative absolute size as indicating their relative importance. In Table 14 the regression coefficients are grouped by dimension, so that the relative importance of levels within dimensions can be evaluated.

Table 14 reveals that, among offense types the fact that an offense was a larceny has the greatest (negative) influence on sentence length. Regarding employment record, only if the offender earned a living through crime, did employment have a significant impact. All the alcohol and drug abuse categories had about the same (positive) impact on sentence length. Among the prior criminal record categories, only categories at the

extremes of each range had a significant impact: presence of no prior convictions for property offenses, six property offense convictions, 6 jail sentences and total length of jail sentence of ten years.

In Table 15 all levels of all legally relevant dimensions are rank ordered by the magnitude of the absolute value of the standardized regression coefficients. By far the most important variables are the offense types, most of which are listed above any other variable. Offense seriousness is the next most important variable. The rest of the variables do make a statistically significant contribution to sentence length, but that contribution is only 5-10 percent as large as the contribution of offense type and seriousness.

In sum, among the legally relevant variables, offense type and seriousness are by far the most important considerations in determination of sentence length. All the legally relevant variables together explain 59 percent of the variation in sentence length.

Purposes of Punishment

After respondents chose the type and amount of punishment for a vignette, they were asked why they chose that punishment. More precisely they were asked eight questions where the common contemporary purposes for punishment were described. For each purpose they were asked whether that purpose was "very important, somewhat important or not at all important" in their selection of

the punishment for that case.

Purposes Across All Offense Types

The purpose designated as "very important" in the largest proportion of cases was special deterrence (79 percent), closely followed by boundary setting (78 percent). Rehabilitation (72 percent), desert (70 percent), general deterrence (69 percent), incapacitation (58 percent), morality or religion (48 percent) and retribution (25 percent) followed in that order (see Table 16).

The difference in response preferences to desert and retribution may be due in part to the way these two purposes were worded. Respondents clearly preferred to "give the offender what he deserves" (desert) rather than to "get even with the offender by making him/her suffer for what he/she has done" (retribution). Respondents made a number of informal comments on their aversion to "suffering", and appeared to be more willing to impose some abstract "desert" than to confront the fact that punishment for crimes in our society does indeed involve suffering.

On the policy-relevant issue of what the public wants from our system of punishing criminals, they are very demanding. They want it all! Only morality and retribution failed to be rated as "very important" in more than half of the responses.

Purpose of Punishment by Offense Type

The variation in preferred purpose of punishment by offense

type is displayed in Table 17. Though popular for all types of offenses, special deterrence and boundary setting were both most often considered to be "very important" for fatal drunk driving offenses.

Rehabilitation was seen as most appropriate for arson, cocaine use and drunk driving. These choices reveal an apparent logical connection between offenses that are often thought to be caused by personality defects which might respond to treatment.

Desert tended to be selected as "very important" for the more serious offenses within most offense categories, as did general deterrence. Wholesale distribution of cocaine and the fatal drunk driving offenses most often had general deterrence highly rated.

Incapacitation was emphasized most for serious assaultive offenses, while morality or religion was most important in non-fatal forcible rape offenses.

Finally, retribution, though not generally favored by the respondents, was most likely to be emphasized in serious assaults.

Purpose of Punishment by Punishment Type

All purposes of punishment were significantly associated with the types of punishment. In Table 18 the percent of responses indicating each purpose was "very important" is presented according to the most severe punishment selected for each offense. Here we can see that incapacitation was the

purpose most often sought for punishment involving imprisonment. Ninety-one percent of respondents who indicated incapacitation was very important chose to imprison the offender. There was little variation among the other purposes regarding the choice of imprisonment.

Probation was most favored by respondents who emphasized rehabilitation, and least favored by respondents who emphasized incapacitation. Fines and restitution were also least favored by incapacitation-oriented respondents.

Purpose of Punishment and Prison Sentence Length

The attitudes of respondents toward purposes of punishment were related to the prison sentences they chose (see Table 19). There is a clear connection here between favoring retribution and opposing special deterrence and rehabilitation. Respondents who deemphasized these latter two purposes assigned much longer sentences than any other group of respondents.

For six of the eight purposes, there was no clear pattern of change in sentence lengths, as support for each purpose changed. For these six purposes, the shortest sentence was assigned by people who said the purpose was "somewhat important". Only general deterrence and rehabilitation have consistent patterns of change in sentence length with support for those purposes: Sentence length increases with support for general deterrence and decreases dramatically with support for rehabilitation.

The large differences in sentence lengths among respondents

who subscribe to different philosophies of punishment accounts for much of the variation in sentencing. This issue will be continued in the multivariate analysis to follow.

Purpose of Punishment by Respondent Characteristics

The popularity of the different philosophies of punishment varies with some characteristics of respondents (see Table 20). Female respondents and black respondents rated every purpose higher than male and white respondents respectively. In addition special deterrence is most popular with people who less education and lower income.

Boundary setting is emphasized more by older people, those with less education, and lower income, and residents of the South. Rehabilitation varies in popularity by age, education, and income, but not according to any pattern.

Desert is favored by older respondents, blacks and Hispanics, people with between junior high and high school education, and people with working class incomes.

General deterrence receives most support from older people, blacks, people with junior high education, and those with the lowest income. Incapacitation is favored more by older respondents, people with less education, and the lowest incomes.

Morality is most favored by the older respondents, blacks and Hispanics, and lowest income respondents. Retribution is most popular among blacks, those with junior high to high school education and lower incomes.

Multivariate Analysis Including All Variables

Previously we presented a multivariate analysis in which only legally relevant variables were included. Here we present a similar analysis in which all the characteristics of respondents, offense, offender and victim are included, to determine their relative importance in determining the length of prison sentences chosen by respondents.

The results of this multivariate analysis, are presented in two ways. In Table 21 the regression coefficients are classified by dimension. In Table 22 all variables with statistically significant betas are presented in the rank order of the absolute magnitude of their betas.

These results are nearly identical, for the legally relevant variables, as the earlier multivariate analysis that contained only those variables. Here, no offense category is substantially more influential than the other categories. Making a living through crime is the only significant employment category. Mental illness has a significant positive impact, as do all the alcohol and drug abuse categories. Few of the criminal history variables had significant impacts: One prior conviction for violent offenses, six prior prison sentences, 10 years in prison.

Offender's and victim's age and sex were all influential, with victim's age having the greatest weight among these characteristics.

Among the characteristics of respondents, age and sex were not significant influences on sentence length. Whites and Hispanics gave significantly lower sentences than blacks. Three of the education categories were significant: junior high and some high school (negative) and some college (positive). Most of the income categories had significant (negative) impacts.

Among the questions regarding the importance of eight purposes of punishment, all the "most important" response categories, except special deterrence, were associated with significant impacts on sentence length. Five were positive--retribution, morality, general deterrence, desert, and boundary setting. Two were negative--incapacitation and rehabilitation.

Finally the relative importance of all offense, offender, victim and respondent characteristics was evaluated (Table 22). Offense type, again is the most important category, followed by offense seriousness and victim's age. After that the rank ordering becomes a mixture of offender, victim, and philosophical concerns with regression coefficients no more than 20 percent as large as the betas for offense types.

The square of the multiple correlation coefficient (R^2) indicates that, altogether, these variables account for 63 percent of the variation in sentence length. Including all the variables that were not "legally relevant" increased the size of the R^2 , or the explanatory power of the statistical model, by only four percent. Despite the variation among

individuals, the question of sentence length boils down to qualities intrinsic to the offense--what kind of offense was it and how much harm resulted.

APPENDIX A

Offense Scenario Dimensions and Levels

Scenario Construction Procedures:

1. One level is randomly selected from each dimension specified below.
2. For each respondent, every dimension except the Offense Dimension is sampled with replacement (i.e. All characteristics, except offense type, can be repeated in scenarios posed to a single respondent).
3. Within each dimension--except Offender's Sex, Offender's Employment History, Offender's Mental Condition and Offender's Drug and Alcohol Abuse--every level has an equal probability of being selected for every scenario. The proportionate distribution of levels within the four excepted dimensions is specified below.
4. The computer is prohibited from choosing certain combinations of levels which are unlikely to occur in real situations (e.g. a female offender committing a forcible rape) or are logically impossible (e.g. an offender who had never been convicted having prior prison sentences).

Offender's Age Dimension

- 1--The offender, a 14 year old
- 2--The offender, a 18 year old
- 3--The offender, a 22 year old
- 4--The offender, a 28 year old
- 5--The offender, a 32 year old
- 6--The offender, a 45 year old
- 7--The offender, a 65 year old
- 8--The offender, a BLANK

Offender's Sex Dimension

- 1--male, (70%)
- 2--female, (30%)

Offense Dimension

Larcenies

- 1--stole property worth \$10 from outside a building.
- 2--stole property worth \$50 from outside a building.
- 3--stole property worth \$100 from outside a building.
- 4--stole property worth \$1,000 from outside a building.
- 5--stole property worth \$10,000 from outside a building.

Burglaries

- 6---broke into a building and stole property worth \$10.
7---broke into a home and stole \$1,000.

Robberies

- 8---did not have a weapon. He/she threatened to harm a victim unless the victim gave him money. The victim gave him/her \$10 and was not harmed.
9---threatened a victim with a weapon unless the victim gave him/her money. The victim gave him/her \$10 and was not harmed.
10---robbed a victim of \$1,000 at gunpoint. The victim was wounded and required hospitalization.
11---robbed a victim at gunpoint. The victim struggled and was shot to death.

Assaults

- 12---[INSERT ONE LEVEL FROM WEAPON DIMENSION] intentionally injured a victim. As a result, the victim died.
13---[INSERT ONE LEVEL FROM WEAPON DIMENSION] intentionally injured a victim. The victim was treated by a doctor and was hospitalized.
14---[INSERT ONE LEVEL FROM WEAPON DIMENSION] injured a victim. The victim was treated by a doctor but was not hospitalized.
15---intentionally shoved or pushed a victim. No medical treatment was required.

Forcible Rapes

- 16---forcibly raped a victim. No other physical injury occurred.
17---forcibly raped a victim. As a result of physical injuries she died.
18---forcibly raped a victim and forced her to perform oral sex on him. No other physical injury occurred.

Drunk Driving

- 19---drove his/her car while drunk, but did not cause an accident.
20---drove his/her car while drunk, and caused a traffic accident where a victim was killed.

Motor Vehicle Theft

- 21---stole a car worth \$5,000 and sold it.

Arson

- 22---intentionally set fire to a building, causing half a million dollars worth of damage.

Drugs

- 23---sold cocaine to others for resale.
24---used cocaine.

Victim's Age Dimension

- 1--The victim was a 10 year old
- 2--The victim was a 14 year old
- 3--The victim was a 20 year old
- 4--The victim was a 30 year old
- 5--The victim was a 45 year old
- 6--The victim was a 60 year old
- 7--The victim was a 75 year old
- 8--The victim was a

Victim's Sex Dimension

- 1--male.
- 2--female.
- 3--BLANK

Offender's Employment History Dimension

- 1--The offender was unemployed for a long time, even though he/she had tried hard to get a job. (10%)
- 2--The offender has never had a steady job. (10%)
- 3--The offender has held a good-paying job for several years. (10%)
- 4--The offender makes his living mostly from committing crimes. (10%)
- 5--BLANK (60%)

Offender's Mental Condition Dimension

- 1--The offender had a serious mental illness. (10%)
- 2--BLANK (90%)

Drug Dependence and Alcohol Abuse Dimension

- 1--The offender was under the influence of an illegal drug when he/she committed the offense. (10%)
- 2--The offense was committed to get money to buy drugs. (10%)
- 3--The offender was drunk when he/she committed the offense. (10%)
- 4--BLANK (70%)

Offender's Prior Convictions for Assault Dimension

- 1--The offender was never convicted before for a violent offense.
- 2--The offender was convicted once before for a violent offense.
- 3--The offender was convicted 3 times before for violent offenses.
- 4--The offender was convicted 6 times before for violent offenses.
- 5--BLANK

Offender's Prior Convictions for Property
Offenses Dimension

- 1--The offender was never convicted before for stealing money or property.
- 2--The offender was convicted once before for stealing money or property.
- 3--The offender was convicted 3 times before for stealing money or property.
- 4--The offender was convicted 6 times before for stealing money or property.
- 5--BLANK

Previous Incarcerations Dimension

- 1--The offender had never been sentenced to jail or prison before.
- 2--The offender had served 1 previous sentence
- 3--The offender had served 3 previous sentences
- 4--The offender had served 6 previous sentences
- 5--BLANK

Length of Previous Incarcerations Dimension

- 1--(of or totalling) 6 months in jail.
- 2--(of or totalling) 1 year in jail.
- 3--(of or totalling) 3 years in prison.
- 4--(of or totalling) 5 years in prison.
- 5--(of or totalling) 10 years in prison.
- 6--BLANK

Weapon Used in Assaults Dimension

- 1--used a gun to
- 2--used a knife to
- 3--used his/her fists to
- 4--used a lead pipe to
- 5--BLANK

Table 1.
Characteristics of Respondents vs. U.S. Population

Characteristic	Percent of Respondents	Percent of U.S. Population (1985)*
Age		
18-24	12.9	16.3
25-34	25.2	24.0
35-44	19.6	18.1
45-54	14.2	12.8
55-64	13.8	12.7
65-74	10.6	9.6
75+	3.6	6.5
Sex		
Male	36.6	48.7
Female	63.4	51.3
Race		
White	68.3	84.9
Black	25.6	12.1
Other	6.2	3.0
Education		
Elementary	1.2	5.9
Junior High	2.8	8.0
Some High School	8.6	12.2
High School Grad	31.5	38.2
Some College	32.8	16.3
College Grad	15.1	19.4 (College Grad +)
Post-Graduate	8.0	
Family Income		
Under \$6,000	6.3	6.5
\$6,000-13,000	11.5	12.9
\$13,000-19,000	15.2	12.5
\$19,000-29,000	25.5	19.8
\$29,000-48,000	25.8	28.7
\$48,000-75,000	11.7	19.6 (Over \$48,000)
Over \$75,000	4.0	
Region		
Northeast	19.3	20.9
Midwest	27.9	24.8
South	36.3	34.3
West	16.4	20.0

*Source: U.S. Bureau of the Census, Statistical Abstract of the U.S., 1987. Washington, DC: U.S. Government Printing Office, 1986. Where appropriate, percentages are based on persons over age 18.

Table 2.

Offense Seriousness by Offense Type:
Comparison of Present Survey with National Survey of Crime Severity

Offense	---Present Survey---			-----NSCS-----		
	Geometric Mean	Ratio Score	Rank	Geometric Mean	Ratio Score	Rank
Property Theft and Damage						
Arson-\$500,000 Damage	220.699	8.09	1	487.652	22.29	1
Larceny of \$10,000	124.423	4.56	2	239.281	10.93	2
Car Theft-Sale-\$5,000	123.169	4.52	3	236.771	10.82	3
Larceny of \$1,000	83.023	3.04	4	150.203	6.86	4
Larceny of \$100	57.201	2.10	5	78.473	3.58	5
Larceny of \$50	46.655	1.71	6	63.049	2.88	6
Larceny of \$10	31.478	1.15	7	37.777	1.72	7
Burglary Offenses						
Burglary-Home-\$1,000	133.506	4.89	1	210.012	9.60	1
Burglary-Building-\$10	60.562	2.22	2	70.559	3.22	2
Robbery Offenses						
Robbery Gun-Death	629.941	23.10	1	946.181	43.24	1
Robbery-Gun-Hospital-\$1,000	266.932	9.79	2	460.007	21.02	2
Robbery-Weapon-No Harm-\$10	178.402	6.54	3	160.007	7.31	3
Robbery-Threat-No Harm-\$10	91.264	3.35	4	144.752	6.62	4
Assault Offenses						
Assault-Death	441.672	16.19	1	778.374	35.57	1
Assault-Hospital	197.788	7.25	2	261.435	11.95	2
Assault-Doctor	140.023	5.13	3	186.039	8.50	3
Assault-No Injury	36.576	1.34	4	32.167	1.47	4
Forcible Rape Offenses						
Rape-Death	738.754	27.09	1	1155.335	52.80	1
Rape-Oral Sex-No Other Injury	414.000	15.18	-	-----	-----	-
Rape-No Other Injury	390.661	14.32	2	565.658	25.85	2
Drunk Driving Offenses						
Drunk Driving-Death	400.774	14.69	-	-----	-----	-
Drunk Driving--No Accident	95.940	3.52	-	-----	-----	-
Drug Offenses						
Cocaine-Sold for Resale	217.922	7.99	-	-----	-----	-
Cocaine-Used	89.125	3.27	-	-----	-----	-
Modulus--Larceny of \$1*	27.275	1.00	-	21.827	1.00	-

*The modulus was computed from the regression of the log base 10 of the dollar amounts of the five larceny offenses on the geometric means of the seriousness scores corresponding to those offenses. The resulting regression equation was $Y = 30.8113 X - 3.5362$. When 1 is inserted for the value of X, Y = 27.275.

Table 3.
Punishment Preferences Across All Offenses

Punishment Type	Percent of Responses Including This Punishment	Percent of Responses Where This Was the Most Severe Punishment Chosen
Death*	36.4	36.4
Prison or Jail	71.4	71.4
Probation	29.8	16.6
Fine	24.3	3.8
Restitution	35.2	3.7

*In these interviews, respondents could choose the death penalty for only three offenses (homicides); therefore the percentages presented regarding the death penalty are for responses about these offenses only.

Table 4.

All Punishment Types Selected, by Offense Type

Offense Type	Punishment Types Selected*				
	Death	Jail or Prison	Probation	Fine	Restitution
Property Theft and Damage					
Arson-\$500,000 Damage	--	81.5	27.1	24.3	39.6
Larceny of \$10,000	--	78.4	28.2	22.3	47.7
Car Theft-Sale-\$5,000	--	72.9	36.1	26.3	59.8
Larceny of \$1,000	--	67.7	34.4	17.9	43.9
Larceny of \$100	--	62.3	33.5	22.4	46.1
Larceny of \$50	--	55.3	38.8	24.0	49.6
Larceny of \$10	--	45.6	41.9	24.0	48.5
Burglary Offenses					
Burglary-Home-\$1,000	--	80.7	31.4	23.8	59.6
Burglary-Building-\$10	--	56.5	46.8	30.7	47.7
Robbery Offenses					
Robbery Gun-Death	37.1	61.7	10.6	6.8	16.8
Robbery-Gun-Hospital-\$1,000	--	92.1	22.5	22.5	47.6
Robbery-Weapon-No Harm-\$10	--	74.5	33.4	26.5	34.7
Robbery-Threat-No Harm-\$10	--	72.2	32.9	31.4	45.2
Assault Offenses					
Assault-Death	29.7	67.4	11.6	7.6	12.4
Assault-Hospital	--	82.3	29.1	19.9	42.4
Assault-Doctor	--	78.3	34.2	28.2	43.9
Assault-No Injury	--	55.4	39.5	34.3	16.7
Forcible Rape Offenses					
Rape-Death	41.7	57.0	5.0	5.3	11.6
Rape-Oral Sex-No Other Injury	--	94.7	18.8	19.6	27.0
Rape-No Other Injury	--	94.1	21.9	19.2	24.1
Drunk Driving Offenses					
Drunk Driving-Death	--	90.6	21.2	29.5	33.6
Drunk Driving--No Accident	--	54.1	40.2	57.8	8.0
Drug Offenses					
Cocaine-Sold for Resale	--	89.9	27.1	35.4	7.8
Cocaine-Used	--	57.9	49.0	33.9	7.3
Mean	36.4**	71.4	29.8	24.3	35.2

*Respondents were asked, serially, whether they thought the offender (if arrested and convicted) should be made to pay a fine, pay restitution, be placed on probation, be made to serve a jail or prison sentence, or (for homicide offenses) be given the death penalty. The entries in this table represent the percentage of respondents who chose each punishment type for each offense type. Respondents could choose as many punishment types as they wished, so the rows do not add to 100 percent.

**Percentage of respondents who selected the death penalty was averaged over only those three (homicide) offenses for which "death" was an optional punishment.

Table 5.

Most Severe Punishment Preferred, by Offense Type

Offense Type	---Most Severe Punishment Preferred---			
	Death	Prison	Jail or Probation	Fine or Restitution
Property Theft and Damage				
Arson-\$500,000 Damage	--	81.5	11.1	7.4
Larceny of \$10,000	--	78.4	12.8	8.8
Car Theft-Sale-\$5,000	--	72.9	19.3	7.8
Larceny of \$1,000	--	67.7	23.0	9.3
Larceny of \$100	--	62.3	23.0	14.7
Larceny of \$50	--	55.3	29.0	15.7
Larceny of \$10	--	45.6	34.6	19.9
Burglary Offenses				
Burglary-Home-\$1,000	--	80.7	14.4	4.9
Burglary-Building-\$10	--	56.6	32.6	11.0
Robbery Offenses				
Robbery Gun-Death	37.1	61.7	1.2	0.1
Robbery-Gun-Hospital-\$1,000	--	92.1	5.6	2.2
Robbery-Weapon-No Harm-\$10	--	74.5	19.5	6.1
Robbery-Threat-No Harm-\$10	--	72.2	19.2	8.7
Assault Offenses				
Assault-Death	29.7	67.4	2.3	0.6
Assault-Hospital	--	82.3	14.4	3.2
Assault-Doctor	--	78.3	16.3	5.3
Assault-No Injury	--	55.4	28.1	16.6
Forcible Rape Offenses				
Rape-Death	41.7	57.0	0.9	0.4
Rape-Oral Sex-No Other Injury	--	94.7	4.3	1.0
Rape-No Other Injury	--	94.1	4.7	1.1
Drunk Driving Offenses				
Drunk Driving-Death	--	90.6	6.7	2.7
Drunk Driving--No Accident	--	54.1	29.4	16.5
Drug Offenses				
Cocaine-Sold for Resale	--	89.9	7.6	2.5
Cocaine-Used	--	57.9	35.3	6.8

*Respondents were asked, serially, whether they thought the offender (if arrested and convicted) should be made to pay a fine, pay restitution, be placed on probation, be made to serve a jail or prison sentence, or (for homicide offenses) be given the death penalty. The entries in this table represent the most severe penalty chosen among all penalties given by each respondent for each offense type.

Table 6.

Mean Prison or Jail Sentence Length Preferred, by Offense Type

Offense Type	Mean Sentence Lengths* (Months)	Standard Deviation	Number of Responses
Property Theft and Damage			
Arson-\$500,000 Damage	99.9	76.7	420
Larceny of \$10,000	67.8	84.5	532
Car Theft-Sale-\$5,000	55.5	76.7	420
Larceny of \$1,000	54.8	89.8	445
Larceny of \$100	43.7	74.5	408
Larceny of \$50	37.4	59.0	379
Larceny of \$10	32.9	64.3	282
Burglary Offenses			
Burglary-Home-\$1,000	53.4	72.4	442
Burglary-Building-\$10	27.0	43.7	270
Robbery Offenses			
Robbery Gun-Death	365.2**	161.5	548
Robbery-Gun-Hospital-\$1,000	123.4	129.3	482
Robbery-Weapon-No Harm-\$10	68.0	91.0	339
Robbery-Threat-No Harm-\$10	46.1	75.1	406
Assault Offenses			
Assault-Death	349.5**	174.5	536
Assault-Hospital	92.7	109.7	446
Assault-Doctor	67.3	100.2	403
Assault-No Injury	42.8	70.3	239
Forcible Rape Offenses			
Rape-Death	416.4**	132.9	616
Rape-Oral Sex-No Other Injury	202.1	173.3	529
Rape-No Other Injury	184.9	155.3	489
Drunk Driving Offenses			
Drunk Driving-Death	141.2	152.5	486
Drunk Driving--No Accident	27.4	53.8	258
Drug Offenses			
Cocaine-Sold for Resale	126.3	142.9	498
Cocaine-Used	66.5	104.4	262
All Offenses	135.7	167.7	10,131

*All sentence lengths over 40 years and all sentences of "life" were recoded to 40 years, which was considered to be, effectively, a life sentence.

**Sentences of "death" for these offenses were recoded to 40 years.

Table 7.
Prison or Jail Sentence Length by Offense Seriousness

Offense Type	Sentence Length	Offense Seriousness		
	Mean (Months)	Rank	Geometric Mean	Rank
Rape-Death	416.4	1	738.8	1
Robbery Gun-Death	365.2	2	629.9	2
Assault-Death	349.5	3	441.7	3
Rape-Oral Sex-No Other Injury	202.1	4	414.0	4
Rape-No Other Injury	184.9	5	390.7	6
Drunk Driving-Death	141.2	6	400.8	5
Cocaine-Sold for Resale	126.3	7	217.9	9
Robbery-Gun-Hospital-\$1,000	123.4	8	266.9	7
Arson-\$500,000 Damage	99.9	9	220.7	8
Assault-Hospital	92.7	10	197.8	10
Robbery-Weapon-No Harm-\$10	68.0	11	178.4	11
Larceny of \$10,000	67.8	12	124.4	14
Assault-Doctor	67.3	13	140.0	12
Cocaine-Used	66.5	14	89.1	18
Car Theft-Sale-\$5,000	55.5	15	123.2	15
Larceny of \$1,000	54.8	16	83.0	19
Burglary-Home-\$1,000	53.4	17	133.5	13
Robbery-Threat-No Harm-\$10	46.1	18	91.3	17
Larceny of \$100	43.7	19	57.2	21
Assault-No Injury	42.8	20	36.6	23
Larceny of \$50	37.4	21	46.7	22
Larceny of \$10	32.9	22	31.5	24
Drunk Driving--No Accident	27.4	23	95.9	16
Burglary-Building-\$10	27.0	24	60.6	20

Results of bivariate regression (with sentence length dependent):

Intercept	-4.66
Slope	.557
Correlation Coefficient (r)	.956
Percent of Variance Explained (r-squared)	.915

Table 8.

Most Severe Preferred Punishment Type by Respondent Characteristics

		-----Most Severe Punishment Preferred-----				
		----Death----				
Respondent Characteristic	#	Capital Offenses		All Only Offenses	Prison or Jail	Fine or Restitution Probation
		Offenses	All Only Offenses	Offenses	or Jail	Probation
Age*						
18-24	30.4	3.9		71.3	17.6	7.3
25-34	33.2	4.6		69.9	18.0	7.6
35-44	35.7	3.9		71.0	17.5	7.5
45-54	41.2	4.4		72.1	16.1	7.5
55-64	41.0	5.6		70.4	16.0	8.1
65-74	36.1	4.7		73.8	15.2	6.3
75+	42.4	4.9		71.7	13.7	9.7
Sex						
Male	38.6	4.8		71.8	16.5	6.9
Female	34.4	4.2		70.9	16.8	8.0
Race*						
White	37.5	4.8		71.5	16.4	7.2
Black	25.1	2.5		69.8	18.3	9.4
Hispanic	41.8	5.4		72.3	14.6	7.7
Asian	16.5	1.5		63.6	28.3	6.6
Other	49.2	5.4		75.6	13.9	5.2
Education*						
Elementary	22.5	2.4		72.2	16.5	8.9
Junior High	43.6	4.3		75.3	13.2	7.3
Some High School	45.0	6.6		71.2	16.6	5.6
High School Grad	37.3	4.7		73.0	15.3	7.0
Some College	34.7	4.7		70.1	17.3	7.9
College Grad	32.9	4.1		69.3	19.2	7.4
Post-Graduate	29.4	3.7		62.8	22.9	10.7
Family Income						
Under \$6,000	36.6	4.0		73.4	16.0	6.5
\$6,000-13,000	28.8	3.6		72.9	17.0	6.5
\$13,000-19,000	42.7	4.5		70.7	16.9	7.8
\$19,000-29,000	28.8	3.9		70.4	17.5	8.2
\$29,000-48,000	36.2	4.7		71.6	17.1	6.7
\$48,000-75,000	46.1	5.8		69.6	16.0	8.5
Over \$75,000	37.8	4.8		71.2	19.2	4.8
Region						
Northeast	34.1	4.2		70.7	17.7	7.4
Midwest	40.6	4.8		70.9	17.3	7.1
South	33.4	4.2		72.5	15.7	7.6
West	38.9	5.1		70.4	16.4	8.1

*Chi-Square over all offenses is significant at .01 level.

#Chi-Square for capital offenses only is significant at .01 level.

Table 9.

Mean Prison or Jail Sentence Length Preferred
by Respondent Characteristics

Respondent Characteristic	Mean Sentence Length (Months)	Deviation from Mean Months	Deviation from Mean Percent
<hr/>			
Age*			
18-24	135.0	-0.7	-0.5
25-34	137.1	1.4	1.0
35-44	122.2	-13.5	-9.9
45-54	130.6	-5.1	-3.8
55-64	153.2	17.5	12.9
65-74	137.7	2.0	1.5
75+	135.8	0.1	0.1
Sex			
Male	134.8	-0.9	-0.7
Female	136.4	0.7	0.5
Race			
White	135.3	-0.4	-0.3
Black	137.7	2.0	1.5
Hispanic	125.6	-10.1	-7.4
Asian	110.3	-25.4	-18.7
Otner	154.3	18.6	13.7
Education*			
Elementary	138.8	3.1	2.3
Junior High	137.6	1.9	1.4
Some High School	145.7	10.0	7.4
High School Grad	136.3	0.6	0.4
Some College	138.3	2.6	1.9
College Grad	123.4	-12.3	-9.1
Post-Graduate	119.0	-16.7	-12.3
Family Income			
Under \$6,000	142.2	6.2	4.6
\$6,000-13,000	133.4	-2.6	-1.9
\$13,000-19,000	129.4	-6.6	-4.9
\$19,000-25,000	139.4	3.4	2.5
\$29,000-48,000	135.8	-0.2	-0.1
\$48,000-75,000	137.5	1.5	1.1
Over \$75,000	133.3	-2.7	-2.0
Region			
Northeast	136.9	1.2	0.9
Midwest	130.9	-4.8	-3.5
South	136.8	1.1	0.8
West	140.4	4.7	3.5

*F-test of differences between groups is significant at .01 level.

Table 10.

Most Severe Preferred Punishment Type
by Offender's and Victim's Age and Sex

-----Most Severe Punishment Preferred-----

-----Death-----

Capital

Characteristic		Offenses Only	All Offenses	Prison or Jail	Fine or Probation	Restitution
			#	#	#	#
Offender's Age*	Blank	33.2	4.6	76.0	12.4	6.9
	14	21.2	3.4	37.5	46.0	13.1
	18	33.4	3.8	70.7	18.0	7.5
	22	40.3	4.7	76.7	12.3	6.2
	28	40.2	5.0	74.8	12.8	7.4
	32	41.5	4.6	75.1	13.8	6.4
	45	41.8	5.0	77.5	11.3	6.3
	65	38.4	4.6	70.6	16.7	8.0
Offender's Sex*	Male	39.1	3.3	71.6	16.8	8.3
	Female	28.6	2.6	67.4	21.5	8.5
Victim's Age*	Blank	38.4	2.5	73.7	17.4	6.4
	10	36.8	12.0	76.1	8.0	3.8
	14	39.3	11.5	72.9	12.3	3.4
	20	35.9	11.0	73.0	12.2	3.7
	30	32.4	9.0	77.8	9.1	4.1
	45	36.8	11.3	75.4	8.3	5.0
	60	34.1	8.9	77.7	8.9	4.5
	75	35.6	10.5	77.2	8.9	3.4
Victim's Sex*	Blank	36.5	1.2	73.4	18.4	7.0
	Male	32.8	8.2	72.6	13.2	6.0
	Female	37.8	9.2	76.3	10.7	3.9

Note: Because only males could be offenders and only females could be victims in sexual assault offenses, distributions of preferred punishments by offender's and victim's sex were computed excluding all sex offenses. Including sex offenses increases the percentage of more severe punishments where the offender is male or the victim is female.

*Chi-Square over all offenses is significant at .01 level.

#Chi-Square for capital offenses only is significant at .01 level.

Table 11.

Most Severe Preferred Punishment Type
by Offender's Employment, Mental Health, Drug/Alcohol
and Criminal Record

-----Most Severe Punishment Preferred-----
-----Death-----

Characteristic		Capital			Fine or	Resti- tution
		Offenses Only	All Offenses	Prison or Jail	Probation	
Offender's Employment Record*	Blank	36.3	4.5	69.4	18.3	7.8
	Unemployed	30.0	4.2	71.7	16.7	8.0
	Never Had a Job	34.7	3.4	76.7	12.5	7.3
	Good-paying Job	36.5	5.1	71.6	15.5	7.9
	Lives by Crime	45.5	5.3	79.5	10.3	4.9
Offender's Mental Condition*	Blank	35.0	4.6	72.3	16.1	7.0
	Mentally Ill	36.5	3.8	60.2	22.6	13.4
Offender's Use of Drugs and Alcohol*	Blank	36.5	4.2	71.0	17.2	7.5
	On Drugs	30.1	4.4	72.6	16.7	6.3
	Crime to Buy Drugs.	43.4	6.4	74.1	11.1	8.5
	Offender Was Drunk	35.6	5.4	70.5	16.5	7.6
Prior Convictions for Violent Offenses*	Blank	36.4	4.9	59.7	24.9	10.5
	None	35.4	4.1	66.1	20.3	9.6
	1	36.0	4.2	74.5	14.1	7.1
	3	38.2	4.5	80.1	11.2	4.2
	6	36.0	4.7	83.2	7.9	4.2
Prior Convictions for Property Offenses*	Blank	34.7	4.4	59.9	25.4	10.4
	None	38.3	4.6	67.5	19.3	8.6
	1	39.5	4.4	76.6	13.3	5.8
	3	40.3	4.5	79.9	10.9	4.7
	6	32.7	4.9	80.2	8.7	6.3
Number of Previous Prison or Jail Sentences*	Blank	34.4	4.3	62.5	23.2	10.0
	None	37.4	4.6	71.6	16.8	7.0
	1	36.3	4.6	78.7	11.2	5.5
	3	36.9	4.0	83.7	7.6	4.8
	6	43.5	6.1	82.7	6.5	4.7
Total Length of Prior Prison or Jail Sentences*	Blank	35.7	4.5	67.2	19.7	8.6
	6 Months	39.3	4.6	79.6	10.7	5.1
	1 Year	31.9	3.8	81.2	10.1	4.9
	3 Years	32.8	3.5	82.5	7.8	6.2
	5 Years	42.0	4.9	82.8	8.2	4.1
	10 Years	48.9	6.5	80.9	8.8	3.8

*Chi-Square over all offenses is significant at .01 level. None of the differences for capital offenses only was significant at this level.

Table 12.

Mean Prison or Jail Sentence Length Preferred
by Offender's and Victim's Age and Sex

Characteristic		Mean Sentence Length (Months)	Deviation from Mean Months	Deviation from Mean Percent
Offender's Age*	Blank	144.4	8.7	6.4
	14	138.3	2.6	1.9
	18	119.6	-16.1	-11.9
	22	131.9	-3.8	-2.8
	28	142.3	6.6	4.9
	32	134.0	-1.7	-1.3
	45	135.0	-0.7	-0.5
	65	140.7	5.0	3.7
Offender's Sex*	Male	111.8	3.4	3.1
	Female	99.7	-8.7	-8.0
Victim's Age*	Blank	206.2	0	0
	10	228.6	22.4	10.9
	14	207.8	1.6	0.8
	20	213.0	6.8	3.3
	30	189.8	-16.4	-8.0
	45	206.8	0.6	0.3
	60	179.1	-27.1	-13.1
	75	221.7	15.5	7.5
Victim's Sex*	Blank	95.6	-31.4	-24.7
	Male	165.0	38.0	29.9
	Female	167.9	40.9	32.2

Note: Because only males could be offenders and only females could be victims in sexual assault offenses, distributions of preferred punishments by offender's and victim's sex were computed excluding all sex offenses. Including sex offenses inflates the severity of preferred punishments for vignettes where males are offenders or females are victims.

*Chi-Square over all offenses is significant at .01 level.

Table 13.

Mean Prison or Jail Sentence Length Preferred
by Offender's Employment, Mental Health, Drug/Alcohol
and Criminal Record

Characteristic		Mean Sentence Length (Months)	Deviation from Mean Months	Percent
Offender's Employment Record	Blank	134.2	-1.5	-1.1
	Unemployed	139.8	4.1	3.0
	Never Had a Job	124.2	-11.5	-8.5
	Good-paying Job	144.2	8.5	6.3
	Lives by Crime	143.9	8.2	6.0
Offender's Mental Condition	Blank	134.7	-1.0	-0.7
	Mentally Ill	150.1	14.4	10.6
Offender's Use of Drugs and Alcohol	Blank	134.4	-1.3	-1.0
	On Drugs	142.5	6.8	5.0
	Crime to Buy Drugs	137.6	1.9	1.4
	Offender Was Drunk	137.9	2.2	1.6
Prior Convictions for Violent Offenses*	Blank	134.5	-1.2	-0.9
	None	129.1	-6.6	-4.9
	1	129.6	-6.1	-4.5
	3	139.8	4.1	3.0
	6	145.2	9.5	7.0
Prior Convictions for Property Offenses*	Blank	135.1	-0.6	-0.4
	None	143.0	7.3	5.4
	1	128.6	-7.1	-5.2
	3	130.6	-5.1	-3.8
	6	142.9	7.2	5.3
Number of Previous Prison or Jail Sentences*	Blank	132.5	-3.2	-2.4
	None	132.6	-3.1	-2.3
	1	135.7	0.0	0.0
	3	137.5	1.8	1.3
	6	159.1	23.4	17.2
Total Length of Prior Prison or Jail Sentences*	Blank	133.6	-2.1	-1.5
	6 Months	132.9	-2.8	-2.1
	1 Year	130.2	-5.5	-4.1
	3 Years	132.6	-3.1	-2.3
	5 Years	142.9	7.2	5.3
	10 Years	171.5	35.8	26.4

*Chi-Square is significant at .01 level.

Table 14.

Multiple Regression Analysis of Sentence Length
With Legally Relevant Variables

Dimension	Level	Unstandardized	Standardized	
		Regression Coefficient b	Standard Error of b	Regression Coefficient beta
Log of Seriousness Score		24.0390	1.5265	0.1167
Property Theft and Damage Offenses	Arson-\$500,000	-282.2079	8.0623	-0.3136
	Larceny of \$10,000	-307.9579	7.4696	-0.3982
	Car Theft-\$5,000	-319.2333	7.7955	-0.3772
	Larceny of \$1,000	-309.4042	7.4656	-0.4014
	Larceny of \$100	-308.8806	7.3578	-0.4129
	Larceny of \$50	-308.0873	7.3276	-0.4164
Burglary Offenses	Larceny of \$10	-298.1228	7.4094	-0.3954
	Home-\$1,000	-322.5831	7.7858	-0.3813
Robbery Offenses	Building-\$10	-322.7159	8.0251	-0.3584
	Gun-Death	N.S.	--	--
	Gun-Hospital-\$1,000	-258.9692	7.9814	-0.2939
	Weapon-No Harm-\$10	-308.5592	8.0546	-0.3432
Assault Offenses	Threat-No Harm-\$10	-321.4601	7.7223	-0.3857
	Assault-Death	-22.5783	10.1166	-0.0259
	Assault-Hospital	-315.2366	10.1230	-0.3658
	Assault-Doctor	-311.8999	10.0156	-0.3840
Forcible Rape Offenses	Assault-No Injury	-295.6710	7.9042	-0.3394
	Death	81.5731	7.8416	0.0984
	Oral Sex-No Other In	-174.2574	7.8858	-0.2048
Drunk Driving Offenses	Rape-No Other Injury	-195.7295	7.8945	-0.2285
	Death	-240.5627	7.9045	-0.2782
	No Accident	-320.9323	7.8949	-0.3654
Drug Offenses	Cocaine-Sold/Resale	-251.9891	7.9031	-0.2882
	Cocaine-Used	Reference Category		--
Offender's Employment Record	Blank	Reference Category		--
	Unemployed	N.S.	--	--
	Never Had a Job	N.S.	--	--
	Good-paying Job	N.S.	--	--
	Lives by Crime	8.8152	3.7730	0.0154
Offender's Mental Condition	Blank	Reference Category		--
	Mentally Ill	25.4226	3.6384	0.4500

(Continued on Next Page)

Table 14. (Continued)

Dimension	Level	Unstandardized		Standardized
		Regression Coefficient	Standard Error	Regression Coefficient
Offender's Use of Drugs and Alcohol	Blank		Reference Category	--
On Drugs		11.5569	3.9253	0.0194
Crime to Buy Drugs		11.2456	3.9960	0.0185
Offender Was Drunk		11.0297	3.9237	0.0185
Prior Convictions for Violent Offenses	Blank		Reference Category	--
None			N.S.	--
1			N.S.	--
3			N.S.	--
6			N.S.	--
Prior Convictions for Property Offenses	Blank		Reference Category	--
None		6.8736	3.3147	0.0161
1			N.S.	--
3			N.S.	--
6		7.9021	3.6709	0.0171
Number of Previous Prison or Jail Sentences	Blank		Reference Category	--
None			N.S.	--
1			N.S.	--
3			N.S.	--
6		13.8754	6.2178	0.0194
Length of Prior Prison or Jail Sentences	Blank		Reference Category	--
6 Months			N.S.	--
1 Year			N.S.	--
3 Years			N.S.	--
5 Years			N.S.	--
10 Years		26.5393	6.3572	0.0332
Weapon Used in Assault	Blank	38.6318	9.8048	0.0357
Gun			Reference Category	--
Fists		35.8230	9.8980	0.0325
Lead Pipe		23.0545	9.7598	0.0215
	Constant	314.8142		
	Multiple R	0.7706		
	R Square	0.5938		
	Standard Error	107.1661		

Table 15.

Multiple Regression Analysis of Sentence Length
By Legally Relevant Variables
Rank Ordered by Absolute Value of Beta

Dimension and Level	Unstandardized Regression Coefficient b	Standard Regression Error of b	Standardized Coefficient beta
Larceny of \$50	-308.0873	7.3276	-0.4164
Larceny of \$100	-308.8806	7.3578	-0.4129
Larceny of \$1,000	-309.4042	7.4656	-0.4014
Larceny of \$10,000	-307.9579	7.4696	-0.3982
Larceny of \$10	-298.1228	7.4094	-0.3954
Rob-Threat-No Harm-\$10	-321.4601	7.7223	-0.3857
Assault-Doctor	-311.8999	10.0156	-0.3840
Burg Home-\$1,000	-322.5831	7.7858	-0.3813
Car Theft-\$5,000	-319.2333	7.7955	-0.3772
Assault-Hospital	-315.2366	10.1230	-0.3658
Drive Drunk-No Accident	-320.9323	7.8949	-0.3654
Burg Building-\$10	-322.7159	8.0251	-0.3584
Rob-Weap-No Harm-\$10	-308.5592	8.0546	-0.3432
Assault-No Injury	-295.6710	7.9042	-0.3394
Arson-\$500,000	-282.2079	8.0623	-0.3136
Rob-Gun-Hospital-\$1,000	-258.9692	7.9814	-0.2939
Cocaine-Wholesale	-251.9891	7.9031	-0.2882
Drive Drunk-Death	-240.5627	7.9045	-0.2782
Rape-No Other Injury	-195.7295	7.8945	-0.2285
Rape-Oral Sex-No Other In	-174.2574	7.8858	-0.2048
Log Seriousness Score	24.0390	1.5265	0.1167
Rape-Death	81.5731	7.8416	0.0984
Mentally Ill	25.4226	3.6384	0.0450
Weapon-Blank	38.6318	9.8048	0.0357
Length of Prior Sent-10 Yr	26.5393	6.3572	0.0332
Weapon-Fists	35.8230	9.8980	0.0325
Assault-Death	-22.5783	10.1166	-0.0259
Weapon-Lead Pipe	23.0545	9.7598	0.0215
Offender On Drugs	11.5569	3.9253	0.0194
6 Prior Prison Sentences	13.8754	6.2178	0.0194
Crime to Buy Drugs	11.2456	3.9960	0.0185
Offender Was Drunk	11.0297	3.9237	0.0185
6 Prior Property Convict	7.9021	3.6709	0.0171
No Prior Property Convict	6.8736	3.3147	0.0161
Lives by Crime	8.8152	3.7730	0.0154
Constant	314.8142		
Multiple R	0.7706		
R Square	0.5938		
Standard Error	107.1661		

Table 16.
Purposes of Punishment Across All Offense Types

Purpose	Importance of Purpose				Don't Know
	Very Important	Somewhat Important	Not At All Important		
Special Deterrence (1)	79.2	11.6	7.7		1.6
Boundary Setting (2)	77.5	13.1	8.1		1.3
Rehabilitation (3)	71.7	13.0	13.3		2.0
Desert (4)	69.8	19.5	9.0		1.6
General Deterrence (5)	69.1	18.3	11.3		1.2
Incapacitation (6)	58.2	13.3	23.4		5.1
Morality or Religion (7)	48.3	21.2	28.2		2.3
Retribution (8)	25.0	21.3	52.4		1.2

After the respondent had selected punishment types and amounts for a vignette, he/she was asked: "When you chose the sentence for this crime, how important was it for you [ENTER EACH REASON BELOW]? Was it very important, somewhat important, or not at all important?"

- (1) "...to scare the offender so he/she will not do it again."
- (2) "...to make a public statement that this kind of behavior will not be tolerated."
- (3) "...to treat the offender to change whatever in him/her made him/her do the crime."
- (4) "...to give the offender what he/she deserves."
- (5) "...to scare off other people who might do the same thing."
- (6) "...to lock up the offender so while he/she is in prison he/she won't be able to commit more crimes."
- (7) "...to respond as my religion or morality requires."
- (8) "...to get even with the offender by making him suffer for what he/she has done?"

Table 17.

Purpose of Punishment, by Offense Type

----Percent of Respondents Who Said the Purpose Was "Very Important"----

Table 18.

Purposes of Punishment by Most Severe Punishment Type

Percent Who Said Purpose Was "Very Important"
and Chose Penalty as Most Severe Punishment

Purpose	-----Death-----				Fine or Restitution	
	Capital Offenses		All Offenses Only	Prison or Jail		
				Probation		
Special Deterrence*	a	75.6#	75.6	83.7	75.3	75.4
	b	35.6#	4.2	72.3	16.0	7.4
Boundary Setting*	a	91.6#	91.6	82.9	68.7	63.6
	b	40.0	5.5	73.1	14.9	6.5
Rehabilitation*	a	46.3#	46.3	75.1	74.9	75.3
	b	28.8	2.9	71.1	17.8	8.2
Desert*	a	91.9#	91.9	76.8	54.2	68.6
	b	42.8	6.0	73.5	12.9	7.6
General Deterrence*	a	86.0#	86.0	75.3	53.5	55.2
	b	41.2	5.8	74.7	13.2	6.3
Incapacitation*	a	74.3#	74.3	77.9	10.1	9.5
	b	34.0	5.8	90.6	2.6	1.0
Morality or Religion*	a	52.5	52.5	52.2	43.7	50.0
	b	36.5	4.7	72.2	14.9	8.1
Retribution*	a	48.7#	48.7	28.4	14.5	19.2
	b	50.1	8.8	75.6	9.6	5.9

Entries in rows "a" are the percentage of respondents who first chose this punishment type as the most severe punishment, and then said the corresponding purpose was "very important" (e.g. 83.7 percent of the respondents who chose "prison" as the most severe punishment type for an offense, then said special deterrence was a "very important" purpose of punishment for that offense).

Rows "b" contain the distribution of most severe punishment types chosen by respondents who indicated that the corresponding purpose was "very important" (e.g. 72.3 percent of respondents who said special deterrence was a "very important" punishment purpose for a particular offense chose "prison" as the most severe punishment for that offense).

*Chi-Square over all offenses is significant at .01 level.

#Chi-Square over capital offenses only is significant at .01 level.

Table 19.
Purposes of Punishment by Prison Sentence Length

Purpose	Importance of Purpose		
	Very Important	Somewhat Important	Not At All Important
Retribution*	181.6	101.3	124.6
Incapacitation*	151.9	49.2	163.9
Morality or Religion*	149.7	118.6	124.8
General Deterrence*	149.1	101.7	94.4
Desert*	147.8	96.9	102.4
Boundary Setting*	145.0	86.6	117.3
Special Deterrence*	132.3	97.1	224.5
Renabilitation*	115.9	135.7	236.8

Note: Entries are mean sentence lengths in months according to the importance attributed to each purpose of punishment.

*Indicates F-ratio between groups is significant at .01 level.

Table 20.

Purpose of Punishment, by Respondent Characteristics

Respondent Characteristic		Percent of Respondents Who Said the Purpose Was "Very Important"							
		Special Deterrence	Boundary Setting	Rehabilitation	Desert Deterrence	General Deterrence	Incapacitation	Morality	Retribution
Age	18-24	78.7	67.1*	72.3*	69.5*	64.4*	56.4*	39.4*	28.1*
	25-34	79.1	74.8	76.7	64.8	64.5	54.6	42.7	25.1
	35-44	80.8	78.9	71.0	61.8	65.3	59.7	42.4	21.4
	45-54	80.4	81.3	77.3	73.7	69.1	62.4	49.0	25.2
	55-64	82.1	81.5	73.6	74.6	75.6	66.0	61.8	23.5
	65-74	82.4	86.5	66.8	80.8	80.2	69.7	60.8	27.2
	75+	78.2	78.2	73.1	85.3	78.3	63.1	59.4	33.9
Sex	Male	75.8*	77.3	64.9*	68.5*	63.4*	59.0	40.5*	24.4
	Female	84.6	79.5	80.4	73.2	75.9	63.3	57.4	26.1
Race	White	79.5	78.2	72.8	69.5*	67.5*	60.4	47.1*	24.1*
	Black	85.5	81.5	75.1	80.1	83.9	67.3	63.5	31.5
	Hispanic	90.6	72.5	74.4	82.1	78.2	71.3	60.0	26.4
	Asian	82.0	48.0	67.8	56.7	58.4	37.4	41.4	30.5
	Other	80.0	80.4	76.9	70.0	86.5	60.3	53.0	42.8
Education	Elementary	82.6*	90.5*	58.7*	61.0*	76.6*	78.5*	53.3*	22.5*
	Junior High	93.6	87.0	63.4	86.8	94.7	73.2	61.1	36.7
	Some High School	85.3	80.6	77.9	81.4	81.8	65.9	59.2	34.6
	High School Grad	83.0	79.4	75.9	75.3	73.7	64.8	50.7	28.7
	Some College	75.4	76.0	76.1	67.0	61.6	55.3	45.7	17.7
	College Grad	71.8	70.3	69.9	57.1	54.0	46.1	37.0	15.6
	Post-Graduate	65.3	66.7	74.4	50.8	36.9	42.8	36.8	12.8
Family Income	Under \$6,000	86.6*	81.5*	79.3*	74.3*	88.8*	74.0*	64.9*	30.5*
	\$6,000-13,000	83.0	78.3	69.8	81.4	73.7	60.8	50.5	29.9
	\$13,000-19,000	80.0	80.8	76.6	74.5	75.2	63.6	53.9	27.9
	\$19,000-29,000	81.8	77.5	67.2	64.5	67.4	55.5	44.3	20.0
	\$29,000-48,000	81.2	78.0	80.2	70.6	63.6	59.1	45.1	20.7
	\$48,000-75,000	74.5	74.8	75.8	65.6	57.1	54.8	38.0	22.2
	Over \$75,000	71.3	73.3	74.3	55.1	55.3	63.4	42.1	17.7
Region	Northeast	82.5	76.4*	76.1	70.9*	70.2	59.4	48.2*	26.0*
	Midwest	79.3	75.5	74.1	72.3	70.1	61.3	50.0	22.8
	South	80.5	82.3	72.3	72.1	70.2	62.2	52.4	27.9
	West	80.2	77.4	70.2	66.5	69.2	61.4	43.3	23.5

*Indicates the Chi-Square is significant at the .01 level.

Table 21.

Multiple Regression Analysis of Sentence Length
With Offense, Offender, Victim, and Respondent Characteristics

Dimension	Level	Unstandardized Regression Coefficient		Standardized Regression Coefficient
		b	Standard Error of b	beta
Log of Seriousness Score		25.5161	1.4934	0.1238
Property Theft and Damage Offenses	Arson-\$500,000	-281.4843	7.7269	-0.3128
	Larceny of \$10,000	-315.5855	7.1814	-0.4080
	Car Theft-\$5,000	-320.8402	7.4630	-0.3791
	Larceny of \$1,000	-314.9739	7.1616	-0.4086
	Larceny of \$100	-314.9536	7.0526	-0.4210
	Larceny of \$50	-317.5762	7.0297	-0.4293
	Larceny of \$10	-305.2026	7.1054	-0.4048
Burglary Offenses	Home-\$1,000	-322.8909	7.4596	-0.3816
	Building-\$10	-325.8923	7.6854	-0.3619
Robbery Offenses	Gun-Death	-40.1530	8.2118	-0.0472
	Gun-Hospital-\$1,000	-295.2871	8.1934	-0.3351
	Weapon-No Harm-\$10	-357.2080	8.3250	-0.3973
	Threat-No Harm-\$10	-370.1115	7.9950	-0.4441
Assault Offenses	Assault-Death	-71.7515	10.1312	-0.0873
	Assault-Hospital	-362.4111	10.1396	-0.4205
	Assault-Doctor	-378.4113	10.0533	-0.4378
	Assault-No Injury	-345.6833	8.1965	-0.3968
Forcible Rape Offenses	Death	27.7096	8.1033	0.0334
	Oral Sex-No Other In	-221.9191	8.1203	-0.2609
	Rape-No Other Injury	-238.3326	8.0732	-0.2782
Drunk Driving Offenses	Death	-244.7351	7.5864	-0.2830
	No Accident	-326.3744	7.5682	-0.3716
Drug Offenses	Cocaine-Sold/Resale	-256.7057	7.5907	-0.2936
	Cocaine-Used	Reference Category		--
Offender's Employment History	Blank	Reference Category		--
	Unemployed	N.S.		--
	Never Had a Job	N.S.		--
	Good-Paying Job	N.S.		--
	Lives by Crime	8.0688	3.6466	0.0141
Offender's Mental Condition	Blank	Reference Category		--
	Mentally Ill	24.7403	3.4910	0.0438

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Table 21. (Continued)

Dimension	Level	Unstandardized Regression Coefficient		Standardized Regression Coefficient	
		b	of b	beta	
Offender's Use of Drugs and Alcohol	Blank		Reference Category		--
On Drugs		12.3987	3.7661	0.0208	
Crime to Buy Drugs		11.3798	3.8386	0.0188	
Offender Was Drunk		10.9684	3.7649	0.0184	
Number of Prior Convictions for Violent Offenses	Blank		Reference Category		--
0			N.S.	--	--
1		-7.2812	3.4326	-0.0171	
3			N.S.	--	--
6			N.S.	--	--
Number of Prior Convictions for Property Offenses	Blank		Reference Category		--
0			N.S.	--	--
1			N.S.	--	--
3			N.S.	--	--
6			N.S.	--	--
Number of Previous Prison or Jail Sentences	Blank		Reference Category		--
None			N.S.	--	--
1			N.S.	--	--
3			N.S.	--	--
6		14.5438	5.9649	0.0204	
Total Length of Prior Prison or Jail Sentences	Blank		Reference Category		--
6 Months			N.S.	--	--
1 Year			N.S.	--	--
3 Years			N.S.	--	--
5 Years			N.S.	--	--
10 Years		24.2895	6.1627	0.0304	
Weapon Used in Assault	Blank	33.6379	9.3995	0.0311	
Gun			Reference Category		--
Knife		30.4011	9.9330	0.0253	
Fists		39.1825	9.4896	0.0356	
Lead Pipe		20.8381	9.3720	0.0195	
Offender's Age	Blank		Reference Category		--
14		-15.5665	5.5128	-0.0280	
18		-10.1523	4.2160	-0.0202	
22		-8.1590	4.0909	-0.0166	
28			N.S.	--	--
32			N.S.	--	--
45		-8.2648	4.0804	-0.0166	
65			N.S.	--	--
Offender's Sex	Male	13.0753	2.4124	0.0343	
	Female		Reference Category		--

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Table 21. (Continued)

Dimension	Level	Unstandardized	Standard	Standardized
		Regression Coefficient b	Standard Error of b	Regression Coefficient beta
Victim's Age	10 Years Old	55.7777	5.8058	0.0711
	14 Years Old	59.7900	6.0284	0.0722
	20 Years Old	59.2313	5.7137	0.0773
	30 Years Old	43.0370	5.7404	0.0551
	45 Years Old	45.9363	5.6961	0.0592
	60 Years Old	31.0686	5.7036	0.0401
	75 Years Old	62.1260	5.8374	0.0774
	Blank	Reference Category		
Victim's Sex	Male	18.9108	3.9241	0.0352
	Female	Reference Category		
Respondent's Age	18-24	Reference Category		
	None Significant	--	--	--
Respondent's Sex	Male	N.S.	--	--
	Female	Reference Category		
Respondent's Race	White	-32.7383	9.2397	-0.0711
	Black	N.S.	--	--
	Hispanic	-35.6173	13.2525	-0.0230
	Asian	N.S.	--	--
	Other	Reference Category		
Respondent's Education	Elementary	Reference Category		
	Junior High	-8.0892	3.7975	-0.0193
	Some High School	-11.8959	3.8849	-0.0273
	High School Grad	N.S.	--	--
	Some College	12.2120	4.0515	0.0259
	College Grad	N.S.	--	--
	Post-Graduate	N.S.	--	--
Respondent's Family Income	<\$6K	Reference Category		
	\$6-13K	N.S.	--	--
	\$13-19K	-13.0825	3.6486	-0.0255
	\$19-29K	-8.6798	3.1832	-0.0209
	\$29-48K	-10.1950	3.2666	-0.0238
	\$48-75K	N.S.	--	--
	\$75K+	-15.5280	6.2608	-0.0162
Retribution	Very Important	24.1065	5.4345	0.0348
	Somewhat Important	N.S.	--	--
	Not At All Important	Reference Category		
Incapaci- tation	Very Important	-61.9441	5.1443	-0.1302
	Somewhat Important	-112.0108	7.0845	-0.1199
	Not At All Important	Reference Category		

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Table 21. (Continued)

Dimension	Level	Unstandardized		Standardized	
		Regression Coefficient	Standard Error	Regression Coefficient	beta
Morality	Very Important	15.0550	5.2125	0.0293	
	Somewhat Important		N.S.	--	--
	Not At All Important		Reference Category		--
General Deterrence	Very Important	30.1221	7.4378	0.0679	
	Somewhat Important		N.S.	--	--
	Not At All Important		Reference Category		--
Desert	Very Important	47.5396	7.2386	0.1076	
	Somewhat Important	37.0057	7.8705	0.0476	
	Not At All Important		Reference Category		--
Boundary Setting	Very Important	27.5778	7.4995	0.0650	
	Somewhat Important	22.2684	8.6314	0.0237	
	Not At All Important		Reference Category		--
Special Deterrence	Very Important		N.S.	--	--
	Somewhat Important		N.S.	--	--
	Not At All Important		Reference Category		--
Rehabilitation	Very Important	-55.5629	5.8699	-0.1271	
	Somewhat Important	-31.1188	7.8532	-0.0329	
	Not At All Important		Reference Category		--
		Constant	357.9607		
		Multiple R	0.7944		
		R Square	0.6310		
		Standard Error	102.4017		

Table 22.

Multiple Regression Analysis of Sentence Length
 With Offense, Offender, Victim, and Respondent Characteristics
 Rank Ordered by Absolute Value of Beta

Dimension and Level	Unstandardized Regression Coefficient b	Standard Error of b	Standardized Regression Coefficient beta
Rob-Threat-No Harm-\$10	-370.1115	7.9950	-0.4441
Assault-Doctor	-378.4113	10.0533	-0.4378
Larceny of \$50	-317.5762	7.0297	-0.4293
Larceny of \$100	-314.9536	7.0526	-0.4210
Assault-Hospital	-362.4111	10.1396	-0.4205
Larceny of \$1,000	-314.9739	7.1616	-0.4086
Larceny of \$10,000	-315.5855	7.1814	-0.4080
Larceny of \$10	-305.2026	7.1054	-0.4048
Rob-Weapon-No Harm-\$10	-357.2080	8.3250	-0.3973
Assault-No Injury	-345.6833	8.1965	-0.3968
Burglary-Home-\$1,000	-322.8909	7.4596	-0.3816
Car Theft-\$5,000	-320.8402	7.4630	-0.3791
Drunk Driving-No Accident	-326.3744	7.5682	-0.3716
Burglary-Building-\$10	-325.8923	7.6854	-0.3619
Rob-Gun-Hospital-\$1,000	-295.2871	8.1934	-0.3351
Arson-\$500,000	-281.4843	7.7269	-0.3128
Cocaine-Sold/Resale	-256.7057	7.5907	-0.2936
Drunk Driving-Death	-244.7351	7.5864	-0.2830
Rape-No Other Injury	-238.3326	8.0732	-0.2782
Rape-Oral Sex-No Other In	-221.9191	8.1203	-0.2609
Incapacitation-Very Imp.	-61.9441	5.1443	-0.1302
Rehabilitation-Very Impor	-55.5629	5.8699	-0.1271
Log of Seriousness Score	25.5161	1.4934	0.1238
Incapacitation-Some. Imp.	-112.0108	7.0845	-0.1199
Desert-Very Important	47.5396	7.2386	0.1076
Assault-Death	-71.7515	10.1312	-0.0873
Victim 75 Years Old	62.1260	5.8374	0.0774
Victim 20 Years Old	59.2313	5.7137	0.0773
Victim 14 Years Old	59.7900	6.0284	0.0722
Victim 10 Years Old	55.7777	5.8058	0.0711
Respondent Race-White	-32.7383	9.2397	-0.0711
General Deterrence-Very I	30.1221	7.4378	0.0679
Boundary Setting-Very Imp	27.5778	7.4995	0.0650
Victim 45 Years Old	45.9363	5.6961	0.0592
Victim 30 Years Old	43.0370	5.7404	0.0551
Desert-Somewhat Important	37.0057	7.8705	0.0476
Robbery-Gun-Death	-40.1530	8.2118	-0.0472
Offender Mentally Ill	24.7403	3.4910	0.0438
Victim 60 Years Old	31.0686	5.7036	0.0401
Fists Used in Assault	39.1825	9.4896	0.0356
Victim Male	18.9108	3.9241	0.0352
Retribution-Very Imp.	24.1065	5.4345	0.0348
Offender Male	13.0753	2.4124	0.0343
Rape-Death	27.7096	8.1033	0.0334

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Table 22. (Continued)

Dimension and Level	Unstandardized Regression Coefficient b	Standard Error of b	Standardized Regression Coefficient beta
Rehabilitation-Some. Imprisoned	-31.1188	7.8532	-0.0329
Weapon in Assaults Blank	33.6379	9.3995	0.0311
10 Total Years in Prison	24.2895	6.1627	0.0304
Morality-Very Imp.	15.0550	5.2125	0.0293
Offender Age 14	-15.5665	5.5128	-0.0280
Respondent Ed-Some High School	-11.8959	3.8849	-0.0273
Respondent Ed-Some College	12.2120	4.0515	0.0259
Respondent Income \$13-19K	-13.0825	3.6486	-0.0255
Knife Used in Assault	30.4011	9.9330	0.0253
Respondent Income \$29-48K	-10.1950	3.2666	-0.0238
Boundary Setting-Some. Imprisoned	22.2684	8.6314	0.0237
Respondent Race-Hispanic	-35.6173	13.2525	-0.0230
Respondent Income \$19-29K	-8.6798	3.1832	-0.0209
Offender On Drugs	12.3987	3.7661	0.0208
6 Prior Prison Sentences	14.5438	5.9649	0.0204
Offender Age 18	-10.1523	4.2160	-0.0202
Pipe Used in Assault	20.8381	9.3720	0.0195
Respondent Ed-Junior High School	-8.0892	3.7975	-0.0193
Crime to Buy Drugs	11.3798	3.8386	0.0188
Offender Was Drunk	10.9684	3.7649	0.0184
1 Conv for Viol Offenses	-7.2812	3.4326	-0.0171
Offender Age 22	-8.1590	4.0909	-0.0166
Offender Age 45	-8.2648	4.0804	-0.0166
Respondent Income \$75K+	-15.5280	6.2608	-0.0162
Offender Lives by Crime	8.0688	3.6466	0.0141
Constant	357.9607		
Multiple R	0.7944		
R Square	0.6310		
Standard Error	102.4017		

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 3

THE NATIONAL PUNISHMENT SURVEY:

COMPARISONS WITH OTHER PUNISHMENT INDICATORS

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Chapter 3--Comparisons with Other Punishment Indicators

Public opinion about punishment has been used as an indicator of a number of factors.

- Satisfaction or dissatisfaction with system performance in regard to actual punishment.
- Confidence or lack of confidence in the judiciary.
- Consensus, consistency, or disagreement on the purposes of punishment.
- Consensus, consistency, or disagreement on the type and length of desired punishment.
- Consensus, consistency, or disagreement on the fit of punishment severity to offense seriousness.
- Whether social or personal circumstances (e.g., victimization or fear of crime) have an effect on punishment preferences.

The body of research addressing these issues relies on three general types of studies: (1) actual system performance data (e.g., sentence type and length; time served; recidivism); (2) national public opinion polls; and (3) local or regional studies incorporating public opinion, system performance data, or both. As one might surmise, no single avenue of research relying on any one of these data sources provides a satisfactory assessment of the issues noted above.

It is therefore of interest to know how data from this comprehensive national survey compare with findings from more limited studies. Regrettably, such comparisons are less systematic than desired, owing to broad variability in the purposes and methods of other studies and to limitations of time and scope in the present study. Nevertheless, three issues can be

addressed:

- Differences between actual and preferred punishment.
- Similarities and differences in the social and personal characteristics related to punishment preferences.
- Similarities and differences in the purposes of punishment.

Actual and Preferred Punishments

A major finding of the survey is the degree to which respondents favor imprisonment as a punishment relative to its actual use by the criminal justice system. Using the most recent comprehensive data on sentencing practices and time served in 13 states, an average of 59 percent of serious violent offenders were sentenced to prison, ranging from a low of 38 percent to a high of 74 percent. For serious property offenders, the average percentage sentenced to prison was 34 percent, ranging from 19 percent to 44 percent.

(Insert Table 1 about here)

In contrast, survey respondents favored imprisonment in 88 percent of the serious violent offense scenarios and in 73 percent of the serious property offense scenarios. The use of imprisonment was clearly preferred by most respondents across all six respondent characteristics. The largest difference among categories of respondents on any of 100 separate comparisons of respondent characteristics was 12.5 percentage points. Seventy-five and 3/10ths percent of those who finished only junior high school favored imprisonment compared to 62.8 percent of those with some graduate education.

In regard to time served, the mean time served for serious violent offenses was slightly more than three years (38 months, ranging from 28

months to 50 months across the 13 states). For serious property crime the mean time served was slightly more than 1.5 years (19 months, ranging from 10 months to 26 months across the 13 states).

(Insert Table 2 about here)

Survey respondents thought that persons imprisoned for serious violent offenses should spend, on average, 17-18 years (or 211 months) in prison, compared to the actual mean of slightly more than 3 years, about 550 percent more time. Survey respondents did not make much distinction among violent offenders based on prior record. Respondents thought that those with no prior convictions should serve 200 months compared to 214 months for those with any priors.

Survey respondents thought that serious property offenders should spend about 5 years in prison (62 months) compared to the actual average of 1.5 years, or about 320 percent more time. Prior convictions of property offenders did matter to survey respondents. They thought that those serious property offenders with no prior convictions should serve about 3 years (37 months) compared to about 5 1/2 years (67 months) for those with any prior convictions.

For individual offense categories, respondents were most different from actual time served in regard to homicide and drug offenses--in each case preferring sentences that were more than six times the actual time served. The difference for drug offenses is partly an artifact of the broader composition of the actual practice drug category that includes offenses pertaining to all types of drugs, whereas the survey drug offenses refer only to cocaine possession or sale. Respondents were closest to actual time served for robbery and burglary, preferring sentences that were only about twice as long.

Discussion

The data reported above agree with Blumstein and Cohen's Western Pennsylvania Study. They concluded that "The sentences desired by the public are found to be consistently more severe than sentences actually imposed, suggesting the need for greater public awareness of current imprisonment practices so that expectations of the determinate sentencing schedules will be realistic and consistent with limited prison capacity" (1982:223).

Using national data some 8-10 years after the Blumstein and Cohen study, we find no substantial evidence to dispute the empirical conclusions about more severe sentences. Nor do we dispute their interpretation that the difference between actual and preferred imprisonment makes it difficult to achieve public agreement on schedules of determinate punishment. The persistence of the large disparities between preferred sentences and actual time served is an interesting issue that has not been resolved in favor of public misconception or public disagreement with policy, the two possible explanations offered by Blumstein and Cohen. To address this issue, we must first examine some additional comparative data.

Comparability of Aggravating and Mitigating Circumstances:Prior Record, Employment, Age of OffenderPrior Record

In a 1977 survey conducted by LEAA (Public Image of the Courts), most of the general public (84%) believed that prior criminal record should influence judges' sentencing decisions in a "tougher" direction. But these data did not

(Insert Table 3 about here)

address the issue of how much tougher judges should be. The current survey, however, permits us to quantify this public expectation. As expected, the condition of prior conviction affects sentencing recommendations for all offenses. The effect is considerably greater, however, for serious property crimes (an 81% increment) than for serious violent crimes (a 7% increment).

(Insert Table 4 about here)

Inspection of the individual offenses suggests that this disparity is mostly a result of violent offenses eliciting formidable sentence recommendations even in the absence of prior convictions. This pattern is not observed for property offenses. That is, respondents are very punitive toward violent offenders to begin with, and prior conviction adds only a relatively small increment to the total sentence. For example, respondents favor an average sentence of 28 years for homicide offenders with no prior record. Those with prior convictions receive 4 additional years. While this is a moderate absolute increase, it is relatively small given the base rate of 28 years. The same is true for robbery and assault, though not for rape. Prior

(Insert Figure 1 and Table 4 about here)

conviction does make a significant difference in the case of rape--a 6 year increment on a base of less than 12 years.

It is for property offenses, however, that prior conviction has its greatest impact. For burglary the increment is 140%--an increase of 2.33 years compared to a base of only 1.67 years for burglary offenders with no prior convictions. Similarly, the increase in recommended sentence is 4.92 years for arson, compared to an average sentence of 4.5 years for those with no prior record (an increment of 109%). While the increments for larceny and auto theft are not as great as those for burglary and arson, they follow the

same pattern, and are greater than all of the increments observed for serious violent offenses.

What differentiates all of the property offenses from the violent crimes is relatively short sentences for property offenders with no prior record. That is, respondents do not appear to view property crime with great alarm, and are significantly less punitive toward property offenders as compared to violent criminals. In all cases of offenders with no prior record, the average sentences for each of the four property crimes (burglary, larceny, auto theft, and arson) are shorter than those for each of the four violent offenses (homicide, rape, robbery, and assault). However, whereas prior record had a relatively small impact on the sentences respondents would impose on violent offenders, it has a significant, often very large, impact on sentencing recommendations for property offenders. This suggests that respondents are more selective in their response to property offenders than they are to violent offenders. Property offenders with prior records are viewed as deserving considerably more punishment than those with no prior record. Prior record does not play nearly as large a discriminating role for violent offenses.

Economic Status

The Public Image of the Courts study reveals that the general public believes that the economic status of the offender should not influence judges' sentencing decisions: 82% believed that a "well-to-do offender" should have no influence on the decision, while 85% believed that the status of "poor offender" should have no bearing on sentencing (Table 3). Our survey data generally support this position, although there are some notable

exceptions to the pattern. Overall, and for property and violent crimes generally, respondents would have "unemployed" offenders serve shorter sentences than those with "good paying jobs" or those who "live by crime".

(Insert Table 5 about here)

However, these differences are quite small, and are not substantively meaningful; a conclusion of "no influence" would be in order here as in the LEAA study.

Examination of specific offense types reveals that general categories such as "violent" and "property" mask some striking employment status differences. For example, respondents would sentence robbers who make their living by crime to over 10 years in prison, while sentencing unemployed robbers to a little over 6 years, and those with good paying jobs to a little less than 6 years. Arson offenders who lead lives of crime receive an average sentence of over 11 years, those who are unemployed an average of less than 9 years, and those with good paying jobs a little over 6 years. A similar pattern is observed for burglary and larceny, although the differences are not as marked. For five offenses (homicide, rape, burglary, grand larceny, and petty larceny) survey respondents would assign the least severe sentence to unemployed offenders.

Although differences by employment status are relatively small for these offenses, the data suggest that respondents may view unemployment as a mitigating factor in the assignment of criminal punishment. On the other hand, career crime is clearly an aggravating factor for most offenses (for 6 of the 9 offenses examined offenders who "live by crime" receive the longest sentence).

Age of Offender

A final comparison has to do with the influence of age of offender. The Public Image of the Courts data revealed that 50% of all respondents reported that an "offender under age 18" should have "no influence on judges' sentencing decisions, and 33% believed such offenders should be sentenced "a little lighter" (Table 3). Our survey data offer only partial support for this position. Specifically, our data show that with but one exception (robbery) respondents believe that offenders under age 18 should receive significantly lighter sentences than those aged 18 and older.

(Insert Table 6 about here)

For example, for violent crimes generally, offenders aged 18 and older receive an average sentence of almost 18 years, while those under 18 average a little over 14 years. The differences are even larger, and often striking, for other offenses: property crimes - 5.08 years for offenders aged 18 and older vs. 2 years for offenders under age 18; homicide - 32.8 years vs. 23 years; rape - 16.6 years vs. 7.9 years; assault - 6.7 years vs. 3.7 years; burglary - 3.6 years vs. 1.6 years; grand larceny - 5.08 years vs. 2.17 years; auto theft 4.6 years vs. 1.5 years; and arson - 8.2 years vs. 2.6 years. Put another way, offenders under age 18 receive sentences ranging from 72% (petty larceny) to 30% (homicide) shorter than those given to offenders aged 18 and older who commit the same crime. Respondents clearly are taking age into account as a mitigating factor when evaluating appropriate sentence lengths.

Discussion

The data on aggravating and mitigating circumstances suggest the public, by and large, does not disagree with past and current practice regarding

tougher sentences for those with prior records or for career criminals, and lighter punishment for juveniles. Earlier studies did not examine the issue of how much tougher or how much lighter. When these different circumstances are examined in regard to length of punishment, we find no reason to change the overall conclusions about the public's desire for longer punishment. Yet the public appears to make qualitative distinctions about punishment severity consistent with both earlier opinion studies about courts and actual punishment practice.

Blumstein and Cohen formulated the issue of disparities between public sentence preferences and actual practice in terms of misunderstanding versus disagreement. Our evidence suggests that the disparity in sentence length is a disagreement with practice rather than a misconception, since the public tends to concur with actual practice in making sentence distinctions based on aggravating or mitigating circumstances.

Coupled with the opinion studies that indicate that the courts are too lenient on offenders, we suspect that the public's preferences for much stiffer sentences are more symbolic than firmly derived quantifications of actual deserved time. While we have not yet conducted the more complex data analysis of interrelationships between punishment severity and reasons for punishment, we can offer an initial comparison of reasons for punishment with earlier studies.

Reasons for Punishment

Data from earlier national public opinion surveys from 1970 through 1981 indicate a sharp decline in the percent favoring rehabilitation as the main purpose of imprisonment, from 73 percent to 49 percent. This decrease

(Insert Tables 7 and 8 about here)

characterized all major subgroups of the population. In place of rehabilitation, more people "switched" to incapacitation (protecting society from future crimes by the offender) than to punishment. In 1981, 31 percent favored incapacitation as the main purpose of imprisonment compared to 12 percent in 1970. In 1981, 17 percent favored punishment as the main purpose of imprisonment compared to eight percent in 1970.

These data suggest that although public support for rehabilitation has diminished, it was still, in 1981, the single most favored objective or punishment. In addition the changes from 1970 to 1981 suggest a much weaker consensus in 1981 than in 1970 about the most appropriate objective of imprisonment.

These facts led us to wonder whether most people had only a single objective in giving imprisonment as a sentence. Since we were asking each respondent about eight offense scenarios which were likely to differ, we reasoned that we should construct separate items for each punishment objective, since imprisonment objectives might vary by offense or offender circumstances. Consequently it is difficult to directly compare our data using multiple responses with percentages from earlier years in which a forced choice response mode was used.

When we examine both comparable objectives of imprisonment (namely, punishment, rehabilitation, incapacitation) as well as a broader range of objectives, we find that our suspicion about preference for multiple objectives is confirmed. Five of the eight reasons for punishment were thought to be "very important" by about 70 percent or more of the respondents. Furthermore, when we limit analysis to those respondents giving a

sentence of imprisonment, we find strong support for three different orientations. Support was found for one punitive orientation, namely desert ("to give the offender what he/she deserves") but not for a more severe formulation namely, retribution ("to get even with the offender by making him suffer for what he/she has done"). Seventy-eight percent of the respondents sentencing an offender to jail or prison thought that desert was a "very important" reason in their decision compared to only 30 percent who thought that retribution was a "very important" reason. We also find comparable support for rehabilitation, where 73 percent of those giving a jail or prison sentence thought rehabilitation was a "very important" reason or purpose. That was also true for incapacitation, where 78 percent of the respondents giving a jail or prison sentence thought that incapacitation was a "very important" reason for their decision.

These data suggest that our inference about the public's increased uncertainty over the goals of imprisonment based on the changes from 1970 to 1981 is accurate in 1987. Strong support is shown by people sentencing hypothetical offenders to jail or prison for three very different correctional goals. In fact, despite the support for these three typical correctional goals, they are not the most strongly supported ones. For persons sentencing offenders to jail or prison, the most strongly supported goals are boundary setting ("making a public statement that this kind of behavior won't be tolerated") and special deterrence ("scaring the offender so he or she will not do it again"). In each instance, about 83 percent of the respondents sentencing an offender to jail or prison thought that those reasons or purposes were very important.

Conclusion

The comparison of the National Punishment Survey data with other data has focused on three areas. The comparison of public punishment preferences with actual imprisonment rates and time served showed that the public desires more severe punishment than is currently administered by the criminal justice system. This is comparable to most, if not all, other studies whether the issue is formulated in a very general way ("Are courts too harsh or too lenient?") or in more detailed ways as in our study. Our national sample and our instrumentation involving the assignment of specific penalties to specific offense scenarios suggest that the U.S. adult population is able to consistently apply its well-known perception that courts are too lenient to a series of specific hypothetical case scenarios. When they do, they think that offenders should serve time in jail or prison more often than they actually do and that they should remain in prison much longer than they actually do.

Whether these preferences are practical, feasible, or have any utility for prescriptive determinations of sentences is dubious. However, that is not the task which respondents were assigned. The sentences they gave in response to the offense scenarios indicate an incontrovertible and persistent preference for more severe punishment than is currently the practice. They were not asked to think in terms of practicality, feasibility, or cost. Those are obvious dimensions that policy makers and criminal justice executives need to balance in creating workable and more effective sentencing structures. The fact remains that when asked for their prescriptions in a case specific framework independent of knowledge of actual practice, the public wants more imprisonment for longer periods of time.

The public also expressed the preference for more than a single reason or purpose for punishment. We expected this to be so on the basis of previously documented declines in support for rehabilitation toward a more even distribution among rehabilitation, incapacitation, and punishment perspectives reflecting less consensus on a single purpose. We did not expect to find the distribution of reasons or purposes that emerged in the 1987 data in view of our findings about severity of punishment and the recent rhetoric about retribution. Unexpectedly, the public by and large rejected the most severe statement of punishment, namely retribution. Instead respondents giving a sentence of jail or prison favored in about equal proportion incapacitation and desert very strongly and rehabilitation only slightly less strongly. But surprisingly even stronger support was voiced for sending offenders the message that their criminal activity won't be tolerated (boundary maintenance) and that they ought to be scared by the prospect of much stiffer sentences from committing the crime again (special deterrence).

These findings about purposes of punishment suggest that the public wants many things to be accomplished by the administration of justice, although they may simultaneously be unaware of limits imposed by work loads and costs. However, support for multiple purposes of punishment is a clear rejection of unidimensional rhetorical responses to crime. The public has a solid grasp of common rationales for punishment implying that improved public education about the questions of practicality, feasibility, and cost based on system performance data has a strong base upon which to build.

TABLE 1: COMPARISON OF BJS 13 STATE INCARCERATION RATES, (Range),
AND CRIME SURVEY INCARCERATION RATES, IN PERCENTAGES

	BJS <u>13 STATES*</u> (%)	BGSU <u>SURVEY** (%)</u>
Serious Violent Crime	59 (38.3-74.5)	88.5
No Priors		76.5
Any Priors		92.7
Serious Property Crime	34 (19.3-43.9)	73.1
No Priors		47.6
Any Priors		81.5
Homicide	78 (52.8-90.6)	98.2
No Priors		95.0
Any Priors		99.4
Rape	72 (27.2-97.8) (BJS data includes other sex crimes)	94.4
No Priors		85.3
Any Priors		97.7
Robbery	72 (56.1-100)	79.6
No Priors		61.2
Any Priors		85.5
Aggravated Assault	39 (30.6-50.7)	80.4
No Priors		57.4
Any Priors		88.2
Burglary	44 (36.5-61.3)	69.1
No Priors		44.2
Any Priors		78.1
Larceny	27 (24.8-33.7)	54.7
Petty Larceny		21.9
No Priors		65.4
Any Priors		73.1
Grand Larceny		46.5
No Priors		81.0
Any Priors		
Auto Theft	41 (33.7-46.9)	72.9
No Priors		44.8
Any Priors		84.5
Arson	40 (31.1-53.2)	81.5
No Priors		56.5
Any Priors		87.1
Drug Sale/Possession	31 (12.1-43.9)	75.2
No Priors		56.2
Any Priors		80.2

* Percent of convictions that resulted in sentences of incarceration.

** Percent of respondents whose most severe sentence was "jail or prison."

TABLE 2: COMPARISON OF BJS 13 STATE MEAN TIME SERVED, (Range),
AND CRIME SURVEY SENTENCES, IN MONTHS

	<u>BJS 13 STATES</u>	<u>BGSU SURVEY</u>	<u>SURVEY: ACTUAL RATIO</u>
Serious Violent Crime	38 [28.3-50.5]	211 200 214	5.5
No Priors			
Any Priors			
Serious Property Crime	19 [10.3-26.1]	62 37 67	3.2
No Priors			
Any Priors			
Homicide	58 [39.3-78.6]	379 341 392	6.5
No Priors			
Any Priors			
Rape	43 [25.5-63.7]	194 139 211	4.5
No Priors			
Any Priors			
Robbery	38 [29.1-61.5]	83 76 84	2.2
No Priors			
Any Priors			
Aggravated Assault	26 [17.4-37.0]	81 71 83	3.1
No Priors			
Any Priors			
Burglary	22 [13.8-30.5]	43 20 48	1.9
No Priors			
Any Priors			
Larceny	15 [6.5-22.7]	39	2.5
Petty Larceny		31	
No Priors		38	
Any Priors		62	
Grand Larceny		42	4.1
No Priors		65	
Any Priors			
Auto Theft	17 [11.8-24.9]	55 57 59	3.2
No Priors			
Any Priors			
Arson	24 [9.4-35.6]	100 54 113	4.1
No Priors			
Any Priors			
Drug Sale/Possession	17 [10.4-24.0]	106* 85 110	6.3
No Priors			
Any Priors			

* Survey data referred only to cocaine sale and use.

Table 3. Effect of Prior Record, Economic Status of Offender,
and Age of Offender on Judges Sentencing Decisions

Public Image of the Courts (1977)*

Should Prior Criminal Record
Influence Judges' Decisions? 49% "Much Tougher"
 35% "A Little Tougher"

Should Well-to-do Offender
Influence Judges' Decisions? 82% "No Influence"

Should Poor Offender
Influence Judges' Decisions? 85% "No Influence"

Should Offender Under Age 18
Influence Judges' Decisions? 50% "No Influence"
 33% "A little lighter"

BGSU Survey (1987) -- Months Sentenced

All Crimes: Overall 136
 No Priors 139
 Any Priors 135

Violent Crimes: Overall 159
 No Priors 200
 Any Priors 214

Property Crimes: Overall 62
 No Priors 37
 Any Priors 67

All Crimes: Overall 136
 Unemployed 132
 Good Paying Job 144
 Lives by Crime 144

Violent Crimes: Overall 211
 Unemployed 209
 Good Paying Job 225
 Lives by Crime 231

Property Crimes: Overall 62
 Unemployed 61
 Good Paying Job 62
 Lives by Crime 70

All Crimes: Overall 136
 Under 18 138
 18 & Older 144

Violent Crimes: Overall 211
 Under 18 172
 18 & Older 213

Property Crimes: Overall 62
 Under 18 24
 18 & Older 61

* Source: Public Image of the Courts, 1977: General Publics Data.
Law Enforcement Assistance Administration, 1979.

Table 4: Effect of Prior Convictions on Sentences Recommended
by Survey Respondents

	<u>% Increase in Sentence (Prior conviction Increment/No Prior Sentence)</u>
Serious Violent Crime	7% (1.17 yrs/16.67 yrs)
Serious Property Crime	81% (2.5 yrs/3.08 yrs)
Homicide	15% (4.25 yrs/28.42 yrs)
Rape	52% (6 yrs/11.58 yrs)
Robbery	11% (.67 yrs/6.33 yrs)
Aggravated Assault	17% (1 yr/5.92 yrs)
Burglary	140% (2.33 yrs/1.67 yrs)
Petty Larceny	26% (.67 yrs/2.58 yrs)
Grand Larceny	55% (1.92 yrs/3.5 yrs)
Auto Theft	59% (1.83 yrs/3.08 yrs)
Arson	109% (4.92 yrs/4.5 yrs)
Drug Sale/Possession	29% (2.08 yrs/7.08 yrs)

FIGURE 1

SENTENCE LENGTH ADDED BY PRIOR CONVICTIONS

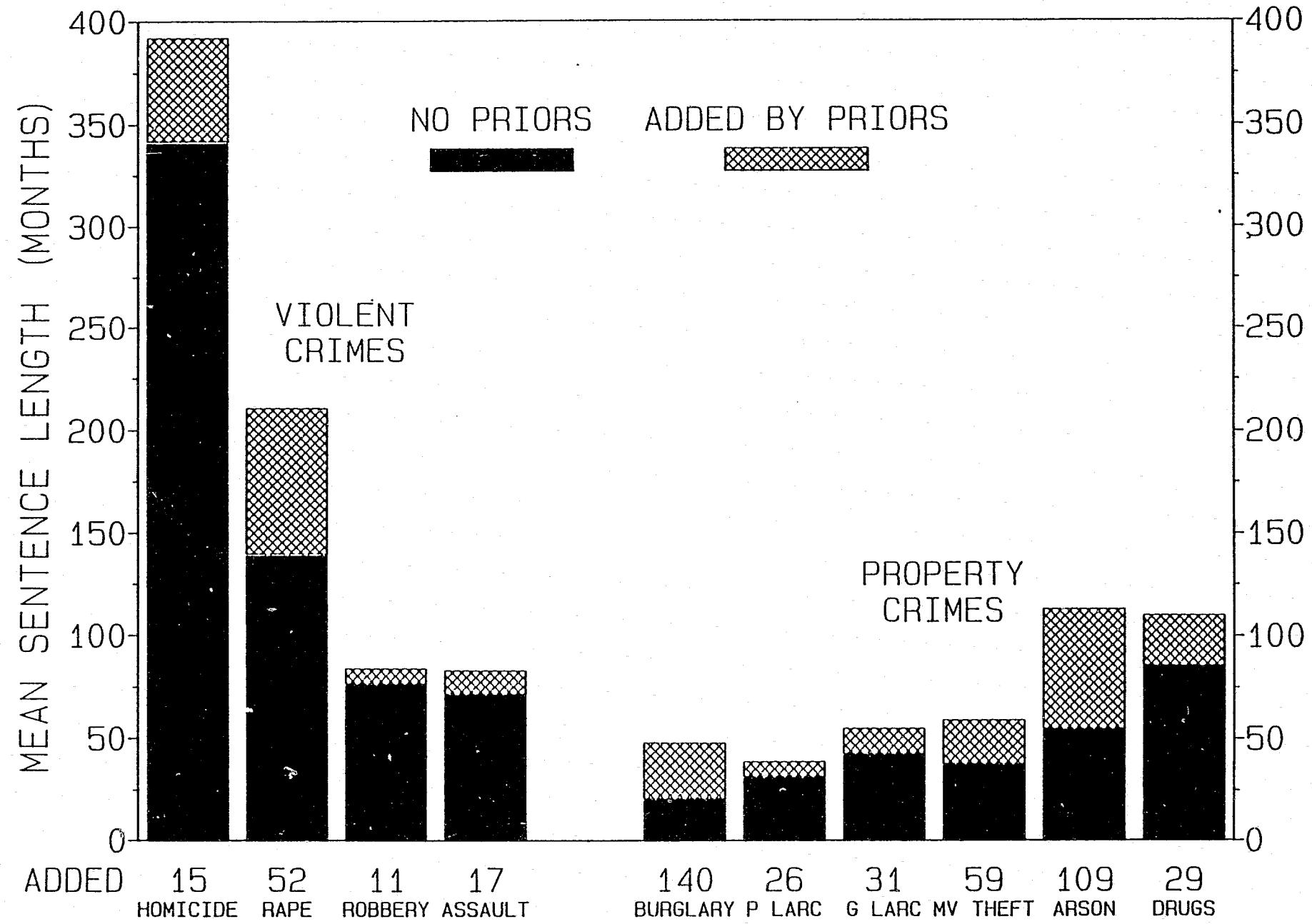


Table 5: Effect of Employment Status on Sentence Length (in months),
by Offense Type

Homicide		Rape	
Overall	379	Overall	194
Unemployed	374	Unemployed	185
Good Paying Job	385	Good Paying Job	217
Lives by Crime	405	Lives by Crime	208
Aggravated Assault		Robbery	
Overall	81	Overall	83
Unemployed	86	Unemployed	75
Good Paying Job	83	Good Paying Job	67
Lives by Crime	85	Lives by Crime	124
Burglary		Grand Larceny	
Overall	43	Overall	62
Unemployed	34	Unemployed	55
Good Paying Job	39	Good Paying Job	64
Lives by Crime	47	Lives by Crime	72
Petty Larceny		Auto Theft	
Overall	39	Overall	55
Unemployed	32	Unemployed	70
Good Paying Job	36	Good Paying Job	63
Lives by Crime	52	Lives by Crime	66
Arson			
Overall	100		
Unemployed	104		
Good Paying Job	76		
Lives by Crime	135		

Table 6: Effect of Age of Offender on Sentence Length (in months)
by Offense Type

			<u>% Decrease in Sentence Due to Offender Under 18</u>
Homicide			
Overall	379		30%
Under 18	276		
18 & Older	394		
Rape			
Overall	194		52%
Under 18	95		
18 & Older	199		
Aggravated Assault			
Overall	81*		46%
Under 18	44		
18 & Older	81		
Robbery			
Overall	83		--
Under 18	82		
18 & Older	82		
Burglary			
Overall	43*		56%
Under 18	19		
18 & Older	43		
Grand Larceny			
Overall	62*		57%
Under 18	26		
18 & Older	61		
Petty Larceny			
Overall	39*		72%
Under 18	11		
18 & Over	39		
Auto Theft			
Overall	55*		67%
Under 18	18		
18 & Older	55		
Arson			
Overall	100*		68%
Under 18	31		
18 & Older	98		

* Overall means are equal to or greater than 60th age-specific means because vignettes in which age of offender was not specified are included in the computation of the overall mean.

TABLE 7

Main Emphasis (1970, 1981) or "Very Important" (1987) Reason for Imprisonment, 1970, 1981, 1987

<u>Reason</u>	<u>1970</u>	<u>1981</u>	<u>1987</u> ^(c)	
			<u>Jail or Prison Sentence</u>	<u>Other Sentence</u>
Punishment	8	17		
Retribution			30	16
Desert			78	59
Rehabilitation	73	49	73	75
Incapacitation	12	31	78	10
("Protect society from future crimes")	_____	_____		
	93 ^(a)	97 ^(b)		

(a) 7% not sure.

(b) 3% not sure.

(c) Percent responding "very important."

(d) Source: 1970 & 1981 data from Sourcebook of Criminal Justice Statistics 1983, Figure 2.14, p. 261.

TABLE 8

Main Emphasis of Imprisonment by Respondent Characteristics, 1970, 1981^(a)

<u>Respondent Characteristics</u>	1970			1981		
	<u>Punishment</u>	<u>Rehabilitation</u>	<u>Incapacitation</u>	<u>Punishment</u>	<u>Rehabilitation</u>	<u>Incapacitation</u>
Sex						
Male	8	74	11	18	50	30
Female	10	72	13	16	48	33
Race						
White	8	75	12	17	49	31
Black	10	64	9	19	50	29
Age						
16-20	6	75	11	na	na	na
21-29	4	81	11	12	54	33
30-49	7	79	9	19	51	27
50 and older	12	63	15	19	44	33
Education						
8th grade or less	15	57	11	24	39	32
High School	8	73	13	20	47	30
College	6	80	10	13	53	32
Income						
1970 categories						
Under 5,000	11	66	12			
5,000 to 9,999	8	72	13			
10,000	6	80	11			
1981 categories						
7,500 or less				19	47	31
7,501 to 15,000				20	52	26
15,001 to 25,000				16	48	35
25,001 and over				15	50	32
Region						
East	9	72	14	17	53	28
Midwest	6	76	11	13	51	32
South	11	70	10	20	48	29
West	6	75	13	18	41	38

(a) Source: Sourcebook of Criminal Justice Statistics, 1983, Table 2.68, p. 262.

TABLE 9
 Percent Responding "Very Important" Reason for
 Imprisonment by Respondent Characteristics, 1987

<u>Respondent Characteristics</u>	<u>Punishment</u>		<u>Rehabilitation</u>	<u>Incapacitation</u>
	<u>Retribution</u>	<u>Desert</u>		
Sex				
Male	29	78	66	75
Female	30	77	80	80
Race				
White	29	77	73	77
Nonwhite	34	84	73	83
Age				
18-24	35	76	71	71
25-34	31	73	76	71
35-44	26	70	74	75
45-54	31	78	76	81
55-64	27	81	71	83
65-74	29	89	71	86
75+	30	85	75	83
Education				
Not HS grad	37	87	73	88
HS grad	33	81	75	78
College	20	66	71	68
Income				
Under \$6,000	36	78	84	90
\$6,000 to 13,000	30	89	70	80
13,000 to 19,000	32	79	77	82
19,000 to 29,000	25	76	68	70
29,000 to 48,000	25	75	78	74
48,000 to 75,000	24	72	72	75
over 75,000	25	61	71	77
Region				
Northeast	30	76	75	78
Midwest	26	78	72	75
South	33	78	72	79
West	28	78	76	81

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 4

ATTITUDES TOWARDS PUNISHMENT IN ENGLAND AND WALES:

SOME SURVEY FINDINGS

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Justice cannot turn its back on popular opinion. Precisely how much weight sentencers should attach to the views of the public is a matter for debate; but public confidence is clearly one of the constituents of an effective system of justice. It is one thing to assert the need for public confidence, of course, and quite another to assess whether the system actually commands this confidence. In Britain, it is probably fair to say that practitioners and politicians alike are pessimistic, and assume widespread public dissatisfaction with the perceived leniency of the courts. The sources of this pessimism include:

- * general support for capital punishment;
- * polls showing scepticism about the courts on other scores;
- * media coverage of unusually lenient sentences; and
- * in the case of politicians, their constituency postbags.

A number of academic surveys carried out in the 80's have similarly found some public dissatisfaction - but they have also come up with findings which contradict or qualify the image of a public which is uniformly in favour of tougher sentences. Indeed some surveys suggest a considerable congruence between opinion and sentencing practice. In the first part of this paper, I shall set out some findings from two surveys: the second sweep of the 1984 British Crime Survey (BCS) and a smaller survey conducted a year later, referred to here as the 'Walker/Hough' survey. The second part of the paper examines some of the factors which seem to be associated with punitive and lenient attitudes in Britain, drawing exclusively on the latter survey (1).

Assessing attitudes to sentencing

There can be little doubt that in Britain - as in the United States and Canada - those

1. In this paper I have used 'punitiveness' as a shorthand to refer to a preference for severe sentences - whether for retributive, vindictive, deterrent or incapacitative reasons.

survey questions which ask about the adequacy of the sentencing process *at a general level* tap widespread dissatisfaction. For a start, there is a clear majority in favour of the reintroduction of capital punishment. For example, a recent poll reported 73% in favour, rising to 80% for terrorist offences and 83% for child murder (*Evening Standard*, 6 October 1987). And in a survey carried out by the Association of Market Research Organisations, 83% agreed that 'sentences given by the courts are frequently not heavy enough'; only 21% thought that 'the courts usually get the length of sentence right'; 88% thought that there was unwarranted disparity between sentences (AMSO, 1986). Gallup (1982) report 67% of their sample thinking that court sentences were too short: in the same survey, 60% of people wanted the 'cat' reintroduced.

It would be a mistake, however, to take these findings at their face value. Four points must qualify them. In asking whether sentences are adequate, surveyors are rarely explicit about the criteria against which adequacy is to be judged. We do not know whether respondents understand questions such as AMSO's and Gallup's in terms of deterrence ('Are sentences tough enough *to keep crime in check?*') or in terms of commensurability ('Are sentences tough enough *to fit the crime?*'). Nevertheless, the distinction is an important one: policy-makers may want to attach rather different weight to views about the deterrent effectiveness of sentencing on the one hand, and about its equity or fairness on the other.

Secondly, the questions often focus - either explicitly or implicitly - on those more serious crimes which can be expected to attract a prison sentence at the least. Respondents are not asked to consider whether the right balance is struck between custodial and non-custodial sentences for those less serious crimes which constitute the bulk of court business. Thirdly - a related point - though different respondents will probably think of different sorts of crime when they are asked whether 'in general' sentences are tough enough, evidence from Canada suggests that most people answer with stereotypes of violent and dangerous criminals in mind (see Brillon, 1984, in press; Doob and Roberts, 1983, in press). The reasons for this are probably

twofold. On the one hand, people both overestimate the proportion of crimes which involve violence (see Walker and Hough, in press, Chapter 11); and on the other, they may not regard cases of theft and vandalism as 'real' crimes.

Certainly, if respondents are asked not about sentencing in general, but sentencing for specific categories of crime, marked differences emerge. We did this in a recent survey (Walker and Hough, in press, Chapter 10) and as Table 1 shows, we found overwhelming dissatisfaction with sentences for rape and robbery (2): there was less - but still considerable - dissatisfaction in relation to burglary; and for shoplifting, a minority of 17% felt that sentences were too soft, two-thirds saying that sentences were about right or too tough.

[Table 1 about here]

Finally, and crucially, responses to such questions depend on the accuracy of respondents' knowledge about crime and sentencing. People who overestimate the lenience of courts are very likely to find them too soft - and the small minority overestimating the severity of courts is likely to find them too tough. In the Walker/Hough survey, we asked what proportion of convicted adult offenders are sent to prison: we selected two categories of crime for which the correct answer is a half - burglary and causing death by reckless driving. The majority underestimated the percentage of burglars who are sent to prison: two-thirds thought put the figure at a third. And for causing death by reckless driving, three-quarters of our respondents put the fraction at a third or less; and most of the three-quarters said 'very few'. What is interesting is not their ignorance, since only those who know their way around

2. Unfortunately, fieldwork coincided with considerable media attention to rape. Two days before fieldwork began, the Lord Chief Justice issued guidelines for the tougher sentencing of rapists, which received considerable publicity. While the interviews were in progress, several sexual attacks achieved notoriety. A vicar's daughter was raped and her family beaten up in their home. A man charged with the sexual murder of Leonie Darnley was acquitted but sentenced to life imprisonment for other serious sexual offences. Towards the end of the interview period, statistics were published showing marked increases in the countrywide incidence of rape, and especially in London. These events could not have failed to sensitise respondents to the issue.

Table 1: Views on the adequacy of court sentences for selected crimes

	RAPE	MUGGING	BURGLARY	SHOPLIFTING
	%	%	%	%
Too soft	90	87	54	17
About right	6	7	34	50
Too tough	1	1	1	15
No opinion either way	2	3	7	12
Dont know	1	2	4	6
	100	100	100	100

Weighted data, unweighted n = 1200

Question: '...can you tell me using one of the phrases from this card what you think of the sentences that courts generally give for [crime]?'

the supplementary volumes of *Criminal Statistics* are in a position to know the right answers. More to the point is the fact that most respondents underestimated, and few underestimated, the courts' use of imprisonment. Little surprise, therefore, that over half of respondents in Table 1 thought that sentenceurs were too soft on burglars. We do not know the extent to which this bias in people's ignorance stretches across other crime types.

Ignorance about the proportion imprisoned must be balanced against people's uncertainty about the process by which prison sentences are discounted. Most respondents seemed well-informed about the principle of remission - whether or not they knew the term itself: 41 per cent knew that time served was reduced by a third, subject to good behaviour, and another 30 per cent gave only slight underestimates. In contrast, however, was respondents' ignorance about parole. Fully 42 per cent did not think that a prisoner given a six year sentence could be released before serving four years; 23 per cent 'didn't know'; and only 11 per cent gave roughly correct answers.

Refining measures of punitiveness

These points underscore the need for considerable specificity in eliciting respondents' views on sentences - not just asking about 'crime', or even about broad crime categories, but providing the respondent with ample, concrete detail about particular cases. Survey research has gone down three paths in trying to get a firmer grasp on views about the adequacy of sentencing, each with its own strengths and weaknesses:

* studies which offer respondents vignettes of specific cases, and ask them to choose a suitable sentence - which can then be compared with actual practice;

* those which present vignettes of specific cases, including the sentences handed down by the court, and ask for reactions to the sentence; and

* studies which ask victims what penalty they think 'their' offender should have.

Examples of each of these approaches will be presented in turn. The first is drawn

from the British Crime Survey, where a nationally representative sample was asked to 'pass sentence' in several hypothetical cases. The second example is drawn from a smaller, subsequent survey, which set out to measure people's tolerance for sentences of differing severity. And the third is again drawn from the British Crime Survey, where victims located by the survey were asked to select a sentence suitable for 'their' offender. In all three examples, questions were asked about specific offences, in which a degree of detail was available about the offence and offender. In the first two, where vignettes were used, the amount of information was necessarily limited: in the third, where victims' views were solicited, respondents obviously had a great deal of detail about the offence, but often had little or no information about the offender.

Getting respondents to 'pass sentence': findings from the BCS

This approach was used in the second BCS, which asked people to 'pass sentence' in a number of hypothetical cases (see Hough and Moxon, 1985, for a fuller discussion). Respondents were asked about a variety of offences committed by people of different ages. Answers for 25-year-old male offenders have been compared to actual court practice in Table 2.

[Table 2 about here]

There are limitations to such comparison. The decisions of the sample of 'lay sentencers' is made on a handful of cases, which provide basic information about the offender but no detail beyond offence category about the crimes themselves. The court statistics, on the other hand, represent sentencers' decisions in several thousand very different cases. Some of the variation between cases will stem from differences between sentencers - from sentencing disparity, in other words; but most will stem from variations in severity of offence. Comparison is further complicated as statistics of court sentences cannot readily be broken down by criminal history in addition to offence category and offender age and sex. (The court figures in Table 2 thus include first offenders.)

Where Table 2 shows, for example, that 62% of respondents would like to see burglars sent to prison, this is not equivalent to a popular wish to see 62% of burglars imprisoned: rather, it means that this proportion of the sample would like to see imprisonment as the usual sentence for burglary.

Bearing in mind, therefore, that the comparisons in Table 2 are suggestive more than conclusive, there does appear to be a fair degree of congruence between the courts and the public in terms of the use of imprisonment. The vast majority of people would like to imprison 25 year old robbers with previous convictions; and the vast majority of such offenders *are* sent to prison. The majority would not like to see offenders of this age imprisoned for shoplifting, car theft or use of cannabis, and indeed, in most of these cases, the offender stays out of prison.

Overall, there may be a fair match between opinion and practice about category of sentence: where prison sentences *are* advocated, however, respondents generally seem to favour longer sentences than are typically meted out.

In weighing up these findings, it should be remembered that respondents are being asked to perform a somewhat artificial task. Though few will have thought about sentencing in any depth, they are asked to select sentences quickly and at short notice. Many of the respondents are deeply uninformed about the nature of available sentences, including their social and financial costs. As is discussed below, people's 'off the cuff' reactions may well differ from more considered and informed views.

Reacting to specified sentences: a study of public tolerance

Several studies have asked respondents not to select a sentence themselves but to rate sentences contained in vignettes - see Walker and Marsh (1984), Rossi *et al.*, (1985), Doob and Roberts (1983, in press) and Walker and Hough (in press, Chapters 10 and 11). The value of this approach lies in the fact that respondents are at least doing something which has its analogue in everyday life. People rarely impose formal

Table 2
Sentences for 25-year-old offenders: preferences of BCS respondents compared to court practice for selected offences.

	Robb- ery	Burg- lary	Shop- lifting	Car theft	Drugs
BCS RESPONDENTS' PREFERENCES (OFFENDER AGED 25 WITH PREVIOUS CONVICTIONS)					
Prison	85	62	12	23	15
Discharge/caution	1	1	16	10	23
Community service	5	10	18	17	7
Other disposal	10	27	54	50	55
TOTAL	100	100	100	100	100
COURT PRACTICE FOR OFFENDERS AGED 25 (INCLUDING FIRST OFFENDERS)					
Prison	92	61	10	31	11
Discharge/ police caution	1	2	11	6	11
Community service	1	8	5	11	2
Other disposal	6	29	74	52	76
TOTAL	100	100	100	100	100

Notes:

1. Court figures, relating to both Magistrates' and Crown Courts in 1983, provided by Home Office Statistical Department; the 'drugs' column includes offences other than possession of cannabis.
2. Weighted data; unweighted n = 3270. Source: 1984 BCS.

punishments on others, but they do routinely hear and read about court sentences, and routinely assess whether these sentences seem reasonable.

In the Walker/Hough survey, which developed earlier work of Walker and Marsh, we presented respondents with what purported to be newspaper clippings of recent court cases, carefully faked to be as realistic as possible. The design of this part of the survey was based on the assumption that it is both more useful and more practicable to ascertain the *limits of the public's tolerance* for severity or leniency in sentencing than to find out exactly what the public wants, and 'fine-tune' sentencing policy accordingly. So we purposely presented respondents with examples of sentences which, though not infrequently passed by sentencers, were clearly more lenient or severe than the modal sentence.

Each respondent was shown six 'clippings', reporting cases of rape, robbery, burglary, shoplifting, joyriding and vandalism. We systematically varied the sentences in these cuttings for four sub-samples (3): the stories presented to one sub-sample are shown in Figure 1.

[Figure 1 about here]

It can be seen from Figure 1 that our offenders were all male, all in their early- or mid-twenties and all had previous convictions. Each story was presented to one or other of the sub-samples with a sentence which was, by the courts' standards, very severe, mildly severe, or lenient in one of two ways. The severe sentences were all custodial - tailored to be slightly or considerably tougher than the 'going rate' for that offence. One set of lenient sentences consisted of 2 years' probation - regardless of crime type; the other set consisted of a years' prison for the rape and

3. As a methodological exercise, we included a fifth sub-sample, which replicated the first sub-sample except that the vignettes were presented by the interviewer verbally. Unfortunately our care in fabricating the cuttings seems to have been misplaced: the first and fifth sub-samples showed almost identical patterns of response (see Walker and Hough, in press, Chapter 10).

Figure 1: the 'newspaper cuttings' presented to respondents

Tattoo gives rapist away

A GIRL'S NAME tattooed on his hand identified Evan Pritchard (25) as the man who raped a young housewife at knife-point in the garden of her house as she was returning from shopping.

Pritchard, who had a previous conviction for attempted rape, was put on probation for 2 years at the Crown Court yesterday.

Traffic Warden catches phone vandal

A TRAFFIC WARDEN waiting to use a phone box saw Nicholas Thompson (22) smashing the receiver inside.

Thompson, with a previous conviction for criminal damage, was ordered to pay £263 compensation.

Bag-snatcher breaks Woman's arm

A woman's arm was fractured in two places when she was knocked down and robbed of her handbag in a well-lit car-park at Sainsbury's Supermarket.

Clive Skelton (26), with a previous conviction for attempted robbery, was sent to prison for 4 years at the Crown Court today.

JOY-RIDER RAN OUT OF PETROL

Though he knew how to start a Metro without the ignition key, Barry Wright (23) did not notice that the one he had 'borrowed' to get him home was almost out of petrol. The police found him stranded at 2am near Wicken.

The magistrates were told that this was Wright's second offence of taking a car without the owner's consent, and sent him to prison for 6 months.

SHOPLIFTER QUEUED ALL NIGHT FOR SALE

SO KEEN was Peter Simpson (26) to get an overcoat at Lewis' sale that he was at the head of an all-night queue. Store detectives told the court that in the confusion of the opening minutes he was seen to put the coat on and walk out while the end of the queue was still pouring in.

Simpson, who had a previous conviction for shoplifting, was sent to prison for 6 months at Marylebone Court yesterday.

Burglar heard in attic

Ray Fairbrother (22) had reached the attic of the house he was burgling when the owner returned unexpectedly.

Hearing noises overhead she telephoned the police, who were waiting for him at the foot of the stairs.

Fairbrother, who was convicted of another burglary two years ago, was ordered to do 40 hours' community service by the Crown Court last week.

Note: the cuttings shown here are those presented to one of the sub-samples. The versions presented to the others differed only in respect of the sentences. See Table 3 and the text.

the robbery, a community service order for the burglary and fines for shoplifting and joyriding. Table 3 presents the results of this part of our survey

[Table 3 about here]

It is clear from Table 3 that the lenient sentences attracted far less support overall than the tough ones; equally clearly, there are considerable variation between crimes. People were least tolerant of lenient sentences for rape: both probation and the year's prison sentence were regarded as 'much too soft' by over 80% of respondents. As mentioned earlier, fieldwork for the survey unfortunately coincided with an unusual amount of media attention to sexual offences, and the majority of respondents must have been aware of the public furore about lenient treatment of rapists.

The only other lenient sentence where a majority voted 'much too soft' was probation for the bag-snatcher, though the burglar sentenced to community service also stretched respondents' tolerance. It is interesting to note that fewer respondents found the community service order acceptable (20%) than probation (31%), even though the former is intended to be a substitute for a prison sentence. Lenient sentences for the other three crimes - shoplifting, joy-riding and vandalism - attracted much less criticism.

As for the heavy sentences, these all secured majority support. Since the fieldwork was carried out, the Lord Chief Justice's guidelines for rape sentences has taken effect, and the clipping which we intended to be a fairly severe sentence for rape - 6 years - now reflects the 'going rate'. 55% saw this as 'about right', but virtually everyone else thought it too soft. 9 years for the rapist was not tough enough for 33% of respondents. Varying minorities saw the severer sentences as too tough, rising to 28% for the bagsnatcher who received 6 years.

TABLE 3 Respondents' ratings of the varied sentences in the newspaper cuttings

Respondents' choices	RAPIST	SHOP-LIFTER	BURGLAR	BAG-SNATCHER	JOY-RIDER	PHONE VANDAL
	probation	probation	probation	probation	probation	probation
'much too tough'	2%	1%	-	-	-	½%
'a little too tough'	-	8%	1%	½%	1%	4%
'about right'	4%	55%	31%	10%	50%	35%
'a little too soft'	6%	28%	31%	22%	27%	38%
'much too soft'	89%	9%	37%	68%	22%	23%
	prison, 1 yr.	fine, £50	com.ser.40hrs.	prison, 1 yr.	fine, £75	compens., £263
'much too tough'	1%	-	-	1%	½%	1%
'a little too tough'	-	1%	½%	1%	1%	2%
'about right'	4%	61%	20%	34%	41%	57%
'a little too soft'	12%	26%	35%	33%	33%	25%
'much too soft'	83%	12%	45%	31%	24%	15%
	prison, 6 yrs.	prison, 3 mths	prison, 2 yrs.	prison, 4 yrs.	prison, 3 mth.	prison, 3 mth.
'much too tough'	-	5%	2%	2%	-	2%
'a little too tough'	½%	13%	16%	14%	7%	10%
'about right'	55%	56%	70%	74%	57%	53%
'a little too soft'	16%	15%	9%	6%	27%	17%
'much too soft'	29%	11%	3%	4%	10%	18%
	prison, 9 yrs.	prison, 6 mth.	prison, 3 yrs.	prison, 6 yrs.	prison, 6mth.	prison, 6 mth.
'much too tough'	½%	6%	3%	9%	2%	2%
'a little too tough'	4%	17%	17%	29%	11%	7%
'about right'	63%	64%	71%	54%	71%	52%
'a little too soft'	17%	7%	5%	4%	11%	19%
'much too soft'	16%	5%	4%	4%	5%	16%
Weighted Ns	1001	991	985	996	996	988

Question: 'Do you think the sentence given (in the newspaper story) was too tough, too soft or about right ?'
 (If the respondent said 'too tough' or 'too soft' he or she was asked 'Is that much too (tough) or
 a little too (tough) ?')

One of the most interesting things to emerge is the extent to which, for the less serious crimes at least, respondents were prepared to acquiesce to sentences of very different severity. When compensation was specified, for example, as the sentence for vandalism, 57% thought this 'about right'; but so did 57% of the sub-sample where the sentence was six months imprisonment. Similarly, 55% thought probation was 'about right' for the shoplifter, and 50% for the joy-rider, when told that this was the sentence; when 3 months imprisonment was substituted, 56% thought this 'about right' for the shoplifter and 57% for the joy-rider. In other words, both sentences which were both more lenient and those which were more punitive than usual achieved at least 50% support for examples of less serious crimes against property.

As already mentioned, the value of getting people to react to sentences, rather than choose sentences, is that it approximates to the circumstances in which people learn of court sentences in real life. The amount of information relayed in this way is, of course, limited, and we would argue that if the aim of a survey is to gauge public confidence in sentencing, it would be misleading to depart from this procedure. But this leaves open the question whether dissatisfaction with particular cases is a function precisely of selective or partial reporting. Canadian research by Doob and Roberts (1983, in press) has examined the effect of providing respondents with much more detail about the case. In one set of experiments, they asked one sub-sample of respondents to rate sentences on the basis of (real) newspaper reports; another sub-sample made their judgements on the basis of information about the case which was available to the sentencer. In the latter condition, ratings were consistently more favourable. One can only speculate whether the same would hold true for this country.

Victims' views

Victims of crime comprise an important subgroup of the general public. Some have argued that the courts should place greater emphasis on redressing the harm done to victims, and that sentencers should thus attach special weight to their views; and in North America at least, it is becoming increasingly common for courts to give victims an opportunity to state their preferences before sentence is passed. On the other

hand, one of the purposes of justice is to stand between offenders and the capricious vengeance of their victims.

A few studies have examined victims' attitudes to sentencing of their offender (eg Shapland, 1981; Maguire, 1982); and the British Crime Survey (4) also asked victims what they thought should happen to their offender. Rather surprisingly, the message to emerge both from these studies is that the first-hand experience of crime as a victim does not in general fuel a desire for heavy sentences. Findings are presented in Table 4 from the BCS for two fairly homogeneous offence types - residential burglary involving loss, and theft of cars.

[Table 4 about here]

Unlike the judgements expressed in Tables 2 and 3, victims' views were based on a full knowledge of the specific offence: but in many cases, they would have had no information about the offender. Because of this, it is difficult to say how closely their preferences are in line with practice. As benchmarks, however, some 45% of convicted 17-year-old burglars are given custodial sentences, and 61% of 25-year-olds are imprisoned; the figures for car thieves are 22% and 31% respectively.

Against these figures, Table 4 provides - at least for these crime types - no support for the view that the courts are too soft for victims' liking. There is no substantial mismatch in terms of severity of sentence. The exceptions, as in the previous section, are in victims' preparedness to see offenders warned - either by the courts or the police, and in their enthusiasm for reparation. The 'compensation' category in Table 4 refers to victims who wanted reparation from the offender and nothing else; a further third of victims of both burglary and car theft wanted compensation *and* some other punishment. There seems to be a clear desire amongst victims that offenders should

4. For further information about the BCS, see Hough and Mayhew, 1985.

Table 4

Penalties specified by victims of burglary and car theft

	Burglaries	Car thefts
	%	%
Year + in prison	19)	8)
	33	17
Up to 1 yr in prison	14)	9)
Fine	13	20
Community service	15	25
Probation, susp. sentence	17	14
Just compensation	7	4
Discharge or caution	10	12
Other/DK/Depends	5	9
TOTAL	100	100

Notes:

1. Percentages do not total 100% because of rounding.
 2. Weighted data; unweighted n = 260 (burglaries), 170 (car thefts).
- Source: 1984 BCS.

make some redress for the harm they have caused.

Table 4 include crimes unreported to the police (12% of burglaries involving loss and 1% of car thefts went unreported). When these are excluded from analysis, the picture changes little: for example the proportion favouring imprisonment for burglars rises from 33% to 36%. It is also possible that cleared-up crimes, where a decision actually is required about punishment, may differ in severity from those which are reported to the police but not detected. The more that this is so, the less valid the comparison between sentences preferred by BCS victims and those meted out by the courts. But even making allowances for this sort of distortion, it seems unlikely that a large proportion of victims would find current sentencing practice unacceptably lenient.

One explanation for this unexpected finding could be that people with little experience as victims imagine the worst: burglars always ransack and desecrate homes, muggers inflict gratuitous violence, car thieves smash up victims' vehicles, and so on. If this is the case, being a victim would for most people serve to underline the more mundane reality of most crime. Certainly, they might well adjust upwards their estimates of the risks they run - and worry about further incidents - but they may no longer see as appropriate the kinds of tough sentences they might have advocated previously to deal with the offence and offender of their imagination. Being a victim may thus exercise a moderating influence on attitudes to punishment for the majority of victims: it seems less likely that the same would be true of those rarer crimes which are deeply distressing for their victims - an issue which our survey could not address.

The correlates of punitiveness

In deciding the appropriate response to calls for heavier (or more lenient) punishment, policy makers obviously need an understanding of the factors which underlie punitive (or lenient) attitudes. Opinions grounded in an accurate knowledge of crime and sentencing and those based on ignorance or misperception both need to be accommodated: but they call for very different responses. The Walker/Hough survey enabled us to assess the correlates of punitiveness in some detail. The measure of punitiveness used

in this analysis is a scale (5) derived from answers to the four questions about the adequacy of sentences whose results were presented in Table 1. The survey also collected information on:

- * respondents' demographic characteristics
- * perceptions of crime rates and sentencing levels
- * ideas about the aims of sentencing
- * fear of crime
- * newspaper readership
- * attitudes to discipline in other areas of life

How much weight should be attached to each of these explanatory factors? To answer this, we carried out a stepwise regression analysis, the results of which are presented in Table 5 (6). The analysis is reported in more detail in Walker and Hough (in press, Chapter 11); the appendix presents the relationships between the dependent and independent variables in the form of two- and three-way tables.

Punitiveness as part of a broad attitudinal set

The first variable identified by the regression was a discipline scale, derived from items measuring attitudes about the need for discipline in schools, the armed forces and the workplace (see also Appendix Table A). This suggests that first and foremost, attitudes to the punishment of criminals can be explained by reference to broader attitudinal sets, or people's ideologies. In other words, punitiveness (or leniency)

5. The punitiveness scale was simple and additive: details in Appendix Table A.

6. Given a dependent variable and a number of independent or predictor variables, stepwise regression identifies at the first step the independent variable which best predicts the dependent variable; at step 2 it selects the next-best predictor, taking into account the contribution already made by the first; at step 3 it selects the third most predictive variable, taking into account the contribution of the first two, and so on until it can find no more variables which make a statistically significant improvement to the prediction. In other words, some idea of the comparative explanatory power of different variables can be derived from the *order* in which variables are selected by the stepwise regression. Some caveats should be stated, however. Measurement error, especially in attitudinal research, can reduce the apparent explanatory power of a variable (where a factor is highly explanatory but badly measured). And where two independent variables are intercorrelated, only one is likely to make a significant contribution to prediction - so that the causal significance of a variable may be masked by the predictive power of an intercorrelated - but causally trivial - variable.

tends to be just one expression of a more general disciplinarian (or libertarian) outlook, and will be shaped by the same factors. One implication of this, of course, is that some people's attitudes to punishment will be resistant to any changes which fall within the control of criminal justice administrators.

[Table 5 about here]

Ignorance of current practice

However, the variable making the second largest contribution to prediction of punitiveness was one of our measures of ignorance of sentencing (discussed on pages 3-4 of this paper - see also Appendix Table B): people who most underestimated the imprisonment rate for burglars were most punitive. The analysis also selected the variable measuring the perceived imprisonment rate for causing death by dangerous driving - but later in the stepping process. Within limits, public knowledge on such issues can be improved, and if the need for confidence in the criminal justice system is taken as axiomatic, there is an obvious and pressing need to improve levels of awareness about sentencing practice, and thus reduce the dissatisfactions grounded in ignorance and misinformation.

Other factors

Of the other factors identified in the regression analysis, age appears early (at step 3), consistent with previous findings in Britain and North America (7). Table C of the Appendix sets out the demographic correlates of punitiveness. Gender differences also emerge, but less strongly.

7. We could not tell the extent to which the differences should be attributed to 'aging' or to an 'era effect'. Were the older people simply expressing the unchanged views of earlier generations, or did their greater punitiveness reflect factors which increase with age? Aging may well be associated with a tendency to impatience, to simplification of issues, to pessimism. Certainly it is associated with longer experience, whether of victimisation or of learning at second hand about the victimisation of others, or of the success or failure (real or reported) of different approaches to crime. It is also known to be associated with a stronger feeling of vulnerability to crime, whether realistic or not (- though Pease, in press, in the context of judgements of crime seriousness, has also found evidence of an 'era effect').

TABLE 5: RESULTS OF STEP-WISE REGRESSION ANALYSIS

Dependent variable: Scale of punitiveness

Multiple R	0.42	All variables included in the equation make a statistically significant contribution ($p < .05$)		
Adjusted R squared	0.17			
Variable	Order of entry into equation	Standardised Beta value	Standard error of B	F Value
Discipline scale (Higher scores = punitive)	1	.16	.016	35.3
Estimate of imprisonment rate for burglars (Underestimates = punitive)	2	.15	.022	28.0
Age (Older = punitive)	3	.14	.019	23.6
Newspaper reading (Quality = lenient)	4	.13	.112	21.4
Penal philosophy (Retributive = punitive)	5	.10	.059	12.7
Anxiety about burglary (High anxiety = punitive)	6	.08	.032	9.9
Gender (Male = punitive)	7	.07	.058	6.9
Estimate of impris. rate for causing death by dangerous driving (Underestimate = punitive)	8	.06	.021	5.2
Educational level (Basic education = punitive)	9	.05	.023	2.7
Estimate of local burglary rate (High = punitive)	10	.04	.002	2.3

It is noteworthy that newspaper choice was selected early (at step 4): those who read the 'quality' newspapers were less likely to have punitive attitudes see also Appendix Tables F and G). This does not necessarily mean that newspapers shape attitudes to punishment. It is notoriously hard to disentangle the impact of the media on public opinion. Correlations can quite readily be found between exposure to media and attitudes, but both can be a function of a third factor, such as educational level. Our analysis controlled for this, but even so, we may simply have failed to devise sufficiently sensitive measures of educational attainment. And even where a first order correlation is established, the direction of causality is problematic: people tend to select those newspapers and watch those TV programmes which reflect their outlook on life. Bearing all these qualifications in mind, however, newspaper proprietors and editors might regard as naive the suggestion that their efforts to shape opinion are without impact. Views on sentencing aims were selected at step 5. Not surprisingly, those who favoured incapacitation and retribution also scored high on our scale of punitiveness.

Anxiety about crime and perceptions of risk, selected by the regression at steps 6 and 10, seem to fuel punitiveness. That this should be so is not surprising, but it is inconsistent with earlier research. The Figgie report (1980) found no such relationship, nor has Canadian research (Brillon, 1984, in press): the differences are more likely to be found in differences in measures of fear and punitiveness than in variations across culture.

Summary and discussion

The main points to emerge from polls and surveys on attitudes to punishment can be summarised as follows:

- A. General questions asking whether sentences are long enough or tough enough consistently show large majorities in favour of greater severity.
- B. Questions about suitable sentences for specified offences and offenders generally show a convergence of public opinion and court practice over the *category* of sentence which offenders deserve.

C. The exception to B is murder (and some categories of rape), where majorities are likely to favour capital punishment - at least in the context of questions about the death penalty.

D. Where people advocate prison sentences, they generally suggest sentence lengths longer than those currently served.

E. Where people are asked to rate sentences which are more lenient or heavier than the norm, they invariably provide greater support for the latter.

F. Where people assess sentences passed in specific cases, the probability of agreeing with the sentence increases with the amount of information provided about the case.

G. Punitive attitudes tend to form part of a broader attitudinal set, rather than evolve from direct experience.

H. Victimisation does not fuel punitiveness, and victims' wishes do not seem to be out of step with practice.

I. Anxiety about crime may, however, contribute to punitiveness - though this finding is not consistent across surveys.

J. Dissatisfaction with the courts' leniency is associated with ignorance of sentencing practice.

These amount to a complex and somewhat inconsistent set of findings. Two features of opinion about punishment provide the keys to these inconsistencies. On the one hand, the public would appear to differentiate sharply between 'real' or 'serious' crimes which threaten life and limb, and property offences. The evidence points to considerable concern about the courts' treatment of dangerous, violent and 'professional' criminals: treatment of those convicted of minor crimes against property is far less of an issue in people's minds. Residential burglary probably falls on the threshold between these two categories. It would seem that most people think of the former category when answering survey questions about punishment - unless they are clearly directed to other sorts of crime. Many of the conflicting findings can thus be attributed to differences in the sorts of crime upon which the surveys implicitly or explicitly focusses.

On the other hand, people's opinions about punishment are conditioned by their knowledge of crime and sentencing, and most people, not surprisingly, are ill-informed. In Britain they tend to overestimate the proportion of crimes which involve violence, and underestimate courts' preparedness to send offenders to prison. At least some of the dissatisfaction voiced in surveys about sentencing must be a function of this lack of information.

In terms of policy responses to public attitudes about punishment, perhaps the clearest thing to emerge from these findings is the Protean nature of opinion. People's views about the adequacy of sentencing differ across crime categories; and when asked about specific sentences, their views shift with the amount of information they are provided about the crime. It is equally clear that there is widespread dissatisfaction with sentencing practice; and this threatens to erode popular confidence in the criminal justice system. It is far from clear, however, that the response entails adjustments to sentencing policy. Even - or especially - those who argue that the weight of public opinion is the best guide to the equity of sentencing must accept the need for public opinion to be informed before it can be trusted.

It will always prove an uphill battle to improve public awareness of current practice. The problem is partly structural: the mass-media inevitably focus on the exception to the rule. Unusually lenient and tough sentences will inevitably attract the attention of the press, and inevitably detract from public confidence. At the same time, there is plenty of scope for providing more - and more accessible - information about court practice. At present it is almost impossible to pin down current sentencing practice with any precision - by age of offender, criminal history and offence, for example. There must be a case for making information of this sort more readily accessible to 'opinion formers' and, indeed, to sentencers themselves.

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APPENDIX

Table A: Attitudes to sentencing, by scores on a discipline scale.

Discipline Scores	Punitive %	Average %	Lenient %	Total Sample %
High	41	33	16	31
Average	44	40	41	40
Low	16	27	43	29
	100	100	100	100

Discipline scale derived from three items ('strongly agree' to 'strongly disagree', five-point scale):-

- 'A good employer should be strict with his employees'
- 'School children should be given plenty of discipline'
- 'Soldiers should refuse to obey orders which they feel are morally wrong'.

Weighted data; unweighted n = 1,200

THE PUNITIVENESS SCALE

The punitiveness scale was simple and additive; scores for all four crimes were coded ('too tough' = 3, 'about right'/'no opinion' = 2, 'too soft' = 1), and summed. In the appendix tables, respondents have been assigned to 'punitive', 'average' and 'lenient' categories on the basis of their score on the scale; this has been done in such a way that 11 per cent of the sample fell into the 'punitive' category, and 19 per cent into the 'lenient'. (The aim was to achieve two roughly equal size groups with extreme views, each accounting for about 15 per cent of the sample.)

Table B: Attitudes to sentencing, by knowledge of sentencing practices and estimates of crime rates.

	Punitive	Average	Lenient	Total Sample
% underestimating severity of sentencing for burglary	84	67	53	66
% underestimating severity of sentencing for causing death by reckless driving	86	78	71	77
% thinking more than 10% of households in their area are burgled per year *	48	45	41	44
% thinking more than 20% of crimes are violent *	77	77	75	77

* Respondents offering extremely high estimates of burglary rates and of the proportion of violent crime have been excluded from analysis, on the grounds that they had probably misunderstood the question.

Weighted data; unweighted n = 1,200

Table C: Attitudes to sentencing, by age and sex, and by class and education.

		Punitive %	Average %	Lenient %	TOTAL %
Age 18 - 34	Male	6	71	22	100
	Female	2	72	26	100
Age 35 - 54	Male	15	66	19	100
	Female	5	74	21	100
Age 55+	Male	19	68	13	100
	Female	19	67	14	100
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Basic educa- tion	Class AB	8	79	13	100
	Class C	14	69	17	100
	Class DE	12	71	17	100
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Further educa- tion	Class AB	7	58	35	100
	Class C	5	75	20	100
	Class DE	12	63	24	100
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TOTAL SAMPLE		11	70	19	100

Weighted data; unweighted n = 1,200

Table D :Attitudes to sentencing, by worry about burglary

		Punitive %	Average %	Lenient %	
Aged under 45	Very worried	8	73	19	100
	Average	4	72	24	100
	Unworried	3	68	29	100
Aged 45 +	Very worried	19	73	9	100
	Average	18	67	16	100
	Unworried	13	65	22	100
TOTAL		11	70	19	100

Weighted data; unweighted n = 1,200

Table E: Attitudes to sentencing, by views of the main aims of sentencing.

	Punitive %	Average %	Lenient %	Total Sample %
Deterrence	35	40	40	40
Retribution	52	47	27	44
Incapacitation	36	30	23	29
Rehabilitation	13	27	43	28

Note : more than one response permitted per respondent

Question: 'What do you think should be the main aims of the courts when sentencing someone for a crime like burglary or robbery?'

Weighted data; unweighted n = 1,200

Table F: Attitudes to sentencing, by readership of daily papers and age

		Punitive %	Average %	Lenient %	%
Aged under 45	Tabloid and/ or local	5	73	22	100
	Quality press	6	63	31	100
	None	6	64	29	100
45 or older	Tabloid and/ or local	19	70	11	100
	Quality press	7	64	29	100
	None	16	68	16	100
TOTAL		11	70	19	100

Weighted data; unweighted n = 1,200

Table G: Respondents' shock at a recent court sentence, by type and frequency of newspaper readership.

Type of Paper	% Shocked	
	Frequent Reader	Less Frequent Reader
Local and tabloid	38	10
Tabloid only	35	29
Local only	32	22
Quality	25	24
No daily paper	21	

Note: Frequent readers are those reading daily papers 5-6 times/week.

Question: 'Have you been surprised or shocked by a court sentence you have heard or read about recently?'

Weighted data; unweighted n = 1,200

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 5

COMMUNITY PERSEPECTIVES ON PUNISHMENT

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Chapter 5--Community Perspectives on Punishment

I feel humbled before this crowd of Ph.D.'s and other various and sundry initials and high academic achievement. This is the sort of group that usually I turn to for information. You are newsmakers in our view and so I feel very fortunate, happy, humble and pleased to have the opportunity to talk to you today.

My thoughts on punishment and the community response toward it is what we are going to talk mostly about today. I would like to go back to one thing that really sticks out in my memory from a couple of years ago when I went to see a movie version of Richard Pryor's monologue--"Richard Pryor on Sunset Strip." He happened to recount his own experience in visiting a penitentiary, or as he put it:

"I went to visit the brothers in the penitentiary. After spending two hours talking with them and exchanging information and messages with them, I came out with one conclusion: Thank God we have penitentiaries. I turned to one guy and said, why did you have to kill the whole family? He said, they was home."

Pryor is funny, I can't really do Pryor as well as Pryor does Pryor. What really got me was, I was in a theater in downtown Miami, not far from Liberty City, with a black and Hispanic audience that was rolling in the aisles at this remark, clapping their hands, saying "right on". This is what you call grass roots response, ladies and gentlemen. Grass roots feeling toward punishment, toward crime, toward its impact on the community and how people feel about it. It is something that we deal with in the media all the time. I decided to do some writings on this--grass roots responses versus the civil rights establishment, our established leaders--trying to reach some common ground between a logical approach toward punishment and vigilantism.

I found some very interesting revelations that I'd like to share with you and then hear your feedback at the end. Let me say, though, since I got here, I've taken my prepared remarks and just scratched and rearranged them. I'm a newsperson and I'm always trying to respond to breaking news, which includes the Bureau of Justice Statistics report that came out this weekend, as well as the ACLU's response to it. It also includes some things I've picked up in the workshops here in talking with various folks. For example, Al Blumstein mentioned last night, and also in the session we just ended, about how we in the media don't give very much coverage to post conviction. It's a very interesting point. It's a point that's been brought up before, that I've run into with judges and other community leaders. I must confess, it is basically true. We in the media do not tend to follow up on very many cases once the sentence has been handed down. The exceptions would be in what we call the "heater" cases in Chicago. I know Mr. Kunkle [a conference participant from Illinois] knows that term.

The "heater" case is the one that draws heat. That means a lot of press are there in the courtroom. You know most cases are not heater cases. An interesting title would be "Heaters and Repeaters" because of what we're talking about here, heater cases that do draw a lot of heat. Richard Speck, of course, is a well known example across the country and the world. He recently came up for parole again and there was the parade of survivors of the nurses that he killed 20 years ago. There was page one coverage of his parole hearing. It was at the top of the news in the evening. How many other people could go up for parole and get that kind of coverage? Of course with that kind of heat, one can be fairly well assured that justice is going to be served in some way, shape, or form with that much public attention.

The other cases would be the repeaters. A few years ago, we had a murder in Grant Park committed by a fellow who was on a early release and, of course, this made page one news. The early release programs--they are pushing them out, they are back on the streets, and they are terrorizing everyone. Of course, there for awhile there was heat, there was that constituency trying to get more money to keep them in jail longer. It tends to fade after awhile. I have to confess, as a member of the media, it is certainly true that sentencing provides a nice little end to the story, a nice little wrap-up to the drama. There is a public perception that results from that and it is perhaps an unfortunate one.

Similarly, this morning, there was, in the talk of Marlene Young of the National Organization of Victim Assistance, a list of policy changes they are looking for which talked about the media and how we sometimes will mention the names and addresses of victims or witnesses. I'm happy to say I do see a change going on there. That is something we in the professional community talk about and are pushing to change.

Another point that came up during that workshop was the role the media can play with a type of punishment we don't always think about, which is public embarrassment, such as publishing DUI offenders. Some small communities, in particular, will publish the names of offenders with DUI and other offenses. That is something we have to be careful about. In my community, Chicago, I remember when there was a prostitution problem in the area called New Town; one of the publishers of a local shopper decided to print the names of all the johns who had been arrested for prostitution. A couple interesting things came out of that. One was that almost all the johns were suburbanites who came into the city in order to make their connections and then scoot back out to the suburbs again. The fact that

their names were exposed publicly did seem to have something of a cooling effect for awhile. The other result was law suits. Naturally, a number of these offenders or alleged offenders sued the shopper. This is the kind of pressure small papers cannot handle as well as the big papers can, and the big papers don't have the room to do. Again, we have limitations there.

I'm always ready to talk about media issues because once it was said that patriotism is the last refuge of a scoundrel. In recent years, it seems like religion has been taking that role in some cases, and certainly in every political year, I find the media tend to be the last refuge. Sometimes media criticism is correct and raises some very good points. I wasn't expecting to talk about that, but if some of you would like, I'd be more than happy to.

Along with Richard Pryor, Judge Eugene Pinchum, a liberal, outspoken appellate court judge in Chicago recently talked to inmates at Cook County Jail. One of his remarks really stuck out with me: "Some of you locked up here shouldn't be here, but others should have been here long before now." That, too, got a round of applause from the inmates. They know the truth when they hear it. It is interesting that Judge Pinchum was speaking on an event we call "No Crime Day" in Chicago, an event put together by a group called Black on Black Love. Their slogan is "Fight Black on Black Crime with Black on Black Love." This is very significant because by the Bureau of Justice Statistics you can see that the impact on the black community of crime is greater than it is on just about anybody else. I don't need to cite your own statistics but there is (and the literature is available down the hall) an impact on households. The fact is, within the black community itself, I think one can see the most profound shifts in public attitude over the past 20 years. Coming out of the civil rights movement, there is a great and historical concern in the black community over, not just crime prevention

and crime prosecution, but also guarantees of civil rights and civil liberties for very obvious reasons. Too often, because of stricter punishment and more severe law enforcement, this has been cast as a racist call for "let's keep the blacks in their place" or the type of law and order call that was used by people who stood in the way of the civil rights movement or for people who opposed measures that were designed to investigate charges of police brutality. This has become a very heated local issue and, as result, people in the black community were not only very hesitant to jump out front on these issues of investigation of prosecution, but also, in many cases it stood in the way of progress, one might say.

This is the kind of thing in which I think we're seeing a change that is evidenced by such things as No Crime Day. This came about after January 7, 1983, when a woman who worked for Soft-Sheen Products in Chicago and who, ironically, had spent five years seeking employment opportunities for ex-offenders, was assaulted while getting into her car. One account here which I have says:

"After violently forcing her back into the car, the only emotion he (the assailant) expressed was anger. Anger because this black woman, mother, and dedicated employee, only had \$7. A struggle ensued and she was able to pin his hand with the gun trapped under it to the floor of the car. He begged her to release him, promising to get out of the car and leave her alone. She momentarily forgot her fears and remembered only the trust she had always had in her fellow man. As she slowly released the pressure from his hand, he quickly retrieved the gun and shot this beautiful black woman in the chest."

She lived, I'm happy to say, but only after she was able to summon the strength to be able to drive to the hospital on her own. Her boss, Ed Gardner, the Chairman of the Board and founder of Soft-Sheen was so stricken by this incident, that was so close to him and to the people that he works with and the people who work for him, that he launched the Black on Black

Love campaign. It has been one of the leading examples of a community response to a cause in a city, which historically has some very cynical attitudes about law enforcement in the black community. It's the sort of thing I like to think we're going to see more of.

As the Bureau of Justice Statistics report shows, the public does want more punishment than criminals tend to get. At the same time, I'd have to point out, that there is a moderating impact that comes about, I think, when you start talking about the types of punishment that are to be meted out. For this, I think in terms of capital punishment, a report was prepared for Amnesty International in May of last year by the Cambridge Survey Research, in the state of Florida, which looked at capital punishment and public attitudes towards it. The state of Florida is hardly a liberal state in regard to capital punishment. It's a very pro-capital punishment state and a leader in executions. Amnesty International had to observe that there was overwhelming support for the death penalty among those they surveyed in Florida. Indeed, and I'm quoting from the report:

"Support for the death penalty is so great that abolition of its use in the short term is simply not a realistic goal. Second, there are cases in which the death penalty is used, or in fact, has been used where voters indicate they oppose and would have opposed its application. So while abolition of the death penalty is unrealistic, paring back its widespread application is eminently achievable. There is no question that lives can be saved in the short term.... Third, voters are receptive to alternatives to the death penalty. It appears there are alternatives such as life imprisonment without parole which can be used to undermine support for the death penalty over time, as well as reparations for the victims' families. Both of these sharply reduced the percentage of people who supported the death penalty."

Similarly, the ACLU has come out with a report which I've just received today. I'm just looking it over. Henry Schwarzhild is here, I believe, and has copies available if anyone is interested. The main conclusion of that report--which also cites various surveys including the Amnesty International

report--is:

"While the public remains concerned about the high level of street crime, most Americans no longer view crime as the most pressing problem facing the nation. Most Americans blame unemployment, not the courts or law enforcement agencies, for the high crime rate. Most Americans oppose government measures that would abridge the constitutional rights of those accused or convicted of criminal acts. Most Americans do not favor the death penalty when they are assured the offender will serve a lengthy prison sentence instead."

The quantity of punishment may not be as important as the quality of the punishment if it combines deterrence, just deserts, and compensation in some way. It can be preferable to capital punishment if it provides some protection and deterrence in some way. It can be preferable over just deserts.

In looking at public attitudes, there may be no broader trends than those that we see in black community attitudes. This is something which I find to be quite intriguing because I think there is a lot of misunderstanding about attitudes in the black community. The Lichter Report, which came out in 1985, and stirred up some controversy, compared the attitudes of civil rights leaders to rank and file black citizens and found there were significant differences between leaders and people in the rank and file. There were significant differences in overall political attitudes. That was something that stirred up considerable amount of controversy because, in and of itself, I'm not surprised and I don't think anyone should be surprised to hear that civil rights leaders have more liberal attitudes across the board on various political issues than the rank and file black American. It's only natural for any constituency to be a little more conservative, less willing to have change, than its leadership. The nature of leadership tells us that. But what really intrigued me about the survey in the context of our discussion today was that when asked about the death penalty for murder, of the rank and file black Americans who were surveyed, 55% favored it compared to 33% of black leaders. The leaders included the NAACP, the National Urban League

Operation Push, and a variety of members of the civil rights establishment. [For] harsher sentences for those convicted of crimes, 65% of the leaders [favored them] compared to 84% of the rank and file black Americans. Only 16% of the citizens compared to 35% of the leaders opposed harsher sentences. Forty-five percent of the citizens compared to 67% of the leaders opposed the death penalty. I think if you compare that with indications, that as Mr. Blumstein was saying earlier when you speak in terms of the abstract, you find a great deal of public sentiment in favor of harsher penalties; when you start getting more specific you find many people will like the option. They will swing toward the alternatives. I think that compared to other studies which have shown, and a Gallup survey which also showed similar attitudes among black Americans, I think you can see that black leaders are searching for answers.

Another breaking news event that happened last week in California gives an example of that. That was in Los Angeles where the city attorney has come up with a novel weapon in that city's war against street crime. He has filed suit against one of the city's largest street gangs, a band of young fellows known as the Playboy Gangster Crypts. He has declared the gang to be a public nuisance--that is the nature of his suit. It's the first of its kind in the nation. I think it is significant because if the city gets its way, the gang will be declared an unincorporated association under the law and all of its members, numbering about 300, will be responsible for any nuisance the gang creates just as any other corporation would. This means that some 23 restrictions would be imposed on the Playboy Gangster Crypts. They would not be able to refuse searches of the persons, residences, or vehicles. They could be ordered to obey curfew restrictions and to disperse within five minutes of gathering in any place open to public view including streets and

parks. One might immediately ask why the gang would obey a civil court order if it already disobeys criminal laws in such a cavalier fashion. The City Attorney, James Haan, points out that under a civil order they could be charged with criminal contempt of court if they did not obey restrictions on their behavior.

Now, because the gang is predominantly black, the local chapter of the National Association for the Advancement of Colored People was invited to review the case, and it decided not to intercede once its leaders were convinced that it would only affect active gang members and would not lead to a general sweep of innocent young folks off the street. NAACP would not interfere, its leaders said, although the organization will continue to monitor the situation and wait for complaints. The American Civil Liberties Union, on the other hand, strongly opposed the city attorney's action and stepped into the case without waiting to be requested by the gang itself. On Thursday [November 5, 1987], Judge Warren H. Deering of Los Angeles Superior Court rejected Haan's request for an immediate sweeping order against the gang, ruling that the request was too broad for him to make without hearing from representatives of the gang. They did schedule a hearing for November 18 at which he will make a decision on whether the gang can be declared such a public nuisance under the state's nuisance abatement laws.

Now this case raises a number of interesting points, only some of which are legal in regard to crime, to be sure. It also raises a number of points about public attitudes. I want to talk most about black on black crime which is the kind of crime the Playboy Gangster Crypts are primarily engaged in. The fact is that black people have been disproportionately the victims of crime, and black people, through history at least, have been disproportionately greater victims of abuses of their civil rights and civil liberties by

those sworn to fight crime. I think it's interesting in this context to note the NAACP, an organization concerned just as much with the burden of black on black crime as it is with the protection of minority rights and civil liberties, has taken the wait and see attitude--waiting to see if the plan will work or if it will create another nuisance as bad as the one it is intended to prevent. The ACLU, on the other hand, has taken a purist, adversarial position, demanding evidence up front that civil liberties will not be violated. In fact, at Thursday's hearing an ACLU lawyer charged that the city attorney was "trying to make an end run around the constitution." Now I know a lot of people criticize the ACLU, saying it cares more about the rights of criminals than the rights of victims. Everyone is entitled to their opinion, of course, as I say some of us are lucky enough to be paid for it. I personally like the ACLU. I think we need to have at least one group that is willing to get beat up for defending the rights of the most odious, loathsome characters whether they be mass murderers, rapists, gang thugs, or neo-Nazis, simply because I believe the best of us are protected quite seriously only when the worst of us are guaranteed the full extent of our constitutional system of protections. The ACLU is willing to offer this when many other people will not and for that I salute them. Nevertheless, I can appreciate the positions of City Attorney Haan and the NAACP. Like community leaders in other major middle-sized cities across the nation, they have become frustrated with conventional methods of fighting the growing problems of youth crime and street gangs. The city attorney has decided to take drastic action, and in a stark contrast to the 60's when black community attitudes toward police and prosecutors was often one of hostility, the NAACP is going along, if cautiously.

I suppose one might say there is some legal justification for this case in the same sense as there was in the case of Morris Deas of the Southern Poverty Law Center, filed on behalf of the mother of a lynching victim in Mobile, Alabama, a few years ago. Many of you may be very familiar with this case. In that particular case, civil rights justification was used, and the United Klans of America were sued as a corporation that conspired to deny this lad's civil rights by murdering him. Deas won the case and won a \$7,000,000 civil judgment from United Klans, which is believed to literally have put the United Klans of America out of operation. Similarly, in the past year, the National Organization for Women has filed a similar type suit against some leaders in the Right to Life movement, claiming they were responsible for bombings of abortion clinics. This is the sort of tactic which we may see more of, whether it works or not. It will be worth watching.

The NAACP has good reason to react strongly because crime does fall disproportionately on the black community. The U.S. Justice Department does show that in 1984, 1 in 24 black households had a member who had been raped, robbed, or otherwise attacked in a case of aggravated assault compared to 1 in 42 white households. The murder rate among young black males is so high that it has become the leading killer of black teens compared to the leading killer of white teens, which is traffic accidents. Although we can be encouraged by statistics that show a decline in crimes since 1982, we know crime remains too high, and in almost all cases, the criminals who victimize blacks also are black. Of course, going along with this, the relative impact of crime on low income families is much greater as a percentage of household income than it is on the better off classes, and blacks are disproportionately low incomes. Members of black communities across the nation are beginning to fight back in various ways because it is becoming more and more apparent

that nothing prevents inner-city blacks from enjoying the fruits of the civil rights revolution in their day to day lives like black on black crime. I think the Lichter study tends to bear that out.

Why have so many black leaders been slow to speak up regarding black on black crime? There are several reasons. First is the natural reluctance on the part of any group to wash its dirty linen in public. Second, black people have good historical memory of police brutality and civil liberties abuses, not the least of which was the institution of slavery, which makes us quite wary of any strong crime fighting effort. Third, there always seemed to be more pressing issues on the agenda of civil rights leadership, not the least of which are jobs, education, housing, health, and other issues that have each in their own way contributed to high black on black crime rates. Leaders, by their very nature as I mentioned, tend to be more progressive than the masses, and, so, we have seen a great deal more pressure exerted publicly and more publicity generated for these other very worthy issues. Today more blacks are becoming receptive to a number of notions that are normally identified with the conservative cause, particularly the notion that, to quote Jesse Jackson, "No one can save us for us but us." The problem of black on black crime must be addressed by the community itself as well as by anyone outside. The problem has reached such a high volume, such a high level of terror, I think that's one of main reasons why we're starting to see a shift in attitude by more of the officers in charge of local law enforcement in various counties and towns across the nation in the south and north who are black. They bring with them a no-nonsense approach to crime fighting that we normally identify with the law enforcement community.

The question is, what kind of strong anti-crime efforts are we talking about? Such things as stiff sentencing, inclusion of the court's

consideration of the defendant's threat to the community, setting pre-trial release conditions, making it more difficult for someone convicted of a crime to be released pending appeal, elimination of parole, narrow the discretion of judges in setting sentences, mandatory minimums for armed career criminals, particularly repeated violators of gun laws, and stronger penalties for drug offenses. These are just some of the issues that come up. Each of which is controversial in its own way, and, of course, there's a great deal of divided feeling about them.

This morning when I was talking with Marlene Young of the National Organization for Victim Assistance, I asked her how much has her organization been able to work with minority communities across the nation. She indicated to me that it is a point of continuing disappointment at NOVA that they have had very limited effectiveness with their outreach programs. They have had some very good and active chapters in black communities in Miami and a few other cities. She said right up front that they are primarily a white middle-class organization by the nature of the people who started it and by the nature of the way it has grown. They are looking for ways to change that. I find it interesting that groups like Black on Black Love in Chicago and various other community based programs, grass roots programs, including Kimmie Gray at Cochran Gardens Public Housing in St. Louis, who was profiled on 60 Minutes last year, a classic example of self help in the case of an all black public housing development that now is managed by its tenants, that has substantially, drastically, dramatically reduced the crime rate in the public housing development through its own policing efforts and through a swift punishment including eviction of disciplinary problems in the development. There are a variety of programs like this across the nation, but there has not been much in the way of networking between these various efforts, so we find a lot of

anecdotal evidence but we don't find a lot of networking that has been done between grass roots anti-crime organizations in various high crime areas of the country.

Some people who have been trying to change that include former State's Attorney Larry D. Thompson of Atlanta. He recently wrote in a Heritage Foundation publication regarding a new conservative agenda in the black community. He listed half a dozen actions that should be taken within the community including: (1) Support research that seeks to define the problem of black crime in terms of victimization as opposed to racial discrimination or lack of economic opportunity. We should not forget racism or jobs and economic opportunity programs, but we should shift our research efforts to look more at the problems of victims as opposed to other socioeconomic problems that may have led to high crime rates. (2) Support local law enforcement officials and their professional associations--a predictable statement from a law enforcement official. (3) Support community based and neighborhood crime prevention programs which I've talked about. (4) Support tough and sometimes expensive measures to crack down on crime including the minor offenses because ignoring them unofficially condones them. In the Chicago Tribune, we have had a number of stories in regard to our juvenile program in Cook County in Chicago as well as adult programs. If there is any message that comes out of juvenile programs after looking at them, it is that big time criminals for the most part begin as small time criminals, very often small time juvenile law breakers. If we don't give more attention to the minor offenses and how they are to be dealt with, we are just asking for trouble down the road. (5) Support tough measures to take violent or repeat offenders off the street. (6) Support fair and racially neutral application of the death penalty.

I present Attorney Thompson's views as an example of what I would call some of the more aggressively, conservative, politically right ideas that are coming out. I, and many other people, would have reservations about a number of them. First of all, in terms of investigating problems from the victim's standpoint, I would have reservations about that in terms of not allowing ourselves to encourage a lynch mob mentality. The death penalty, for example, is viewed by many people as a feel good response to a problem that provides little measurable deterrence, but it makes us feel good in the sense of an eye for an eye sort of just deserts punishment. The problem with it is, especially in the black community, is we understand and we know that it is racially discriminatory. I think the Supreme Court recently recognized that it is still discriminatory in terms of the victim if not in terms of the offender. Yet the Court said that was not enough to overrule the death penalty. It is still recognition of racism existing in the system that leads to a disproportionate number of offenders in the white community getting punished more severely than those who victimize the black community. At the same time, I think we have also seen cases, and we recognize cases where the death penalty can kill the innocent. People who can not be brought back which in itself can cause the same the kind of problem it is designed to prevent. I think there are many reasons why, although there is high support for the death penalty in the black community now, with more education and with more of an assurance of a stiff penalty, more of an assurance that perhaps there can retribution for the family, perhaps an assurance of a life time penalty, you can certainly see some reduction in support for the death penalty. A number of other current measures to punish criminals could certainly be mitigated as far as public pressure is concerned.

[Second], I would support law enforcement officials, while at the same time policing their methods and effectiveness. Police brutality does remain a significant issue. In Chicago, there is a case which I am most familiar with. I have seen politicians fall on that issue. I've seen politicians rise on the issue. Mayor Harold Washington made a major issue in his campaign for re-election in the black community that he had reduced the number of police brutality complaints substantially during the time he's been in office. He did not talk much about the crime rate which has gone up during the time. Anything good that happens on your watch, you campaign with that as part of your platform.

Third, I would support efforts like Black on Black Love. I would also support efforts that go further than Black on Black Love. Right now, as I mentioned, it is primarily concerned with law enforcement in the community and trying to improve community morale to favor getting youngsters away from gangs, etc. It doesn't do any kind of follow-up work in regard to punishment. I think that is one area in the black community that has not received very much attention and should receive more attention. Again, why I speak of the black community here is that, I think it is a reflection of what goes on in the white community as well.

Fourth, in terms of supporting tough and sometimes expensive measures to crack down on crime. I think, I as a journalist and other people, should encourage politicians not to avoid the "T" word--taxes. I wish I had a nickel for every time I've heard a politician speak of revenue enhancement or revenue sources. In fact, if all our presidential candidates had to give \$5 for each time they said it, we could wipe out the deficit. The fact is when you try to talk about how do we improve our prison facilities, how do we expand penal facilities so we're not pushing people out the back door for

every one we let in the front door, there is not a constituency for paying for it. It rises and falls with the times. I would say that is a particular area we should talk about in all candor.

Fifth, I would certainly support tough measures to take violent or repeat offenders off the streets. At the same time, I would support measures like Safer Foundation, a Chicago founded organization that works with ex-offenders and has had considerable, dramatic success in helping ex-offenders who are willing to find employment, to get their minds right, and to go out and be able to seek a job. In spite of being an ex-offender, they are very honest about it, up front, and are able to find work and keep it. They are able to develop the kind of work habits that enable them to be productive citizens. This is the way we can break the cycle for those who can be saved before they become repeat offenders.

Finally, again, as far as the fair and racially neutral application of the death penalty, I think it is important that it be fair and racially neutral. I have reservations about its application personally. If there is a public consensus in favor of its application that can be found to be fair and racially neutral, I think you can find support for it in the black community as well.

These are a number of observations coming to you from a non-academic, someone who is a journalist, who has worked in the streets and has prided himself on trying to stay close to the grass roots sentiments that are going on out there in some of our highest crime areas of the nation. As we said earlier, all of us coming here from different backgrounds and engaged in different areas of activities need to work together on all aspects of this program so that we can see some real improvement in the future.

SECTION III

DESERT AND DETERRENCE: PERSPECTIVES ON THE RATIONALITY OF PUNISHMENT

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 6

THE ARGUMENT FOR PUNISHMENT

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Chapter 6--The Argument for Punishment

Traditionally, legal punishment has four purposes to justify it: (1) incapacitation, (2) rehabilitation, (3) retribution, (4) and deterrence. I mean general deterrence, of course, assuming that special deterrence is the same as rehabilitation. However, punishment can be justified only by past crimes. Future crimes can never be predicted with certainty and cannot be punished before they happen. If indeed, crimes could be predicted, they might be prevented but, therefore, not punished. One cannot be punished for what one has been prevented from doing. Thus, neither incapacitation, which temporarily prevents crimes, nor rehabilitation, which more permanently prevents future crimes by convicts, can morally justify punishment. Incapacitation or rehabilitation, although not justifiable as punishments, may still be justified as means of prevention, of reducing the crime rate. Could either reduce the total number of crimes? If the convicts prevented from committing crimes were so uniquely qualified as criminals that no one could replace them, their deactivation would indeed reduce the crime rate. Unfortunately, many persons, other than incapacitated or rehabilitated convicts, have the ability, the opportunity, and when the circumstances seem propitious, the inclination to commit crimes. Hence, deactivating convicted offenders is unlikely to lower the crime rate, as unlikely as deactivating prostitutes or dentists is to lower the rate of prostitution or dentistry. The crime rate depends on expected advantageousness of crimes, just as the rate of dentistry or prostitution depends on the advantageousness of these activities. If practitioners are deactivated, supply decreases and comparative advantageousness increases and so does, therefore, the number of new practitioners.

Most crimes are market dependent. The proceeds of car theft, burglary, or truck hijacking must be sold. I'm speaking, of course, of property crimes. There are some exceptions, rape, for instance, the proceeds of which are not sold, or the taking of money, which need not be sold, of course, and these two, therefore, do not depend on the market. Hence, rape does not become more rewarding when rapists are deactivated. Therefore, the deactivated rapists are not replaced and the rate of rape, unlike the rate of market dependent crimes, may be diminished by deactivation, but that is not true of market dependent crimes. As the supply of stolen goods, such as those that are the proceeds of burglary or truck hijacking, etc. declines because supplies have been deactivated, the price rises and that attracts new offenders. Therefore, neither incapacitation nor rehabilitation reduces the frequency of most property crimes. Only a rise of the cost to the offender (the risk of punishment) can reduce the crime rate by reducing the advantageousness of crime. In practice, imprisonment, of course, combines punishment and incapacitation and this confuses people. But let me point out that you can have punishment without incapacitation, such as fines, and you can have incapacitation without punishment, if you confine the insane, for instance. Although the incapacitative and rehabilitative effect must be discounted, imprisonment does reduce crime rates because of the punitive and, therefore, deterrent effect. It raises the cost of crime to offenders and therein lies its usefulness.

Having discarded rehabilitation and incapacitation on both moral and instrumental grounds, we are left with retribution and deterrence to justify punishment. In penal law, justice means retribution according to what is deserved. To give offenders their just deserts is to do justice.

But what punishments are deserved? Manslaughter deserves less than murder and burglary still less. However, there is no plausible theory to tell us how much less, nor how much punishment murder, or any other crime used as a starting point, deserves in the first place. Justice, then, tells us that punishment must be deserved by guilt but this does not help much in deciding how much punishment each crime deserves. To believe that just deserts can determine and justify a specific punishment for each crime confuses the question with the answer. Retribution according to desert is a desire, not a theory that enables us to determine anything. Although justice has no purpose other than moral satisfaction and helps little in determining punishments, it should not be discouraged. On the contrary, justice as an end in itself, not as an instrument to achieve anything outside itself, is indispensable to any penal system. We all feel that the guilty should be punished because they deserve to be, and that the innocent should not be punished because they do not deserve to be. If it were shown that punishing the innocent reduces crime more than punishing the guilty, we would still not want to punish innocence. On the other hand, if it were shown that punishing the guilty reduces crime not at all, we would still want to punish them. Our desire for justice, for retribution according to desert, is stronger than our desire to reduce crime. Hence, there can be no acceptable justification of punishment which does not rely on its perceived justice. Just as punishment satisfies a profound and universal longing, it also incidentally lessens the crime victim's disruptive desire for revenge. Although, incidentally, punishment according to desert may deter crime, retribution does not directly address the social need for deserts. However, satisfying that social desire, the desire for crime control, is no less important than satisfying the desire for justice. Crime control, therefore, is the second justification of punishment.

Deterrence means restraining people from doing what the law forbids by threatening punishment. Whereas justice morally justifies punishment, deterrence justifies punishment as an instrument for reducing crime. When carried out often enough against those who are not deterred, the threats of the law become credible and they reduce crime by deterring others. To be sure, no criminal justice system can capture and punish all those who violate the law. The threats of the law amount to no more than a legal risk for criminals. That risk consists of the threatened punishment (we call it the list price) divided by its actual incidence (the actual price). It constitutes a cost of crime to the criminal. Even if high enough to deter most people most of the time, and it is, the risk of punishment never can be high enough to deter all people all the time. Still as the 1960's have conclusively shown, fewer people are deterred from crime when that legal risk is reduced. Between 1962 and 1972 the probability of imprisonment for an index crime fell five-fold, from 0.10 to 0.2. Crime rates doubled and in some cases tripled. I'm taking these data from Wilson and Hernstein's book, Crime and Human Nature. The prospective criminal is willing to bear the risk of punishment only when his expected benefit is likely to sufficiently exceed his costs. Crimes are not committed unless criminals expect a net advantage, a benefit not only above the cost but also above what available, legitimate activities may be expected to yield to them. These legitimate activities, of course, differ according to one's abilities, skills, character, and external circumstances. Other things equal, those whose legitimate opportunities are least rewarding are most attracted to crime. They have the most to gain and the least to lose. Thus, members of this audience, I trust, are not much tempted by crime because they have available comparatively rewarding, legitimate activities. That's a guess. This much is common sense as distinguished from criminology.

My assertion that the disadvantaged are more tempted by crime than the rich may strike some as undermining the justification of punishment. In a celebrated passage by Anatol France he states, "the law in its majestic equality forbids rich and poor alike to sleep under bridges and to steal bread." His sarcasm suggests that punishment is unjust because it is inflicted on many people who cannot avoid doing what they are punished for. But crime is always an avoidable act. As a matter of fact, if a person did steal bread because of imminent danger of starvation, he would have the legal defense of necessity, but I won't go into that at any length. Anatol France's sarcasm strikes me as silly, which might explain why it's so widely quoted. Certainly rich and poor are tempted by crime to a different degree, but the purpose of the criminal law is always to restrain those who are tempted to violate it. The law would be redundant if it were to restrain only those who are not tempted to break it. The poor who are more tempted, therefore, are more often punished than the rich. The burden of any law always and only falls on those who are tempted to do what it forbids. The burden of prohibition fell on drinkers, not on tea totalers. The punishment for burglary or robbery falls mainly on the poor, not on the rich.

A more pretentious version of Anatol France's sneer claims that poverty somehow drives the poor to crime. They are punished although it is the social structure, capitalism, that first victimizes and then blames them for the crimes caused by their victimization. Punishment is presented as an instrument of class justice wielded by capitalists against proletarians and, therefore, unjustifiable. Yet, although the disadvantaged do have more incentive to crime than the advantaged, they are not compelled to commit crimes. Indeed, they don't if moral or material disincentives such as threats of punishment are strong enough to deter them.

No social order, be it capitalist or socialist, can avoid inequalities of wealth, power, and prestige. Inequality implies that some are least and others are most advantaged. Relative poverty, unhappiness, envy and ambition are always with us. There is no ambition without frustration. In every society the least advantaged commit most crimes regardless of how poor they are in absolute terms. As a matter of fact, in societies in which the poor are altogether destitute the crime rate seems relatively low. In more prosperous societies in which the poor are not destitute, the crime rate is higher. Crime appears to be fueled by resentment and opportunity far more than by need. It is legitimate, of course, to explain actions, criminal or not, by the conditions that shape actors and cause them to act but causation is not compulsion and explanation is not justification. The acts of criminals are voluntary, if not, they are not crimes. The incentives that lead to crime can be offset by disincentives. For most people who are poor, the threat of punishment is a disincentive which prevails over incentives and deters crime most of the time.

Punishment, then, has two functions which serve as justification. If it is felt to be proportionate to the seriousness of the crime and, thus, deserved by it, punishment is felt to do justice. Secondly, when sufficiently severe, the threat of punishment, carried out often enough to make it credible, deters most people most of the time from committing crimes, and society wants crime controlled. However, as you are aware, justice and deterrence are not always easily reconciled. To be effective, the threatened punishment must deter more than the crime attracts. The attractiveness of the crime as a punishment needed to deter it are not identical to the seriousness of the crime. It's the punishment deserved by it. Yet, there is some convergence.

We want to deter most of the crime we think materially and morally most harmful. These are also the crimes we think most serious and, therefore, deserving of most punishment. Crime nearly always can be reduced by adding to the resources invested in controlling it by increasing the probability and severity of punishment. Yet even when other feasible means of crime control are not available, we will not be willing to bear the moral and material costs of more deterrence by increased punishment. Returns on investment in law enforcement will diminish at some point. I do not think we have reached it by a long shot. Once the point of diminishing returns has been reached, no community wants to increase its expense on crime control for the sake of a trifling reduction of crime. This limit to our willingness to bear additional costs determines the probability and severity of the punishments we impose.

Let me articulate this criterion a little more clearly. To decide rationally on the punishment for each kind of crime, we must answer the question: Do we want to reduce the frequency of this crime by "x" if we can do so only by increasing the actual punishment by "y," actual punishment being the cost of punishment divided by its incidence. When the needed increase of punishment is major and the reduction of crime by deterrence minor, we will stop or should stop. Up to that point, we may want to increase deterrence by increasing punishment, either severity or probability or both. However, we will hardly ever want to increase punishment if the seriousness of the crime to be deterred does not appear to warrant it, even though more punishment would deter more. Thus, we will not greatly increase the punishment for parking violations although it would indeed reduce parking violations; they could easily be reduced by five years in prison, execution or things like that.

But we don't do that because we'd rather have more crime, in this case, parking violations than to have more punishment and that is true not just for parking violations; it's equally true for burglary or anything else. The limit is simply when we feel that an increase in the resources needed, moral and material, for punishment would decrease the crime by not enough to warrant this expenditure of resources.

Let me point out that if I'm correct in what I'm saying, this gives you a schedule of punishments as the retributionist theory does not. Justice objects to punishment that seems out of proportion to what is deserved by the seriousness of the crime or the culpability of the criminal. This is why we don't punish parking violations as much as needed to reduce the frequency significantly nor vehicular homicide or other kinds of negligence or even recklessness. I have assumed that appropriate punishments can lower the frequency of each kind of crime to the frequency we are willing to tolerate rather than bear the moral and material costs of the punishment required to further the frequency of the crime. The punishment needed for the desired degree of deterrence will also satisfy our desire for justice, for, after all, the rate of crime we are willing to tolerate depends on the perceived seriousness of the crime. Hence, the punishment needed to bring the rate of crime to the tolerable level is likely to be the punishment perceived as deserved. My assumption that punishments can be used to deter crime to a specifiable degree is by no means universally accepted. Yet to the extent to which it is influenced by anything external, our life largely reflects the incentives and disincentives we are presented with. More persons would have attended this conference if every tenth attendee were awarded \$10,000. Far fewer would have attended if every tenth attendee would have to pay \$10,000.

In the responsiveness to incentives and disincentives, criminals do not differ much from criminologists. Given moral inhibitions, the \$10,000 net gain attracts to conferences or to crime. The \$10,000 penalty deters from either conference or crime.

Incidentally, let me point out that it matters little over a ten year period whether a criminal is imprisoned once for four years or twice for two years. In the latter case, the probability of punishment has been doubled and the severity halved but either way he spends four out of ten years in prison. It matters, however, somewhat in perception. I'm perfectly willing to grant that. It's a psychological factor, but essentially whether you increase probability, which is very expensive, or severity, which is somewhat less expensive, does not matter, at least not for professional or career criminals. Increasing probability, let me point out, requires more police and less restrictions on policing. Also, lower standards of proof, hence a greater chance for the innocent to be convicted. I don't mean to say that deterrence in the form of these deterrents may not warrant this, but there are considerable moral and material costs, whereas increasing severity is much less costly.

Other objections to deterrence need detain us only briefly. Some argue that deterrence requires a rational calculation that few persons engage in. This confuses the analysis of the term with its subject. If we mathematically analyze and predict a behavior of moving bodies, we do not imply that moving bodies calculate their movements. Deterrence mainly requires that people, on the average, be responsive to incentives and disincentives, and they are. Few will jump from the 60th floor of a skyscraper even though it saves time compared to the elevator. There is a strong disincentive and people, without calculating, seem to respond to it.

Just as people respond to nature's disincentives, so they respond to legal disincentives. In most cases, we respond largely by habit formation rather than by conscious thought or calculation. As a matter of fact, I think punishment really deters criminal habits already formed. It does influence the formation of such habits. Of course, legal disincentives can never be as predictable in the application or as immediate as natural ones are. Therefore, legal laws are not as deterrent as the law of gravity. The more reason to try to make punishment as predictable as we can.

Another objection to deterrence, popular among sociologists, argues that since criminals are led to their crime by their environment or prior conditioning, they should not be blamed or punished. Yet, even if conditioning or the environment explains or predicts crime, it does not either justify or excuse it. Incidentally, of course, if everybody rather than just criminals is conditioned by his prior experience, and, therefore, not responsible, then we need not bother at all, because criminals would not be responsible, but neither would be judges or legislatures, so we don't have to worry about the matter. But if criminals alone are supposed to be predetermined, let me say, once more, they are not predetermined in the sense that they cannot avoid doing what they are doing, because if they could, they wouldn't be committing crimes. It seems hard to see, to me at least, why legal disincentives such as the threat of punishment cannot become part of the environment as much as the social incentives that lead to crime. We have little control over the latter but we certainly can produce the former if we want to. A more serious argument correctly contends that we do not know how much deterrence each punishment secures. We do know that rape or burglary are deterred more by a threat of five years imprisonment than by a threat of

five days, but we do not know how much more. We know also that if the threat of punishment is carried out more often, it deters more, but, again, we do not know how much more. Still, it seems to me, that these are factual matters and the resurgent principle could establish the facts, the reduction of crime each increase of punishment, could secure under given conditions. Let me point out that I have used imprisonment as the paradigm of punishment. I do not mean to exclude other things.

I shall now make my last point. Kant argued that we must treat even a criminal as an end in himself and never merely as a means to accomplish social purposes he does not share. Therefore, justice which is an end in itself and not a means, can justify punishment but deterrence cannot. Consequently, it is quite appealing, but contrary to what many philosophers believe, it is consistent with punishment for the sake of criminal deterrence. Remember, it is not punishment that deters but the threat which the actual punishment carries out. The threat does not use anyone as a means in any way. It is a conditional threat. One can avoid punishment by avoiding the threatened act. If an innocent person were punished to deter others, he would indeed be used merely as a means, since he could not avoid the punishment by being innocent and does not consent to it. But a guilty person by committing his crime volunteered to run the risk of the threatened punishment; he volunteered, just as a taxi driver volunteers to serve as a means to my transportation. By accomplishing my purpose to be transported, he accomplishes his to earn an income. We each consent to serve as means for the other. Because of his consent, neither is used exclusively as a means for the purposes of the other. The criminal no more wants to be punished than the gambler wants to lose. But both the gambler and the criminal volunteered for the risk of being punished or losing. Neither, therefore, can complain if that which he risked does happen.

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Chapter 7

DESERT, DETERRENCE, AND DRUNK DRIVING

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Chapter 7--Deterrence, Desert and Drunk Driving

In the past few years, attempts have been made to deter drunk driving by significantly increasing the penalties for the offense. The justification for the increases is that they will result in fewer cases of drunk driving and this will in turn reduce the numbers of injuries and deaths attributed to such behavior.

In this paper, I argue that such attempts have not been successful. While attempts to increase the severity of punishment for DWI (driving while impaired) show an increase in deterrence in the short-term, such results have not been sustained over the long-term. On the other hand, efforts to achieve increased deterrence of DWI through more severe punishment produce undesirable distortions in the criminal justice system. Thus, when such results are evaluated in light of the deterrence theory (the theoretical justification for increasing the penalties) they appear to be unjustified.

Since the deterrence theory, as I argue, is in any case an inadequate theory for deciding questions regarding the allocation of penalties, attention is turned to the deserts theory. I try to show that from a deserts perspective, DWI is not, in itself, a serious offense and therefore does not merit severe punishment. Since severe punishment is not justified for DWI on either the deterrence theory or the deserts theory, we should take a look at the penalties currently in effect for DWI to determine if they are justified.

In recent years penalties for drunk driving have been markedly increased in an attempt to deter such behavior. Since driving while intoxicated is considered to be a deadly form of behavior, attempts to reduce such occurrences are understandable. Nevertheless, there are two basic sorts of

difficulties that arise from attempting to employ deterrence as the criterion for determining the appropriate penalty for a criminal offense. One is the practical problem of determining the relation of severity of penalty to its deterrent effect. The other raises concerns about whether the penalty appropriate from a deterrence standpoint is the penalty the offender deserves.

In this paper I want to address each of these problems in light of penalties currently being handed out for DWI (driving while impaired or intoxicated) offenses. I will argue that, aside from the practical difficulty of measuring how the deterrent effects of penalties are related to various degrees of severity, increases in penalties for DWI offenses are not, over the long term, effective. Secondly, I will argue that severe penalties for drunk driving raise serious questions of justice.

According to the deterrence theory of punishment, punishment is justified because of its social utility. Its social utility consists of deterring criminal behavior, primarily through the threat of punishment. Since criminal behavior harms society, deterring its occurrence has social utility. Deterrence takes two forms. The effect that punishment has on the criminal in reducing the chances that the offender will commit another offense, is called special deterrence. Special deterrence is often identified with reform of the criminal. The second form of deterrence, the effect that the threat of punishment has on preventing others from committing crimes, is called general deterrence. General deterrence, rather than special deterrence, is considered to be the main social benefit of punishment.

Proponents of the deterrence theory usually realize that punishment has its social costs. They are willing to concede that punishment is, in itself, an evil, since it contributes to human suffering. For example, punishment inflicts suffering on the offender and the offender's family. Aside from the suffering caused by punishment, there are, of course, all sorts of other costs associated with the institution of punishment. It is well-known that the financial costs of administering the criminal justice system are mammoth.

In general, punishment is justified according to the deterrence theory, if the benefits of punishment outweigh its social costs. Thus, the theory suggests that we employ a sort of cost\benefit analysis in determining whether the institution of punishment is justified. Those who hold that punishment is justified on the basis of deterrence are committed to maintaining that the social benefits of punishment outweigh its costs. In light of the enormous commitment of society's resources necessary to administer the institution of punishment, defenders of the deterrence theory must hold that punishment has a substantial deterrent effect.

Let us begin by assuming that punishment does have a deterrent effect.¹ That is, having some penalty for an offense deters better than having none at all. Let us also assume that the deterrent effects of punishment are such that the social benefits of having the institution of punishment outweigh its social costs. Further, let us assume, for now, that if benefits of punishment outweigh its social costs, this is sufficient to justify the institution of punishment. Finally, let us grant, for the moment, that deterrence provides an adequate basis for determining the proper allocation of punishment. Each of these assumptions can be and has been questioned.² I will be questioning the last assumption myself later on in this paper.

After granting these assumptions regarding the effectiveness of punishment as a deterrent to criminal behavior, as well as its theoretical adequacy in justifying the institution of punishment, we still can not apply the deterrence theory to particular offenses until we answer yet another question. This question concerns the allocation of punishment. How much punishment ought to be handed out for a given offense? In order to answer this question we need to know not only that punishment deters, a necessary condition for deterrence to count at all in determining the allocation of penalties, but also how the magnitude of the deterrent effect varies with penalties of different severities.

Given the recognition that punishment has its social costs, the correct amount of punishment on the deterrence theory is the amount that produces the greatest social benefit with the least social costs. That is, the theory directs us to choose the amount of punishment that produces the best overall cost/benefit balance. In general, more severe penalties have greater social costs, e.g., longer prison sentences produce more suffering for the offender and a greater financial burden on society. If we are to justify such penalties from the standpoint of deterrence, we have to show that more severe penalties produce enough additional deterrent effect, i.e., social benefit, to offset the additional social costs.

Unfortunately, the relation of severity of punishment to the degree of deterrent effect is difficult to determine.³ The difficulty is largely due to the fact that there are many factors that affect the incidence of a given offense aside from the severity of the penalty attached to it. Social and economic conditions can be mentioned as two factors commonly thought to affect the crime rate and these, of course, are constantly changing. Thus,

one cannot directly infer, for example, if the incidence of a certain crime is reduced after an increase in its penalty, that the reduction in its incidence is due to an increase in the penalty's severity.

Research on deterrence does tend to suggest, though, that once the severity of punishment reaches a moderate level, increases in the severity of a penalty are unlikely to add significantly to its deterrent effect. What we do not know is at what level of severity this diminishing deterrent effect takes place. Secondly, research tends to indicate that the certainty of punishment is a more important component of deterrence than severity.⁴

Attempts to deter drunken driving have characteristically taken the form of promoting increased penalties for such offenses, e.g., mandatory incarceration and revocation of driving privileges. In addition to attempts to increase the severity of punishment, spearheaded by Mothers Against Drunk Driving, Students Against Drunk Driving, as well as other groups, other efforts have focused on increasing the likelihood of punishment, e.g., enforcement crackdowns and sobriety checkpoints.

Although limitations of space prevent me from discussing in detail the literature concerning recent efforts to increase the deterrent effect of punishment and to thereby reduce the incidence of DWI the results are nicely summarized by H. Laurence Ross, one of the leading scholars in the field.

Recent experience in the United States seems to support the conclusion, reached on the basis of earlier inter-national experience, that legal interventions intended to deter drunken driving succeed in the short run to the extent that they are capable of affecting drivers' perception of the certainty of punishment. Evidence of a deterrent effect for severe penalties remains elusive, but the distortions in the criminal justice system produced by the severity of punishment have been impressively documented.⁵

Ross supports his conclusion with results from the 1981 attempt by the state of Maine to deter drunken driving. Maine boasted "the toughest drunk driving law in the nation" which, among other provisions, called for mandatory incarceration if blood alcohol levels reached a certain point. Surveys indicated that the Maine campaign increased the perceived risk of drunken drivers being apprehended and convicted and the perceived severity of punishment. Results reported for 1982 suggested a significant deterrent effect for the new efforts. However, results for 1983 "testify to the decay of this effect over time."⁶

On the other hand, a well-documented effect of penalties of increased severity is the distortions this introduces into the criminal justice system. As penalties increase in severity, a smaller percentage of those arrested are convicted, the number of jury trials increases and jails become so overcrowded that many accused of drunken driving are released. This is what Ross means by "the distortions of the criminal justice system," resulting from increases in the severity of punishment for DWI.

Based on a survey of studies concerning the outcome of efforts to deter DWI by introducing more severe penalties, or by attempts to increase the likelihood of the offender being apprehended and punished, one must conclude that such efforts do not appear to be justified from the point of view of the deterrence theory. The deterrent effects of more severe penalties do not last and the costs of achieving this short-term increase in deterrence, given the distortions it introduces into the criminal justice system, clearly appear to outweigh the benefits. From a strictly deterrence standpoint, then, such increased penalties must be regarded as unjustified.

Apart from the ineffectiveness of recent attempts to achieve increased deterrence of DWI, there remains the question of the adequacy of deterrence as a basis for determining the proper amount of punishment to be visited on the offender. Suppose that these penalties did deter sufficiently for us to conclude that their benefits outweigh their costs. Imagine that we had ready the facilities and the staffing to efficiently process those guilty of DWI. Do we then simply select the penalty that will achieve the most deterrence at the lowest social cost?

This, of course, is precisely what the deterrence theory prescribes. But suppose we discover that if we selected 30 year prison sentences for DWI, the deterrent effect would be such as to virtually wipe out DWI. Or, imagine that we select a few DWI offenders and in order to make examples of them, we sentence them to death.

Although I doubt that this would achieve the long-term deterrent effect we are after, assume that it did. One might then argue, that since so few people are suffering the punishment and because the penalty is so effective in deterring DWI, the social benefits clearly outweigh the social costs. Should 30 year prison sentences or the death penalty be used to deter DWI?

Naturally, I am not advocating that such penalties should be considered. What I am pointing out is that the deterrence theory would sanction these penalties if their social benefits were greater than their social costs. But, it seems to me that even if they were socially beneficial, it would be wrong to employ them. It would be wrong because those found guilty of DWI would not deserve penalties of this magnitude.

This suggests that the deterrence theory is not an adequate theory for determining the allocation of penalties since it might advocate penalties which ought not be employed because they are inconsistent with what the offender deserves. In order to remedy this defect, we need to look at punishment from another viewpoint. We need to ask, what sort of punishment is deserved for a given offense, rather than what sort of punishment will best deter. In other words, we need to look at the question of allocation of punishment from a deserts theory rather than a deterrence theory.

The two theories could hardly be more different. The deterrence theory looks forward, for its justification, to the effects the contemplated punishment will have on society as a whole. Since the amount of punishment is determined by its future social effects, what the offender did in the past is not the basis for punishment. On the deterrence theory, one is not punished because one did wrong, but, rather, because of the deterrent effect the punishment will have on other offenders.⁷ It is this deterrent effect that justifies both that the offender will be punished and amount of that punishment. In fact, leaving aside the reformative effects of punishment on the offender (these play a minor role on the deterrence theory in any case), if we could gain the deterrent effects of punishment without actually punishing the offender, this is what the theory would prescribe. It is because the deterrent theory looks forward to the effects of punishment, rather than back to the nature of the offense, that allows it to justify penalties inconsistent with what the offender deserves.

On a deserts theory, punishment is justified on the grounds that those who break the law deserve punishment. Thus, the deserts theory looks back to the past in its justification of punishment. It is because the offender broke the law that punishment is justified. The fact that punishing the offender might have a deterrent effect plays no role in its justification on the deserts theory. Punishment of the offender is justified solely on the grounds that he or she deserves it. The amount of punishment that is justified is determined solely by how seriously wrong was the offense.

In order to decide how severely an offender ought to be punished, then, we have to determine the seriousness of the person's offense. How is seriousness to be understood?

Standard accounts of seriousness, such as that offered by Andrew von Hirsch in his Doing Justice,⁸ involve the culpability of the offender and the amount of harm caused by the act itself. Let's look at harm first. The seriousness of an offense is to be determined, in part, by how much harm an act of that sort typically causes. So, on this account, arson is a more serious offense than, say, defacing a building, because it does more harm. Since more serious offenses are to be punished more severely than less serious ones, arson is to be punished more severely than defacing a building.

The other component in determining the seriousness of an offense is the actor's culpability. Did the offender do the act intentionally, recklessly, or negligently? Was the act provoked or unprovoked? Each of these questions refers to the mens rea component in assessing criminal liability, the "state of mind" of the offender. If, for instance, I intentionally run down a student in a crosswalk for the purpose of getting even with him for something the student did to me, I am more culpable than if I hit a student in the

crosswalk because I am not paying attention to my driving. Notice that in both cases the amount of harm may very well be the same, but we generally think that intentionally killing is a more serious offense than negligently killing. The reason is that the offender is more culpable, i.e., more to blame for the offense. Therefore, on the deserts theory, intentional killing deserves more punishment.

Since culpability of the actor plays a significant role in how serious an offense is, in assessing the harm done by a particular sort of behavior, we will want to limit our consideration to how harmful is a single act of that kind. Although offenses such as shoplifting may be quite harmful in aggregate, a single act of shoplifting usually causes little harm. While on a deterrence model we might want to punish shoplifting severely, since in aggregate it does so much harm, on the deserts model this will not be true. A person is, generally, responsible only for his/her own actions, not for the actions of others and can, therefore, be justly punished only for the former.

One further refinement in our account of seriousness appears necessary. What about the risk of harm presented by an act of a particular kind? The criminal law, for instance, considers armed robbery to be more serious than burglary, even though the actual harm caused in a given case may be the same. Having a gun present does not, in itself, cause more harm. Rather, the claim is that more harm is risked because of the presence of arms. Assuming that the offender is aware of this increased risk, he/she then deliberately subjects others to more risk of harm. The increase in the risk of harm, then, makes the offense more serious and, consequently, deserving of more punishment.

With this sketch of seriousness to guide us, we can now address the question of how seriously wrong is the DWI offense. Once we have answered that question we will be ready to address the question of how much punishment is appropriate for the DWI offender. Since the amount of punishment, on a deserts theory, is to be determined by the seriousness of the offense, let us begin by asking, how serious is DWI? To answer this question, as we have seen, we need to inquire into the harm done or risked by such offenses and into the culpability of the offender.

If the penalty for DWI is to be based on what the offender deserves, it seems clear that we must focus on how much harm is done or risked by a single act of DWI, not how much damage such behavior does in aggregate.⁹ The latter consideration, while important from a deterrence standpoint (that is, how important is it for society to deter such behavior), is irrelevant, as we have seen, from the viewpoint of deserts since the offender is not responsible for the behavior of others.

One obvious difference between DWI and, say, robbing a bank, is that a single instance of DWI may cause no harm at all. When someone is robbed, unless the robber is apprehended and the property immediately recovered, the victim has suffered harm. In contrast, however, no harm is caused by the typical DWI offense. Although DWI does not in itself, necessarily, cause harm, it does risk harm. It is for this reason that it is prohibited by law.

A second important difference between a crime such as robbery and DWI is that although the DWI offender intends to drive the car while intoxicated and, perhaps, knowingly subjects others to risk, he/she does not set out with the intention of harming someone.¹⁰ Presumably, the harm arising from robbing a bank forms part of the robber's intention, although this may not be the motive for the action. This affects the agent's culpability.

With these points in mind, we must ask, first of all, what is the risk involved in DWI. The question has two components, how much harm is risked by a single case of DWI and how likely is it that the harm will occur. Obviously, the amount of harm that could be caused by an instance of DWI is great. It could result in the serious injury or even death of several persons. Thus, on the bases of our answer to this questions, alone, DWI would seem to be a serious offense deserving severe punishment.

Before we accept this conclusion, however, we must also seek an answer to the second question: how likely is this harm to occur. The answer here is not so obvious, and we must turn to the research on the subject for an answer. It is clear that driving a car under normal conditions while sober presents some risk of causing injury or death both to oneself and to others. How much more likely is such an outcome if one is DWI? According to Ross:

While drinking and driving on the massive scale experienced by modern societies is associated with costly and tragic consequences, the individual trip impaired by alcohol is extremely unlikely to harm anyone. Fatal and injury-producing crashes are extremely rare events. According to Summers and Harris's (1978) estimates for the United States, the probability of a crash is three times higher for the impaired driver than for the sober one. Yet the absolute risk of a crash for the impaired driver still is only on the order of 1 in 1,000, and the absolute risk of causing injury or death is of course considerably lower.¹¹

If the 'absolute risk' of an alcohol impaired driver causing injury or death is so low, and provided we are correct in maintaining that the DWI driver does not intend to cause injury or death, it is difficult to show that DWI is a serious criminal offense. As we have seen, DWI is not, in itself,

harmful but only increases the risk of harm. Since the risk of harm of a single case of DWI is not great, even if we assume that the DWI driver intentionally subjects others to that risk, the degree of culpability is still not great.¹²

If we cannot show that DWI is a serious criminal offense, then, on the deserts theory, we cannot justify severe penalties for it. Now, of course, there are different degrees of intoxication and it can be shown that the risk of causing an accident and, thus, the risk of causing injury or death, increases as the level of intoxication increases. In that case, the seriousness of the offense would increase. This suggests that if we are concerned with the offender's deserts the law should, where it often does not now, distinguish different levels of intoxication and vary the penalty according to the level of intoxication.

But the level for the typical DWI offense is set at .10 BAL (blood alcohol level) and the question remains whether penalties recently put into place or proposed for that offense are too severe from a deserts perspective. This is a difficult question to answer since the deserts theory does not precisely determine what an appropriate penalty should be. (The same is true for the deterrence theory.) The deserts theory does, however, clearly rule out one being punished more for a less serious offense, than one is punished for a more serious offense.

On that basis, one must be led to wonder how mandatory incarceration can be justified when one-fourth of those convicted of much more serious offenses, e.g., rape or robbery, serve no jail or prison time.¹³ Although this does not prove that penalties for DWI are too severe, it should at least raise the question in our minds.

In any case, my purpose in this paper has not been to decide what the correct penalties for DWI, or for any other offense for that matter, ought to be. Instead, I have argued that from a deterrence standpoint, which, by the way I tried to show is an inadequate standpoint, severe penalties for DWI are not justified. This is because there is simply no evidence that such penalties are successful in producing long-term deterrence, although they do produce serious problems for the administration of the criminal justice system.

From the deserts perspective, I have claimed, DWI cannot be considered a serious criminal offense. This entails that it is not deserving of severe punishment. Although I have not suggested what a correct penalty for DWI would be, I hope that I have provided a framework within which such a determination can be more easily made.

NOTES

1 See Richard G. Singer, Just Deserts (Cambridge: Ballinger, 1975), pp. 12-18, for a discussion of problems with determining the deterrent effects of punishment.

2 See, for example, Jeffrie Murphy and Jules Coleman, The Philosophy of Law (Totowa, N. J.: Rowman and Allanheld, 1984), pp. 123- 125, and Andrew von Hirsch, Doing Justice (New York: Hill and Wang, 1976), pp. 35-44.

3 A summary is in von Hirsch, pp. 61-64.

4 H. Laurence Ross, "Deterring Drunken Driving: An Analysis of Current Efforts," in Journal of Studies on Alcohol, Supplement No. 10, July, 1985, pp. 122-128. For a more detailed discussion see Ross, Deterring the Drinking Driver (Lexington, Massachusetts: Lexington Books, 1984), pp. 7-19.

5 Ross, "Deterring Drunken Driving", p. 126.

6 Ross, "Deterring Drunken Driving," p. 125.

7 On this point see Murphy and Coleman, pp. 124-125 and Richard Wasserstrom, Philosophy and Social Issues (Notre Dame: Notre Dame, 1980), pp. 130-135.

8 von Hirsch, pp. 77-83. My account here is obviously indebted to that of von Hirsch.

9 I am again indebted to von Hirsch for this point. On the relation of alcohol to traffic accidents, see Joseph Gusfield, "Social and Cultural Contexts of the Driving-Drinking Event," in Journal of Studies on Alcohol, Supplement No. 10, July, 1985, pp. 70-77. He points out the tendency to suppose that "any time alcohol is 'involved' in an auto-accident, the drinking is at fault and the use of alcohol has caused or aggravated the injury or fatality." Gusfield calls this the "malevolence assumption."

10 Although the criminal law assumes that one intends the probable consequences of one's acts, here the probability of harm seems too low for it to count as part of the agent's intention.

11 Ross, Deterring the Drinking Driver, p. 112

12 At lower levels of drinking and driving, the offender may be unsure of whether his BAL is slightly above or below the legal limit.

13 From a summary of a Bureau of Justice Statistics report in the Sentinel-Tribune, Bowling Green, Ohio, August 3, 1987.

SECTION IV

SYSTEM PERSPECTIVES ON PUNISHMENT

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 8

PUNISHMENT AS A SYSTEMS PROBLEM

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Chapter 8--Punishment as a Systems Problem

The title of the talk is "Punishment as a Systems Problem", and I was delighted with that title because it harks back to some of my early experience, some of my early training, in looking at issues as systems issues. I think it is the systems context, particularly, that we want to think about punishment policy questions and, particularly, interpret some of the results we got this morning regarding punishment policy.

As many of you have seen or know, there's this simple construct of a system that has inputs or policies or, if you will, knobs on a black box going through this punishment system with outputs or consequences that are, in a sense, the dials on a black box that one cares about. The crucial element of the system is that it has a feedback loop, so that if the outputs are in conflict or what you don't want, you use that to modify the policies and so the whole system maintains a stability and integrity and a control. It's a fairly simplistic notion but it urges some appropriate concerns. Those are, first, that you have to have some concern for what happens when you do something. It's not enough simply to do it. So it is concern for the consequences, and those consequences have to be assessed ultimately in terms of the objectives of the system. What is it doing and why? It has to have concern for the interaction among the parts of system. It recognizes that the criminal justice system has a bunch of interacting parts, and it is those interactions we have to be particularly sensitive to. It is particularly concerned with internal coherence. That is, there has to be some relationship between the inputs or the policies and the consequences.

In this context, I'd just like to put on the table the often quoted statement that the criminal justice system is not a system. Indeed, at some

level that's intended. When we deal with individuals we don't want a single decision maker dictating liberty, life, and death considerations. We want a system that has its own internal conflicts, its own checks and balances. But we do want, and we've shown in a variety of ways, some coherence in the aggregate. It's in the aggregate that policies become relevant. Indeed, LEAA was created to provide some of that system coherence and system integrity. Through a whole variety of misfortunes, the wrong agenda at the wrong time, LEAA had a demise. There's also an inherent logic about what policy is that requires this kind of system thinking. It's the distinction, for example, between sentences which are the individual acts of deciding judges, among others, versus sentencing policy. It's the policy that must reflect some of the aggregate consideration and it's the issue of the policy that I particularly want to address today.

As we deal with consequences and objectives, we have to do a number of dichotomies. As we think about punishment, I think there's a dichotomy between two primary objectives, and I think it's these two primary ones, rather than the six or eight that we heard about this morning, that really deal with what the system is trying to do. On one hand, it's trying to impose punishment in a desert sense for what is deserved as means of reinforcing the values of the society that may have nothing to do with the crimes that are averted. [On the other], it's also trying to avert crimes. As it averts crimes, we make a dichotomy between the ways in which it does so at a macro level, which is what we call general deterrence, that is, the symbolic effect of the punishment in deterring others, and the micro effect, that is, what it does to the individual offenders. At the individual offender level, there is another dichotomy involving incapacitation, that is, removing the individual from the streets so that he removes his crimes from

the street with him, for example, as a pathological rapist does and, for example, a drug dealer does not. When the individual removes his crimes from the street those crimes then get averted. Or behavior changes in the individual subsequent to treatment, which is rehabilitation as well as special deterrence. Within the incapacitation, one might make a further dichotomy between that which one does without trying to select who are the worst offenders, the most frequent offenders, the most persistent versus selective where one really tries to home in on who are the worst explicitly. This structure, then, is linked to the two primary objectives by which the outputs would be measured. One is whatever effect it has on crime, [that is, the change in] crimes attributable to more or less of any of these activities. There's also the issue of justice, [that is,] the degree to which the punishments delivered are viewed as just. In that context, there are relative issues and there are aggregate issues. Is this sentence or is this punishment reasonable with respect to that other punishment and at the relative level and in the aggregate? Are we being excessively harsh or are we being excessively lenient? Underlying it all is the issue of costs which is best reflected in prison populations, and we have to think about prison populations, not only costing \$15,000 to \$20,000 per prisoner per year, but the whole variety of societal costs associated with incrementally putting more or fewer people in prison. Putting fewer or more may change crimes and those are some of the trade-offs that we have to make as we establish those aggregate policies. This provides a context for putting a little more specificity onto that first black box picture we [described].

Within the punishment system, the primary deciders, the primary articulators are the judges, of course. They do the sentencing. The prosecutors have a strong role in this. They do the charging and the

charging in many cases shapes the sentence. The parole folks, in most settings, really decide the time served. The legislatures put bounds and are the vehicle for explicitly articulating policies through statutory acts, the traditional, albeit largely irrelevant, role of legislatures, and increasingly in establishing determinant sentences, mandatory minimum sentences and so on or through their agents, sentencing commissions and the like, that are explicitly responsible not for doing sentencing as judges do but for establishing sentencing policy that ultimately constrains what the judges do and what the prosecutors do.

The policies then are the sentences, and, as we heard this morning, the announced sentences and the time served and the consequences relate to crimes, costs, prison population and justice. I'd like to start dealing with some of those issues. I can't deal with them all. The ones that in a sense are most relevant to the discussion at this conference are the justice issues and I'd just like to say a few things about them.

The dominant theme as one thinks about justice really relates to desert, and Norvil Morris for example talks about desert not as the absolute standard but as limiting principles. That is, one shouldn't go above or beyond what is just in a relative sense but one has considerable flexibility within that as long as one doesn't violate that. The dominant theme of desert is proportionality. That is, a more serious crime should get a more serious sentence. The sentence for robbery should be no less than the sentence for burglary, everything else being equal. On the other hand, a particularly serious burglary, a burglary that involves an offender with a long record, may well involve more serious punishment than a minimal robbery. The real issues end up being what are the reasonable factors to consider in establishing the desert. There's no ambiguity that the dominant one is often

seriousness. All the literature affirms that. All the empirical evidence affirms that is the dominant consideration. Very few people will argue that prior record does not belong in there. There may be differences in the role of prior record. Yet I was struck, for example, in how small the attention paid to prior record was in the survey this morning. It's clear that both empirically and judgmentally that prior record is important. It's clear in sentencing commission guidelines that prior record becomes important. The interesting issues come down to the other attributes that may or may not be included. There's no ambiguity that race is the absolutely precluded variable, and that there are some few who may argue that's too bad, because look at the enormous difference in offending between whites and blacks, and why can't we deal with it. Some subtlety argue that on normative grounds, it should not be included, which is clear, but rather on empirical grounds, there is indeed an important difference between whites and blacks in their involvement in crime. But when one looks at the population that does get involved in crime, those who do participate, the factors that distinguish more or less serious offenders among the class of offenders don't carry racial information so that empirically it is also inappropriate, as well as inappropriate on normative grounds.

As one gets to other variables, there's a very important tension and what I would love to see sorted out is the degree to which some of these variables are not implemented, and what we see is very little influence of these variables, variables like drugs and unemployment. The problem with those variables is that they are acting in opposite directions. For those who are trying to avert crime, some of these variables are predicted factors. They are legitimately aggravating considerations because they reflect an increased propensity of this individual, who uses drugs, who is

unemployed, an increased propensity to commit crime. On the other hand, those same factors for the individual who is assessing blameworthiness, who is assessing desert, those factors are mitigating. The individual who had diminished competence is less culpable for the harm or the offense engaged in. I suspect we have seen no effect of these largely because the mitigators and the aggravators balance each other out. I'd love to see that partition because the crime controller should deal with those as aggravating factors. The retributivist, the one who is concerned predominantly with desert, should see those as mitigating factors.

All of the discussion about proportionality really talks relatively, talks ordinally, what is more and what is less but doesn't give us very much guidance about the absolute scale. What one might call the proportionality concept. We may all agree that robbery should get twice as much punishment as burglary, but is it one year or two years, is it two years and four years, or is it four years and eight years. There is not very much guidance in desert to find out what that scale factor is, what that proportionality should be. That's why we went out and looked at some years ago in a survey that was much simpler, much more expeditious, much less of a survey than the one we heard about today, to try to get a handle on what the public thought about what this scale factor ought to be. [Blumstein describes the data appearing in his article (with J. Cohen), "Sentencing of Convicted Offenders: An Analysis of the Public's View," Law and Society Review 14:223-261, 1980.] These ranges are the actual sentences imposed by the Pennsylvania courts. The left end of these horizontal bars are the minimum sentence; the right end is the max and this is what the people called for in the survey, and this 45 degree line is the cases where the survey and the actual would be identical.

It's clear that the people are calling for sentences that were close to the max. The minimums were roughly half the max and, as you probably know, almost always it's the minimum sentence that's served rather than the maximum. Here's a factor, too, that was reflected. That was the sentence. This is a picture of the actual time served. These are narcotics possession, robbery, auto theft and so on. The question here was for somebody who was a repeat offender, how much time should that person serve, and this horizontal axis was again the actual time served by people in Pennsylvania prisons. The great bulk of them were indeed repeat offenders. Here is that 45 degree line. What you see by looking at this is a very high correlation between actual sentence and what the public calls for. This is the same result we saw here. There is quite a good agreement on the proportionality. There is considerable disagreement on the proportionality constant. Most of these are in the range two to four times and probably best approximated by four times what the actual sentence is, something not dissimilar from the results we heard about this morning. Similar results on probability of going to prison if convicted are shown. The purple pictures are prison or jail and the comparable green pictures are just state prison, and it highlights the point that was raised this morning. That if you bring in jail, particularly for the minor offenses, it adds an awful lot because of the very large fraction of people imprisoned go to a local jail, particularly at the minor offenses. But again, the best approximation for any kind of incarceration here was that the public was calling for twice as much time.

Let me make some observations. I think there is striking agreement and, again, that was reflected in the survey results we heard this morning on this sense of proportionality, on what is more serious and what is less serious.

But there is a big difference between the public's proportionality constant and that of the criminal justice system. Rather than simply accepting that, I think it's best to think very hard about how these norms of the public get formed. Until I started working with the criminal justice system, I didn't have a good sense of what would be appropriate. Where do I get my information about what the appropriate norms are? Probably the best information I get is from the newspaper reports at the most dramatic event in the criminal justice process, which is the conviction day, particularly in the very flashy cases. What does the press tell us? They tell us that "Joe Smith" has been convicted of "x" and faces so many years of punishment. What he faces is the sum of the statutory max for all the conviction charges served consecutively. Nobody serves consecutively. Hardly anybody serves anything like statutory maximums. But, if that is where [the public's] mind comes from, that is bound to be distorted and if someone asks me how much should someone get, I would think that would come into account, particularly those stories I read about in the press which are inevitably the most heinous version of any particular offense.

I think we've seen a process over the last ten to fifteen years where the sentencing process has been profoundly politicized. It used to be that sentencing was an issue left to the professionals in the criminal justice system, particularly parole boards, and they made their judgments about when someone should be appropriately released within bounds established by the judge which may have been tight or loose bounds. We see politicization and, in the process, the cheapening of sentencing. What we particularly get our attention drawn to in that politicization process is the most heinous version of a rape, the most heinous version of a murder, the most heinous version of

a robbery. That, too, pushes our cognition out to the higher values. I'm not too familiar with all the literature, but I know there have been a number of studies where they have asked people how much should a robber get, how much should someone get for this robbery, and then they take the individual (the flesh and blood robber) and tell the respondent something about that flesh and blood robber, and this clearly will shift downward in the sentence imposed when the flesh and blood is presented. I raise this simply to recognize that when people say when asked a bland question what should someone get, it's not a trivial issue and really requires some exploration to sort out the basis by which those answers are arrived [at]. I think most of us identify as victims. When the percentage of population in a year that is touched by crime is something between a quarter and third, most of us are victims. A quarter to a third of the respondents in any survey likely will have been victims or have someone in their household who has been. I know when I was victimized I felt enormous anger and animosity towards the offender who did it to me. If the criminal justice system is simply to represent the sum of that animosity, then we might as well have a vigilante system. I think there is a moderation of that personal animosity that transforms it into the social policy that gets reflected in punishment policy. I should say that when one asks the question price-free, people will always ask for more of what they would like than when they start to face some of the price implications of what it costs to get what they are asking for. The fundamental theme here is that, number one, it is important that we know what the public wants, it's important that we know with increasing sophistication what it wants, what it wants under different circumstances, and where it becomes particularly uncomfortable one way or another, harshness or leniency. But with all that, I think we've got to view the criminal

justice system as moderator of that public demand, and it's that moderation process that tries to appreciate some of these subtleties and tries to appreciate some of the tradeoffs associated with the system.

We basically have to inform the public with much greater sophistication about what sentencing is about. Unfortunately, the politicization process doesn't provide that information. What it provides is lots of rhetoric that says we hate these offenses; therefore, let's crank up the sentences on them without dealing with the issue of the degree to which cranking up the sentences will do anything about those particular offenses. I've been particularly interested and involved in some of the debate within the Pennsylvania Sentencing Commission on sentences for drug offenders. Here is a relatively sophisticated group that has been trying to sort out where it wants to be on sentences for drug trafficking, one of the currently popular offenses. It's clear that to some degree we want retribution, but I think we would all agree and even the most hawkish testifiers when pushed have indicated that it was predominantly the big dealers that they want retribution on rather than universal retribution on the large majority of street dealers who are users themselves. It's unclear to what degree increasing sanctions would significantly affect drug trafficking through deterrence. I sense that it's awful tough to get a good measure of the deterrent effects on burglars, on robbers. I sense a very large queue of people willing to replace those who are deterred because of the very large profits to be made in drug dealing. In terms of incapacitation, it's also clear that there's a large queue of other sellers willing to replace those who are locked up and that one isn't going to do very much about higher

sentences on drug trafficking through incapacitation. On the other hand, the population that is particularly relevant are those individuals who are robbers, who are drug users and, certainly, I would think those are populations, who if incarcerated, would have a significant incapacitation effect in any event. It's really necessary, then, in thinking in just this one example, that we start sorting out what we want to do symbolically, what will be the effects on crime and which crimes, and what are the effects on costs, particularly as represented by prison populations which are now being overly filled. The question is really one of finding an appropriate allocation of the very limited, increasingly constrained capacity that we have to deal with.

What we have here then is a problem that really focuses on political processes. The systems issue is how do we find means for linking punitiveness, which in a sense we all want, with its costs, which are much more subtle, much more societal. In the political process, punitiveness is too often used as a free lunch by those who want to gain political advantage by being tough because it clearly has demonstrated to be an effective political instrument. We see this reflected in a whole sequence of crime-of-the-month bills introduced whenever there's a heinous visible offense. We immediately see legislation introduced to assign a mandatory minimum to the whole class of that offense rather than to deal with those particularly heinous versions. Inevitably, costs and crowding follow without dealing with those downstream consequences. They are typically not taken into account in the political process. The real problem is that we have a correction system that is suffering profoundly the consequences of this political process. They don't have the vehicle for solving the problem.

The solutions have got to lie elsewhere, in the legislative process, in the prosecutorial process, and in parole. Unfortunately, there's no constituency to argue for their case. We need new methods, therefore, for developing this feedback control. For developing the control to keep the system from getting out of hand, we need new methods to maintain stability and that's the only way in which this system is responsibly managed.

Let me just say a few things about approaches to that. As we deal with new punishment policies, it's crucial that we find means of developing impact statements as well as crime effect statements associated with those policies. As we start to think in those terms, at least we bring both of the issues together on the same table. In Pennsylvania, for example, there was introduced into the legislature some years ago a mandatory minimum prison bill that would have cranked sentences to five years for burglaries and a whole variety of other offenses as well as murders and rapes. An impact analysis of that showed it would have about doubled prison populations. The big increase would not be in the murderers and rapists; they would go to prison for that mandatory minimum anyway. The big increase would be at the margin, at the offenses that were not getting the serious increases. At least people in this context would start to worry [about] the issues of what are those impacts. Another vehicle for doing this is the sentencing guidelines as illustrated by the Minnesota Sentencing Guidelines Commission where they view prison capacity properly as one of the relevant considerations in establishing a budget of sentences. There was a fixed aggregate capacity. They could go to the legislature and say we don't like your capacity; we want more. But at least it was responsible to try to allocate that capacity (or any potential future capacity) over different

kinds of offenders as reflected, for example, in prior record and as reflected in different kinds of offenses provides that feedback to policy with appropriate concern for output considerations.

A fascinating idea was proposed by the corrections commissioner of Connecticut some years ago. He said, "Look, we can't decide how to limit capacity. Why don't we give each court or possibly each prosecutor so many of our prison cells. If he wants a new guy in, he's got to decide who goes out." The prospect of seeing a solution like that very quickly isn't very likely but it makes one think much harder about some of the other approaches for bringing these aggregate considerations into account. We have to think of punishment as an allocation process. We have a limited current supply and we have to allocate that. We may well want to increase the supply. We may want to increase the capacity to punish. If we do so, we ought to take into account our desire for more punishment and the cost implications that it represents. I think the assessment of this has got to be done, not at the average, not at the top, but at the margin. Who more will we put in if we had another 100,000 prison spaces in the United States? It's not the average prisoners--those are the folks who go already--it's the people at the margin. It's entirely legitimate that we consider them. It's entirely legitimate that we consider the crimes we would avert at the margin. It's particularly important that we do so in the context of the population this country is going to have at least five to ten years from now and their respective crime committing propensities. But it's looking downstream in terms of what kind of punishment system we want and what are we going to pay in terms of the number of fellow citizens we want to lock away, in terms of the number of crimes averted, in terms of the justice--harsh or soft--that we

want to deliver. It's in that context of putting it all on the table at the same time. I think this is the really the critical criminal justice system policy that we've got to look forward to, and the more we can get a group like this worrying about those issues together rather than in disjointed rhetorical form they always take, the more reasonable, responsible, and effective I think the response is going to be.

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 9

PUBLIC OPINION, POLITICS AND PUNISHMENT

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PUBLIC OPINION, POLITICS, AND PUNISHMENT

Introduction

"The citizens of California want people locked up and put away, but we can't keep doing this forever and still have schools," says a consultant to the California state legislature.¹ "It is politic to increase punishments and the [Texas] Legislature is politic. Texas is not alone; the same has happened in New York, Minnesota, Illinois and California," writes the president of a national lawyers group.² "The public wants to lock up everyone who spits on the street," worries the director of a state penitentiary in the Southwest.³ "We are entering a cycle--I think--in this country that is very punitive, very retributive oriented, very punishment oriented, and with not a great deal of concern about people," complains a corrections director in the Midwest.⁴ A court-ordered study of the prison crisis in Tennessee criticizes "policy-makers who blindly follow the politically aroused prejudices of the masses."⁵ The head of an organization that studies prison overcrowding maintains that "we are learning we simply cannot continue our insatiable desire for incarceration."⁶ A Tennessee state senator concludes that "we've been paying for vengeance, and we're finding it very expensive and very counterproductive."⁷ Finally, in a speech to his organization a recent president of the American Correctional Association argued that:

While there is discussion and great interest in the issues surrounding crime and criminal behavior, too often the shrill rhetoric results in harsh penalties which ignore the reality of consequential costs. It is unfortunate that the serious nature of correctional problems contributes to the politicizing of the issue; however, it is much easier to support harsher punishment than to seek effective solutions. . . . Policy can only be implemented by influencing and changing the perceptions of the public. Changing these perceptions, often in the face of politically motivated rhetoric, is a monumental task, but it is a task which we must try to perform.⁸

These statements represent a widespread and deeply felt view regarding the connection between public opinion, politics, and punishment in the United States. This view comprises the following elements: (1) the public, motivated by desires for vengeance or retribution, seeks excessive levels of punishment for criminal offenses; (2) politically motivated politicians use irresponsible rhetoric to play to public fears about crime, offering the simplistic solution of more and longer incarceration; (3) the combination of irresponsible politicians and a vengeful citizenry overwhelm the more responsible voices in the governmental system; and (4) the result is that too many

offenders are incarcerated for too long a time in too many prisons at too much cost. Prison overcrowding with its resulting tensions and disturbances, the corruption of thousands of less serious offenders unnecessarily incarcerated, the diversion of scarce resources from important social programs, and, most seriously, the failure of the governmental system to address adequately the crime problem can all be attributed to a seriously deficient policymaking process that responds too readily to irresponsible public desires.

It is a disheartening picture, especially in its view of the quality of public judgments about crime and justice, the motives and tactics of elected officials, and the competence of our governing institutions. Indeed, it is hard to think of another area of public policy in the United States in which so many prominent actors share such a bleak view of the citizenry and its leaders. If the picture is accurate, one would almost be forced to conclude that democratic government as presently constituted in the states of this nation is incapable of making and administering responsible policy regarding crime and punishment.

I maintain, however, that this view of the conjunction of public opinion, politics, and punishment is fundamentally wrong. While I do not dispute that in criminal justice, as in other policy fields, there are sometimes irresponsible politicians and uninformed and unreasonable citizens, I will argue that actual levels of punishment in this country during the past several decades have not been driven by public attitudes and desires. On the contrary, in a variety of discrete ways public opinion is screened out from the effective decisions regarding punishment in the criminal justice system. The result, I suggest, is levels of punishment substantially below what the public considers just.

* * *

From June of 1981 through December of 1984 I worked for the Cook County States Attorney's Office (CCSAO) in Chicago, Ill. The CCSAO is the public prosecutor for violations of state law that occur within Chicago and many of its suburbs, an area with a population of 5.2 million persons. While I worked there the CCSAO employed about 570 attorneys who prosecuted approximately 40,000 felonies and more than half a million misdemeanors each year. Courts in Cook County sentenced about 7,000 felons each year to the Illinois state prison system, equivalent to two-thirds of the state-wide total.

Among other duties, I was assigned by States Attorney Richard M. Daley to work extensively on two crime and punishment controversies that confronted the citizens of Illinois during these years. The first was the controversy over the "early release" of prisoners from the state prison system, which came to a head in the spring, summer, and fall of 1983. The second, much less heated and publicly visible, was a successful fight in the winter and spring of 1984 to revise state procedures for the

granting of parole to the 1100 offenders in the state prison system (800 convicted of murder) who had been sentenced before February of 1978 when determinate sentencing was introduced in Illinois. My argument draws heavily on lessons that were learned about public opinion, politics, and punishment from these two episodes.⁹

Micro Data: Chicago and Cook County

"Early" Paroles

Consider the following examples of murderers paroled from the Illinois Department of Corrections (IDOC) to Chicago and Cook County between January and November of 1983:¹⁰

1. Darrell Cannon was paroled from state prison on January 23, 1983 for the 1970 murder of 68-year-old Emanuel Lazar. On February 6, 1970 Cannon entered the Wee Folks Toy Store on 79th St. in Chicago. He announced a holdup and demanded money from Mrs. Lazar, who was behind the counter. When Mr. Lazar, who was entering the store from the back, saw what was happening, he turned to flee. Cannon shot him in the back, spinning him around, and then shot him four more times, emptying his .38 caliber revolver. Cannon was arrested five days later at his aunt's apartment in possession of the murder weapon and a .357 Magnum, both fully loaded. Investigators subsequently discovered that Cannon had previously boasted that he was a hitman for the Black P Stone Nation street gang and that he had killed 15 people. He was convicted of murder by a Cook County jury, which recommended a sentence of death. The judge sentenced Cannon to 100-200 years. Throughout the trial and even as the sentence was being pronounced, Cannon vowed to kill the arresting officer and the prosecutor "no matter how long it took." For his crime Cannon served a total of 12 years and 11 months behind bars. (All time-served figures in this paper include any time spent in jail pending and during trial, unless otherwise noted.)

Postscript: Nine months after his parole Cannon and an accomplice carried out an execution style murder of a small-time dope dealer, apparently on orders from the El Rukn street gang (the new name for the Black P Stone Nation). He was subsequently convicted for this crime and sentenced to life in prison.

2. William Redwine was paroled to Cook County on September 2, 1983 for the 1970 murder of Chicago Police Officer Kenneth Kaner. On June 19, 1970 Redwine and a group of young men spotted Officer Kaner sitting in a marked squad car filling out a report. Redwine and his companions decided to steal the officer's service revolver. Three of them approached the car. One fired a shotgun into the officer's face, while Redwine fired his .38 caliber revolver. Officer Kaner died instantly. The men were arrested a

few blocks away with Kaner's service revolver in their possession. Redwine was subsequently convicted of the murder and sentenced to 25-80 years in prison. He served a total of 13 years and 2 months for his crime.

3. Richard Shutz was paroled on November 4, 1983 for the 1967 murder of 17-year-old Cheryl Lyn Littlejohn of St. Charles, Ill. On the evening of November 23, 1967 Littlejohn was walking in an unincorporated area of Cook County after having had Thanksgiving dinner at her aunt's house. Shutz abducted the girl off the street, dragged her into nearby woods, and struck her repeatedly with a heavy, blunt object crushing her skull. As she lay dying he raped her and committed deviate sexual assault. He returned to his car and then came back to commit another sexual act on the body. Shutz was arrested two years later and gave oral and written confessions. He was convicted and sentenced to 35-100 years. He was incarcerated a total of 13 years and 11 months for his crime.

4. Barney Lee Anderson was paroled on November 10, 1983 for the 1970 murder of 54-year-old Laura Alston. On January 28, 1970 Anderson and a male companion spotted Mrs. Alston's automobile stuck in the snow in an isolated area in Cook County. They approached Mrs. Alston and tried to rape her and to force her to have oral intercourse. When she resisted, they struck her on the head with a hammer. They then forced her into their car and beat her again on the skull with the hammer. They returned her to her car and set it on fire. Both Anderson and his accomplice subsequently gave written confessions. Anderson was convicted of murder, armed robbery, aggravated kidnaping, attempted rape, and attempted deviate sexual assault. He received three sentences of 30-95 years and two sentences of 5-10 years, all to run concurrently. For these crimes he served a total of 13 years and 10 months.

5. Eugene Horton was paroled on February 4, 1983 for the 1971 murder of Terry Tomalak, an off-duty Illinois Public Aid caseworker. During a drinking party in a Chicago apartment, Horton, his brother, and another man attacked Tomalak, beating him about the head with a liquor bottle, a pop bottle, and a lotion bottle. They then got a knife and stabbed Tomalak to death. Horton, who two years before had been convicted of aggravated assault and sentenced to one year in jail, was convicted of the murder and sentenced to 100-150 years in prison. He served 11 years and 10 months for his crime.

Postscript: Four months after his parole Horton was arrested for shoplifting. One month later he committed an armed robbery for which he was subsequently convicted and sentenced to 60 years in prison.

6. Lawrence Draper was paroled from the Illinois prison system on July 29, 1983 for the 1975 murder of security guard Donald Gilmore. On October 3, 1975 at 2:00 a.m. Draper entered a

restaurant on Chicago's south side. He grabbed a gun from Gilmore, who was on duty as a security guard. They struggled for the gun, and Gilmore fell over a cement slab. As Gilmore was lying on the ground, Draper shot him twice, killing him. Draper was convicted of murder and sentenced to 14-20 years. He served 7 years and 10 months for his crime.

7. Wilbert Madison was paroled on March 5, 1983 for the 1976 murder of Cede Odum. On September 24, 1976 Madison and Odum got out of a car driven by Madison. As they were crossing the street Madison pulled a gun and shot Odum twice, killing him. Madison had apparently set up Odum in revenge for an earlier fight. Madison was convicted of murder and sentenced to 15-25 years. He served a total of 6 years and 5 months for his crime.

Early Release

The following are examples of state prisoners "early released" from determinate sentences to Chicago and Cook county in 1982 and 1983:

1. Johnnie Lee Evans was released from Illinois prison on December 23, 1982. He had been serving a 10-year sentence for raping a woman in an elevator in a public housing project in Chicago. He served 4 years and 7 months for this crime. Nine days before he had committed this rape, he had been released from Illinois prison after serving 3 years and 3 months of a 4-6 year sentence for the rapes of two women in elevators in the same housing project in two separate incidents. These two rapes had occurred within 27 days of Evans' release from jail after charges were dismissed for another rape of a woman in an elevator in a public housing project.

Postscript: Twenty-four days after his release from prison in December of 1982 Evans attempted to rape a woman in an elevator in the Stateway Gardens public housing project. Two days later he raped and committed deviate sexual assault against a woman in an elevator in the same housing project. Four days later he tried to rape and then murdered a 16-year old pregnant high school student in an elevator in Stateway Gardens, stabbing her 22 times. He was subsequently sentenced to death for this crime.

2. Frank Redd was released from prison on November 1, 1983. He had been serving a 10-year sentence for rape and attempted murder. On April 25, 1979 Redd had visited a woman acquaintance and her 12-year-old daughter. While in their apartment Redd choked the woman, causing her to lose consciousness. He then raped the girl. When the mother came to, Redd stabbed her in the neck and fled. In the 7 years prior to this crime Redd had been convicted of: attempted theft and sentenced to 1 year of supervision, burglary and sentenced to 3 years of probation, felony theft and sentenced to 3 years of probation, and grand larceny and sentenced to 5 years in prison in Mississippi (for

which he served 2 years and 8 months). For the rape and attempted murder for which he was released in November of 1983, Redd served a total of 4 years and 5 months.

Postscript: Four months and 5 days after his release from prison Redd was arrested for the strangulation and rape of his girlfriend's two daughters, ages 3 and 5, in their mother's apartment. He was convicted and sentenced to death for the murders and to 60 years for the two rapes.

3. Clifford Banks was released from prison on September 30, 1983. He had been serving 7 concurrent 14-year sentences for three separate incidents of deviate sexual assault and indecent liberties with a child. In the first incident, on August 17, 1976, he lured a 9-year-old boy from his yard with the promise of a dollar. Banks took the boy to an apartment where he forced him into acts of oral and anal intercourse. In the second incident, five months later, he used a handgun to force a 15-year-old boy into a building. After threatening to kill him, he forced the boy to pull down his pants and attempted to perform anal intercourse. The boy resisted and his screams were heard by the building owner who interrupted the crime. Banks fled. In the third incident, two weeks later, Banks used a knife to force a 9-year-old boy to a gangway. Once there, he forced the boy into acts of anal and oral sex and made him drink motor oil. Banks served less than 6 years and 8 months for these crimes.

Postscript: Less than 2 months after his release from prison Banks was arrested and charged with three separate abductions and sexual assaults of three boys and a girl. He pleaded guilty to deviate sexual assault and was sentenced to 30 years in prison.

4. Coleman Lawton was released from state prison on May 26, 1983. He had been serving a 9-year sentence for the armed robbery of Elaine President. In the early morning of September 29, 1979 Lawton approached Mrs. President, who was waiting for a bus on a Chicago street corner. He put a gun into her side, forced her into his car parked in a nearby alley, and threatened to rape and kill her. He robbed her and then released her. Before his arrest he made several threatening phone calls to Mrs. President. At the time of this crime Lawton was on parole for two previous armed robberies. He also had previous convictions for robbery and auto theft. For the armed robbery of Mrs. President Lawton served 3 years and 8 months.

5. Darryl Williams was released from prison on October 15, 1982. He had been serving a 4-year sentence for robbery, for which he was convicted in March of 1981. In the same month he had been convicted in a separate incident of burglary and sentenced to 2 years probation; and in the previous month he had been convicted of auto theft and sentenced to 1 year probation. For the robbery, his third felony conviction, he served 1 year and 7 months.

Postscript: Forty-one days after his release from prison Williams entered the home of a 59-year-old woman and demanded money. Williams shoved the woman down and raped her. She told him she had \$50 in her bible and gave it to him. Williams then stabbed her three times in the chest and once in the face. He pleaded guilty to rape, attempted murder, home invasion, and armed robbery and was sentenced to 16 years in prison.

6. Stewart Harris was released from state prison on June 17, 1982. He had been serving a 6-year sentence for armed robbery, his second imprisonment for this crime. Actual time served was 2 years and 6 months.

Postscript: Forty-two days after his release he committed the first of six new robberies that occurred over a three-month period. He was subsequently convicted of five counts of armed robbery, four counts of armed violence, four counts of unlawful restraint, and one count of robbery. He was sentenced to five concurrent 18-year terms and one concurrent 7-year term in state prison.

7. Buenaventura Rivera was released from prison in June of 1983. He had been serving a 3-year sentence for robbery. In the incident Rivera and an accomplice seized and robbed a 56-year-old disabled man, a nursing home resident with a severe asthmatic condition, on the street just after he left a store where he had cashed a \$285 disability check. Rivera was reputed to be a leader of the Latin Kings street gang and his accomplice was another gang member. Rivera had previously been to prison on a sentence of 1-6 years for intimidating a witness and had received 5 years probation for burglary in the same case. For the robbery for which he received the 3-year sentence Rivera served a total of 4 months.

In a single week in 1983, between May 9 and May 16, the following six individuals were "early released" from determinate sentences to Cook County by the Illinois Department of Corrections:

1. A 31-year-old offender who served 2 years and 5 months of a 6-year sentence for an armed robbery in which he walked into a restaurant, pointed a gun at the manager, and demanded cash. The offender had twice before been incarcerated for committing a felony.

2. A 25-year-old offender who served just over 5 years of a 12-year sentence for rape and robbery. He had abducted a woman from the street, dragged her into a garage, and raped and robbed her while threatening her with a brick. As a juvenile he had twice before been convicted of rape and once of armed robbery. As an adult he had been convicted of theft and sentenced to 1-year probation.

3. A 30-year-old offender who served just over 4 years of a 10-year sentence for attempted murder and auto theft in which he shot at police officers when they attempted to stop him for a traffic violation while he was driving a stolen vehicle. The offender had one prior felony conviction.

4. A 24-year-old offender who served 1 year and 1 month of a 4-year sentence for an aggravated battery in which in a gang dispute he threatened to kill two individuals and fired a sawed-off shotgun at them twice, wounding both. The offender had twice before been incarcerated for committing a felony.

5. A 19-year-old offender who served under 10 months of a 3-year sentence for robberies of a drug store and a victim on the street. He committed these crimes while on probation for another robbery committed less than 2 months earlier.

6. A 26-year-old offender who served 3 years and 8 months of a 9-year sentence for armed robbery and attempted murder. In the incident the offender entered a tavern and robbed the occupants at gunpoint. When pursued by police, he shot at them. Prior to this crime the offender had been convicted of four felonies and incarcerated twice.

Mandatory Release

Finally, consider the strange case of Cleoria Watts:

Cleoria Watts received a mandatory parole from the Illinois Department of Corrections on September 22, 1983. He had been serving concurrent sentences of (1) 20 years to 20 years and 1 day for murder and three counts of attempted murder, (2) 5-15 years for rape and robbery, and (3) 5-15 years for armed robbery and burglary. The sentences covered three separate criminal incidents.

The first incident occurred on January 14, 1975. Watts and an accomplice confronted Patricia Jump on her way home from work at 11:30 p.m. They put a gun to her head and told her that if she resisted she would be killed. They entered her home and then put a gun to Wilford Jump's head. Mr. and Mrs. Jump were tied up and their faces sprayed with a chemical. Watts and his accomplice ransacked the house, taking money and household items. Three months later, on March 17, Watts approached a woman at night in the hallway to her apartment. He produced a knife, forced her to lie on the floor, and took money and jewelry. Watts then raped the woman and forced her to engage in oral intercourse with him. A few weeks later Watts was arrested and charged for this crime. On May 2 he was indicted by a Cook County grand jury for the rape and robbery. Twelve days later, free on bond, Watts entered a Sears retail store in Chicago. He attempted to purchase some items with a credit card that had been stolen in an armed robbery the night before. When he was confronted by Henry McCarthy of

Sears Security, he threw McCarthy down, pulled a gun, pointed it at McCarthy's face, and pulled the trigger twice. The gun misfired. Watts was then pursued through the store and chased into a parking garage across the street by both Chicago Police investigators and Sears security guards. In the ensuing shootout a uniformed Sears security guard was killed.

These three criminal incidents were not the first time Watts had committed serious crimes. Eight years before in 1963 he was sentenced to 1 year of incarceration for larceny while serving in the military. In 1967 he was sentenced to 1-year probation for theft. In 1969 he was sentenced to 1 year in jail and 5 years probation for four counts of armed robbery. In 1970 he pleaded guilty to rape, four counts of armed robbery, and burglary for which he received six concurrent 7-15 year sentences. He was paroled from Illinois state prison after serving less than 4 years and 5 months. Four months after this parole, he robbed and assaulted Mr. and Mrs. Jump.

When Watts received his mandatory parole on September 22, 1983, as a result of good-time reductions from his maximum sentence, he had served a total of 8 years and 4 months for his crimes.

Postscript: Two months to the day after his release from prison Watts entered a home in Oak Park, a suburb of Chicago. He surprised the occupant, a 36-year-old man, and tied him up. Sometime later the man's companion, a 36-year-old woman, entered the house. Watts assaulted her sexually. During the attack the woman also received cuts and bruises and the man was stabbed across the face and arm. After the man was able to break free and call a phone operator, police arrived and surrounded the house. Watts dragged the woman naked into the street with a gun to her head. After a chase through nearby streets and alleys, Watts commandeered a car and tried to escape with his hostage. Police shot out the tires of the car. Watts and his hostage fled on foot. A short time later there was a shootout in which Watts was killed and an Oak Park police officer was wounded by a shot in the abdomen.

Macro Data: Cook County and Illinois

"Early" Paroles

The seven examples of discretionary paroles cited above were among the dozens that came to the attention of the Cook County State's Attorney's Office during 1983. It was standard procedure at this time for State's Attorneys to be notified of upcoming parole hearings of prisoners convicted by their office and to be informed of all inmates released from the Illinois Department of Corrections to their county. The Cook County State's Attorney's

Office, as well as others throughout the state, regularly opposed, either in writing or in person before the Illinois Prisoner Review Board, the parole of murderers who had not yet served a substantial portion of their sentence. Until State's Attorney Daley decided to make a public issue of these parole releases, none of them, to the best of my knowledge, had received any attention by the press.

It is fair to say that everyone in the Cook County State's Attorney's Office who was involved in the developing controversy over "early" paroles considered the cases outlined here, as well as others not detailed, as gross injustices. To assess the dimension of the problem we conducted a systematic study of all paroles of murderers to Cook County in the 6-month period between April 1, 1983 and September 30, 1983. There were thirty such cases. (Note that under Illinois law murder is defined as causing the death of another without lawful justification while "intend[ing] to kill or do great bodily harm," "know[ing] that such acts create a strong probability of death or great bodily harm," or "attempting or committing a forcible felony other than voluntary manslaughter." Murder is distinguished from both "voluntary manslaughter" and "involuntary manslaughter.")

Our study found that the thirty paroled murderers served a median of 10 years, 4 months in prison (and jail) for their crimes. The distribution was as follows:

<u>Time served</u>	<u>Number</u>	<u>Percent</u>
More than 14 years	2	7%
12 yrs - 13 yrs, 11 mths	8	27%
10 yrs - 11 yrs, 11 mths	6	20%
8 yrs - 9 yrs, 11 mths	8	27%
6 yrs - 7 yrs, 11 mths	6	20%

These figures were consistent with time-served data for released murderers published by the Illinois Department of Corrections for the state overall:¹¹

<u>Year</u>	<u>Average Time Served</u>
1978	11.0 years
1979	10.1 years
1980	9.2 years
1981	9.2 years
1982	9.2 years

(As described below, Illinois converted in 1978 from a parole-based, indeterminate sentencing system to a determinate system with no discretionary parole release. It is likely that all murderers released from Illinois prisons through 1982 were sentenced under the old system. Some, however, may have exercised the option of having their indeterminate sentences converted to determinate sentences with fixed release dates.)

Early Release

Under the determinate sentencing legislation that went into effect in Illinois in February of 1978, convicted felons would serve a fixed prison sentence, imposed by the trial judge, minus accumulated good-time credits. The legislation set the good-time rate at one day of sentence reduction for each day of good behavior. This "day-for-day" good-time provision effectively established that in most cases actual time served in prison would be one-half of the judicially imposed sentence. However, the legislation included another good-time provision that became the basis for the state's early release program. It provided that "the Director [of the Department of Corrections] may award up to 90 days additional good conduct credit for meritorious service in specific instances as the Director deems proper."¹²

Illinois' early release program began on a small scale in June of 1980 and grew substantially through July of 1983, when it was limited by the Illinois Supreme Court. In response to prison admissions exceeding space in the Illinois prison system, the Director of the Department of Corrections awarded blocks of meritorious good-time each Friday to less serious offenders to accelerate their release to make room for incoming prisoners, mainly from Cook County. This was called the "forced release" program. In addition, as the demand for space continued to outstrip capacity, the Director began awarding blocks of meritorious good time to all categories of prisoners in order to reduce their length of stay.

Before the early release program began, meritorious good-time was reserved by regulations of the Department of Corrections for "extraordinary, exceptional, or heroic service or service of a similar nature." It was not to include "normal good conduct, service performed on an ordinary work assignment, or the mere absence of violation reports." The regulations cited four examples of meritorious service: "1) saving the life of an employee or other resident; 2) performing heroic service during a flood, tornado or act of God; 3) volunteering for an exceptionally hazardous or dangerous assignment; or 4) assisting in maintaining control where a general disturbance is occurring." Once the policy decision was made to use meritorious good-time to accelerate prison releases, the regulations were substantially broadened to allow the Director to consider "the complete master file of any resident," "any specific report or recommendation made concerning any resident," "the fact that an individual has not violated any rule or regulation of the Department over a stipulated period of time," "the job performance of any resident while in the custody of the Department," and "the educational program or achievements of any resident while in the custody of the Department."¹³

Before meritorious good-time was converted into an early release mechanism, it was used sparingly; for example, in fiscal year 1978 (July 1, 1977 - June 30, 1978) a total of only 760 days

of such good-time was awarded to the inmates of Illinois prisons. By contrast, in the first twelve months of the early release program (July 1, 1980 - June 30, 1981), 280,286 days of meritorious good-time were awarded. In the next twelve months (July 1, 1981 - June 30, 1982) awards of such good-time more than quadrupled to 1,036,460 days. Early release reached its peak in late 1982 and early 1983. In the ten months between July 1, 1982 and April 30, 1983, a total of 1,633,047 days of meritorious good time was awarded, equivalent to 4,474 years of early release for a prison system housing about 13,900 inmates during this period.¹⁴ By May of 1983 inmates were averaging 195 days of early release and some were receiving up to 270 days. The Director of the Department of Corrections predicted at this time that some inmates would soon be sent home a full year before their sentences expired.¹⁵

These awards of meritorious good-time came on top of the standard day-for-day good-time that nearly all inmates received. This explains why in all of the examples of early release cited above the offenders served less than 50% of the imposed sentence. For the thirteen examples cited the percent of sentence served and the estimated months of early release (one-half the sentence minus actual time served) were as follows:

<u>Offender</u>	<u>Percent of Sentence Served</u>	<u>Months of Early Release</u>
Evans	46%	5 months
Redd	44%	7 months
Banks	48%	4 months
Lawton	41%	10 months
Williams	40%	5 months
Harris	42%	6 months
Rivera	11%	14 months
Offenders released, May 9-16, 1983:		
#1	40%	7 months
#2	42%	12 months
#3	40%	12 months
#4	27%	11 months
#5	28%	8 months
#6	41%	10 months

As early release expanded and sentences shrunk throughout Illinois, law enforcement officials became increasingly critical of a policy that seemed to them to be both unwise and unauthorized. Using his position on the Governor's Task Force on Prison Crowding, appointed by Governor James Thompson in April of 1983, as well as the resources of his office, State's Attorney Richard Daley became the leading critic of early release in Illinois. He opposed early release for a variety of specific reasons, as summarized in the following excerpts from his office's "State's Attorney News" of June, 1983:

Early release in Illinois is radically undermining the crucial principle that lawbreakers should receive punishment which reflects the seriousness of their offense and their prior criminal history.

The use of early release by the Illinois Department of Corrections threatens to destroy the public's confidence in and respect for the criminal justice system. . . .

Because of lack of adequate prison capacity, the criminal justice system in Illinois has become a revolving door. Early release is imposing a greater burden on the counties, cities, and towns throughout the state in increased law enforcement

But the problem with the prisons' revolving door is that it multiplies the number of innocent victims and simply encourages criminals to continue a life of crime.

Virtually every day in Chicago and Cook County criminals are coming back into the system who were released early from prison. That also means that innocent individuals are being victimized virtually every day in Chicago and Cook County because of early release. . . .

. . . police are arresting more criminals, state's attorneys are successfully prosecuting more, and judges are sentencing more to prison, for longer sentences.

But all of this effort at the 'front end' of the system has little impact if there simply isn't enough space in the prison system to confine criminals for a period of time appropriate to the seriousness of the crime and their prior criminal record. . . .

Can you imagine the effect that this use of early release has on the victims and witnesses of crime who come forward and testify against violent offenders and then see them serve only one-third of their sentence? What kind of effect can this have on the community?

In the late spring and early summer of 1983 State's Attorney Richard Daley and four other Illinois State's Attorneys filed separate suits against the Director of the Department of Corrections, charging that he had no lawful authority to grant more than 90 days of meritorious good-time to an inmate during any one term in prison. The Illinois Supreme Court heard the case on July 12, 1983. On the same day it issued a unanimous ruling agreeing with the State's Attorneys and ordering a halt to awards of meritorious good-time in excess of 90 days.¹⁶ This effectively ended early release in Illinois as then conducted, although the ruling was not made retroactive nor did it prevent the Director from releasing inmates up to 90 days early through meritorious good-time.

In the fall of 1983 Governor James Thompson called on the state legislature to specifically authorize an emergency early release mechanism, a policy endorsed by the Governor's Task Force on Prison Crowding, which met between April and October of 1983. State's Attorney Daley filed an "Alternative Report" to the final

report of the Task Force objecting to early release and to a variety of other proposals for diminishing punishment for crime in Illinois. He led the political fight against the Governor's legislative efforts in the fall. In the face of mounting opposition to early release, the Governor withdrew his request from the legislature and instead sought greater resources for prison expansion.

Trends in Punishment in Illinois, 1961-83

The "early" parole and early release controversies were fought against a backdrop of decreasing punishment for crime in Illinois in the 1961-83 period. In 1961, 1962, and 1963 the likelihood of being sentenced to prison if convicted of a felony in Illinois stood at 66-67%. This proportion then began a steady decline, dropping to 39% by 1973. Because the number of felony convictions rose from 5,133 in 1961 to 9,371 in 1973, the substantial and sudden drop in the likelihood of incarceration was not matched by a similar drop in sentences to prison; these remained fairly constant, somewhere between 2,757 and 3,680 each year. (The number of felony convictions in Illinois, sentences to the Illinois Department of Corrections, and the yearend sentenced prison population for each year from 1961 to 1984 are shown in the appendix table.)

Although felony sentences to the Illinois Department of Corrections were relatively constant during the 1960s, the state's sentenced prison population (inmates with sentences of more than 1 year) declined steeply from 9,611 in 1961 to 5,600 in 1973, a 42% drop in 12 years. This major drop in prison population came at a time when Index crimes reported to the police in Illinois and arrests for these offenses nearly doubled.

Thus, from 1961 to 1973 reported crime, arrests, and felony convictions all rose in Illinois, while the likelihood of incarceration if convicted of a felony and the number of imprisoned felons both declined dramatically.

Beginning in 1972 felony convictions in Illinois skyrocketed, doubling by 1974, nearly tripling by 1976, and quadrupling by 1980. In the nine years between 1972 and 1981 felony convictions grew from 6,409 to 28,619. These huge increases were largely attributable to a vast expansion of the felony court system in Illinois during this period. In Cook County alone the number of courts that tried exclusively felony cases grew from 11 in 1970 to 49 by 1983. More courts required more judges, prosecutors, public defenders, and support personnel. This infusion of resources at the county level was a response to the major crime increases of the 1960s and early 1970s, and it resulted in a corresponding improvement in the system's ability to process felony cases. More courts meant less crowded court dockets, less delay in processing cases, and less pressure to dismiss "tough" cases or to plea bargain felonies to misdemeanors.

By 1974 the likelihood of incarceration if convicted of a felony in Illinois had dropped to 37%. It then stabilized at 37-41% through the mid-1980s. Given the major increases in felony convictions at this time, sentences to state prison began to grow substantially, doubling from 1973 to 1976 and nearly tripling from 1973 to 1981. These increases reversed the sharp downward trend in the sentenced prison population. After reaching a low on 5,600 in 1973, the number of imprisoned felons in Illinois grew to 10,871 by 1977 and remained at about that level through 1980.

In 1977 the Illinois legislature abolished the state's parole-based indeterminate sentencing system for all offenders convicted after February 1, 1978. Under the indeterminate system judges had been given quite broad discretion in selecting sentences. For example, for murder the sentence could be death or any prison term of at least 14 years; for voluntary manslaughter the range for a prison sentence was 1-20 years; for involuntary manslaughter, 1-10 years; for rape, 4 or more years; for armed robbery, 5 or more years; and for burglary, 1 or more years. Actual time served, however, was usually determined by the Parole and Pardons Board (later renamed the Prisoner Review Board) once an inmate had served his minimum sentence minus good-time credits. Moreover, under the indeterminate system nearly all offenses were probationable. This system was replaced by one in which all felony offenses were grouped into one of six classes, each class with a specific sentencing range. These were Class M (murder); Class X (attempted murder, aggravated kidnaping for ransom, rape, deviate sexual assault, armed robbery, etc.); Class 1 (attempts to commit a Class X offense, aggravated kidnaping not for ransom, voluntary manslaughter, etc.); Class 2 (robbery, burglary, etc.); Class 3 (involuntary manslaughter, incest, perjury); and Class 4 (unlawful restraint, obstructing justice, looting, some thefts, etc.). Although the new sentencing ranges were narrower than those they replaced, substantial discretion was still left with judges. For murder the range was death, natural life, or 20-40 years; for Class X, 6-30 years; for Class 1, 4-15 years; for Class 2, 3-7 years; for Class 3, 2-5 years; and for Class 4, 1-3 years. The new law also provided that in some circumstances, such as prior record or the heinous nature of the offense, sentences could be doubled. One substantial limitation on judicial discretion was the stipulation that probation could not be granted in lieu of a prison sentence for anyone convicted of murder or a Class X offense. Convicted felons sentenced to prison were to serve their "fixed" sentence minus good-time credits.

Through the abolition of parole for new offenders and the imposition of mandatory prison sentences for those convicted of the most serious offenses, the new law was widely seen throughout Illinois as a "get tough" measure to combat violent crime. Yet many violent crimes such as attempted rape, voluntary and involuntary manslaughter, unarmed robbery, and aggravated battery

remained probationable. Moreover, the same law required day-for-day good time, effectively reducing judicially imposed sentences by one-half. Thus, in the absence of sentencing enhancements the effective time-served range for murder was 10-20 years (unless sentenced to death or natural life); for Class X offenses, 3-15 years; for Class 1, 2-7.5 years; for Class 2, 1.5-3.5 years; for Class 3, 1-2.5 years; and for Class 4, 0.5-1.5 years. (The grant of meritorious good time can further reduce actual time served by an additional 3 months.)

Contrary to a now widespread view, the determinate sentencing reform of 1977-78 had no aggregate effect on the proportion of felony convictions that resulted in a prison sentence in Illinois. In the four years before the law went into effect (1974-77) 38.7% of felony convictions led to a prison sentence; in the first four years the law was in effect (1978-81) the proportion was nearly identical, 38.4%. (Of course, some individuals sentenced to prison after 1978 for committing a Class X crime may have received probation under the old law.)

Through the first five years of determinate sentencing in Illinois, time served for those released from prison dropped across all major crime types. In its Statistical Presentation 1983 the Illinois Department of Corrections showed average time-served figures for eleven major offenses. For ten of these, those released in 1983 served less time in prison (and jail) than those released in 1978; for the other offense, time served was unchanged.¹⁷ For voluntary manslaughter the drop was from 3.7 to 2.7 years; for rape, from 5.3 to 4.5 years; for robbery, from 2.6 to 1.6 years; for aggravated battery, from 2.7 to 1.4 years; for burglary, from 2.6 to 1.4 years; and for theft, from 2.4 to 1.0 years. Proportionately, the drops were greater for the lesser offenses: for the Class X offenses the drop was 10%; for Class 1 it was 37%; for Class 2, 44%; for Class 3, 62%; and for Class 4 offenses, 70%.¹⁸

Some of this reduction, especially for the less serious offenses, was the result of sentencing changes brought about by the new law, and some was the result of the widespread use of early release. Moreover, it must be recognized that 1982 was too soon after the new system went into effect to assess its impact on time served for those convicted of the most serious crimes, since those sentenced to long determinate prison terms in the first years of the new law were not yet eligible for release by 1982. To assess the effects of determinate sentencing on time served, the Illinois Department of Corrections projected length-of-stay in prison based on sentences imposed in 1983 and compared these with actual length of stay of those released in 1978.¹⁹ This projection estimated that time served would drop for Classes 1-4 (with approximately a 50% reduction for Classes 3 and 4) and would increase for Murder and Class X. For Class X the projected increase in length-of-stay was from about 4 to 6 years, and for Murder it was from about 11 to 13 and one-half years. It is not clear, however, that all of the increase for Class X crimes is

attributable to determinate sentencing as such; for from 1978 to 1983 average sentence lengths imposed by Illinois judges for Class X crimes increased substantially, even though determinate sentencing was in operation throughout this period. For example, sentence lengths for attempted murder went from 11.0 to 13.2 years; for rape, from 11.0 to 13.9 years; for armed robbery, from 8.8 to 11.9 years; and for other Class X, from 11.6 to 12.1 years.²⁰ An increase of Class X sentence lengths of 2-3 years would by itself lengthen time served by about 1-1.5 years.

As noted above, in the face of major increases in felony convictions and sentences to prison, the sentenced prison population in Illinois nearly doubled from 1973 to 1977. This population increase was accommodated not by new construction, but mainly by double-celling at institutions that had previously been converted from double-celled to single-celled as the prison population reached its low point in 1973.²¹ Between 1977 and 1981, as demands for new prison space continued, several new prisons were built, two former mental health centers were converted to prison use, and several existing facilities were expanded. By the end of 1981 there were 13,669 sentenced inmates in Illinois prisons. At this time, according to the Department of Corrections, "no further expansion in prisons was planned. . . . A policy decision to maintain population at current rated capacity through the forced release program reduced concerns for the construction of additional capacity."²² As a result, the sentenced inmate population remained at about 13,700 through mid-1983. When the Illinois Supreme Court effectively ended early release in July of 1983, "this action compelled the Department to significantly alter its population projection and look for increased capacity."²³ Through accelerated expansion of existing facilities, the construction of new facilities, and additional double-celling, capacity increased by 2,291 beds by mid-1984 and by another 2,309 beds by mid-1985. By yearend 1985 the state's sentenced prison population stood at 18,279 and by yearend 1986, at 19,456.²⁴

How do these data and trends on punishment in Illinois compare with other states and the nation as a whole?

Macro Data: The Nation

There is substantial evidence that the period from 1960 through the early 1970s was a time of substantial decline in levels of punishment for crime in the United States. For example, the sentenced prisoner population stood at 212,953 in 1960.²⁵ After rising slightly to 220,149 in 1961, the prison population began a slow decline each year until it reached 187,274 in 1968. It then rose to just over 197,000 in 1969 and stayed at about this level through 1972. It took until 1975 before the prison population exceeded the 1961 level.

Although the national prison population did not decline proportionately as much as did the prison population in Illinois during this period, many other major states experienced prison population reductions equal to, or approaching, those in Illinois.²⁶ In the Midwest, Indiana had a 44% drop in the 14 years between 1960 and 1974, Michigan had a 35% drop in the 8 years between 1958 and 1966, Ohio had a 35% drop in the 9 years between 1964 and 1973, and Missouri had a 20% drop in the 7 years between 1962 and 1969. In the Northeast, Pennsylvania's prison population dropped 36% in the 9 years between 1962 and 1971, and New York's dropped 35% in the 9 years between 1963 and 1972. In the South, Alabama's prison population dropped 35% in the 14 years between 1958 and 1972, Virginia's dropped 32% in the 8 years between 1959 and 1967; and Georgia's dropped 31% in the 6 years between 1963 and 1969. Finally, in the West, Colorado had a 32% drop in the 8 years between 1965 and 1973.

The decade and one-half from 1960 to 1975, a time when the nation's prison population was stable or declining, was also a period that saw substantial increases in reported crime and arrests throughout the country.²⁷ The number of Index crimes reported to the police more than tripled during this period--from 3,384,200 to 11,256,600--and violent Index crimes increased three and one-half times--from 288,460 to 1,026,280. Among the violent crimes robbery increased the fastest, more than quadrupling from 107,840 to 464,970. Based on reports from cities and counties covering about half of the nation's population, all arrests for Index crimes increased 146% between 1960 and 1975 and arrests for violent Index crimes increased 160%.²⁸ Arrests of adults were up 148% for all Index crimes and 133% for violent Index crimes.²⁹

Although it would be a mistake to view these incident and arrest figures as exact measures, few would dispute that the period from 1960 to 1975 was one of major crime increases in the United States. The combination of a substantial growth in crime and arrests with a stable or declining prison population can only mean that the amount of imprisonment per crime and per arrest declined significantly during this period. Data published by the Bureau of Justice Statistics (BJS) show that if one considers only offenses that are most likely to result in a prison sentence and that also constitute a sizable portion of the prison population--specifically, murder, non-negligent manslaughter, rape, robbery, aggravated assault, and burglary--the number of commitments to prison per 1,000 of these crimes reported to police dropped from 62 in 1960 to 23 by 1970 and rose only to 25 by 1980.³⁰ Prison commitments per 1,000 arrests for these crimes dropped from 299 in 1960 to 170 in 1970 and then rose to 196 by 1980. Thus, the likelihood in 1970 that the commission of one of these six serious offenses would lead to a prison term was only about a third as great as it was in 1960; and the likelihood that an arrest for one of these crimes would lead to prison was less than three-fifths as great.

There is also evidence that time-served in prison decreased during the 1960s and early 1970s. According to data published by BJS, those released from prison in 1974 for robbery, aggravated assault, burglary, and larceny all served less time than those released for the same crimes in 1960.³¹ (Note that national time-served figures for all years prior to 1983 do not include credit for time served in jail pending or during trial. Also, all national time-served figures presented here are medians; mean figures are available in the BJS reports.) Time-served for robbery dropped from 2 years and 10 months to 2 years and 3 months; for aggravated assault and for burglary, from 1 year and 8 months to 1 year and 4 months; and for larceny, from 1 year and 5 months to 1 year and 2 months. Rape was an exception to this trend, with time-served increasing from 2 years and 6 months to 2 years and 8 months.

Since the mid-1970s, the first of these trends, the likelihood of incarceration, has turned around, but, at least through 1983 (the last year with published data) time-served had not increased. In the 5 years between 1980 and 1985 the likelihood of incarceration for the commission of one of the six specified serious offenses increased from 25 to 42 per 1,000 reported incidents of these crimes and from 196 to 266 per 1,000 arrests for these crimes, a substantial increase that brought the 1985 figures to a level still below that of 1960.³² Since national felony sentencing data are not available for these years (BJS has recently begun such a data collection program), it is not possible to determine whether the increased likelihood of incarceration between 1980 and 1985 is a function of (1) the increased likelihood of conviction given commission of, or arrest for, one of these crimes or (2) the increased likelihood of being sentenced to prison if convicted of one of these crimes, or (3) a combination of these. Data that cover selected jurisdictions and years from BJS' Offender-Based Transaction Statistics (OBTS) program, its Prosecution of Felony Arrests series, and its sentencing studies conducted by the National Association of Criminal Justice Planners have not yet shown a generalized increase in the likelihood that a person convicted of a felony will be sentenced to prison. In fact, from 1983 to 1985 probation populations in the United States grew faster (18%) than prison populations (15%).³³

The most comprehensive and recent felony sentencing data come from a study of 71,000 felony sentences (23,000 unweighted cases) issued by judges in twenty-eight medium to large court jurisdictions in 1985. The study found the following sentencing pattern for seven major felonies:³⁴

<u>Conviction offense</u>	<u>Prison</u>	<u>Jail (with or without probation)</u>	<u>Probation only</u>	<u>Other</u>
Total	45%	29%	26%	1%
Homicide	84%	8%	8%	-
Rape	65%	18%	16%	-
Robbery	67%	20%	13%	-
Agg. assault	42%	33%	24%	1%
Burglary	49%	27%	25%	-
Larceny	32%	29%	38%	1%
Drug trafficking	27%	40%	32%	1%

In most jurisdictions sentences to state prison are for more than 1 year, and sentences to local jail are for a year or less. For the 23,900 convictions for one of the four violent felonies the sentences were: prison, 62%; jail, 22%; and probation only, 16%.³⁵

Contrary to the turnaround in the likelihood of incarceration, time-served continued to drop through 1982 when it reached 1 year and 4 months for all those released from prison, down from 1 year and 6 months in 1974 and 1 year and 9 months in 1960. The 1982 figure was the lowest recorded since 1926. A revised data collection program was introduced in 1983, making new data not directly comparable with earlier figures. The new data show for the first time total time incarcerated in jail and prison. For those released from prison in 1983, median time-served in jail and prison was as follows:³⁶

All offenses	1 year, 7 months
Violent offenses	2 years, 6 months
Murder	6 years, 7 months
Manslaughter	2 years, 8 months
Rape	3 years, 11 months
Other sexual assault	2 years, 5 months
Robbery	2 years, 6 months
Assault	2 years
Kidnaping	2 years, 9 months
Other violent crimes	1 year, 2 months
Property offenses	1 year, 3 months
Burglary	1 year, 5 months
Arson	1 year, 9 months
Auto theft	1 year, 3 months
Forgery/fraud	1 year, 3 months
Larceny	1 year
Stolen property	1 year, 1 month
Other property crimes	1 year
Drug offenses	1 year, 3 months
Public-order offenses	10 months
Other offenses	1 year, 4 months

One of the limitations of examining released inmates to gauge time-served is that this will not show possible recent changes resulting in major increases in length-of-stay, since inmates so affected may not be released for some years. Consequently, in 1983 the Bureau of Justice Statistics began publishing data on the "minimum time to be served" for those admitted to prison during the year. This is a measure of "the shortest time that each admitted prisoner must serve before becoming eligible for release." It is possible then to compare minimum time to be served by incoming inmates with actual time served by outgoing inmates. In 1983 the minimum time to be served was less than actual time served for one of the eighteen crimes specified; it was the same for three crimes; it was 1 or 2 months longer for seven; it was 3-4 months longer for three; it was 5-8 months longer for two; it was 11 months longer for kidnaping; and it was 8 years and 5 months longer for murder.³⁷ Thus, murderers may serve much longer periods in prison in the future than they had through 1983; but the data suggest only very modest increases for most offenses. Of course, these data say nothing about sentencing and release practices for the years since 1983.

By yearend 1986 the sentenced prison population in the United States had grow to 503,794, more than double the 212,953 in 1960. Nonetheless, this increase in prison population did not match the increase in crime and arrests during the same period:³⁸

Percent change, <u>1960-86</u>	
Prison population (sentenced)	+136%
Reported crime:	
Total Index	+290%
Violent Index	+416%
Arrests, all ages (est.):	
Total Index	+176%
Violent Index	+219%
Arrests of adults (est.):	
Total Index	+169%
Violent Index	+225%

Public Opinion and Substantive Justice

The detailed examples of those released from Illinois prisons to Cook County in 1982 and 1983, the broader data on the substance and process of punishment policy in Illinois, and the aggregate data from other states and the nation as a whole present a varied, but generally consistent, portrait of substantive justice in the United States. On the one hand, the examples of "early" paroles and early releases provide details

about offenders, their crimes, and their prior records that are unavailable in the aggregate data. On the other hand, the aggregate figures present overall patterns regarding which no collection of specific cases can be definitive.

We know, for example, that in 1983 rapists released from state prisons throughout the United States served a median of 3 years and 11 months in jail and prison for their crime and that in the same year rapists released from Illinois prisons served a mean of 4.5 years. But these aggregate data, in averaging over hundreds or thousands of dissimilar cases, obscure details highly relevant to judgments about punishment. Some of the rapists released from prison each year are likely to be first-timers who committed a single rape and did not otherwise injure the victim. But others, like Johnnie Lee Evans, may have been to prison before for raping one or more women; or, like Frank Redd, may have raped a 12-year-old girl and stabbed someone else; or, like Redd, may have had numerous prior convictions for other serious offenses; or, like Clifford Banks, may have committed deviate sexual acts on several young boys; or, like Darryl Williams in his most recent offense, may have raped, stabbed, and robbed a 59-year-old woman. Similarly, among the robbers who were released from state prisons in 1983 and who served a median of 2 years and 6 months in jail and prison, some may have been first-timers who committed a single robbery without injury to the victim. Others, however, like Coleman Lawton, may have threatened to rape and kill their victim at gunpoint; or, like Lawton, may have been on parole for prior robberies when the most recent crime was committed; or, like Darryl Williams, may have been convicted of three separate felonies in a 2-month period; or, like Stewart Harris in his most recent offenses, may have been sentenced concurrently for committing five armed robberies and one unarmed robbery in a 3-month period that began 1 month after release from prison for a previous armed robbery; or, like Buenaventura Rivera, may have robbed a 56-year-old disabled man of his disability check after having been previously imprisoned for another offense.

In light of these varied and extensive data, what can we say about the contribution of public attitudes to substantive punishment in Illinois and the United States during the past two and one-half decades? I suggest the following propositions:

- (1) The public was generally unaware of the large reductions in levels of punishment for serious crimes that occurred in the United States as a whole, in many large states, and in Illinois during the 1960s and early 1970s. Consequently, public attitudes did not cause these reductions.
- (2) Public attitudes neither drove nor supported the "early" paroles of murderers in Illinois in the early 1980s.

(3) Public opinion in Illinois opposed the massive early release program of 1980-83 that undermined determinate sentencing by drastically shortening prison terms.

(4) Public attitudes played no role in the administrative decision by the Illinois Department of Corrections to place a cap on the prison population in 1981 at 13,700 sentenced inmates.

In sum, in Illinois, and perhaps in the nation as a whole, public opinion has been largely irrelevant to and often, where the information was available, in opposition to key decisions and policies of the past several decades that have determined substantive levels of punishment for serious offenses. I suggest that a set of de facto standards for punishment has evolved that bears little relationship to deep-seated public attitudes about just penalties for criminal offenses.

Consider again the penalty for murder in Illinois. As indicated above, murder under the Illinois criminal code does not include accidental homicide or homicide as a result of provocation. It includes only homicides in which there is (1) an intention to kill or cause great bodily harm, (2) the knowledge that certain acts create a strong probability of death or great bodily harm, or (3) death during the commission of a forcible felony other than voluntary manslaughter. To the extent that the public in Illinois has debated the appropriate punishment for murder, the controversy has turned between the poles of capital punishment at one extreme and life in prison at the other. Yet by the mid-1980s in Illinois, the de facto penalty for murder was an average of 10 years of incarceration, with the most brutal murderers generally paroled after 13-14 years. This punishment "policy" had never been subject to community-wide discussion and approval; indeed, it became quite clear during the "early" parole controversy of 1983 and 1984 that this policy was virtually unknown to the public at large in Illinois and radically out of step with public desires.

Since American democracy is one in which public opinion ought to provide general direction to public policy, how can we explain this disjunction between public attitudes and governmental performance?

The Politics of Punishment Policy

With the exception of the pardon and clemency power vested by the state constitution in the governor, the state legislature of Illinois possesses plenary power to determine the nature and extent of punishment for criminal offenses (limited by procedural or substantive rights specified in the state and federal constitutions). Under the old indeterminate sentencing system,

the legislature defined criminal offenses but effectively delegated the actual punishment decisions, and therefore punishment policy, to the judges of the criminal courts, the Parole and Pardons Board, and the Department of Corrections.

As noted earlier, judges were vested with broad discretion for selecting sentences: e.g., 1-20 years in prison for voluntary manslaughter, 4 years or more for rape, etc. Judges could also grant probation instead of a prison term for most offenses. This broad sentencing discretion, however, was matched by the equally broad release discretion of the Parole and Pardons Board. Authorized to operate by majority votes in panels of three members, the Board was vested with virtually complete authority to release inmates once their eligibility date was reached. All the examples of "early" paroles cited at the beginning of the paper were discretionary judgments of this Board.

In addition to these broad grants of sentencing and release discretion, the legislature vested a third kind of broad authority over punishment in the Department of Corrections. This was the authority to determine a schedule of good-time (so-called "statutory good-time"), which would accelerate both the parole eligibility date, by reducing the minimum sentence, and the mandatory release date, by reducing the maximum sentence. In addition, the Department of Corrections was vested in the early 1970s with authority to grant inmates in work or other programs special good-time credits (so-called "compensatory good-time") that would further reduce time to parole eligibility or mandatory release. Together with a statutory provision specifying that no inmate would be considered for parole any later than 20 years in prison minus good-time credits--no matter how long the sentence--the statutory and compensatory good-time schedules effectively determined that those who received long sentences in Illinois in the 1970s would generally be eligible for parole within 8 years and a few months. Moreover, since good-time also reduced the maximum term, a 20-year maximum sentence was effectively reduced to just over 8 years. This is why Cleoria Watts, sentenced to 20 years to 20 years and 1 day for murder and three counts of attempted murder, to 5-15 years for rape and robbery, and to 5-15 years for armed robbery and burglary, was mandatorily released after serving just over 8 years in prison.

The Watts case is a particularly dramatic illustration of the problem of reconciling actual punishment levels with public attitudes. Recall Watts' record. Between 1963 and 1970 he was convicted of (1) theft twice and incarcerated once, (2) four counts of armed robbery and incarcerated again, and (3) rape, four more counts of armed robbery, and burglary and incarcerated for the third time. Four months after his release he committed the first of three separate violent acts involving murder, attempted murder, rape, and robbery. No one conducted a public opinion survey in Illinois on the issue of the appropriate punishment for Watts' crimes, but I would hazard a guess that well over 95% of the citizens of that state would have demanded

no less than life in prison.

After determinate sentencing was introduced in Illinois in 1978, punishment discretion was substantially reduced. Discretionary parole releases were ended for new offenders; statutory good-time was codified in the criminal code as day-for-day; and judicial sentencing discretion was reduced over the indeterminate system. Yet even under the new determinate system judges retained substantial sentencing discretion (for example, 6-30 years for rape or armed robbery), and the Department of Corrections was able to influence punishment policy by placing a cap on the prison population and instituting an extensive "early release" program (though this was later overturned by the Illinois Supreme Court).

As I think the Illinois example illustrates, the large number and variety of individuals and institutions involved in deciding actual punishment levels thwarts any organized impact by public opinion. This was especially true under the indeterminate sentencing system (the type still used in the vast majority of states). Judges, the Department of Corrections, and the Parole and Pardons Board decided punishment levels in Illinois. Yet these are not representative institutions in the way, for example, that the state legislature is. Their decisions, even when publicly made, are rarely subject to public scrutiny. Legislative bodies operate in the full glare of daily press coverage, and their decisions are monitored by dozens of organizations and interest groups. By contrast, except for the rare criminal case that generates widespread public interest, the sentencing, good-time, or parole decisions of judges, administrators, and parole boards receive no comparable scrutiny.

The problem is exacerbated by the sheer number of criminal cases that move through the courts and prisons each year, rendering sustained public scrutiny virtually impossible. In 1983 there were over 20,000 felony convictions in Illinois and over 12,000 sentences to prison. Even if as many as 50-100 cases--about one or two a week--generated substantial public interest, this would constitute only a tiny fraction of all felonies processed. Although sentencing decisions are made in open courtrooms, and parole or other types of prison releases are part of the public record, the broader public is in effect totally unaware of 99% of the specific decisions that determine substantive punishment levels.

Indeed, to my knowledge only one of the twenty-one prison releases detailed earlier, Buenaventura Rivera, attracted any press coverage or public attention at the time of release. And this was one of the less serious offenders of the group. (The Chicago Police Officer who had arrested Rivera just 4 months before his release from a 3-year prison sentence for robbery had publicly attacked the early release: "I got excited. I hit the roof. How do you think police officers feel when they put a guy with that background in the penitentiary for three years and then

see that he's back on the street in just four months? You have to fight hard enough to get him in. Then to just have the back door open is very discouraging."³⁹) All the other examples were either discovered and then publicized by the Cook County State's Attorney's Office as part of its public campaigns against "early" paroles and early release, or they came to the attention of the press after the former inmate committed new crimes.

Interestingly, the crimes involved in the first four parole cases listed earlier in the paper did attract widespread press and public attention at the time of their commission and during the arrest, conviction, and sentencing of the offenders. These were not "ordinary" or "average" murders in Chicago and Cook County. Darrell Cannon's cold-blooded shooting of Emanuel Lazar; William Redwine's murder of Officer Kaner; Richard Shutz' abduction, sexual assault, and bludgeoning of Cheryl Lyn Littlejohn; and Barney Lee Anderson's sexual assault and murder of Laura Alston all shocked the community. Some of these were front page stories in Chicago's major daily papers. However, all four of the subsequent paroles occurred apparently without press or public attention of any sort. Over the 12-14 years between offense and release, the public memory of these brutal crimes had faded if not disappeared. This illustrates that the recent case of Richard Speck's possible parole, with its enormous press and public attention, is the exception that proves the rule. Apparently, it is only the extremely rare mass murder, political assassination, or otherwise unique and horrifying crime that creates an imprint on the community's conscience so deep as to sustain public attention for the decade or more until parole becomes an issue.

To put the point in social science terms, the multiplicity of decisionmakers, the huge number of discrete cases, and the passage of time combine to generate enormous information costs that create a barrier to public knowledge of and impact upon punishment policy. It is not, fortunately, an unbreachable barrier. Aggressive and public-spirited political leadership that draws upon reliable aggregate statistics on punishment and a detailed understanding of local practices and policies can do much to form an educated citizenry capable of directing crime and punishment policy in a responsible and just way.

Joseph M. Bessette

Appendix: Criminal Justice Trends in Illinois, 1961-84

<u>Year</u>	<u>Felony convictions</u>	<u>Sentences to prison</u>	<u>Prison population</u>
1961	5,133	3,427	9,611
1962	4,176	2,757	8,928
1963	5,003	3,319	8,855
1964	5,591	3,662	8,754
1965	5,387	3,366	8,306
1966	5,214	3,067	7,491
1967	5,666	3,306	7,041
1968	6,085	3,450	6,886
1969	6,726	3,743	7,131
1970	6,586	3,476	6,381
1971	6,678	2,852	5,854
1972	6,409	3,124	5,630
1973	9,371	3,680	5,600
1974	13,571	5,073	6,667
1975	17,388	6,483	7,861
1976	18,609	7,569	9,739
1977	20,178	7,851	10,871
1978	20,982	8,396	10,159
1979	22,577	8,495	10,743
1980	25,714	9,843	10,451
1981	28,619	10,849	13,669
1982	28,702	11,572	13,551
1983	30,461	12,692	15,364
1984	29,694	12,110	16,912

Source: The data on felony convictions and sentences to prison are from the Annual Reports of the Administrative Office of the Illinois Courts. Prison population data are from BJS' National Prisoner Statistics series (see footnote 24).

Footnotes

1. Robert Holmes, quoted in the New York Times, April 4, 1987.
2. Frank Maloney, President, National Association of Criminal Defense Lawyers, Letter to the Editor in the Austin, Texas, American Statesman, September 4, 1987.
3. George W. Sullivan of New Mexico, quoted in the New York Times, March 1, 1987.
4. Orville B. Pung of Minnesota, quoted in The Mirror, June 20, 1986.
5. Quoted in the Washington Post, November 6, 1985.
6. Linda Adams of the National Jail and Prison Overcrowding Project, quoted in the National Law Journal, August 10, 1987.
7. Bill Richardson, quoted in the National Journal, March 14, 1987.
8. T. Don Hutto, from excerpts of a speech delivered on August 12, 1985 that appeared in Corrections Digest, August 28, 1985.
9. I am indebted to State's Attorney Daley for the opportunity to work on these controversies and also to Frank Kruesi, Executive Officer of the CCSAO, and to Patricia King, Administrative Assistant to State's Attorney Daley, with whom I worked closely on both of these issues. Much of the information presented in this paper on criminal justice in Illinois was produced during these controversies through the combined efforts of Kruesi, King, and myself.
10. The details of the specific cases cited in the paper are all derived from the public record.
11. Illinois Department of Corrections, Statistical Presentation 1982, Table 31.
12. Illinois Revised Statutes 1981, ch. 38, sec. 1003-6-3(a)(3).
13. Administrative Regulations, State of Illinois Department of Corrections, Adult Division, Section Number 864.
14. Data presented by the Illinois Department of Corrections to the Governor's Task Force on Prison Crowding, May 1983.
15. Chicago Tribune, May 17, 1983 and Chicago Sun-Times, March 20, 1983 and May 17, 1983.
16. Michael P. Lane v. Robert L. Sklodowski.

17. Table 5.
18. Table 6.
19. Presented in James Austin, "Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," in Crime and Delinquency, Vol. 32 No. 4 (October 1986), p. 431.
20. Illinois Department of Corrections, Statistical Presentation 1983, Table 13.
21. Illinois Department of Corrections, Adult Correctional Center Capacity Survey, 1986, pp. 11-16.
22. Ibid., p. 16.
23. Ibid.
24. Bureau of Justice Statistics, National Prisoner Statistics series. BJS has recently compiled state-by-state data on sentenced prisoners for 1926-86. These data are now available in "Trends in Prison Populations" by Lawrence A. Greenfeld and Patrick A. Langan of the BJS staff. They will be published subsequently in a BJS report.
25. Ibid.
26. Ibid.
27. Federal Bureau of Investigation, Crime in the United States 1975: Uniform Crime Reports, Table 2, p. 49.
28. Ibid., Table 30, p. 182. To compute trends in arrests for Index crimes, arrests for "manslaughter by negligence" were excluded.
29. Ibid.
30. Prisoners in 1986, BJS Bulletin, NCJ-104864, May 1987, Table 10, p. 6.
31. Prison Admissions and Releases 1982, BJS Special Report, NCJ-97995, July 1985, Table 13, p. 8.
32. Prisoners in 1986, Table 10, p. 6.
33. Probation and Parole 1985, BJS Bulletin, NCJ-103683, January 1987, p. 1.
34. Sentencing Outcomes in 28 Felony Courts, 1985, BJS report, NCJ-105743, based on Table 2.1, p. 5.
35. Ibid., based on Table 2.1, p. 5 and Table C.1, p. 39.

36. Prison Admissions and Releases 1983, BJS Special Report, NCJ-100582, March 1986, Table 9, p. 6.

37. Ibid., Table 7, p. 6.

38. Prison population statistics are from BJS' National Prisoner Statistics series (see note 24). Reported crime and arrest data are from the FBI's Crime in the United States for 1975 and 1986. The arrest data are estimates based on a comparison of arrest data for 1986 with arrest trends for 1960-75.

39. Quoted in the Chicago Sun-Times, June 24, 1983.

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 10

LEVELS OF PUNITIVENESS IN THE FEDERAL SYSTEM

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Chapter 10--Levels of Punitiveness in the Federal System

I. Introduction

I am delighted to be here today and to be able to address you on the topic of punishment for criminal offenses. I have spent the better part of my professional life researching the topic and for the last several years I've been involved in trying to actually apply some of what I've learned to policy making in the area.

Having spent most of my adult life around economists, I really never gave the idea that conviction should not be followed by punishment very serious consideration. Nor had I even given much thought to the notion that punishment might be an end in itself. In a sense, if I had to write an essay on what I've learned during my time in Washington, it would be entitled:

"A Visit to a Land Where Some Believe in Costs, Others Believe in Benefits, but only the Economists Believe in Comparing the Two."

Before explaining why I think making economists out of more policymakers would benefit the process, I'd like to discuss a few less controversial issues with you. I'd like to share with you some observations on how punitive the Federal criminal justice system appears to have been in the recent past, as well as some insights into how punitive it's likely to be under the guidelines recently promulgated by the U.S. Sentencing Commission. Finally, I'd like to discuss the issue of whether the new guidelines are too harsh and what role I think the Commission should play in determining the level of punitiveness in the Federal system.

II. How Punitive is the Federal Criminal Justice System?

I think it would be hard to argue that a system in which over 40 percent of those convicted and sentenced receive probation without any conditions of

confinement is particularly punitive. Even for crimes against the person such as homicide, assault, rape and kidnapping, the average rate at which defendants receive straight probation, i.e., probation without confinement, exceeds 30 percent in the Federal system. Convicted drug offenders have until recently stood better than a 1 in 5 chance of not serving any time in confinement and most property offenders, i.e., those convicted of embezzlement, forgery larceny, fraud, counterfeiting etc. never do any time. Only 2 out of 5 convicted property offenders currently serve any time in confinement and fully 75 percent get some form of probation. For property offenders and for many other serious offenders, Federal prisons really have been among the hardest places to get into; they may not be country clubs but they are exclusive.

In the past, if you committed a crime under Federal jurisdiction it appears as if you had to be a particularly unlucky to end up in prison. Considering that the likelihood of actually being convicted for a property crime you committed is probably no greater than 1 in 5, the chances that you would actually receive a prison sentence for a property crime committed under Federal jurisdiction is about 1 in 12. That is, you stood no more than about an 8 percent chance of serving some time if you committed a property crime under Federal jurisdiction, and for many property crimes the chances of imprisonment were much more remote. In a study I took part in some years ago we found that in several government programs, only about 1 in 10 unwarranted payment cases were even referred to the prosecutor.

If we look at the average time actually served in the Federal system, we find that in 1985 it was barely 16 months. Considering only those actually in confinement, i.e., those sentenced to some imprisonment, the average is

26.5 months. That is, the average time actually served by those serving time is little more than 2 years. For those convicted of crimes against the person and robbery and sentenced to confinement, their actual time served averages only about 4.5 years (55 months). Confined drug offenders have averaged less than 2.5 years (29 months), while those confined for burglary and firearm violations spend on average less than 2 years in prison (21-22 months). Those confined for fraud and other property offenses spend on average less than a year and half (17 months), while the average time served by those serving time for income tax fraud is about a year (12.7 months). Immigration offenders who are confined spend on average only about 9 months in confinement. I think it is fair to say that this is hardly the description of a draconian criminal justice system.

Perhaps the most relevant way to gauge the punitiveness of the system is to judge the punishment meted out relative to the scale of the crimes committed. This comparison is most straightforward for property crimes. Let's take embezzlement. In 1985 the total amount of money embezzled by those convicted for this crime in the Federal system was in excess of \$100,000,000 and the average embezzlement was about \$56,000. The average fine assessed in these cases was \$2,811 or about 5 percent of the embezzled funds. Now if that was the only sanction given out, I would think even most people in the nation's capital would agree that this was inadequate punishment. However, some prison time was meted out to these offenders. If we reduce the amount embezzled by the restitution made by these offenders, then it turns out that we have in the Federal system been giving one month of imprisonment for every \$11,000 of funds taken and not returned by convicted embezzlers. That's not a bad monthly wage for someone who may be making less than \$2,000/month as a bank employee.

The situation in fraud is even more interesting. Those convicted of fraud in the Federal system during 1985 stole almost 1 billion dollars. The average fraud, if we ignore those committed against social security or the food stamp programs, was over \$200,000. In this area, we in the Federal system have been giving out one month of prison for every \$24,000 taken and not returned in these fraud schemes.

These figures, of course, underestimate just how profitable crime has been in areas covered by Federal jurisdiction. Not every criminal is apprehended and not all of those who are apprehended are prosecuted and convicted. For example, the FBI estimates that only 1 in 5 larcenies are cleared by arrest and of these it is unlikely that more than 75 percent are actually prosecuted by a U.S. Attorney. Hence, while it appears that we have been giving one month of imprisonment for every \$4,000 of property taken by theft, the thief can actually expect a much better return. If the apprehension and prosecution rates above are accurate, then even if all prosecutions ended in convictions, a thief could expect to spend a month in prison for about every \$30,000 he steals and does not return. That is hardly the description of a system that takes the profit out of crime.

Moreover, even when the system appears to be harsh, such as in program fraud, in reality it is far from very punitive. If we look at program fraud in the Federal system, it turns out that we give out a month of prison for about every \$1,300 for which restitution is not made. While this may seem relatively harsh, we need to remember how unlikely it is that the defrauder will be apprehended and prosecuted in these programs. By way of illustration, consider the odds of actually getting prosecuted for AFDC fraud. I found some years ago in several states that the chances of actually

being detected and referred to the prosecutor for fraud in these systems was about 1 in 500. Odds like this if they are even close to the situation in the Federal programs, make crime extremely profitable. At these rates, one month of prison would be given for every \$635,000 of program fraud. The expected punishment in the system is nil.

Not only has crime paid in Federal system, it appears to have paid quite well.

III. How Punitive will the Federal Criminal Justice System be Under the Sentencing Guidelines?

On November 1, [1987] a new set of sentencing procedures went into effect in the Federal system. All offenders who commit crimes after that date will be sentenced under the Federal Sentencing Guidelines promulgated by the United States Sentencing Commission. Parole will be abolished for these offenders and the sentence given by the judge will be, except for a 15 percent good time allowance, the time served by the defendant. If a judge pronounces a sentence of 24 months, the defendant will serve about 20 months. No longer will there be long sentences and relatively short time served. Sentences and time served will be nearly identical.

The guidelines establish 43 sentencing levels and 6 criminal history categories. Each entry in this offense/offender matrix has a range of 6 months or 25 percent from the bottom to the top of the range. These relatively tight ranges were mandated by the legislation establishing the Commission. A judge may depart from the guidelines sentence only if he finds a factor that the Commission did not adequately consider in establishing the guideline range for that particular offense/offender combination. Sentences above the

guidelines can be appealed by the defendant and those below by the government. Because the guidelines cover hundreds of crimes, they are organized by generic crime categories and while they appear complex, they are actually quite straight-forward.

For example, if the crime is a crime of theft, the guidelines instruct the judge to start with a base offense level of 4 and add 1-13 levels depending on the amount of money stolen as well as 2 levels if the crime involved more than minimal planning. Hence, if a theft involved \$15,000 and little planning, the offense level would be 9 and a first offender would receive a guideline sentence of between 4-10 months. However, as long as the minimum sentence is not more than 6 months, it may be satisfied by community or intermittent confinement. Straight probation would not, however, be allowed for this crime. Only if the theft was \$2,000 or less and involved little planning and no firearms or controlled substance, would straight probation be authorized. No confinement is required by the guidelines for offense levels where the minimum is zero months. For a first offender, this is up to offense level 6. There is, however, no in/out line in the traditional sense. That is, there are no offense levels where probation is the presumed sentence. It is simply the case that for offenders without long records, a number of offense levels do not require any confinement. All offense levels, however, permit confinement within the guidelines.

A crucial question of course in all this is, how will the guidelines actually effect the punitiveness of the Federal system? In order to attempt to answer this, I draw on the results of the Commission's prison impact study. Using detailed data on over 10,000 cases in 1985, we attempted to resentence the 1985 cohort of 40,000 convicted offenders under the

guidelines. We allowed departures for cooperation and assumed that the proportional reduction for plea agreements would remain about the same under the guidelines as it has been historically.

Certainly one of the most dramatic effects of the guidelines is likely to be a significant decrease in the proportion of offenders sentenced to straight probation. We estimate this proportion to fall to 18.5 percent. That is, after the guidelines are fully implemented, we are predicting that less than 1 sentence in 5 will involve no confinement. For crimes against the person, the incidence of straight probation is predicted to fall to less than 15 percent, while for drug offenses the impact of the 1986 Anti Drug Abuse Act and the guidelines are likely to drive the incidence of straight probation down to about 5 percent of all sentences. In the area of property offense, we predict that under the guidelines, straight probation will be given to only 1 out of every 3 defendants. For fraud this will be 1 out of every 4 defendants and for income tax evasion only 3 out of a 100 defendants will get away without some confinement.

Dramatic as this predicted reduction in straight probation is, it is actually a somewhat more marginal increase in punitiveness than meets the eye. A good deal of the reduction in straight probation is offset by an increase in the incidence of probation with some conditions of confinement and split sentences. Overall, we predict that probation with confinement and split sentences will increase from around 15 percent of all sentences to about 25 percent, and for property crimes from just over 15 percent to more than 35 percent of all sentences. For property offenses while straight probation will decline from 60 percent to 33 percent of all sentences, taken together all forms of probation and split sentences will decline only

slightly from 75 percent to 69 percent of all sentences.

My point about the reduction in probation being only a marginal change in punitiveness is perhaps best made by considering the sentences expected in the cases where straight probation is being displaced by some form of confinement. We predict that the average sentence of all those who would have received straight probation in the past, and will under the guidelines, be confined is 8 months. This includes drug and violent offenders where the reduction in probation is mandated by law and whose rather substantial sentences are, at least in the case of drugs, also often mandated by statute. If we concentrate on those crimes for which the guidelines themselves can be expected to reduce probation, the time served is much shorter. For example in theft and embezzlement cases, those who would under current practice receive probation but are likely to be confined under the guidelines, the average time served is less than 3 months, for counterfeiting and forgery it's less than 4 months and for fraud it's less than 5 months. Of the crimes primarily effected by the guidelines, only for income tax violations is the term of confinement for those who would have been on straight probation as long as 9 months. Punishment is back, but, at least for property crimes, not in a big way.

Moreover, we predict that there will be some reduction under the guidelines in the sentences at the high end of the scale. We predict that about 10-13 percent of all sentences for felonies and other serious crimes will be less under the guidelines than under current practice and that the sentence reduction here will be substantial. For these offenders, the average time served will be reduced by about 14 months. In some areas like fraud, the prevalence of reduced sentences will be even greater, perhaps as high as 16 percent of all sentences and involve nearly a halving of these high end

sentences from an average of about 25 months down to 13 months or so.

While we predict that time served will move up from about 16 months to nearly 29 months under the guidelines, all but 10 percent (1.2 months) of this 13 month increase is due to the 1986 Anti Drug Abuse Act and to the career offenders provision of our enabling legislation. Much of the increase in punitiveness occasioned by the guidelines will result from our redistributing punishment. Average time served is predicted to remain about the same for property crimes and to increase only modestly for fraud. Our assumption was that taking a month off the end of a 2 or 3 year sentence and giving it to someone who had previously received straight probation would result in a net increase in the punitiveness of the system.

Nevertheless, there were some areas in which the Commission did attempt to increase the absolute level of punitiveness. The average time served for those convicted of crimes against the person is predicted to rise under the guidelines from 37.7 months to 75.2 months of which almost 60 percent of this increase is due to Commission decisions. Under the guidelines, those sentenced to prison for a crime against the person will spend an average of over 7 years (88 months) in confinement. While average time served will skyrocket for drug offenders, almost all of this is due to the 1986 Anti Drug Abuse Act. Also in robbery, while average time served will increase to over 6 years (75 months), all but about a month of the increase in average time served results from the career offender provision of the 1984 Crime Control Act.

Aside from crime against the person, where the Commission acted to increase average time served, the increase was usually moderate both in absolute and relative terms, the major exception here being income tax evasion. For income tax offenses, the average time served is projected to

more than double. Essentially all those convicted of income tax evasion will now, on average, serve sentences as long as those previously reserved for the unlucky minority who were previously sent to prison.

The approach we took in income tax contrasts sharply with the approach we took in property crime. Here the average time served is virtually the same under the guidelines as in current practice, about 6 or 7 months. However, since we drastically reduced straight probation for this crime, the average sentence of those actually confined will decrease from nearly a year and half to just over 3/4 of a year. It is for the property crimes that we significantly deconcentrate punishment. More defendants will be confined but for shorter terms. Even here, however, the effect will not be uniform across all crimes.

Part of what we attempted to do in the guidelines was to equalize the relative punitiveness across property crimes. As an example, consider that in current practice we mete out one month of imprisonment for every \$11,000 stolen by embezzlement, \$4,000 stolen by larceny and \$1,400 stolen by forgery. Under the guidelines we project that courts will give a month of imprisonment for each \$5,600 of embezzlement, \$3,400 of larceny and \$3,000 of forgery. Punishment will be predominantly determined by the amount stolen and not by the method used to accomplish the taking. Since there was no obvious reason for the disparity in punitiveness in property crimes, the Commission's decisions to deconcentrate punishment across these crimes should increase the effective level of punishment in the system.

For the closely related crime of fraud, the Commission did opt for a moderate increase in the absolute level of punitiveness. Under the guidelines, we project that courts will mete out a month of imprisonment for each \$600 of program fraud. While this involves a doubling of the prison per

dollar for this type of fraud, given the odds against ever being convicted for this crime, it is still a very good bet as far as crimes go. There was also some increase in the level of punishment for other frauds. We project for these crimes that a month of imprisonment will now be given for each \$20,000 instead of each \$24,000 of loss.

IV. Are the Sentences Under the Guidelines Too Harsh?

When the guidelines were sent to Congress they drew criticism from some that they were not harsh enough and from others that they were too harsh. A spokesman for the Free Congress Foundation's Institute for Government and Politics urged us in an article in USA Today to make the guidelines tougher. Alan Ellis from the National Association of Criminal Defense Lawyers testified to the Subcommittee on Criminal Justice in the House of Representatives that "the guidelines are excessively harsh" and Marvin Frankel expressed "hope that the Commission in its future study will reconsider the overall level of punishment and scale the penalties downward from where they appear now to be."

Abstract arguments over the appropriate level of punishment, I'm sure, have their place, but they do seem to degenerate quite quickly. Advocates of reduced punishment levels hold out the specter of intolerable prison overcrowding while proponents for harsher sentences claim cost should be no object in assuring domestic tranquility. Usually the debate in this area is not joined. Argument proceeds without any reference to a common framework within which to consider the appropriate level of punishment.

One function that an independent Commission should perform is to bring some coherence to this debate. As an economist, I am immediately drawn to

the prospect of using cost-benefit analysis on the punishment decision. It's unfortunately true that increasing the harshness of the system usually involves costs in terms of added imprisonment. Suggestions for alternative sanctions are often impractical. All of us would like to use more fines but they simply aren't realistic in many cases. Consider for example a typical embezzlement case based on data in our files. A teller in a suburban bank makes a number of unauthorized withdrawals from different accounts and steals over \$20,000. At the time of sentencing, the defendant is working as a clerk at \$800/month. It's doubtful that the court can impose meaningful fine. It's simply the case that we are going to have to impose punishments that are costly if we are ever going to increase the punitiveness in the system.

The crucial question for setting punishment levels is whether any movement in the punishment level will generate more benefits than costs. This is not a new idea, but it does remain a somewhat controversial one. Of course the controversy here is probably no greater than the controversy surrounding cost/benefit analysis in any area where the benefits are not entirely pecuniary in nature. After all, the use of cost-benefit analysis is still decried by many in setting safety standards and in regulatory analysis in general.

The problem of evaluating benefits seems particularly acute in this area. There is to begin with some diversity of view as to the purpose of the system. Most will agree that crime prevention is a purpose of punishment but after that the consensus breaks down. For some punishment is its own reward and desirable even if there is no crime control consequences of punishment. Since this is not a universally held belief, there is always a tremendous amount of tension in setting punishment levels that cannot be justified in terms of crime control. More significantly, however, an independent

Commission is not a very good forum in which to evaluate the willingness to pay for desert based punishment. Granted that people will pay for punishment even if it results in very little crime control, an independent Commission is a poor mechanism for ascertaining just how much desert is socially optimal. A legislative body is really the only place for this type of evaluation.

A Commission like the United States Sentencing Commission is, however, a good institution for evaluating the cost effectiveness of increasing punishment levels for the purpose of crime control. It is in this area that the Commission can begin to bring scientific evidence to bear on this policy question. It's not that I would down play the difficulty of estimating and monetizing the benefits of increases (or decreases) in punishment levels, it's only that this is an area in which an independent Commission has a chance of providing light instead of heat.

The difficulty of monetizing the benefits of crime control is substantial and important policy conclusions may turn on technical issues. For example, in a 1986 article by Austin that was published in Crimes and Delinquency the author reported that according to his calculations the benefits of an early release program clearly outweighed the costs. However, it turns out that according to a bright young researcher at Vanderbilt, Mark Cohen, that even if you ignore general deterrence considerations but include the pain and suffering involved in victimization, the early release program is a flop, imposing costs on victims that far outweigh the savings to taxpayers from shorter sentences. No one ever said that setting sentences by cost/benefit analysis was easy but it does offer some hope of joining the debate. It also argues for going slowly and giving some deference to current practice.

You might be thinking how can I justify my go-slow recommendation with the description I gave as to the projected impact of the guidelines, especially in the area of probation. The reconciliation is immediate. In terms of real resources, the impact of the Commission's decisions are marginal. Our best guess is that 5 years from today the decisions taken by the Commission in its initial guidelines wouldn't have more than a 6 or 7 percent impact on prison population. In the absence of any other guideline amendments, in 1992 there will probably be 4,000-5,000 more people in Federal prisons because of decisions made by the U.S. Sentencing Commission in its initial guidelines. While our impact on straight probation is likely to be dramatic, our impact on prison population is not. All of the reduction in straight probation described above would require only 7,000-8,000 additional prison spaces by 1992. And since on balance we reduced some long sentences, the net requirement will only be 4,000-5,000 spaces.

What about the dollar and cents of this reduction in probation? Let's take the crime of fraud. Here we predict that straight probation will decline from about 60 percent of all fraud sentences to roughly 24 percent under the guidelines. This will increase prison population five years from now by 1,200-1,500 inmates and increase operating costs by 7.5 to 9.5 million dollars. Adding to this a reasonable allowance for capital costs, the total cost of the drastic reduction of straight probation for fraud is between 11-13.5 million dollars a year. Since the amount of fraud subject to Federal jurisdiction is way in excess of 1 billion dollars, the percentage reduction in fraud necessary to make this a cost-effective strategy is at most about 1 percent. That is in order for this policy to pay for itself, we require that a 45 percent increase in the chances of being confined for fraud generate

a 1 percent reduction in the amount of fraud in the system. Considering that some years ago I found that a 10 percent increase in rate at which fraudulent AFDC claims are referred to prosecution decreases such fraud by over one percent, I am confident that our decision to reduce straight probation could easily be justified in term of cost/benefit analysis. I only hope our decision to offset some of the costs of this reduction by trimming sentences was as prudent.

In my view, the future of the U.S. Sentencing Commission lies not in attempting to resolve unresolvable conflicts as to the purposes of sentencing nor in figuring out how much punishment there should be for its own sake, but rather in trying to rationalize the punishment system by searching for changes in the level, structure and composition of punishment that yield a surplus of social benefits over social costs.

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Chapter 11

JUDGES, PUBLIC OPINION, AND PUNISHMENT

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Chapter 11--Judges, Public Opinion and Punishment

Over two centuries ago a great English writer made some incisive comments on the relationship between public opinion, crime and sentencing. Henry Fielding,¹ novelist, lawyer and magistrate, in Tom Jones, tells of a quasi-competent school-master, one Partridge, whose jealous wife forced him to dismiss their maid, Jenny Jones. Nine months later, news of Jenny's giving birth to twins impelled Mrs. Partridge to publicly denounce the innocent schoolmaster of the vile crime of adultery. The villagers, good, common souls, believed the worst. Shortly after this, an accusation was lodged against Partridge for fathering the foundling and the hero of the book, allegedly the son of Jenny, who was being raised in the household of Squire Allworthy.

The Squire, like all country gentlemen and landowners at the time was the local justice of the peace. He had great power to decide misdemeanors and cases of immorality. Fielding creates a truly admirable character in Allworthy - judicious, tolerant, patient, impervious to gossip, and generous to a fault. Thus, he is careful to extend full and careful consideration to Partridge, who, nevertheless, is wrongfully found guilty on the basis of false testimony against him. However, once convinced of Partridge's guilt, Squire Allworthy did not hesitate to sentence the schoolmaster, leading to his dismissal. As a result, Partridge and his wife slipped into utter penury, kept from starvation by secret gifts from the Squire. But that public opinion, which was so quick to condemn Partridge before his trial, proved to be fickle indeed:

The justice which Mr. Allworthy had executed on Partridge at first met with universal approbation; but no sooner had he felt its consequences, than his neighbors began to relent, and to compassionate his case; and presently after, to blame that as rigour and severity which they before called justice They now exclaimed against punishing in cold blood, and sang forth the praises of mercy and forgiveness.

Fielding's reservations on the subjectivity of public opinion about punishment ought to be taken seriously. In individual cases, public outrage or sentimentality may create pressure for decisions that are inconsistent with any sound system of punishment. On general issues of punishment, opinion is likely to be overly harsh or lenient in comparison to those penalties actually meted out. The public is not well informed about the actual methods of contemporary corrections or much concerned with fiscal and administrative constraints which limit and shape actual corrections departments. The public wants lower taxes, no prisons or half-way houses in their neighborhoods, but does want enough prison cells for all serious offenders. A real danger of demagogic manipulation of public opinion exists where there is such a large gap between knowledge and belief. Finally, one must be concerned that the inconsistencies within public opinion is likely to make a general finding merely a vector of inconsistent forces.

Would it not be better, following Fielding's lead, to leave punishment entirely in the hands of sober and professional judges and correctional administrators, within the guidance of the legislature and well established rules of common law? Would it not, in short, be more professional and responsible if public opinion were kept altogether out of the subject of sentencing?

Fielding apparently thought so. From his perspective as a reforming magistrate in the rowdy, undisciplined and thoroughly corrupt times he lived in, he may have had a point. It is not so simple today. If corrections were a matter of scientifically based professionalism there would be an argument for the exclusion of public opinion, but that view has few adherents today.³ Sentencing decisions deprive citizens of liberty and implement public policies to do justice and ensure public safety. Very few topics are so fraught with public concern and are, therefore, fitting for political inquiry. We must examine the role of public opinion in sentencing and corrections.

* * * * *

A distinction between the influence of public opinion on judicial sentencing and on executive branch corrections, in the light of American political and constitutional theory, is called for. Insofar as corrections is an executive branch function, its funding and general purposes is fair game for influence through the same mechanisms by which public opinion operates in other spheres of government. The influence of public opinion on judicial sentencing, however, is entirely another matter, thought to be totally out of bounds.

Why is there such disquiet over the influence of public opinion on judges?

I will tackle this subject by addressing two topics; first, the response of judges to public opinion about sentencing and punishment both in specific cases and in general and second, the response of judges to legislative initiatives to sentencing and punishment, especially determinate sentencing and sentencing guidelines.

JUDICIAL RESPONSE TO PUBLIC OPINION ABOUT PUNISHMENT

The judicial response to public opinion regarding punishment and sentencing is inherently ambiguous. On the one hand, judges say that it is totally wrong to base a sentence on public outcry for harshness or leniency in a particular case or on an unusual amount of publicity in cases. Judges will listen to the desires of victims or family in pre-sentence hearings, but are very uncomfortable about the notion that these parties will in some way gain a decisive say in the sentencing decision. Thus, provisions of victim's rights bills giving victims input at sentencing are thought to have little effect.

This state of mind was pungently expressed by a judge to Willard Gaylin:

...in the name of humanity you must always react to the particular person. As a public official, in the justice system, you will quite often be hit by the squalls of opinions of the moment. If you can't take that kind of storm and weather it, you have no business being a public official. You have to act on your expertise, that's why you're elected. If you're going to merely take polls and find out what 51 per cent of the public want every time you act, you don't need a judge - all you need is someone from Lou Harris or Gallup. You're put in because you have a degree of expertise which you have developed over the years. The one thing that bothers me most about this period of hysteria we're now undergoing is that, with the heavy criticism of judges,... some of my colleagues have just folded. They have the balls of tsetse flies, and instead of giving a youngster probation when they should, and formerly would have, they now take the safe way and sentence him to five years in prison ... They play it so the press or governor can't criticize ... I will do what I think is right.⁴

Most thoughtful citizens will agree with this. But, even if the public is correct in a particular case (a difficult determination when standards for punishment are vague or nonexistent) - we still want the judge to do what he or she believes is right in a case. If we suspect that a judge is bending to public pressure we still do not want this openly admitted. Such an

appearance undermines the integrity of and public confidence in the judiciary. Unlike presidents, governors and mayors who are supposed to listen to public opinion, judges are supposed to listen only to the facts of the case, consult the law, and make decisions on their independent assessments of the law and on their sense of fairness.

On the other hand, in an almost mystical way, judges are supposed to be in touch with and responsive to public opinion in general. This paradoxical tension is not unique to punishment cases; it pervades the American judicial system and has been frequently commented on in the context of the United States Supreme Court. It applies, however, to every judge who is responsible for sentencing.

Otto Kirchheimer has pointed out that since medieval judges were appointed by kings, who could dismiss them at will, the judge owed loyalty to the king.⁵ But since the political revolutions of the Enlightenment in England, America and France, judicial independence has become a centerpiece of limited constitutional government. As a result, as Kirchheimer so trenchantly notes, the judge gained a new master: public opinion. Is he correct?

If we ask judges, they will say that their loyalty is to the law. In our system a judge may be appointed by the governor or elected by the people after party nomination, but the judge who decides a case on a partisan basis violates the most basic canon of professional conduct: impartiality. Although partisan rulings do occur, a wide expanse of judicial independence is made real by the open texture of American law, the specialized training of lawyers, the judge's past experience as a lawyer, canons of judicial professionalism and the complexity of particular cases which make often simple partisan decisions infeasible.

Judicial independence is not only a keystone of western constitutionalism, but it has an interesting societal effect: namely, judges' decisions legitimize actions. But, as a legitimizer, the court's "authority rests on the community's preparedness to recognize the judge's capacity to lend legitimacy to or withdraw it from an individual's act."⁶ Thus, a court can lose its legitimization-granting power if its decisions stray too far from the understanding or needs of the community. This brings us back to the question of loyalty. It is a bit too facile to say that the judge's loyalty is owed only to the law. The judge owes loyalty, in a real sense, to the community. By swearing to uphold the constitution and by being appointed through a political process, the judge gives guarantees that he will rule over society in ways that comport with an acceptable range of values. Thus, even decisions that appear to be behind the time or forward looking, are not usually so reactionary or so revolutionary that they meet with universal derision. If opinions cannot satisfy everyone in society, they will usually satisfy a large segment of the population.

In a discretionary area like sentencing, then, a judge cannot be swayed or appear to be swayed by public opinion in specific cases lest he undermine the constitutionally vital principle of judicial independence. But the judge must be attuned to the general contours of public opinion. An interesting example of this is John Hogarth's intensive study of Ontario magistrates' sentencing in the late 1960s. He found that magistrates scored much higher than law and social work students and probation officers on the attitude that punishment, i e , prison sentences, corrects offenders. Hogarth interprets this as a way for magistrates to maintain their practice of giving prison sentences in good conscience. "Armed with a philosophy which emphasizes both

the protection of the community and the correction of offenders through punishment, magistrates would be able to impose rather severe penalties without any sense of guilt about sacrificing the offender for the good of the community. The way in which the demands of one's occupational role affect one's attitudes are thus revealed.⁷ While I do not dispute Hogarth's finding, given the changes of general attitudes in the last twenty years, I doubt that Ontario magistrates any more than their American judicial counterparts would today maintain that prison sentences correct offenders. What has changed has been the broad public perception of prisons and indeterminate sentences. As I have previously noted, up until 1970 there was a strong current of opinion which saw the indeterminate sentence as one of the few really good aspects of the criminal justice system. Belief in the rehabilitative effect of correctional programs, including prisons, however empirically incorrect, was widespread in American society. The assault on a belief in rehabilitation which came partly from critical evaluations, combined with the Attica prison riot in 1971, has markedly changed public opinion about sentencing and corrections to this day.⁸ Thus, when judges now express disbelief in the prospects for penal rehabilitation and search for punishment justifications in deterrence, incapacitation or retribution, it seems quite certain that they are influenced by generally held public attitudes and beliefs about punishment.

Any student of sentencing will realize that a sensitivity to general community opinion about punishment is not likely to act as a real constraint on a judge. Except for very specific issues, like support for the death

penalty, there is likely to be sufficient variation in public opinion so that judges can comfortably locate their own beliefs of proper sentences within it. Thus, Gaylin notes that two judges, one a liberal state court judge, the other a middle of the road federal judge, both verbalize a desire to balance the needs of the law abiding community with the circumstances of the particular defendant. Yet, the federal judge spoke of leniency in terms of 5 to 10 year sentences while the state trial judge said that he would give prison sentences of more than 5 years only in cases of murder.⁹

I suspect that an examination of the research literature on seriousness scales, such as those pioneered by Sellin and Wolfgang¹⁰ would show that the general public and sentencing judges do not differ in their rankings of offenses. But this leaves us far from the attachment of specific sentences to individuals.¹¹ I suggest, therefore, is that a more relevant inquiry, is the public opinion among working professionals in a particular court, or in a county, that produces a particular set of "going rates" for sentences. There is much folklore and informal learning about this, but little specific research. Eisenstein and Jacob¹² have led the way in this area by positing the existence of a local court culture of sentencing, but for any useful research to be done, I suggest that it is necessary to look at the county as a unit of analysis and to compare several counties within a particular state.¹³

To summarize this section: (1) the mandate of judicial independence is so important to our political system that judges must never give the appearance that they are influenced by the public in a particular case; (2) the nature of the judicial function in democratic societies requires that

judges be aware of, and in a general sense adhere to, the broad outlines of acceptable public opinion on relevant topics, including punishment; (3) public opinion about punishment is so diffuse that it allows the judge a great deal of leeway in sentencing; and (4) the more important inquiry may very well be the climate of opinion among local prosecutors, defense attorneys, judges, probation officers, police officials, court administrators, and correctional officials than a diffuse public opinion about punishment.¹⁴

JUDICIAL RESPONSE TO SENTENCING GUIDELINES AND DETERMINATE SENTENCING

If the judicial response to public opinion about punishment tends to be ambiguous, the reaction of judges to determinate sentence reform and sentencing guidelines is, for the most part, quite negative. While a few progressive judges hail the advent of guidelines, it is clear to me that judges do not like to have their discretionary authority infringed upon. Now, my basis for this observation is partly anecdotal, but I have been involved with the development of sentencing guidelines in two states over a number of years and on the whole, judges wish that the whole idea of determinate sentencing and guidelines would just go away. Despite the collapse of rehabilitation as a justification for the indeterminate sentence, judges remain comfortable with it for many practical reasons.¹⁵. The indeterminate sentence gives the court flexibility in obtaining pleas and so serves the vital function of keeping the courts running with limited resources. This factor, more than any other, has made judges wary of rigid sentencing rules. Next in importance is the fact that flexibility gives the court leeway in assessing the moral worth of a case in accord with his or her evaluation of the facts and circumstances.

Judge Marshall Levin of Maryland, a state with sentencing guidelines, expressed this in a revealing article in Judicature. That system was designed by judges for judges, in Judge Levin's words, and is voluntary and without appellate review. The judges, needless to say, oppose appellate review. "There is also a viewpoint that the sentence ranges should be narrowed considerably so as to better structure the sentencing decision. Here, too, there could well be opposition on the theory that too much policymaking is involved."¹⁶ The attitude here is clear - those guidelines are good which do not seriously impinge upon the judge's decisional authority. I have found a similar response in Michigan. Guidelines in this state must be used, but the range of guidelines are quite large, in my estimation, and because the guideline ranges do not have the force of law, very few appellate courts have interfered with sentence based on guidelines. In interviews with judges in Wayne and Oakland Counties in 1985 I found them to be satisfied with the guidelines. Michigan's guidelines ranges are rarely less than six months. Latitude of 3, 4, 5 and more years within a guideline cell are frequent. Many of the ranges for first offenders give judges the option of probation, jail or prison for similarly situated offenders. Although I participated, as a staff member, in the development of these guidelines, and find much in their structure and approach which is good, I am at a loss to explain how ranges of such magnitude can be said to be similar sentences for similarly situated offenders.

The arguments for sentencing standards and a curbing of discretion flow from three complex factors. The first is the collapse of the medical model of penology. Without the needed flexibility in assigning differential sentences for treatment, the concept of justice as equity has come to the fore. In a polity which exalts formal democracy, the inequities meted out to similarly situated defendants becomes more and more intolerable to our perceptions of basic principles. Sentencing comes to be seen as unjust and thus the legitimacy of the judicial function is undermined. Equity, then, can best be achieved by curbing the disparity which flows from discretion. Such a trend clearly threatens existing modes and patterns of judicial sentencing.

Second, although there is a raging debate about the genuine effectiveness of prison to incapacitate and deter,¹⁷ it is fairly obvious that allowing individual judges in multi-judge courts to make their own assessments of what sentences best bring about deterrence or incapacitation makes about as much sense as letting company level officers make their own assessments of grand strategy in time of war. Of course, the judicial system is the antithesis of an administrative hierarchy, and in most areas of law, judges follow rules not in a mechanical way, but through the complex and uncertain process of legal reasoning. Thus, it does not seem appropriate to have judges play a major role in sentencing if rigid adherence to very narrow rules for utilitarian purposes is to be the future of sentencing.

Finally, the unprecedented growth of prison populations to almost 600,000 has led to a correctional funding problem of major proportions in virtually every state and in the federal jurisdiction. This is an issue that generates a need for centralized decisions regarding the allocation of correctional resources. But judges, key actors in the decisional process,

cannot be part of such a centralized decisionmaking process. Furthermore, judges are legitimately concerned that such needs for centralized decisionmaking would tend to undermine their perceptions of the integrity of sentencing decisions. They say that it is wrong to take prison crowding into effect in meting out a sentence. In the individual instance they are correct. But, does this mean that a state's government is helpless to establish some limits on how correctional resources will be used? To what extent must judges be consulted in shaping the penal policy of a state? Perhaps a compromise can be worked out which preserves judicial autonomy in individual sentencing yet gives the State greater control over who goes to prison and jail.

Still, I believe that the same structural and constitutional aspects of the American judiciary which make judges impervious to public opinion in individual cases propel them, in their judicial functions to obstruct the movement to uniform sentencing standards. Both administrative decisionmaking and judging require the application of general norms to specific fact situations. But the differences in the scope of discretion between the two functions are wide enough to be quite real. The judge has maximum protection and his function is personal and non-transferable. The judicial role, ideally, allows the judge to concentrate on the correct determination of law, with minimal attention given to matters of feasibility and practicality.¹⁸

In this light what judges fear the most has little to do with the substantive results that determinate sentencing or sentencing guidelines are likely to bring about. The powerful motivating force that impels judges to viscerally oppose guidelines, or to be happy with them in proportion to the extent that guidelines fail to control judges' decisions, is the fear that the judges will be reduced to clerks, will be performing routine functions.

Astute observers and most inside players may argue that most judicial latitude has, in any event, been hemmed in by plea bargaining. This is true, but with important differences of appearance and nuance. The plea process is familiar and requires the sort of legitimating ritual that is an integral part of legal practice. The judge is a ratifier of previous decisions and thus the central attribute of legitimizing decisions still occurs. The judge is also an actor, not a passive spectator. This, I think, is the reason that so many judges are known to have "pet crimes" which they emphasize in sentencing. Judge X is generally lenient but very harsh in spouse abuse cases. Judge Y is a tough sentencer but sees most drug offenders as needing treatment rather than prison. These quirks are more than reflections of independently worked out policies; these personal styles of decisionmaking are taken on by the judge to convince himself that he has not become a cog in a sentencing machine designed to reduce the judge to a registrar.

The style of determinate sentencing, on the other hand, is antithetical to styles of work that judges are comfortable with. Even if "sentencing by computer" is a myth, the appearance of decision grids and the linking of guidelines to social scientific research strikes at the heart of the judge's professional self-concept. It is not so much an attack on the pride of the judge as an individual that is at play here, but an undermining of an important aspect of the judge's institutional role.

Although I am generally in favor of sentencing guidelines, I think it is critical for me and all guideline adherents to recognize the legitimate institutional claims of the judiciary. This is not a plea for a return to unbridled indeterminacy or for judicial dictation of the complete shape of a

sentencing system. I would suggest that guidelines are called for only if the three factors mentioned above (fairness, utilitarianism, prison overcrowding) are seen as posing such critical problems to a State that it becomes necessary to override traditional ways of sentencing. But if they are, I think that it is important to devise a change in the role of judges at sentencing that will not demoralize the judiciary. This may require taking judges out of the primary role of meting out sentences and reshaping their role. Perhaps, if the use of genuinely restrictive sentencing guidelines becomes the norm, judges will become overseers of the guideline system with review power over the application of guidelines to insure that mechanical application does not lead to egregious injustices. This idea is speculative, but it is generated by a real concern for balancing the imperatives of rational sentencing and judicial autonomy.

My experiences in Michigan and New York lead me to be rather pessimistic that such an accommodation can be worked out. In both States reaction to guidelines have led to their weakness or demise. New York judges, plus every other interest group, raised such a barrage of criticism that Governor Cuomo's initiative died a swift death. In Michigan, judges have lobbied most effectively to keep the sentencing guidelines from gaining legislative stature and real "teeth." The Michigan Supreme Court has not been willing to date to raise the guidelines from their weak status as an administrative order to the level of Court Rules having the force of law.¹⁹ The signal from the judiciary has been unmistakable: whatever problems exist in sentencing and corrections, they should be solved in ways that leave judicial sentencing discretion intact. I think that the success or failure of the Federal guidelines²⁰ will prove critical in setting the direction of the sentencing reform movement. If they do not work, I think that the movement

toward determinate sentencing will come to a halt. If successful, they will create the impetus for states to continue experimentation with guideline systems.

I have only sketched out a problem, not a solution. The dilemma of sentencing reform, vis-a-vis judges is this: judges hold a veto power over sentencing reform; if reforms are to be adopted the judges must be consulted. On the other hand, if the judiciary is given major control over the design of sentencing reform, they will reflexively build broad discretion back in, thus regenerating problems for the correctional end of the criminal justice process. This dilemma cannot be solved by pretenses about sentencing guidelines. I believe that the stronger need to preserve judicial independence and confidence is likely to subvert efforts at sentencing reform. One way out of this dilemma, as I have suggested, is to reconceptualize the judicial role in sentencing.

Notes

¹ Henry Fielding (1707-1754), along with Samuel Richardson considered an inventor of the novel as a literary form, was also a lawyer who gained lasting respect as magistrate of the Bow Street court. His interest in crime suppression led to innovative efforts to develop a rudimentary police force for London.

² Henry Fielding, The History of Tom Jones, A Foundling (London: The Abbey Press, n.d.), p. 83.

³ See D Lipton, R Martinson and J Wilks, Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger, 1975); R Martinson, T Palmer, and S Adams, Rehabilitation, Recidivism, and Research (1976).

⁴ Willard Gaylin, Partial Justice: A Study of Bias in Sentencing (New York: Vintage Books, 1975), p. 210.

⁵ Otto Kirchheimer, Political Justice: The Use of Legal Procedure for Political Ends (Princeton, N.J.: Princeton University Press, 1961; reprint ed., Westport, CN: Greenwood Press, 1980), p. 14.

⁶ Ibid- p 178.

⁷ John Hogarth, Sentencing As a Human Process (Toronto: University of Toronto Press, 1971), p. 146.

⁸ See Marvin Zalman, "The Rise and Fall of the Indeterminate Sentence [Parts I & II]," Wayne Law Review, 24 (1977): 45,86-94.
⁹ Gaylin, op. cit , pp. 106-107.

¹⁰ Thorsten Sellin and Marvin Wolfgang The Measurement of Delinquency (New York: John Wiley, 1964).

¹¹ An intriguing exploratory study which does just that is Alexis M Durham III, "Citizen Judgments of Appropriate Punishment: An Exploratory Inquiry," Criminal Justice Policy Review 1 (1986): 357-380. Durham's findings indicate that there is a moderate amount of consensus about the kinds of punishments which should be attached to criminal acts, less consensus regarding the length of prison sentences, and no clearcut consensus on the rationales for assigning sentences.

¹² James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little Brown, 1977).

¹³ A recently issued study provides this level of analysis, see James Eisenstein, Roy B. Flemming and Peter P Nardulli, The Contours of Justice: Communities and their Courts (Boston: Little Brown, 1988). The study offers empirical evidence for the existence of "going rates" of sentences in several counties.

¹⁴ Of course, many material factors such as the nature of a state's penal code and its sentencing structure, the availability of jail and prison spaces, the extent of correctional programs and the like, plus intangible attributes such as the degree of liberalism or conservatism interplay with professional opinion to create the "going rates" in a particular locale.

15 See David Rothman, Conscience and Convenience (New York: 1979).

16 Marshall A. Levin, "Maryland's sentencing guidelines - a system by and for judges," Judicature 68 (Oct-Nov 1984): 172, 179.

17 See Alfred Blumstein, Jacqueline Cohen, and Daniel Nagin, eds., Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, D C: National Academy Press, 1978); Andrew von Hirsch and Don M. Gottfredson, "Selective Incapacitation: Some Queries About Research Design and Equity," New York University Review of Law and Social Change, 12 (1983 - 1984): 11-51.

18 Kirchheimer, op. cit. , p. 180.

19 This may change, since modifications in Michigan's guidelines are now in the works.

20 United States Sentencing Commission, Sentencing Guidelines and Policy Statements (Washington, D. C.: U. S. Govt. Printing Office, April, 1987).

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Chapter 12

TRENDS IN PRISON POPULATIONS

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Trends in prison populations

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In 1926 the federal government, in a statistical series called "National Prisoner Statistics," began keeping annual records of state and federal prison populations. Published, soon-to-be published, and unpublished statistical reports from "National Prisoner Statistics" form the basis for this paper on national trends in state and federal prison populations.

"National Prisoner Statistics" provides various measures for investigating national trends:

- o An annual national census of "prisoners present," begun in 1926 and repeated every year thereafter, compiles state and federal information on the total number of persons in prison at the end of the year, their sex distribution and, since 1978, their race distribution.
- o An annual national census of "prison admissions," begun in 1926 and repeated every year thereafter, compiles state and federal information on the total number of persons admitted to prison throughout the year, the type of admission and, for many years, their sex, race, offense and sentence-length distributions.
- o An annual national census of "prison releases," begun in 1926 and repeated every year thereafter, compiles state and federal information on the total number released from prison throughout the year, the type of release and, for many years, their sex, race, and offense distributions.
- o A national sample survey of state prison inmates, first conducted in 1974 and repeated in 1979 and 1986, collects, through lengthy interviews, detailed information on individual inmates in prison on a given day, including information on each inmate's prison sentence, and each inmate's social and criminal backgrounds.
- o An annual census of participating states, first conducted from 1974 to 1982 under the name "NPS 2/3," and conducted thereafter in a reorganized program under the name "National Corrections Reporting Program," compiles offense, sentence-length, time-served, and social and demographic information on each inmate admitted to prison, or released from prison, or admitted to parole or released from parole.

This paper draws on these censuses and surveys to describe major national trends in

prison populations. The paper is organized around five topics: prison population size; prison admissions and releases; capital punishment; prison staffing; and, demographic composition of prisons.

Trends in the size of the prison population

Historically, the size of the prison population has been measured by the number of persons in prison on a given day. This measure is called "prisoners present," traditionally defined as the total number of sentenced felons in prison custody on December 31 of the year. Statistics on prisoners present constitute the data for describing trends in the size of the prison population.

1. Trends in the size of the federal prison population as a percentage of the total prison population

The prison population has two components: a state prison population, and a federal prison population (table 1 shows details of each). The federal prison population as a percentage of the total population has not remained constant since 1925:

Record high percentage of federal prisoners. (table 2) From 1925 to 1945, the prevalence of federal prisoners increased, reaching its all-time high level of 14% in 1945.

Record low percentage of federal prisoners. (table 2) From 1945 to 1982, the prevalence of federal prisoners steadily declined, reaching its all-time low level of 5.6% in 1982. Since 1982, the prevalence of federal prisoners has been growing.

2. Trends in the number of persons in prison

Record number of persons in prison. (table 3) From 1925 to 1974 the record high prison population was in 1961, when 220,149 persons were in prison. The record was broken in 1975, when the prison population reached 240,593. Every year since 1975 has set a new record high. To date, the 1986 prison population of 503,794 is the highest number ever recorded. It nearly equals the population of Alaska (1986 population 534,000), or Vermont (1986 population 541,000), or Wyoming (1986 population 507,000).

Record imprisonment rate. (table 3) From 1925 to 1980 the record high imprisonment rate (historically defined as the number of persons in prison per 100,000 population) was in 1939, when there were 137 prisoners per 100,000 population. The record was broken in 1981, with a rate of 150 per 100,000 population. Every year since 1981 has been a record-breaking year in terms of the imprisonment rate. To date, the highest imprisonment rate ever recorded is the 1986 rate of 209 prisoners per 100,000 population.

3. Trends in year-to-year changes in the size of the prison population

Record year-to-year numerical increase. (table 3) The largest numerical increase in the prison population ever recorded was from 1981 to 1982, when the prison population grew by 41,060 prisoners. At that rate, the equivalent of a new thousand-bed prison would have to be built nearly every week just to keep up with prison population growth.

Record year-to-year percentage increase. (table 3) Over the past 62 years, prison populations have typically increased from one year to the next. The average year-to-year change has been a 2.9% increase. The largest year-to-year percentage increases ever recorded have all occurred in the past twelve years. The largest year-to-year increase ever recorded was from 1980 to 1981, when the prison population increased 12.9%; the second largest, 11.9%, was from 1981 to 1982; the third largest, 10%, was from 1974 to 1975.

Record year-to-year percentage decrease. (table 3) The largest year-to-year percentage decrease ever recorded was from 1941 to 1942, when the prison population declined 9.1%; the second largest decline, from 1942 to 1943, was 8.6%; the third largest decline, from 1965 to 1966, was 5.3%.

Trends in Admissions and Releases

Prisoner movements in and out of institutions during a given year directly affect the number of "prisoners present" at the end of each year. If more persons are admitted than are discharged, for example, the year-end count will be higher than at the end of the preceding year. Conversely, if releases outpace admissions, the end of year count of prisoners present will be lower than the preceding end-of-year figure.

Admission movements are largely a function of two distinct methods of prison entry: Commitments from a court, and returns to prison as a result of violating the requirements of an earlier conditional release. Releases, on the other hand, are a function of length of stay---a determination which may be made in different ways depending upon the type of sentencing and release procedures used.

Historical data from National Prisoner Statistics are available for many years between 1926 and 1986 on each of the items discussed both at the national-level and for most of the jurisdictions. In recent years, particularly since 1983, a strong emphasis has been placed upon obtaining detailed individual-level information on each person admitted to or released from a prison in the U.S.

1. Trends in the ratio of prison admissions to prison releases

Over the 55 years for which data are available between 1926 and 1986, admissions have exceeded releases 43 times and releases have exceeded admissions only 12 times (table 4).

Record high ratio. (table 4) In every year between 1974 and 1986, admissions exceeded releases. In 1982, the number of admissions relative to the number of releases reached a record high of 123 admissions for each 100 prisoners released resulting in a net gain of more than 42,000 inmates.

Record low ratio. (table 4) Since 1926, there have been essentially two periods in which fewer persons were admitted to prisons than were released. In each year between 1940 and 1944, there were more releases than admissions with a record low ratio reached in 1943---83 admissions for each 100 released. The second period occurred during the 1960's---in 1966, for example, there were 92 admissions for each 100 released.

Rate of turnover is a second method for examining the relationship among prisoners

present, admissions, and releases over time. By taking the number of prisoners present at the beginning of a year and adding the number of new admissions during the year, the total number of prisoners handled can be calculated. Releases as a percentage of the total number handled would indicate the turnover rate. Generally, as can be seen in table 5, approximately one-third of the prisoners handled exit prison each year.

Record high turnover rate. (table 5) Over the period 1960 to 1967, the turnover rate steadily increased reaching a record high 41.5% in 1967. Such rates of turnover would help to further illustrate how releases outpaced admissions during the same period.

Record low turnover rate. (table 5) The lowest, (29.3%) turnover rate occurred in 1929. In recent years, 1982, a record growth year, reflected the lowest turnover rate since 1939.

2. Trends in prison admissions

The two principal sources of admissions to prison, court commitments and returned conditional release violator, have reflected changes over the 60 years for which such data are available for State and federal prisons. Historically court commitments have always accounted for a higher percentage of those admitted than returned violators.

Record high percentage of court commitments. (table 6) From 1926 to 1940 court commitments were 90% or more of those admitted to prison by these two methods with 1927 the record high year (95.2% of admissions).

Record low percentage of court commitments. (table 6) Since the early 1970's, court commitments have been accounting for a decreasing share of prison admissions; in 1986 a record low 74.7% of admissions were new court commitments. Comparing 1980 and 1986, the number of admissions from courts grew by 56% compared to 153% growth in the number of conditional release violators entering prison.

Percentage of court commitments declines in recent years. (table 7) For the recent period (1978-86), the source for increased violators is largely the return to prison of persons who had exited prison by other than a parole board decision (other conditional release violators are by and large persons who received a mandatory release under a determinate sentence).

Although new court commitments represent a declining percentage of admissions, the absolute number of prison entries from courts as well as the per capita rate of commitment have been generally increasing in recent years (table 8)

Record high rate of court commitment. (table 8) Per capita rates of commitment (admissions from courts per 100,000 adults in the resident population) reached their highest level in 1986 with more than 200,000 court commitments for a rate of 114 per 100,000 adult residents.

Record low rate of court commitment. (table 8) The lowest per capita rate of court commitment was recorded in 1944—37 admissions per 100,000 adult residents---after a steady decline which began in 1941.

Historical data on the most serious offense for which persons were admitted to prison is available for each year between 1926 and 1950 and for only a few scattered

years after that through 1984 and generally is limited to only those admitted as new court commitments. Table 9 displays the offense distribution for the most frequently observed crimes at admission.

Record high percentage of violent admissions. (table 9) Violent admissions as a percentage of admissions reached their peak of 37% in 1943 and in 1970, two periods characterized by generally low rates of commitment and releases exceeding admissions. This would generally suggest greater selectivity in the use of prison by reducing the number and percentage of non-violent offenders entering prison.

Record low percentage of violent admissions. (table 9) By contrast, in 1960 about 27% of admissions had been convicted of a violent offense. The non-violent admissions that year were largely affected by the record percentage of burglary admissions, 27.8%. In recent years, such offenses as forgery, fraud, embezzlement, larceny, and auto theft account for a lesser share of admissions than in earlier years, partly due to the growing percentage of drug offenders admitted.

3. Trends in prison releases

There are three principal methods by which offenders leave prison: parole, other conditional release, and expiration of term. Parole is a discretionary decision by an authorized board to discharge an offender into the community under specific rules or conditions based upon the board's view of how much incarceration time was appropriate for the offense and the offender's criminal history. Other conditional releases consist, for the most part, of persons discharged from prison as a result of good time credited against their sentence (called mandatory release) or as a result of a court-ordered probation sentence (sometimes called shock probation) after a brief institutional study. Both mandatory releases and probation releases are, like parolees, under conditional supervision in the community for the balance of their sentence. By contrast, an expiration of term discharge is an unconditional release which occurs after full service of a sentence.

Over the years for which data are available between 1926 and 1986, discretionary parole board release accounted for half or more of all releases in 46 of the 55 years (see table 10). Data for recent years, however, indicate that after growth in the use of parole extending from the mid-50's to the late 70's, other forms of conditional release, most notably mandatory release, are playing a significantly greater role with respect to discharges. Although there has been a substantial decline in the use of unconditional release (largely expiration of term but also including a small number of pardons and commutations), over the last ten years the percentage of such releases has been stable.

Record high percentage of releases by parole. (table 10) The year 1977 marked the highest ever usage of discretionary parole release—72% of all releases that year were by a parole board decision.

Record low percentage of releases by parole. (table 10) In 1940, 42% of all releases were by a parole board decision, about equal to the use of parole observed in 1985 and 1986.

Parole releases decline in recent years. (table 11) Table 11 focuses on the method of release observed over the period 1977-86. During these years, release methods shifted away from parole to greater reliance on mandatory

release thereby increasing the significance of both sentence length and good-time credits in relation to the actual amount of time-served prior to discharge. In addition, though parole use has been declining, there is little evidence that such a decline has affected the use of unconditional release.

4. Trends in time served (table 12)

Time-served is a difficult measure to track over time since many factors may influence it. For example, recent data seem to indicate that time-served is generally shorter now than in the past. This, however, may be a function of lengthier credits for jail time spent prior to trial than in earlier years. Alternatively, the recent crowding problems in prisons resulting in court-ordered releases, sentence rollbacks, and emergency releases may very well have shortened the actual time offenders serve. Yet a third possible explanation is that the growth in the per capita commitment rate reflects greater use of prison for perhaps a larger share of offenders with shorter sentences—a widening of the net explanation. Finally, the composition of first-time and recidivist offenders will affect the time to discharge--- data for 1983 indicate that for a similar crime, a recidivist will serve an average of 12% longer than a first-timer. For these reasons, it is not appropriate to identify record years for time served.

Trends in capital punishment (table 13)

Table 13 presents the available counts of admissions, executions, and year-end prisoners present for death sentences for the years 1930 to 1986. As can be seen, no executions were conducted between 1968 and 1976.

Record high number of death sentences. (table 13) During 1975, a record of 322 death sentences were imposed.

Record high number of executions. (table 13) The 199 executions carried out in 1935 were the most to occur in any year between 1930 and 1986.

Record high number of prisoners under a sentence of death. (table 13) At the end of 1986, a record high 1,781 persons were under sentence of death.

Trends in the number of prison employees (table 14)

Table 14 depicts for selected years the ratio of inmates to staff in state prison facilities. As can be seen, substantial increases have occurred in the number of staff relative to inmates. It is interesting to note that between 1979 and 1984, the rapid growth of the inmate population (45%) was matched by identical growth in the total number of employees. In fact, the growth in the number of custodial staff actually exceeded the growth in the number of inmates resulting in a decline from 4.6 inmates per correctional officer to 4.1 between 1979 and 1984.

Trends in the demographic composition of prisons

1. Trends in the sex composition of prisons

The annual census of prisoners present is the most complete source of historical data on trends in the sex composition of prisons.

Record high percentage of females. (table 15) From 1925 to 1985, the prevalence of females in the prison population reached its highest level in 1944, when females were 4.6% of the prison population. This same level was reached in 1986.

Record low percentage of females. (table 15) The prevalence of females in the prison population was at its lowest level in 1970 and in 1973, when 2.9% was female. Since the early 1970s, a trend has emerged, with females becoming an increasingly larger percentage of the prison population.

Record imprisonment rates of males and females. (table 16) From 1925 to 1939, the highest imprisonment rates ever recorded for males or females was in 1939. The record-high rates of 1939 were not broken until 1980 for males and 1981 for females. Each subsequent year has been record-breaking. In 1986, the most recent year for which comparable data are available, the male imprisonment rate reached its all time high at 409 male prisoners per 100,000 male population; the female imprisonment rate reached its all time high at 19 per 100,000 females.

2. Trends in the race composition of prisons

The census of prison admissions is the most complete source of historical data on the race composition of prisons. These statistics were regularly collected and published from 1926 through 1950. Thereafter, data on race were collected sporadically and the source of the data varied as well. The census of prison admissions was the source until 1974, when "NPS 2/3" and, later, the "National Corrections Reporting Program," became the sole source of data on the race composition of prison admissions. The race statistics known to exist reveal the following:

Record high percentage of blacks. (table 18) In 1926, when race statistics were first collected, blacks were 21% of all persons admitted to prison. Since then, the black percentage has steadily grown. By 1981, it had doubled to 42% of all persons admitted to prison. From 1926 to 1983 the highest percentage ever record of blacks among persons admitted to prison was 45% in 1982.

Two other sources of race data on prisons are the annual census of prisoners present and the prison inmate survey. The census of prisoners present began compiling statistics on the race composition of prisons in 1978. Continuous statistics on the race composition of prisoners present now exist from 1978 to the present. The only source of more detailed demographic data on the prison population is the prison inmate survey. The survey involves lengthy interviews with randomly selected inmates of state prisons. More than 1 out of every 35 inmates throughout the nation is interviewed in the survey. To date, three inmate surveys have been conducted: in 1974, 1979, and 1986.

The census of prisoners present, conducted from 1978 to 1982, and the 1974 and 1979 inmate surveys formed the basis for a detailed report on the racial distribution of prison populations. Highlights from the report, titled "The Prevalence of Imprisonment" (NCJ-93675, July 1985), follow. The highlights pertain to imprisonment levels in the late 1970's and early 1980's, not to the higher levels observed since then. They nevertheless provide approximate measures of the level of imprisonment today.

Percentage of population in prison on any given day: details on sex and race. More than 1 in every 49 adult black males in the United States is in a state prison on any given day. This compares to 1 in every 376 white males, 1 in

every 1,220 black females, and 1 in every 10,000 adult white females.

Percentage of population in prison on any given day: details on age, race, and sex. On a given day, more than 1 in every 33 black males in his twenties (i.e., ages 20 to 29) is in a state prison. This compares to 1 in every 244 white males, 1 in every 806 black females, and 1 in every 6,250 white females.

Percentage of population ever in prison. At current imprisonment rates, nearly 1 in every 5 black males born in the United States today will serve a prison sentence at some period in his lifetime. This compares to 1 in every 30 white males, 1 in every 66 black females, and 1 in every 498 white females.

One explanation given for the growing prevalence of blacks in prison is pervasive racism by the criminal justice system. An alternative explanation given is high rates of offending by blacks. Two studies using state prison statistics to investigate these explanations are Blumstein's "On the racial disproportionality of United States' prison populations" (1982) and Langan's "Racism on trial: new evidence to explain the racial composition of prisons in the United States" (1985).

Blumstein (1982). Blumstein compared the race distribution of persons arrested by the police with the race distribution of persons in state prisons on a given day. He found a close correspondence between the two:

Blacks were 43% of persons arrested in 1974 and 48% of persons in prison that year.

Blacks were 44% of persons arrested in 1978 and 49% of persons in prison in 1979.

Langan (1985). Blumstein's use of arrest data as a measure of criminal involvement raises the question of whether race percentages in police statistics might be the product of racially discriminatory practices in criminal justice administration. Using statistics supplied by the police as a measure of criminal involvement could prove misleading if, as some critics suggest, police over-arrest blacks.

Ideally, the race distribution of the prison population should be compared to the race distribution of all offenders, not just those offenders who are arrested by the police. Langan's study used data to conduct such a comparison. The data were from the National Crime Survey, in which representative samples of the general population are interviewed and asked about victimizations they may have suffered during a specific period. In these surveys, people are asked about all victimizations, regardless of whether or not they reported them to the police. The survey covers the most serious crimes that comprise the bulk of the prison population: rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

Langan's analysis of the National Crime Survey focused on crime victims' descriptions of their offender's race. He compared the race distribution of offenders described by their crime victims with the race distribution of persons admitted to prison. Langan found a close correspondence between the two:

In 1973, blacks were 48% of offenders described by their crime victims and 49% of persons admitted to state prisons.

In 1979, blacks were 44% of offenders described by their crime victims and

48% of persons admitted to state prisons.

In 1982, blacks were 45% of offenders described by their crime victims and 49% of offenders admitted to state prisons.

Together, the Blumstein and Langan studies indicate that comparatively high rates of offending by blacks, not racial discrimination against blacks by the criminal justice system, explain why blacks now comprise nearly half of all persons going to prison in the United States.

Conclusions

The task of collecting correctional statistics has continued to evolve over the 60 years in which the federal government has been involved. Statistical series have been added covering probation, parole, local jails, and recidivism. Correctional practices, too, are more varied reflecting changes in how punishment is operationalized and administered.

Two main purposes, however, underlie all these statistics---measurement of temporal and spatial variation. Temporal variation describes how much things have changed over time and how today compares to the past. For example,

- o Prison populations have reached record highs both in absolute numbers and per capita rates;
- o Courts are now committing offenders to prison at per capita rates nearly double those rates observed over most of the 60 year series;
- o Admissions of conditional release violators are growing at a faster rate than court commitments;
- o Discharge from prison is increasingly the result of sentence imposed minus good-time credit and decreasingly the result of parole boards deciding how much time a prisoner serves;
- o Offenders under a death sentence have been growing at a faster rate than prisoners, in general---since 1980, the number of death row prisoners has grown 156% compared to growth of 66% among all prisoners.
- o Females have been increasing in recent years as a percentage of the prison population; and
- o Blacks as a percentage of the prison population have steadily grown over the more than 60 years of compiling race statistics; today blacks are nearly half of the prison population.

Spatial variation, or the measurement of differences across jurisdictions, can be addressed from "National Prisoner Statistics," as well. For example, since 1980, Western States have experienced the most rapid rate of population growth, increasing nearly 116%, largely led by Alaska (192% increase), California (148% increase), Nevada (145%), and Hawaii (144% increase). By contrast, prison populations in Southern States have grown more slowly over the same period, increasing by 46%. Even given these differences in growth, Southern States in 1986 evidence a per capita prison population 25% larger than the Western States. Southern States account for 43% of all State prisoners but about 34% of adult residents of the U.S.

Measures of temporal and spatial variation supply important indicators of how well or how poorly sanctioning objectives coincide with practice. The public, legislators and agency officials have a need to evaluate contemporary practices against both the historical record and in relation to other jurisdictions. Frequently, such information is

used by state budget or legislative officials, for example, to determine whether more housing space or additional staff are required. Jurisdictions have a need to compare themselves against one another and against a national average and to assess how much progress or change has occurred over time.

The federal government plays the important role of setting uniform data collection procedures, gathering the data, and giving the data wide dissemination. It creates a level of consistency in the measurement process that enhances the value of the data for temporal and spatial comparisons. As the central gatherer of correctional data, it provides a service that would not otherwise exist. The value of the data to the States and the Nation is what has been the driving force behind the more than 60-year history of "National Prisoner Statistics."

Table 1. Prisoners present in state and federal prisons, 1926-86.

	1986	1985	1984	1983	1982	1981	1980
U.S. Totals	503,794	464,804	429,050	405,501	385,343	344,283	304,692
Federal Totals	33,135	29,215	24,805	23,836	21,630	21,311	19,025
State Totals	470,659	435,589	404,245	381,665	363,713	322,972	285,667
Northeast							
Connecticut	3,990	3,955	3,665	3,508	3,004	2,770	2,469
Maine	1,136	916	802	790	729	667	541
Massachusetts	5,396	5,160	4,738	4,372	4,238	3,791	3,032
New Hampshire	723	630	521	434	431	351	299
New Jersey	12,017	11,328	10,345	9,092	7,970	6,846	5,561
New York	38,647	35,346	33,782	30,924	28,501	25,494	21,639
Pennsylvania	15,174	14,132	13,004	11,691	10,466	9,292	8,130
Rhode Island	1,015	966	888	867	785	688	601
Vermont	430	417	~ 361	390	390	361	326
Midwest							
Illinois	19,456	18,279	16,912	15,364	13,551	13,669	10,451
Indiana	9,963	9,615	9,063	8,973	8,295	7,559	6,281
Iowa	2,777	2,832	2,836	2,814	2,829	2,670	2,435
Kansas	5,257	4,565	4,130	3,620	3,015	2,800	2,431
Michigan	20,742	17,755	14,604	14,510	14,913	15,157	15,124
Minnesota	2,515	2,495	2,331	2,235	2,197	1,909	1,884
Missouri	10,309	9,780	8,685	8,026	7,422	6,489	5,726
Nebraska	1,919	1,753	1,582	1,554	1,560	1,480	1,389
North Dakota	381	395	389	362	305	238	264
Ohio	19,930	18,776	16,993	16,416	17,147	14,796	13,138
South Dakota	1,111	998	893	812	758	665	625
Wisconsin	5,535	5,220	4,845	4,226	4,441	4,249	3,788
South							
Alabama	11,129	10,449	9,824	8,687	7,565	5,827	4,489
Arkansas	4,578	4,504	4,346	4,128	3,747	3,214	2,805
Delaware	1,808	1,541	1,340	1,392	1,260	984	967
Florida	31,632	28,054	26,751	25,293	26,892	22,898	19,945
Georgia	16,291	15,115	14,596	14,935	14,038	12,377	11,922
Kentucky	5,282	4,956	4,710	4,641	3,915	3,993	3,588
Louisiana	11,131	10,977	10,685	10,516	9,436	8,577	7,622
Maryland	12,444	12,183	12,316	11,854	10,968	8,841	7,454
Mississippi	5,474	5,364	4,766	4,542	4,412	3,412	2,690
North Carolina	16,373	16,007	15,219	14,257	15,349	14,754	14,456
Oklahoma	7,604	7,108	6,960	7,025	6,054	4,950	4,544
South Carolina	9,781	9,202	8,316	8,225	8,048	7,185	6,683
Tennessee	7,182	6,943	7,227	7,876	7,683	7,678	6,844
Texas	38,534	37,532	36,682	35,259	36,149	31,502	29,892
Virginia	11,166	10,778	9,784	9,197	9,203	8,450	8,231
Dist. of Columbia	4,787	4,604	3,718	3,465	3,351	2,932	2,719
West Virginia	1,482	1,725	1,579	1,609	1,547	1,565	1,257
West							
Alaska	1,293	1,250	1,052	808	608	510	381
Arizona	9,038	8,273	7,646	6,743	5,809	4,780	3,597
California	57,725	48,279	41,652	38,025	33,583	27,913	23,264
Colorado	3,808	3,369	3,230	3,242	3,037	2,743	2,596
Hawaii	1,422	1,317	1,244	977	804	680	544
Idaho	1,418	1,317	1,185	1,123	990	903	672
Montana	1,087	1,096	826	781	810	734	691
Nevada	4,425	3,774	3,430	3,068	2,546	2,075	1,815
New Mexico	2,198	2,028	1,814	1,629	1,433	1,305	925
Oregon	4,001	3,714	3,439	3,318	3,867	3,284	3,195
Utah	1,814	1,623	1,491	1,191	1,117	1,051	916
Washington	6,509	6,468	6,342	6,198	5,861	5,294	4,339
Wyoming	820	726	706	681	684	610	490

	1979	1978	1977	1976	1975	1974	1973
U.S. Totals	291,610	284,149	276,157	262,833	240,593	218,466	204,211
Federal Totals	20,315	23,973	28,650	26,980	24,131	22,361	22,815
State Totals	271,295	260,176	247,507	235,853	216,462	196,105	181,396
Northeast							
Connecticut	2,062	1,804	1,647	1,923	1,849	1,464	1,663
Maine	561	559	655	610	643	527	453
Massachusetts	2,707	2,693	2,789	2,651	2,242	2,226	1,981
New Hampshire	285	244	219	248	250	219	277
New Jersey	5,539	5,422	5,386	5,618	5,682	5,219	5,357
New York	20,895	20,190	19,367	17,705	16,071	14,329	12,945
Pennsylvania	7,325	7,320	6,873	6,656	5,982	6,732	6,515
Rhode Island	541	508	524	490	408	435	404
Vermont	285	322	279	279	244	242	188
Midwest							
Illinois	10,743	10,159	10,871	9,739	7,861	6,667	5,600
Indiana	5,270	4,394	4,250	4,203	3,897	3,051	3,357
Iowa	2,069	1,937	2,030	1,891	1,786	1,476	1,402
Kansas	2,171	2,284	2,246	2,078	1,685	1,421	1,354
Michigan	15,002	14,944	13,824	12,465	10,852	8,630	7,874
Minnesota	1,984	1,837	1,755	1,624	1,685	1,372	1,402
Missouri	5,279	5,637	5,302	4,997	4,371	3,764	3,767
Nebraska	1,126	1,218	1,284	1,304	1,251	1,040	1,006
North Dakota	199	198	194	162	173	129	155
Ohio	13,360	13,107	12,846	12,525	11,421	9,326	7,717
South Dakota	550	520	519	478	338	250	236
Wisconsin	3,677	3,432	3,347	3,299	2,992	2,587	2,147
South							
Alabama	4,028	4,242	2,919	3,032	4,420	4,259	3,693
Arkansas	2,783	2,510	2,386	2,431	2,162	1,938	1,679
Delaware	1,012	823	695	684	582	436	325
Florida	18,907	20,188	18,917	17,793	15,315	11,217	10,376
Georgia	11,666	10,833	11,243	11,025	10,421	9,289	8,310
Kentucky	3,691	3,390	3,661	3,657	3,246	3,051	2,954
Louisiana	6,746	6,101	5,951	4,696	4,758	4,779	4,033
Maryland	7,468	7,572	7,137	7,912	6,965	6,247	5,799
Mississippi	2,077	1,779	1,585	1,936	2,422	2,127	1,738
North Carolina	13,461	12,268	12,769	11,570	10,993	10,932	9,641
Oklahoma	4,250	4,186	3,609	3,736	3,133	2,896	3,187
South Carolina	7,016	6,922	6,041	6,433	5,600	4,318	3,489
Tennessee	6,629	5,835	5,480	4,817	4,561	3,771	3,454
Texas	26,522	24,575	22,517	20,717	18,937	16,833	17,238
Virginia	7,920	7,589	7,143	6,030	5,497	5,032	5,100
Dist. of Columbia	2,599	2,530	2,237	2,283	2,302	2,072	2,331
West Virginia	1,251	1,237	1,250	1,278	1,271	989	1,086
West							
Alaska	364	333	293	255	207	175	174
Arizona	3,315	3,206	2,982	2,850	2,647	2,101	1,691
California	21,260	19,550	17,338	18,113	17,296	21,897	19,794
Colorado	2,521	2,452	2,311	2,239	2,039	1,968	1,894
Hawaii	476	420	374	327	336	309	295
Idaho	810	795	752	682	580	525	426
Montana	677	633	617	551	429	336	316
Nevada	1,656	1,353	1,184	961	848	801	748
New Mexico	1,441	1,459	1,489	1,220	999	902	726
Oregon	3,244	2,838	2,924	2,821	2,480	1,993	1,670
Utah	935	872	824	748	657	548	519
Washington	4,463	4,524	4,272	3,771	3,369	2,989	2,632
Wyoming	477	432	400	340	307	269	278

	1972	1971	1970	1969	1968	1967	1966
U.S. Totals	196,092	198,061	196,441	197,136	187,274	194,896	199,654
Federal Totals	21,713	20,948	20,038	19,623	19,703	19,579	19,245
State Totals	174,379	177,113	176,403	177,513	167,571	175,317	180,409
Northeast							
Connecticut	1,818	1,938	1,568	1,630	1,444	1,587	1,599
Maine	473	454	516	561	598	592	605
Massachusetts	1,856	2,203	2,053	1,966	1,912	1,824	1,829
New Hampshire	240	213	244	215	224	222	205
New Jersey	5,279	5,272	5,704	5,382	5,065	4,614	4,912
New York	11,693	11,928	12,059	12,452	12,781	14,085	15,760
Pennsylvania	6,245	5,315	6,289	5,780	5,519	5,674	6,519
Rhode Island	340	378	350	329
Vermont	139	212	162	170	226	220	233
Midwest							
Illinois	5,630	5,854	6,381	7,131	6,886	7,041	7,491
Indiana	3,847	4,358	4,137	4,243	4,057	3,884	3,907
Iowa	1,306	1,540	1,747	1,732	1,747	1,830	1,885
Kansas	1,642	2,017	1,902	1,980	2,185	2,289	2,444
Michigan	8,471	9,547	9,079	8,049	7,743	7,037	6,754
Minnesota	1,337	1,553	1,585	1,605	1,632	1,652	1,620
Missouri	3,533	3,614	3,413	3,242	3,245	3,263	3,447
Nebraska	953	1,040	1,001	937	950	971	1,027
North Dakota	179	132	147	161	156	182	199
Ohio	8,276	9,063	9,185	9,567	10,189	10,323	10,694
South Dakota	344	388	391	380	446	489	555
Wisconsin	2,036	2,493	2,973	2,768	2,172	2,607	2,709
South							
Alabama	3,632	3,823	3,790	4,140	4,017	3,881	4,056
Arkansas	1,619	1,658	1,651	1,864
Delaware	279	186	596	555	...	308	270
Florida	10,382	9,653	9,187	8,512	7,946	7,261	6,972
Georgia	8,225	6,777	5,113	5,084	5,175	5,300	5,385
Kentucky	2,941	3,060	2,849	3,314	2,864	2,834	2,932
Louisiana	3,421	4,159	4,196	4,170	4,237	4,112	4,068
Maryland	5,578	4,950	5,186	5,356	5,096	5,083	5,117
Mississippi	1,879	1,841	1,730	1,700	1,544	1,667	1,829
North Carolina	8,263	7,795	5,969	5,856	...	5,516	5,297
Oklahoma	3,667	3,729	3,640	3,230	2,893	2,756	2,776
South Carolina	3,197	3,066	2,726	2,506	2,331	2,337	2,248
Tennessee	3,329	3,454	3,268	3,148	2,999	2,980	2,968
Texas	15,709	15,989	14,331	14,014	12,215	12,313	12,392
Virginia	4,946	4,981	4,648	4,407	4,126	4,033	4,220
Dist. of Columbia	2,500	2,600	1,423	1,504	1,466	1,268	1,542
West Virginia	1,058	1,063	938	1,001	1,124	1,208	1,189
West							
Alaska	183	191
Arizona	1,529	1,401	1,461	1,714	1,692	1,596	1,627
California	16,970	17,474	25,033	27,535	28,435	27,741	27,467
Colorado	1,925	1,957	2,066	2,107	2,338	2,514	2,540
Hawaii	300	254	228	256	296	364	423
Idaho	377	362	411	348	328	391	477
Montana	283	250	260	372	466	521	548
Nevada	646	635	690	665	645	608	651
New Mexico	597	642	742	857	850	892	912
Oregon	1,856	2,016	1,800	1,712	1,815	1,803	1,880
Utah	581	590	491	488	640	651	659
Washington	2,608	2,782	2,864	2,765	2,599	2,738	3,098
Wyoming	262	263	231	246	257	254	279

	1965	1964	1963	1962	1961	1960	1959
U.S. Totals	210,895	214,336	217,283	218,830	220,149	212,953	208,105
Federal Totals	21,040	21,709	23,128	23,944	23,696	23,218	22,492
State Totals	189,855	192,627	194,155	194,886	196,453	189,735	185,613
Northeast							
Connecticut	1,642	1,716	1,652	1,653	1,639	1,497	1,500
Maine	695	719	723	728	766	750	696
Massachusetts	1,929	1,980	2,046	1,947	1,978	1,920	1,913
New Hampshire	205	198	210	164	191	180	147
New Jersey	4,839	4,614	4,594	4,573	4,572	4,284	4,101
New York	17,504	17,658	17,906	17,637	17,569	17,207	16,904
Pennsylvania	7,116	7,667	7,804	8,160	8,047	7,802	7,924
Rhode Island	310	278	266	249	262	255	274
Vermont	263	290	289	316	319	269	315
Midwest							
Illinois	8,306	8,754	8,855	8,928	9,611	9,064	8,660
Indiana	4,486	4,797	4,836	5,085	5,372	5,429	5,268
Iowa	2,178	2,256	2,291	2,406	2,418	2,204	2,212
Kansas	2,791	2,825	2,893	2,875	2,627	2,313	2,248
Michigan	7,342	8,028	8,264	8,338	9,197	9,550	9,622
Minnesota	1,772	1,863	1,720	1,883	2,016	2,059	2,137
Missouri	3,517	3,529	3,816	4,056	3,930	3,698	3,614
Nebraska	1,151	1,323	1,411	1,316	1,328	1,269	1,237
North Dakota	208	240	235	235	228	248	270
Ohio	11,374	11,861	11,644	11,513	11,155	11,111	11,448
South Dakota	571	525	556	544	571	526	561
Wisconsin	2,830	2,844	2,811	2,887	2,953	2,784	2,640
South							
Alabama	4,377	4,586	5,083	5,521	5,540	5,369	5,449
Arkansas	1,970	1,992	2,000	2,066	2,076	2,016	1,811
Delaware	315	281	208	206	240	226	232
Florida	6,995	6,725	6,751	7,599	7,615	7,084	6,802
Georgia	5,966	7,309	7,350	7,051	6,851	6,985	6,963
Kentucky	2,813	3,030	3,025	3,381	3,703	3,603	3,430
Louisiana	3,844	3,564	3,961	4,058	3,828	3,749	3,561
Maryland	5,467	5,453	5,164	5,615	5,745	5,316	5,010
Mississippi	2,019	2,056	2,121	2,179	2,068	1,975	2,057
North Carolina	6,029	4,888	4,950	5,409	5,875	5,977	5,949
Oklahoma	2,829	2,808	2,776	2,671	2,693	2,679	2,706
South Carolina	2,323	2,306	2,347	2,281	2,144	2,080	2,131
Tennessee	3,213	3,187	3,246	3,167	3,144	3,134	2,914
Texas	12,854	12,278	12,084	12,203	11,890	11,308	11,123
Virginia	4,553	4,873	5,103	5,308	5,734	5,775	5,909
Dist. of Columbia	1,604	1,653	1,841	1,890	2,059	1,958	1,990
West Virginia	1,477	1,722	1,912	2,031	2,207	2,407	2,492
West							
Alaska
Arizona	1,694	1,627	1,728	1,679	1,592	1,516	1,493
California	26,325	26,483	26,133	24,032	23,927	21,660	19,299
Colorado	2,766	2,666	2,594	2,356	2,149	2,078	2,012
Hawaii	463	504	490	536	583	558	509
Idaho	481	476	512	516	552	549	509
Montana	586	742	715	674	648	602	588
Nevada	622	450	442	453	431	413	399
New Mexico	1,002	987	1,178	1,274	1,243	1,243	1,136
Oregon	2,000	2,056	2,061	1,915	1,799	1,710	1,552
Utah	701	661	692	653	638	553	533
Washington	3,202	2,960	2,539	2,341	2,401	2,455	2,876
Wyoming	336	339	327	328	329	338	387

	1958	1957	1956	1955	1954	1953	1952
U.S. Totals	205,643	195,256	189,565	185,780	182,901	173,579	168,233
Federal Totals	21,549	20,420	20,134	20,088	20,003	19,363	18,014
State Totals	184,094	174,836	169,431	165,692	162,898	154,216	150,219
Northeast							
Connecticut	1,565	1,329	1,263	1,260	1,188	1,173	1,093
Maine	647	621	646	620	611	641	635
Massachusetts	1,906	1,884	1,879	1,995	2,092	2,075	2,165
New Hampshire	144	167	192	198	169	193	193
New Jersey	3,996	3,848	3,944	3,782	3,796	3,625	3,640
New York	17,552	17,659	17,345	17,069	16,530	16,328	16,097
Pennsylvania	7,945	7,614	7,462	7,342	7,205	6,636	6,812
Rhode Island	272	253	298	305	289	257	255
Vermont	295	248	254	285	278	280	303
Midwest							
Illinois	8,606	8,451	8,053	8,130	7,948	7,632	7,411
Indiana	5,296	5,050	4,632	4,462	4,459	4,504	4,610
Iowa	2,167	2,148	2,177	2,203	2,162	2,034	2,040
Kansas	2,001	1,945	1,932	1,974	2,113	2,090	1,977
Michigan	10,334	10,138	10,071	9,547	9,571	8,912	8,732
Minnesota	2,128	2,153	2,063	1,964	1,985	1,848	1,775
Missouri	3,673	3,703	3,703	3,966	3,932	3,518	3,301
Nebraska	1,210	1,091	1,072	1,080	1,010	1,038	1,132
North Dakota	293	241	232	228	231	209	211
Ohio	11,365	11,257	10,679	10,483	10,146	9,482	9,250
South Dakota	467	464	451	423	448	443	442
Wisconsin	2,617	2,282	2,336	2,281	2,210	2,216	1,932
South							
Alabama	5,543	5,224	5,407	5,222	5,255	4,879	4,646
Arkansas	1,849	1,776	1,721	1,751	1,665	1,470	1,483
Delaware	226	213	226	172	165	151	153
Florida	6,374	5,668	5,107	4,830	4,343	3,878	3,894
Georgia	6,824	6,285	5,908	5,701	5,442	5,185	4,719
Kentucky	3,531	3,125	3,170	3,349	3,399	3,176	3,089
Louisiana	3,636	3,363	3,220	3,026	2,842	2,532	2,456
Maryland	5,037	5,099	5,117	4,685	4,930	4,500	4,400
Mississippi	2,066	1,967	2,011	2,080	1,970	1,890	2,060
North Carolina	5,804	5,702	5,497	5,334	5,530	5,497	5,250
Oklahoma	2,754	2,666	2,664	2,600	2,479	2,423	2,390
South Carolina	2,200	1,963	1,868	1,852	1,853	1,776	1,662
Tennessee	2,712	2,657	2,713	2,723	2,706	2,474	2,601
Texas	10,531	10,091	9,268	8,622	8,509	7,781	6,960
Virginia	5,719	5,135	4,869	4,869	4,938	4,587	4,608
Dist. of Columbia	2,064	1,968	2,119	1,943	1,914	1,786	1,529
West Virginia	2,406	2,191	2,101	2,269	2,220	2,316	2,697
West							
Alaska
Arizona	1,392	1,238	1,118	1,155	1,007	994	937
California	19,202	16,918	15,532	15,230	14,572	13,365	12,612
Colorado	1,972	2,006	1,912	1,800	1,783	1,597	1,520
Hawaii
Idaho	587	538	526	520	511	464	450
Montana	645	596	586	529	674	631	577
Nevada	380	352	370	373	349	329	341
New Mexico	1,060	888	764	724	629	628	599
Oregon	1,524	1,400	1,557	1,552	1,516	1,591	1,508
Utah	570	567	602	554	560	583	549
Washington	2,623	2,422	2,468	2,443	2,438	2,331	2,224
Wyoming	384	272	326	287	326	268	299

	1951	1950	1949	1948	1947	1946	1945
U.S. Totals	165,680	166,165	163,749	155,977	151,304	140,079	133,649
Federal Totals	17,395	17,134	16,868	16,328	17,146	17,622	18,638
State Totals	148,285	149,031	146,881	139,649	134,158	122,457	115,011
Northeast							
Connecticut	1,081	1,020	1,087	1,084	1,078	1,045	1,023
Maine	698	736	650	632	627	570	576
Massachusetts	2,315	2,375	2,537	2,620	2,664	2,374	2,660
New Hampshire	207	235	250	268	269	237	206
New Jersey	4,005	3,991	4,301	4,190	3,958	3,541	3,227
New York	15,587	15,313	15,246	14,749	14,090	12,995	12,796
Pennsylvania	6,856	7,432	7,616	7,375	6,938	6,586	6,551
Rhode Island	248	284	350	361	403	365	346
Vermont	260	259	284	218	229	255	228
Midwest							
Illinois	7,420	7,886	7,922	7,784	7,820	7,478	7,263
Indiana	4,603	4,738	4,707	4,296	3,942	3,439	3,112
Iowa	2,081	2,084	2,104	1,990	1,824	1,695	1,673
Kansas	1,895	1,959	1,765	1,458	1,345	1,267	1,302
Michigan	9,132	8,591	8,589	8,161	8,241	7,829	7,392
Minnesota	1,834	1,879	1,777	1,699	1,616	1,586	1,544
Missouri	3,252	3,400	3,209	3,155	3,161	2,922	2,749
Nebraska	1,131	1,147	1,193	1,020	914	836	683
North Dakota	224	235	242	244	243	240	210
Ohio	9,132	9,128	8,835	8,261	8,134	7,264	6,735
South Dakota	411	451	418	422	363	300	232
Wisconsin	1,880	2,017	1,991	1,915	1,705	1,588	1,439
South							
Alabama	4,416	4,454	5,036	4,679	4,432	3,948	3,646
Arkansas	1,471	1,541	1,595	1,442	1,446	1,252	1,140
Delaware	161	158	157	178	189	169	153
Florida	3,860	3,973	3,851	3,761	3,460	2,952	2,525
Georgia	4,542	4,545	4,449	4,269	4,187	3,693	3,585
Kentucky	2,995	3,259	3,198	2,906	2,363	2,234	2,248
Louisiana	2,583	2,674	2,514	2,288	2,304	2,220	2,075
Maryland	3,952	3,892	4,148	3,771	3,597	3,481	2,885
Mississippi	2,168	2,158	1,970	1,886	1,893	1,846	1,781
North Carolina	5,223	5,004	5,144	5,016	4,907	4,438	4,258
Oklahoma	2,430	2,401	2,297	2,229	2,224	2,122	1,909
South Carolina	1,583	1,513	1,413	1,387	1,256	1,048	936
Tennessee	2,683	2,780	2,715	2,665	2,637	2,380	2,232
Texas	6,604	6,424	5,958	5,792	5,675	4,246	3,291
Virginia	4,540	4,439	4,242	3,984	3,992	3,937	3,853
Dist. of Columbia	1,514	1,478	1,372	1,258	1,102	1,115	1,126
West Virginia	2,974	2,904	2,776	2,484	2,309	2,178	2,044
West							
Alaska
Arizona	900	878	894	964	941	784	645
California	11,464	11,056	10,377	9,563	8,547	7,373	6,628
Colorado	1,446	1,490	1,362	1,456	1,389	1,331	1,211
Hawaii
Idaho	469	514	479	381	326	257	194
Montana	575	595	584	464	428	361	342
Nevada	285	240	300	251	263	278	229
New Mexico	665	705	637	580	630	607	524
Oregon	1,542	1,534	1,400	1,308	1,200	1,106	982
Utah	469	562	476	485	487	409	342
Washington	2,151	2,290	2,053	1,944	2,044	1,957	2,002
Wyoming	368	410	411	356	366	323	278

	1944	1943	1942	1941	1940	1939	1938
U.S. Totals	132,456	137,220	150,384	165,439	173,706	179,818	160,285
Federal Totals	18,139	16,113	16,623	18,465	19,260	19,730	17,133
State Totals	114,317	121,107	133,761	146,974	154,446	160,088	143,152
Northeast							
Connecticut	1,115	1,175	1,163	1,055	1,146	1,166	1,174
Maine	484	441	524	605	608	666	626
Massachusetts	2,536	2,646	2,740	2,721	2,993	3,144	3,184
New Hampshire	210	207	242	243	262	259	269
New Jersey	3,041	2,972	3,299	3,543	3,662	3,570	3,650
New York	13,221	13,399	14,397	15,883	15,353	15,409	12,067
Pennsylvania	6,621	6,682	6,851	6,799	6,690	6,939	6,740
Rhode Island	331	371	360	348	308	411	500
Vermont	214	230	256	322	343	379	381
Midwest							
Illinois	7,766	8,631	10,019	10,234	11,374	11,707	11,790
Indiana	3,034	3,293	3,909	4,218	4,361	4,463	4,606
Iowa	1,677	1,785	2,104	2,447	2,574	2,648	2,593
Kansas	1,383	1,539	1,895	2,237	2,431	2,494	2,515
Michigan	7,506	7,447	7,511	7,571	7,656	7,731	7,306
Minnesota	1,617	1,769	2,058	2,415	2,589	2,640	2,570
Missouri	2,758	3,040	3,473	3,949	4,208	4,652	4,706
Nebraska	605	678	826	885	1,064	1,232	1,183
North Dakota	210	216	268	319	353	318	292
Ohio	6,672	7,008	7,442	8,260	8,758	8,840	9,310
South Dakota	210	239	324	371	400	439	512
Wisconsin	1,415	1,706	1,929	2,139	2,330	2,332	2,775
South							
Alabama	3,044	4,036	4,096	5,166	6,446	7,248	...
Arkansas	1,100	1,425	1,509	1,611	1,904	2,015	1,896
Delaware	135	130	151	168	386	435	491
Florida	2,415	2,521	3,005	3,799	3,648	3,753	3,578
Georgia	3,153	3,309	3,993	4,731	5,085	5,303	...
Kentucky	2,491	3,155	3,725	4,410	4,537	4,695	4,664
Louisiana	2,230	2,584	2,806	2,892	2,946	3,176	3,268
Maryland	2,832	2,577	2,908	3,127	2,933	2,949	3,081
Mississippi	1,922	2,251	2,512	2,537	2,651	2,591	2,680
North Carolina	4,304	4,520	4,905	5,121	4,998	4,985	4,134
Oklahoma	1,897	2,268	2,777	3,522	3,921	4,058	3,938
South Carolina	966	1,082	1,175	1,217	1,276	1,299	1,219
Tennessee	2,364	2,523	2,820	2,973	3,233	3,309	3,061
Texas	3,394	3,644	4,835	5,814	6,070	6,831	6,989
Virginia	3,870	3,841	4,142	4,038	4,144	4,369	4,412
Dist. of Columbia	1,205	1,345	1,535	1,604	1,597	1,678	1,738
West Virginia	2,208	2,431	2,736	2,689	2,691	2,643	2,507
West							
Alaska
Arizona	603	603	653	726	796	801	709
California	5,710	5,729	6,018	7,201	8,182	8,719	8,619
Colorado	1,174	1,303	1,386	1,536	1,556	1,749	1,639
Hawaii
Idaho	201	148	175	241	409	430	283
Montana	342	353	412	492	522	577	544
Nevada	221	237	216	241	255	243	224
New Mexico	476	506	544	667	646	656	650
Oregon	864	794	816	976	1,038	1,047	1,080
Utah	272	264	276	318	438	411	349
Washington	2,033	1,778	1,771	2,256	2,312	2,292	2,299
Wyoming	265	276	274	337	363	387	351

	1937	1936	1935	1934	1933	1932	1931
U.S. Totals	152,741	145,038	144,180	138,316	136,810	137,997	137,082
Federal Totals	15,309	15,374	14,762	12,058	10,848	12,276	12,964
State Totals	137,432	129,664	129,418	126,258	125,962	125,721	124,118
Northeast							
Connecticut	1,204	1,243	1,299	1,238	1,267	1,366	1,342
Maine	574	504	524	524	523	559	514
Massachusetts	3,265	2,899	2,934	2,820	2,675	2,658	2,499
New Hampshire	262	257	228	229	209	198	189
New Jersey	3,457	3,079	3,110	2,975	3,289	3,212	3,263
New York	11,263	10,379	9,891	9,349	9,807	9,613	9,089
Pennsylvania	6,558	6,034	6,511	6,328	6,183	6,396	6,307
Rhode Island	564	581	589	456	460	535	463
Vermont	332	326	386	384	364	431	440
Midwest							
Illinois	11,137	9,848	10,579	10,748	10,581	10,440	9,890
Indiana	4,669	4,360	4,474	4,183	4,323	4,764	4,727
Iowa	2,664	2,733	2,835	2,829	3,006	3,058	2,971
Kansas	2,534	2,796	2,765	2,648	2,563	2,526	2,537
Michigan	6,926	6,503	7,206	7,487	7,460	8,689	8,995
Minnesota	2,379	2,506	2,594	2,659	2,599	2,592	2,443
Missouri	4,855	4,917	4,671	4,536	4,632	4,579	4,577
Nebraska	1,266	1,303	1,266	1,123	1,367	1,268	1,230
North Dakota	255	271	268	309	363	365	433
Ohio	8,795	8,174	8,645	8,787	9,119	8,603	9,154
South Dakota	528	557	571	545	546	580	529
Wisconsin	2,791	2,819	2,331	2,302	2,402	2,696	2,584
South							
Alabama
Arkansas	1,917	1,859	1,872	1,699	1,417	916	1,374
Delaware	521	525	470	510	238	...	340
Florida	3,254	3,233	2,849	3,041	3,050	2,951	2,985
Georgia
Kentucky	4,261	4,261	3,306	3,928	3,322	3,439	3,504
Louisiana	3,274	3,044	3,001	2,939	2,920	2,580	2,775
Maryland	2,752	2,947	2,899	2,581	2,588	2,503	2,549
Mississippi	2,571
North Carolina	3,818	3,616	3,283	3,052	2,871	2,719	2,886
Oklahoma	2,904	4,256	4,570	4,192	4,110	4,096	4,164
South Carolina	1,250	1,310	1,244	1,181	1,167	1,194	...
Tennessee	3,024	3,071	3,093	2,812	2,672	2,734	2,926
Texas	6,400	5,948	5,904	5,214	5,347	5,190	5,385
Virginia	4,248	4,074	3,794	3,451	3,323	3,312	2,991
Dist. of Columbia	1,670	1,668	1,430	1,259	1,174	1,048	813
West Virginia	2,396	2,322	2,294	2,198	2,338	2,642	2,571
West							
Alaska
Arizona	696	688	613	572	615	677	587
California	8,108	8,108	8,578	9,156	9,042	8,333	7,515
Colorado	1,437	1,359	1,321	1,312	1,257	1,348	1,382
Hawaii
Idaho	325	305	300	249	246	274	330
Montana	578	538	562	548	589	604	611
Nevada	230	197	186	158	163	229	255
New Mexico	651	559	604	524	548	526	546
Oregon	1,035	1,060	909	808	795	868	861
Utah	304	278	325	290	310	297	329
Washington	2,166	1,986	2,012	1,812	1,811	1,801	1,911
Wyoming	364	363	322	313	311	312	352

	1930	1929	1928	1927	1926	1925
U.S. Totals	129,453	120,496	116,390	109,346	97,991	91,669
Federal Totals	12,185	12,964	8,233	7,722	6,803	6,430
State Totals	117,268	107,532	108,157	101,624	91,188	85,239

Northeast

Connecticut	1,328	1,210	1,097	1,005	920	948
Maine	403	433	382	382	399	451
Massachusetts	2,436	2,124	2,123	1,866	1,923	1,769
New Hampshire	184	124	125	122	133	150
New Jersey	3,187	2,865	2,846	2,518	2,383	2,213
New York	8,856	8,135	7,819	7,583	7,367	6,820
Pennsylvania	5,836	5,314	5,027	4,505	4,170	3,960
Rhode Island	410	366	409	362	388	315
Vermont	455	412	399	332	343	346

Midwest

Illinois	9,088	7,949	7,049	6,378	6,038	5,287
Indiana	4,323	3,986	3,881	3,710	3,535	3,402
Iowa	2,759	2,468	2,345	2,157	2,044	2,018
Kansas	2,756	2,776	2,861	2,708	2,675	2,369
Michigan	8,115	7,103	6,691	6,303	5,168	4,687
Minnesota	2,242	2,360	2,135	2,167	2,240	1,906
Missouri	4,311	3,971	3,828	3,624	3,442	3,059
Nebraska	1,200	1,124	1,077	994	1,000	936
North Dakota	369	330	298	302	309	304
Ohio	9,251	8,804	8,335	7,530	6,209	5,398
South Dakota	466	462	416	420	469	445
Wisconsin	2,381	1,933	1,617	1,595	1,494	1,356

South

Alabama	3,674	3,152
Arkansas	1,312	1,153	1,124	1,241	1,231	1,297
Delaware	332
Florida	1,985	1,592	1,648	2,503	1,910	1,427
Georgia	3,424	3,184	2,945	3,007
Kentucky	3,448	3,143	2,805	2,188	2,248	2,170
Louisiana	2,440	2,130	1,963	1,746	1,686	1,575
Maryland	2,602	2,281	2,296	2,095	1,921	1,886
Mississippi	1,717	1,563	1,471
North Carolina	2,327	2,232	1,954	1,723	1,478	1,490
Oklahoma	3,614	3,690	3,484	3,281	2,677	2,513
South Carolina	799	686	633	437	504	528
Tennessee	2,887	2,676	2,450	2,182	2,023	1,916
Texas	5,068	5,056	4,561	3,864	3,201	3,396
Virginia	2,896	2,664	2,453	2,138	1,979	1,920
Dist. of Columbia	732
West Virginia	2,344	2,174	1,931	1,762	1,799	1,768

West

Alaska
Arizona	539	509	534	483	444	473
California	7,116	7,071	6,815	6,049	5,794	5,285
Colorado	1,331	1,250	1,209	1,258	1,129	1,185
Hawaii
Idaho	403	381	418	396	382	347
Montana	721	668	503	471	437	420
Nevada	225	245	261	188	232	203
New Mexico	486	489	411	381	358	353
Oregon	888	817	697	629	572	478
Utah	314	278	210	208	210	206
Washington	1,765	1,741	1,621	1,484	1,552	1,504
Wyoming	338	357	318	301	264	282

...Data not available.

Table 2. Total number of sentenced felons in prison, number in federal prisons, number in state prisons, and percentage of prisoners that are in federal prisons, 1925-86

Year	U.S. Total	Federal Total	State Total	% Federal
1925	91,669	6,430	85,239	7.0%
1926	97,991	6,803	91,188	6.9
1927	109,346	7,722	101,624	7.1
1928	116,390	8,233	108,157	7.1
1929	120,496	12,964	107,532	10.8
1930	129,453	12,185	117,268	9.4
1931	137,082	12,964	124,118	9.5
1932	137,997	12,276	125,721	8.9
1933	136,810	10,848	125,962	7.9
1934	138,316	12,058	126,258	8.7
1935	144,180	14,762	129,418	10.2
1936	145,038	15,374	129,664	10.6
1937	152,741	15,309	137,432	10.0
1938	160,285	17,133	143,152	10.7
1939	179,818	19,730	160,088	11.0
1940	173,706	19,260	154,446	11.1
1941	165,439	18,465	146,974	11.2
1942	150,384	16,623	133,761	11.1
1943	137,220	16,113	121,107	11.7
1944	132,456	18,139	114,317	13.7
1945	133,649	18,638	115,011	14.0
1946	140,079	17,622	122,457	12.6
1947	151,304	17,146	134,158	11.3
1948	155,877	16,328	139,649	10.5
1949	163,749	16,868	146,881	10.3
1950	166,165	17,134	149,031	10.3
1951	165,680	17,395	148,285	10.5
1952	168,233	18,014	150,219	10.7
1953	173,579	19,363	154,216	11.2
1954	182,901	20,003	162,898	10.9
1955	185,780	20,088	165,692	10.8
1956	189,565	20,134	169,431	10.6
1957	195,256	20,420	174,916	10.5
1958	205,643	21,549	184,094	10.5
1959	208,105	22,492	185,613	10.8
1960	212,953	23,218	189,735	10.9
1961	220,149	23,696	196,453	10.8
1962	215,820	23,944	194,986	10.9
1963	217,263	23,128	194,155	10.6
1964	214,336	21,709	192,647	10.1
1965	210,895	21,040	189,855	10.0
1966	199,654	19,245	180,409	9.6
1967	194,896	19,579	175,317	10.1
1968	187,274	19,703	167,571	10.5
1969	197,136	19,623	177,513	10.0
1970	196,441	20,038	176,403	10.2
1971	198,061	20,948	177,113	10.6
1972	196,092	21,713	174,379	11.1
1973	204,211	22,815	181,396	11.2
1974	218,466	22,361	196,105	10.2
1975	240,593	24,131	216,462	10.0
1976	262,833	26,980	235,853	10.3
1977	276,157	28,650	247,507	10.4
1978	284,149	23,973	260,176	8.4
1979	291,610	20,315	271,295	7.0
1980	304,692	19,025	285,667	6.2
1981	344,283	21,311	322,972	6.2
1982	385,343	21,630	363,713	5.6
1983	405,501	23,836	381,665	5.9
1984	429,050	24,805	404,245	5.8
1985	464,804	29,215	435,589	6.3
1986	503,794	33,135	470,659	6.6

Table 3. Total number of prisoners of state and federal prisons,
and imprisonment rate, 1925-86

<u>Year</u>	<u>U.S. Total</u>	<u>Rate</u>	<u>Year</u>	<u>U.S. Total</u>	<u>Rate</u>
1925	91,669	79	1960	212,953	117
1926	97,991	83	1961	220,149	119
1927	109,346	91	1962	218,830	117
1928	116,390	96	1963	217,283	114
1929	120,496	98	1964	214,336	111
1930	129,453	104	1965	210,895	108
1931	137,082	110	1966	199,654	102
1932	137,997	110	1967	194,896	98
1933	136,810	109	1968	187,274	94
1934	138,316	109	1969	197,136	97
1935	144,180	113	1970	196,441	96
1936	145,038	113	1971	198,061	95
1937	152,741	118	1972	196,092	93
1938	160,285	123	1973	204,211	96
1939	179,818	137	1974	218,466	102
1940	173,706	131	1975	240,593	111
1941	165,439	124	1976	262,833	120
1942	150,384	112	1977	276,157	126
1943	137,220	103	1978	284,149	128
1944	132,456	100	1979	291,610	130
1945	133,649	98	1980	304,692	134
1946	140,079	99	1981	344,283	150
1947	151,304	105	1982	385,343	166
1948	155,977	106	1983	405,501	173
1949	163,749	109	1984	429,050	181
1950	166,165	109	1985	464,804	195
1951	165,680	107	1986	503,794	209
1952	168,233	107			
1953	173,579	108			
1954	182,901	112			
1955	185,780	112			
1956	189,565	112			
1957	195,256	113			
1958	205,643	117			
1959	208,105	117			

Table 4. Sentenced State and Federal prison admissions per 100 Prison releases, 1926-86

Year	Number admitted per 100 released	Year	Number admitted per 100 released
1926	116	1955	104
1927	120	1956	104
1928	119	1957	105
1929	122	1958	111
1930	117	1959	102
1931	113	1960	104
1932	103	1961	106
1933	101	1962	99
1934	104	1963	98
1935	112	1964	97
1936	100	1965	97
1937	109	1966	92
1938	112	1967	96
1939	102	1974	112
1940	94	1975	119
1941	92	1976	121
1942	84	1977	114
1943	83	1978	106
1944	96	1979	104
1945	102	1980	108
1946	110	1981	121
1947	116	1982	123
1948	106	1983	111
1949	110	1984	111
1950	102	1985	116
1951	98	1986	116
1952	103		
1953	106		
1954	111		

Table 5. Rates of turnover in state and federal prisons,
1926-86

Year	Releases as a percentage of inmates handled ^a	Year	Releases as a percentage of inmates handled ^a
1926	31.6%	1955	33.7%
1927	30.7	1956	33.4
1928	30.6	1957	33.2
1929	29.3	1958	33.2
1930	31.1	1959	34.8
1931	33.2	1960	34.7
1932	34.2	1961	35.1
1933	33.2	1962	36.6
1934	32.1	1963	37.4
1935	30.7	1964	38.6
1936	31.8	1965	39.4
1937	30.2	1966	41.0
1938	29.6	1967	41.5
1939	31.3	1974	38.0
1940	35.3	1975	37.1
1941	35.5	1976	33.3
1942	37.3	1977	33.2
1943	36.6	1978	33.8
1944	33.9	1979	35.2
1945	33.5	1980	34.7
1946	33.4	1981	32.9
1947	32.4	1982	31.9
1948	34.3	1983	34.6
1949	32.4	1984	33.0
1950	33.7	1985	32.4
1951	33.6	1986	33.1
1952	33.6		
1953	33.4		
1954	32.6		

^aInmates handled is equal to the number of prisoners present at the beginning of the year plus new admissions during the year.

Table 6. Percentage of admissions from courts and conditional release violators, 1926-86

Year	Percent court commitments	Percent conditional release	Year	Percent court commitments	Percent conditional release
1926	95.1%	4.9%	1960	84.6%	15.4%
1927	95.2	4.8	1961	84.4	15.6
1928	94.9	5.1	1962	82.9	17.1
1929	94.7	5.3	1963	81.3	18.7
1930	94.8	5.2	1964	80.8	19.2
1931	94.5	5.5	1965	81.0	19.0
1932	93.4	6.6	1966	80.7	19.3
1933	93.3	6.7	1967	80.8	19.2
1934	93.0	7.0	1968	79.3	20.7
1935	92.3	7.7	1969	80.7	19.3
1936	92.1	7.9	1970	81.0	19.0
1937	90.3	9.7	1971	85.0	15.0
1938	91.0	9.0	1972	85.0	15.0
1939	90.9	9.1	1973	85.0	15.0
1940	90.9	9.1	1974	84.9	15.1
1941	89.4	10.6	1975	86.5	13.5
1942	87.8	12.2	1976	84.2	15.8
1943	86.3	13.7	1977	85.3	14.7
1944	84.8	15.2	1978	83.4	16.6
1945	86.4	13.6	1979	83.0	17.0
1946	87.5	12.5	1980	82.7	17.3
1947	87.6	12.4	1981	81.5	18.5
1948	87.8	12.2	1982	81.8	18.2
1949	88.1	11.9	1983	80.1	19.9
1950	88.3	11.7	1984	77.1	22.9
1951	87.0	13.0	1985	76.5	23.5
1952	86.8	13.2	1986	74.7	25.3
1953	86.4	13.6			
1954	87.2	12.8			
1955	86.3	13.7			
1956	85.8	14.2			
1957	85.9	14.1			
1958	86.6	13.4			
1959	85.9	14.1			

Table 7. State prison admissions by method, 1977-86

Year	Total admissions to prison	All	Percent of prison admissions			
			Court commitments	Parole violators	Other conditional release violators	Other
1977	135,582	100%	84.3%		(14.5%)	1.3%
1978	137,315	100	82.2	14.3%	2.0%	1.5
1979	147,150	100	80.5	14.6	1.9	3.1
1980	159,286	100	82.4	14.1	2.9	0.6
1981	187,113	100	79.7	13.4	4.8	2.1
1982	203,269	100	81.0	14.3	3.7	1.0
1983	221,180	100	78.3	11.5	7.9	2.2
1984	218,280	100	76.5	13.1	9.6	0.8
1985	240,598	100	76.1	12.2	11.1	0.5
1986	273,402	100	74.4	11.6	13.6	0.5

Note: Excludes transfers and returned
escapees/AWOLs admitted.

Totals may not add to 100% due to
rounding.

Table 8. Court commitments to state prisons
per 100,000 adult population, 1926-86

Year	Rate of commitment	Year	Rate of commitment
1926	58	1955	58
1927	62	1956	58
1928	65	1957	60
1929	63	1958	66
		1959	64
1930	70	1960	64
1931	75	1961	68
1932	70	1962	63
1933	65	1963	62
1934	63	1964	62
1935	63	1965	60
1936	57	1966	52
1937	58	1967	52
1938	61		
1939	59	1974	65
1940	63	1975	76
1941	57	1976	74
1942	48	1977	74
1943	40	1978	72
1944	37	1979	74
1945	40	1980	80
1946	47	1981	90
1947	52	1982	98
1948	50	1983	101
1949	54	1984	96
1950	53	1985	104
1951	50	1986	114
1952	52		
1953	54		
1954	59		

Table 9. Distribution of admission offenses (most serious offense) for state prison admissions, 1926-84

Year	Number admitted from courts	Homicide	Robbery	Sex assault and other sex crimes	Assault	Burglary	Forgery/fraud/ embezzlement	Larceny	Auto theft	Drugs
1926	43,098	6.6%	9.2%	8.0%	5.4%	18.3%	-	27.1%	-	-
1927	46,915	5.9	9.1	8.1	5.2	18.2	9.5	24.1	-	0.9
1928	50,176	6.1	10.0	7.5	4.9	20.0	9.6	21.8	-	1.0
1929	49,172	6.7	10.8	7.3	5.2	19.9	9.7	21.6	-	0.7
1930	56,213	6.3	12.3	6.0	5.1	21.9	9.4	21.9	-	0.4
1931	60,905	6.2	14.0	5.5	5.1	23.3	8.6	21.9	-	0.3
1932	57,825	6.4	13.8	5.3	5.3	26.3	7.8	18.1	3.9	0.3
1933	54,468	7.1	14.2	6.1	6.5	26.9	6.2	18.2	3.8	0.3
1934	52,976	7.8	13.2	6.4	6.8	25.2	6.3	18.1	4.6	0.5
1935	53,886	7.2	12.0	6.4	6.5	25.4	6.9	20.2	4.3	0.5
1936	49,466	7.5	10.4	6.8	6.6	23.3	8.5	21.1	4.3	0.6
1937	50,898	7.2	10.9	7.2	5.7	25.4	9.9	20.9	4.8	0.5
1938	54,352	6.5	11.6	6.7	6.0	25.5	10.6	20.6	4.5	0.6
1939	52,789	6.2	11.2	7.0	6.1	25.7	10.5	20.4	4.6	0.6
1940	57,995	6.1	10.9	6.4	6.4	25.2	11.1	20.0	4.5	0.4
1941	53,350	7.3	10.1	7.2	6.8	23.2	10.9	19.5	5.3	0.5
1942	45,133	7.8	10.9	7.9	7.5	21.4	9.2	21.1	5.0	0.4
1943	37,879	8.3	11.5	9.5	7.4	22.2	8.3	19.9	4.7	0.5
1944	36,115	7.4	10.7	9.0	7.0	23.0	8.1	20.4	5.7	0.5
1945	39,041	7.0	11.4	8.7	7.3	23.6	8.2	19.3	6.3	0.5
1946	46,388	7.3	12.0	7.3	6.8	24.2	9.7	18.5	6.0	0.5
1947	51,856	7.1	12.5	7.1	6.6	23.3	12.1	17.9	5.5	0.6
1948	51,347	7.1	11.8	7.0	6.1	23.8	13.1	16.7	6.0	0.8
1949	55,795	6.2	12.3	6.4	6.0	25.0	13.2	15.7	5.6	0.8
1950	55,236	6.1	12.1	6.4	5.7	25.9	13.6	15.8	5.0	1.0
1960	74,852	5.2	10.9	5.3	5.6	27.8	14.8	13.4	4.8	4.2
1970	67,304	8.4	16.8	4.0	7.7	22.1	9.3	10.9	3.4	9.8
1981	149,186	7.1	18.9	4.4	6.9	27.2	5.9	9.0	1.5	7.7
1982	164,648	7.2	18.3	4.4	6.5	27.7	5.9	9.9	1.8	8.1
1983	173,289	5.7	14.3	5.0	7.0	26.3	5.7	11.3	2.2	8.3
1984	166,927	6.3	13.4	6.5	6.7	21.3	5.6	10.6	1.6	10.3

Table 10. Methods of release, state and federal prisoners, 1926-86.

Year	Percent of releases				Year	Percent of releases			
	Total	Paroled	Other con- ditional	Uncon- ditional		Total	Paroled	Other con- ditional	Uncon- ditional
1926	100%	55%	0%	45%	1955	100%	56%	3%	41%
1927	100	56	0	44	1956	100	56	3	42
1928	100	57	0	43	1957	100	55	3	42
1929	100	56	0	44	1958	100	57	3	40
1930	100	55	0	45	1959	100	59	4	38
1931	100	59	0	41	1960	100	59	4	37
1932	100	57	0	43	1961	100	60	4	36
1933	100	57	0	43	1962	100	60	4	36
1934	100	57	0	43	1963	100	60	4	36
1935	100	54	1	45	1964	100	60	4	36
1936	100	55	1	44	1965	100	61	4	35
1937	100	50	7	43	1966	100	61	5	34
1938	100	49	8	43	1967	100	62	5	32
1939	100	47	10	43	1974	100	68	10	22
1940	100	42	11	47	1975	100	68	9	23
1941	100	46	9	45	1976	100	69	10	21
1942	100	47	12	41	1977	100	72	11	18
1943	100	54	9	37	1978	100	70	11	18
1944	100	55	10	35	1979	100	60	23	17
1945	100	55	9	35	1980	100	57	26	16
1946	100	56	8	36	1981	100	55	28	17
1947	100	55	6	39	1982	100	52	33	15
1948	100	52	6	41	1983	100	48	35	17
1949	100	51	5	44	1984	100	46	36	18
1950	100	55	2	43	1985	100	43	38	19
1951	100	56	2	42	1986	100	43	40	17
1952	100	55	2	42					
1953	100	55	3	43					
1954	100	55	3	42					

Table 11. State prison releases by method, 1977-86

Year from prisons	Total releases	Percent of prison releases					
		All	Discre-tionary parole	Manda-tory release	Expira-tion of term	Probation	Commutation
1977	115,213	100%	71.9%	5.9%	16.1%	3.6%	1.1% 1.4%
1978	119,796	100	70.4	5.8	17.0	3.3	.7 2.8
1979	128,954	100	60.2	16.9	16.3	3.3	.4 3.0
1980	136,968	100	57.4	19.5	14.9	3.6	.5 4.0
1981	142,489	100	54.6	21.4	13.9	3.7	2.4 4.0
1982	157,144	100	51.9	24.4	14.4	4.8	.3 4.2
1983	191,237	100	48.1	26.9	16.1	5.2	.5 3.2
1984	191,499	100	46.0	28.7	16.3	4.9	.5 3.6
1985	203,895	100	43.2	30.8	16.9	4.5	.4 4.1
1986	232,504	100	42.9	30.8	14.7	4.5	.3 6.8

Note: Excludes transfers and those on escape or AWOL.

Totals may not add to 100% due to rounding.

Table 12. Estimated median time served for selected years and offenses, 1926-84

Year	Median time served to first release ^a					
	All offenses	Robbery	Rape	Aggravated assault	Burglary	Larceny
1926	19 mos.	31 mos.	24 mos.	17 mos.	20 mos.	17 mos.
1927	19	34	26	17	21	18
1928	19
1929	19	38	26	18	20	18
1930	19	35	27	17	21	18
1931	18	34	30	17	20	17
1932	18	32	30	19	19	16
1933	17	32	32	17	17	16
1934	17	35	28	16	18	14
1935	17	39	30	17	19	14
1936	17	40	27	19	20	14
1937	20	43	27	19	21	15
1938	21	46	28	18	22	15
1939	21	49	28	19	22	16
1940	21	47	31	19	21	14
1944	30	52	37	26	30	21
1945	30	55	38	25	30	21
1946	25	47	36	20	26	18
1960	21	34	30	20	20	17
1967	19	31	34	15	17	13
1968	18	31	32	15	16	13
1969	18	31	33	15	16	13
1970	18	30	35	18	16	13
1981	17	25	33	17	13	11
1982	16	25	36	15	14	10
1983	13	26	36	14	12	8
1984	13	25	38	16	13	10

Note: Data for 1967-70 are from unpublished Uniform Parole Reports statistics obtained from between 31 and 35 jurisdictions. Data for all other years are from published National Prisoner statistics reports.

... Data not available or could not be utilized.

^a First release is defined as the first discharge from prison on a sentence. Persons who enter prison by methods other than a new court commitment are excluded.

Table 13. Number admitted under sentence of death, executions, and number present under sentence of death at year-end, 1930-86

Year	Number admitted under sentence of death	Number executed	Number present under sentence of death at year-end	Year	Number admitted under sentence of death	Number executed	Number present under sentence of death at year-end
1930	...	155	...	1960	113	56	210
1931	...	153	...	1961	140	42	257
1932	...	140	...	1962	103	47	267
1933	...	160	...	1963	93	21	297
1934	...	168	...	1964	106	15	315
1935	...	199	...	1965	86	7	331
1936	...	195	...	1966	118	1	406
1937	...	147	...	1967	85	2	435
1938	...	190	...	1968	138	0	517
1939	...	160	...	1969	143	0	575
1940	...	124	...	1970	133	0	631
1941	...	123	...	1971	113	0	642
1942	...	147	...	1972	83	0	334
1943	...	131	...	1973	42	0	134
1944	...	120	...	1974	167	0	244
1945	...	117	...	1975	322	0	488
1946	...	131	...	1976	249	0	420
1947	...	153	...	1977	159	1	423
1948	...	119	...	1978	210	0	483
1949	...	119	...	1979	173	2	595
1950	...	82	...	1980	203	0	697
1951	...	105	...	1981	250	1	864
1952	...	83	...	1982	287	2	1,073
1953	...	62	131	1983	263	5	1,214
1954	...	81	147	1984	296	21	1,420
1955	...	76	125	1985	281	18	1,575
1956	...	65	146	1986	297	18	1,781
1957	...	65	151				
1958	...	49	147				
1959	...	49	164				

...Data not available.

**Table 14. Staff and staffing ratios for full-time state prison employees,
selected years, 1926-84**

	1926	1934	1944	1958	1962	1979	1984
Total prison employees	6,936	12,159	16,252	32,912	42,216	93,570	135,471
Inmates per employee							
Administrative	359.5	508.3	296.6	268.3	272.1	54.6	76.7
Custodial	15.4	16.4	10.3	8.6	7.2	4.6	4.1
Service and professional	234.2	47.5	42.4	43.5	42.4	20.5	20.8
All employees	10.9	10.4	6.9	5.6	4.9	2.8	2.8

Table 15. Number of prisoners in state and federal prisons, by sex; and females as percentage of all prisoners, 1925-86

Year	U.S. Total	Males	Females	% Female
1925	91,669	88,231	3,438	3.8
1926	97,991	94,287	3,704	3.8
1927	109,346	104,983	4,363	4.0
1928	116,390	111,836	4,554	3.9
1929	120,496	115,876	4,620	3.8
1930	129,453	124,785	4,668	3.6
1931	137,082	132,638	4,444	3.2
1932	137,997	133,573	4,424	3.2
1933	136,810	132,520	4,290	3.1
1934	138,316	133,769	4,547	3.3
1935	144,180	139,278	4,902	3.4
1936	145,038	139,990	5,048	3.5
1937	152,741	147,375	5,366	3.5
1938	160,285	154,826	5,459	3.4
1939	179,818	173,143	6,675	3.7
1940	173,706	167,345	6,361	3.7
1941	165,439	159,128	6,211	3.8
1942	150,384	144,167	6,217	4.1
1943	137,220	131,054	6,166	4.5
1944	132,456	126,350	6,106	4.6
1945	133,649	127,609	6,040	4.5
1946	140,079	134,075	6,004	4.3
1947	151,304	144,961	6,343	4.2
1948	155,977	149,739	6,238	4.0
1949	163,749	157,663	6,086	3.7
1950	166,165	160,309	5,814	3.5
1951	165,680	159,610	6,070	3.7
1952	168,233	161,994	6,239	3.7
1953	173,579	166,909	6,670	3.8
1954	182,901	175,907	6,994	3.8
1955	185,780	178,655	7,125	3.8
1956	189,565	182,190	7,375	3.9
1957	195,256	188,113	7,301	3.7
1958	205,643	198,208	7,435	3.6
1959	208,105	200,469	7,636	3.7
1960	212,953	205,265	7,688	3.6
1961	220,149	212,268	7,881	3.6
1962	218,830	210,823	8,007	3.7
1963	217,283	209,538	7,745	3.6
1964	214,336	206,632	7,704	3.6
1965	210,895	203,327	7,568	3.6
1966	199,654	192,703	6,951	3.5
1967	194,896	188,661	6,235	3.2
1968	187,274	182,102	5,812	3.1
1969	197,136	189,413	6,594	3.3
1970	196,441	190,794	5,635	2.9
1971	198,061	191,732	6,329	3.2
1972	196,092	189,823	6,269	3.2
1973	204,211	197,523	6,004	2.9
1974	218,466	211,077	7,389	3.4
1975	240,593	231,918	8,675	3.6
1976	262,833	252,794	10,039	3.8
1977	276,157	265,387*	10,770*	3.9
1978	284,148	273,067*	11,082*	3.9
1979	291,610	279,946*	11,664*	4.0
1980	304,692	292,809*	11,883*	3.9
1981	344,283	330,512*	13,771*	4.0
1982	385,343	369,159*	16,184*	4.2
1983	405,501	388,900	16,601	4.1
1984	429,050	410,974	18,076	4.2
1985	464,804	444,658	20,146	4.3
1986	503,794	480,555	23,239	4.6

*Estimated from sex distribution of jurisdiction-based prison population counts.

Table 16. Number of prisoners in state and federal prisons, by sex; and imprisonment rate, by sex, 1925-86

<u>Year</u>	<u>U.S. Total</u>	<u>Males</u>	<u>Male rate</u>	<u>Females</u>	<u>Female rate</u>
1925	91,669	88,231	149	3,438	6
1926	97,991	94,287	157	2,704	6
1927	109,346	104,983	173	4,363	7
1928	116,390	111,836	182	4,554	8
1929	120,496	115,876	187	4,620	8
1930	129,453	124,785	200	4,668	8
1931	137,082	132,638	211	4,444	7
1932	137,997	133,573	211	4,424	7
1933	136,810	122,520	209	4,290	7
1934	138,316	133,769	209	4,547	7
1935	144,180	139,278	217	4,902	8
1936	145,038	139,990	217	5,048	8
1937	152,741	147,375	227	5,366	8
1938	160,285	154,826	236	5,459	8
1939	179,818	173,143	263	6,675	10
1940	173,706	167,345	252	6,361	10
1941	165,439	159,128	239	6,211	9
1942	150,384	144,167	217	6,217	9
1943	137,220	131,054	202	6,166	9
1944	132,456	126,350	200	6,106	9
1945	133,649	127,609	193	6,040	9
1946	140,079	134,075	191	6,004	8
1947	151,304	144,961	202	6,343	9
1948	155,977	149,739	205	6,238	8
1949	163,749	157,663	211	6,086	8
1950	166,165	160,309	211	5,814	8
1951	165,680	159,610	208	6,070	8
1952	168,233	161,994	208	6,239	8
1953	173,579	166,909	211	6,670	8
1954	182,901	175,907	218	6,994	8
1955	185,780	178,655	217	7,125	8
1956	189,565	182,190	218	7,375	9
1957	195,256	188,113	221	7,301	8
1958	203,643	198,208	229	7,435	8
1959	208,105	200,469	228	7,636	8
1960	212,953	205,265	230	7,688	8
1961	220,149	212,268	234	7,881	8
1962	218,830	210,823	229	8,007	8
1963	217,283	209,538	225	7,745	8
1964	214,336	206,632	219	7,704	8
1965	210,895	203,327	213	7,568	8
1966	199,654	192,703	201	6,951	7
1967	194,896	188,661	195	6,235	6
1968	187,274	182,102	187	5,812	6
1969	197,136	189,413	192	6,594	6
1970	196,441	190,794	191	5,635	5
1971	196,061	191,732	189	6,329	6
1972	196,092	189,823	185	6,269	6
1973	204,211	197,523	191	6,004	6
1974	218,466	211,077	202	7,389	7
1975	240,593	231,918	220	8,675	8
1976	262,833	252,794	238	10,039	9
1977	276,157	265,387*	248	10,770*	10
1978	284,149	273,067*	253	11,082*	10
1979	291,610	279,946*	257	11,664*	10
1980	304,692	292,809*	265	11,883*	10
1981	344,283	330,512*	296	13,771*	12
1982	385,343	369,159*	327	16,184*	14
1983	405,501	388,900	341	16,601	14
1984	429,050	410,974	357	18,076	15
1985	464,804	444,658	383	20,146	16
1986	503,794	480,555	409	23,239	19

*Estimated from sex distribution of jurisdiction based prison population counts.

Note: Detail may not sum to total shown because year-end counts were sometimes revised in subsequent reports while gender counts were not.

Table 17. Race distribution of admissions to state and federal prisons in the United States, 1926-1983.

		<u>Percentage black</u>	
<u>Year</u>	<u>Prison admissions</u>	<u>Year</u>	<u>Prison admissions</u>
1926	21.4%	1950	28.7%
1927	21.1	1960	32.1
1928	20.7	1964	33.5
1929	21.0		
1930	22.4	1970	39.5
1931	21.6	1974	37.8
1932	21.7		
1933	22.9	1975	35.0
1934	23.9	1976	35.0
1935	24.9	1977	37.4
1936	25.4	1978	40.2
1937	26.0	1979	40.0
1938	26.3	1980	39.5
1939	26.3	1981	42.4
1940	28.2	1982	44.9
1941	29.2	1983	43.3
1942	30.7		
1943	30.1		
1944	35.7		
1945	30.5		
1946	33.1		
1947	29.7		
1948	29.2		
1949	28.8		

Note: The table presents all the national statistics known to exist on the race distribution of the prison population through 1983. The data are from reports of National Prisoner Statistics, supplemented in certain years by statistical reports of the Federal Bureau of Prisons. The "percentage black" is the number of blacks admitted divided by the total admissions of all races (including race not known). For most years, "admissions" refers to admissions from court.

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Chapter 13

**A COMPARISON OF PRISON USE IN
ENGLAND, CANADA, WEST GERMANY, AND THE UNITED STATES:
A LIMITED TEST OF THE PUNITIVENESS HYPOTHESIS**

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Cross-national comparisons of crime and criminal justice practices have potential for defining limits of change in criminal justice systems. Unfortunately, the requisites for good cross-national comparisons are quite stringent. Too often such comparisons misrepresent differences in practices or account for observed differences in terms that are too general to serve as a guide for policy.

A specific case in point is cross-national comparisons of incarceration rates. A number of studies conclude that the United States is the most punitive of industrialized nations, based on its rate of using prison as the sentencing option of choice.¹ In fact, although the U.S. has the largest per capita prison population, that figure does not necessarily result from a more punitive policy on the part of its courts. Other factors may more readily explain differences in prison populations. For example, the United States tends to legislate morality to a greater extent than other countries so that a broader scope of law contributes to the inmate population.² The United States has a much higher crime rate than other countries.³ Crimes in the United States are violent or otherwise serious in greater proportion than in other nations. Isolating these and other competing explanations for observed differences in prison populations and systematically examining these alternatives will provide information specific enough to serve as a guide to policy making. This study is intended to be a model for such specificity. It will reexamine the use of incarceration in

several countries, including the United States, and, by introducing a more precise methodology than has usually been employed, it will control for several of the most obvious competing explanations. The first section reviews earlier approaches and describes the methodological modifications introduced; the second section presents our data and the conclusions that they support.

Review of Previous Work

Authors of cross-national studies of incarceration too eagerly conclude that a punitive orientation of the courts explains observed differences in the size of prison populations. Though aware of other reasons for variation in the sizes of those populations, they have not had ready access to the information necessary to test competing explanations.^{4 5} Even when the necessary information has been available, however, problems in the design of these studies have often resulted in inaccurate characterizations of differences among countries, and in the spurious attribution of causality.

Specifically, studies of cross-national incarceration rates have suffered from at least three flaws in their research design. First, these studies confound the rate of imprisonment with the level of crime in a given country by using the total population rather than the true population at risk of imprisonment, i.e. suspects, in calculating rates. Second, the concept of punitiveness is often vaguely defined with the result

that observed differences in incarceration rates are spuriously attributed to differences in punitiveness. This ambiguity in definition also complicates the identification of specific punitive policies. Third, by using "stock" rather than "flow" designs length of sentence has been confounded with rates of imprisonment.

The Population At Risk

Previous cross-national studies of incarceration often acknowledged, but failed to account for the influence of crime rate on the rate of imprisonment. The incarceration rate is computed as a simple ratio of prisoners to the total population or to the adult population of the country. This standardizes the rates for variation in the size of populations across countries, but it does not account for the relative propensity of the population to engage in criminal behavior and thereby become eligible for imprisonment. For example, the incarceration rate of a nation like England with a serious violent crime rate of 219 per 100,000 would be compared to that of the U.S. which has a much higher violent crime rate of 555 per 100,000 and, therefore, a much greater probability that a citizen will be brought before a court and sentenced to some form of incarceration. We would assume that nations with such radically different crime problems would have quite different incarceration rates even if their sentencing practices were very similar.

The Definition of Punitiveness

Differences in punitiveness imply more severe responses to similar acts. Studies that attribute differences in the size of prison populations to greater or lesser punitiveness, however, seldom control for differences in the seriousness of crime or sanctions across countries.⁶ The concept of severity of sanctions is particularly in need of definition in order to delimit the scope of a given comparative study. Severity has many dimensions. At minimum, a distinction should be made between incarceration and other sanctions that do not deprive citizens of their liberty. Incarceration is a more severe sanction than non-custodial alternatives. Length of the custodial sentence served is also a useful distinction, such that longer sentences are more severe than shorter ones. The degree of deprivation involved in custodial sentences must also be included as a dimension of severity of sanction, since five years in a maximum security institution would be more arduous than the same sentence in a minimum security institution.

Most studies of punitiveness do not distinguish the various dimensions of severity. These distinctions are important, however, for providing specific guidance for reform. It is useful to know, for example, that it is the length of the sentence imposed and not the use of incarceration that distinguishes one country from another. While it may be impossible to investigate empirically each dimension of severity, keeping these dimensions separate can permit much more specific

statements about policy differences across countries and their effect on punitiveness. Failing to identify the dimensions of severity in sanctions also contributes to problems in rate estimation discussed in the following section.

In assessing punitiveness it is equally important to standardize for differences in the severity of crimes committed. Countries can have very similar crime rates, but the nature of the crimes committed can vary. It would seem inappropriate, for example, to compare the U.S., in which serious violent crime, and particularly weapons offenses, forms a high proportion of all registered crime, with Sweden or The Netherlands. In the latter countries, a much smaller proportion of crimes involve serious violence or weapons. If we are to attribute differences in incarceration rates to punitiveness, then we must control for differences in the seriousness of crimes across countries.

The "Flow" Design

Static or stock studies of incarceration measure the use of imprisonment by the number of prisoners in custody on a given day while flow designs use the number of admissions to prison over a particular unit of time. The static approach is preferred largely because data for prisoners in custody are believed to be more accurate and they are certainly more readily available than admissions or release data in many countries. However, since the probability of an offender being in prison on a given day is a function of the length of his sentence, stock statistics tend to

overrepresent the more serious offenders with longer sentences. Serious offenders with long sentences also accumulate in prison populations and, therefore stock studies overestimate the propensity to incarcerate in those countries with higher rates of serious crime. In contrast, flow studies using annual admissions are not affected by the accumulation of more serious offenders. This is not to say that length of sentence is not an important dimension of punitiveness, but, as we argued earlier, for reasons of clarity, it should be treated separately. Flow designs permit the separation of the propensity to incarcerate from the length of sentence served and, thereby, provide a clearer picture of both dimensions of punishment.

In reexamining the relative use of imprisonment cross-nationally, we attempt to avoid the pitfalls of earlier studies by focusing on one dimension of punitiveness, by adjusting incarceration rates for the incidence of crime, by restricting the comparisons to incarceration rates for reasonably comparable classes of crime, and using a flow rather than a stock design.

An Alternative Approach to Computing Incarceration Rates

This study compares the use of incarceration in several industrialized democracies--England, Canada, the Federal Republic of Germany, and the United States. Our focus is the propensity to use incarceration and not other dimensions of punitiveness such as length of stay or degree of deprivation. Comparisons are

restricted to a narrow range of serious and reasonably comparable crime classes. Incarceration rates are the ratio of persons admitted to prison for a particular offense in a given year to the number of persons arrested for that offense in the same year.

Focusing on the Propensity to Incarcerate

This study is limited almost exclusively to the investigations of differences in the relative frequency with which countries use incarceration as a sentencing option. Other dimensions of severity of sanction or punitiveness are equally important, but it is difficult to entertain all of these dimensions simultaneously. Moreover, at the present time, it is easier to measure the propensity to incarcerate than other aspects of punitiveness. Subsequent studies will compare countries in terms of the length of custodial sentences served.

Restricting the Range of Criminal Behavior

We limited the study to classes of crime similar to the Federal Bureau of Investigation's (FBI) Index Crimes--homicide, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.⁷ We computed rates separately for each class of Index crime, from homicide to motor vehicle theft, to ensure that the range of behaviors included in the study were comparable across countries.⁸ A listing of the specific offenses included under each category of Index Crime for each country is presented

in Appendix A. Differences in the format of routine statistical reports in the countries studied prohibited comparisons of all types of Index crimes across all countries. In some cases, no data were available for specific Index crimes in particular countries. In others, several categories were collapsed to conform to the routinely reported classes of crime in a specific country. The comparisons made below employ the most disaggregated crime classes possible.

While restricting the range of offenses in this way reduces the effects of differences in crime seriousness across countries, it raises some questions about the generalizability of our findings. It is possible that our findings comparing incarceration for Index crimes may not be the same for comparisons of non-Index crimes. This concern is reduced somewhat by the fact that although these offenses constitute only a small proportion of criminal offenses, they account for a large proportion of the prison population in the countries under study.⁹ This increases the likelihood that our findings will be an accurate reflection of the differences in incarceration use across countries generally.

Adjusting the Incarceration Rate for Differences in Crime Rates

Controlling for the effects of the incidence of crime on the incarceration rate is problematic largely because accurate measures of the level of crime are not readily available. More

importantly, errors in the estimates of crime rates are not constant across countries.¹⁰ Victimization surveys provide an inclusive estimate of crime, but the variability of surveys across countries complicates their use in comparative studies. The number of persons convicted would be the most desirable base for an incarceration rate because it excludes innocent persons who should not be punished. The absence of court data of uniformly high quality cross-nationally, however, precludes the use of convicted persons as a rate base. Using arrested persons as the base for the incarceration rate seems to be the best means of controlling for crime while minimizing bias for comparative purposes.

Victimization surveys would provide the most inclusive estimate of criminal behavior. All of the countries under consideration have some form of recurring victimization survey, but the instrumentation and procedures used by each are very different and these differences can bias cross-national comparisons. The National Crime Survey (NCS) which provides victimization estimates for the U.S., for example, differs from the British Crime Survey (BCS) in many ways that will affect estimates of the crime rate in the respective countries.¹⁰ The NCS interviews every member of the household twelve years of age or older while the BCS is administered to one adult, i.e sixteen years of age or older, member of the household. Studies have shown that the two interview procedures will result in substantially different rates.¹¹ Respondents in the BCS are

asked to report crimes that occurred in the past 12 months while the NCS employs a six month recounting period. Studies have shown that reporting becomes less complete as time passes¹² and that longer reference periods will result in less complete reporting of victimizations.¹³ These and other procedural differences between the surveys make accurate comparisons of crime rates extremely difficult across countries and surveys.

The use of victimization surveys to standardize incarceration rates for the incidence of crime is further complicated by the fact that the surveys register victimizations and incidents while the criminal justice system sentences persons. One person can be responsible for many crimes, yet he may be sentenced only once. This can complicate the interpretation of an incarceration rate that has victimizations or victim-reported incidents as a base. Finally, victimization-based rates would confound ineffectiveness with punitiveness. Victimization counts include crime incidents in which the offender is never identified and made the subject of criminal justice proceedings. Consequently, systems that apprehend few criminals but frequently sentence them to incarceration would have the same rate as those that apprehend a larger proportion of offenders and sentence few to prison. For these reasons victimization based incarceration rates would be difficult to estimate and ultimately misleading.

The number of persons convicted for each type of Index crime would be the most desirable base for an incarceration rate, since

it includes only those persons who have been found guilty. This would provide the most interpretable measure of the relative punitiveness of sentencing practices cross-nationally. Defining the particular point at which conviction occurs in each country, however, is not simple due to the differences in the structure of the criminal justice process. In the United States, for example, prosecutors can decide not to proceed with a case for reasons other than evidentiary strength. Indeed, there is strong evidence to suggest that the less serious crimes are less likely to be prosecuted¹⁴ regardless of the evidentiary strength of the case. By deciding not to proceed, the prosecutor makes the decision not to incarcerate. In systems like the Federal Republic of Germany where prosecutors do not have the same discretion to decline to prosecute,¹⁵ the judge may be confronted with many more less serious cases in his sentencing decision and fewer convicted persons will be incarcerated. If the two systems were compared using an incarceration rate based on convicted persons, then Germany would appear less punitive than the U.S. when the two systems may be quite similar if some decisions not to prosecute are included as decisions not to incarcerate. Since different actors make the same decisions in different countries, there is no unambiguous choice of decision point for assessing the punitiveness of sentencing practices cross-nationally. Convicted persons may be the most appropriate base for an incarceration rate, but determining when conviction occurs in each system is problematic.

More importantly for our present purposes, an incarceration rate based upon convicted persons cannot be computed at this time because there are no comprehensive and routinely collected data on sentencing decisions in either the United States or Canada. In the past five years, the U.S. Department of Justice's Bureau of Justice Statistics has initiated several programs to build statistical systems for state courts,¹⁶ but these programs are in their infancy and they do not include a large number of state jurisdictions.¹⁷ While these data are useful, they may not be representative of practices in the nation as a whole. The situation in Canada is very similar to that of the U.S.. There are no comprehensive and routinely produced court conviction and sentencing data for Canada as a whole.¹⁸ While individual provinces have good information systems, not all provinces have such systems and there is no uniformity in definitions and procedures.

For a variety of reasons, police arrest statistics are the most acceptable of the available means of standardizing incarceration rate for differences in the level of crime. First, police arrests should vary with the rate of criminal activity. Second, police arrest information is available for most jurisdictions in all of the countries under study. Third, if arrested persons are used as the base for the incarceration rate, then both the numerator and the denominator will be person-transactions. This makes for a much more straightforward interpretation than would be possible if victimization incidents

were used. Fourth, arrested persons require a decision by the criminal justice system, so that differences between the number of persons arrested and incarcerated in a given time period will be to some degree a function of decisions made by the system rather than situations beyond the control of the system, e.g. solvability of crimes.

The desirability of using arrested persons as the base for our incarceration rate rests in part on the assumption that arrest has reasonably similar meanings across countries. In the U.S., for example, the police can arrest when they have probable cause to believe that an individual has committed a crime. In the case of minor offenses not occurring in the presence of the police, the police must present their evidence to the court in order to obtain an arrest warrant. For more serious offenses, the police may arrest without a warrant if there is probable cause. The police in the U.S. have considerable discretion not to use their arrest powers when the legal requisites for their use are present.¹⁹ The legal limits of arrest are reasonably similar in Britain²⁰ and Canada.²¹

There does not seem to be a status exactly comparable to arrest in the Federal Republic of Germany. They have two statuses similar to arrest -- suspects (*Tatverdächtige*) and charged persons (*Anklage*). Suspects are not taken into custody unless there is a clear indication that they will flee the jurisdiction or destroy evidence. The status of suspect indicates that the police have reason to believe that a person

has committed a crime, but suspects need not be taken into custody. Indeed, suspects may not even know that they are suspects. Consequently, the status of suspect is more inclusive than that of arrested person in the other countries. The status of a charged person, however, is more restrictive than arrest. It includes only those persons who are charged with a crime in a formal judicial proceeding -- similar to the laying of formal charges by a prosecutor. The actual number of arrested persons lies somewhere in between the number of suspects and the number of charged persons. While neither status is exactly comparable to arrest, they can provide a high and a low estimate of arrested persons that permits the calculation of arrest-based incarceration rates.

Development of a Flow Design

As noted earlier, a flow design describes the sequential processing or flow of persons through the criminal justice system over a given period of time. Usually the flow of persons through the system is characterized as a series of transitional probabilities. For example, if a person is arrested, what is the probability that he will be charged with an offense during a given period of time? In this case we are interested in the flow of persons from arrest to imprisonment. What is the probability that a person arrested for an offense will be imprisoned? This probability will be used to indicate the relative punitiveness of the countries under study.

Although flow designs have a number of advantages over stock designs, some of which were mentioned earlier, they also have a number of potential disadvantages. Rather than confounding length of sentence with the propensity to incarcerate as stock studies do, flow designs can confuse delay in court processing with the incarceration rate. One hundred percent of all persons arrested for murder, for example, may eventually be incarcerated, but in a given year perhaps only 50% of those arrested in that year may have completed court processing to the point of being sentenced. As a result, countries that process cases more slowly will appear to have an artificially low incarceration rate relative to those that are more efficient.

A second source of possible error in flow designs restricted to a subset of crimes results from changes in charge during court processing. Offenders who are arrested for aggravated assault but plead guilty to and are sentenced for simple assault drop out of a flow study which is restricted to Index Crimes. Since the offender is arrested for an Index crime, his arrest will be included in the denominator of the incarceration rate. By being admitted to prison for simple assault, his admission will be excluded from the nominator, thereby artificially reducing the incarceration rate. If charge reduction practices are reasonably similar across countries, then they should not affect the accuracy of the comparison.

The bias introduced by delay can be ignored if we can make one of two assumptions--that the bias is offsetting from year to

year, or that delay in processing felony offenses is fairly constant across countries. The data to support the latter assumption are not readily available on an international basis. There is some evidence, however, which suggests that delay effects may be reasonably constant and offsetting from year to year. A simple comparison of the ratio of prison admissions to arrests over time in England and the U.S., for example, indicates that this ratio remained reasonably constant over short periods of time, e.g., five years. This suggests a certain stability in the processing of suspects in the criminal justice system overtime.

Reduction in charge, however, does present a problem in the use of flow designs. Since the incarceration rate is the ratio of persons admitted to prison for a particular offense to the number of persons arrested for that offense, changes in charge during court processing can radically affect rates. More importantly for comparative purposes, the available evidence on plea bargaining cross-nationally suggests that we cannot assume that charge reduction practices are similar in all countries under study. We know that plea bargaining is very prevalent in the United States,²² less so in Canada²³ and virtually non-existent in Great Britain²⁴ and West Germany.²⁵ Some adjustment must be made to the U.S. rates in order to correct for the differences in the prevalence of charge reduction across countries.

Computation of Incarceration Rates

The mechanics of computing incarceration rates is simple in countries like West Germany and Great Britain because statistics on crime and prison admissions for the entire nation are collected centrally. As a result, more jurisdictions report routinely and there is more uniformity in definitions and collection procedures. Rate computation is, then, simply a matter of locating the appropriate statistics. In highly decentralized systems like the U. S. and Canada, the responsibility for collecting crime and prison data is shared more evenly by the Federal and State or Provincial governments. Not all jurisdictions report routinely and definitions and procedures can vary. It is often necessary to make adjustments to the data in order to correct for information gaps and non-uniformities in collection. Because of their importance to this investigation, the mechanics of rate computation for each country are described in great detail in Appendix B. Data sources are presented and adjustment procedures explained.

Presentation of the Data

The foregoing discussion describes several of the shortcomings of population-based stock incarceration rates and presents some of the advantages of arrest-based flow rates. While stock rates can be misleading for assessing the relative punitiveness of sentencing practices, comparisons of various stock and flow rates can be useful in identifying the factors

affecting the size of prison populations. The population-based stock rate, for example, can be helpful in comparing the use of incarceration while standardizing for differences in the size of the populations in the countries studied. A flow rate which divides admissions to prison in a given year by the population not only holds differences in the population constant, but does so also for the effects of differences in sentence length on the prison population. Comparisons of stock and flow rates based upon population provide some indication of the contribution of sentence length to differences in the prison population across countries. Similarly, flow rates based upon arrest in a given year standardize for both the effects of sentence length and differences in crime across countries. Comparing population-based flow rates with arrest-based flow rates indicates the importance of differences in crime for determining the size of prison populations. Tables 1 to 3 present stock and flow rates for four countries and those offenses most comparably defined across countries.

On the basis of population-based stock rates, the U.S. is much more likely to incarcerate for violent offenses than either England or the Federal Republic of Germany. In the case of homicide, the U.S. incarcerates at 7.5 times the rate of Great Britain and 5.3 times that of the Federal Republic. The relative propensity to incarcerate is similar for robbery where the rate for the U.S. is 8.7 times that of England and 4.7 times that of Germany. Differences in the rates are somewhat less for property

crime. For burglary, the English rate is approximately 90% of the United States. In the Larceny/Theft category, which combines burglary, larceny and motor vehicle theft, the incarceration rate for the U.S. is roughly twice that of Germany and England.

The picture does not change substantially when population-based flow rates are used to compare countries. For homicide and robbery, the United States has incarceration rates many times greater than those of England or West Germany. The incarceration rate for robbery in Canada, however, is not greatly different from that of the U.S.. Again, the differences in rates across countries are less for property crimes than for crimes of violence. The U.S. incarceration rate for burglary is 50% greater than that of Britain, but quite similar to that of Canada. The incarceration rate for Larceny/Theft in the U.S. is about 65% greater than the English rate. The Canadian rate is, again, very similar to the U.S. incarceration rate. West Germany's incarceration rate for Larceny/Theft is approximately one-sixth of the U.S. rate and 29% of the English rate.

Table 1: Population-Based Stock Incarceration Rates Per Thousand by Country and Offense

<u>Offense</u>	<u>Country</u>			
	1982 USA	1983 England 1/	1980 Canada	1984 West Germany
Homicide	.309	.041	NA 2/	.057
Robbery	.461	.051	NA 2/	.099
Burglary	.37	.21	NA 2/	NA 3/
Larceny/ Theft	.565	.50	NA 2/	.267

1/ Includes Wales.

2/ National statistics on prisoners by admission charge are not available for Canada.

3/ Germany does not have a crime class exactly comparable to burglary. Burglary is included in the Larceny/Theft category.

Table 2: Population-Based Flow Incarceration Rates Per Thousand by Country and Offense

<u>Offense</u>	<u>Country</u>			
	1982 USA	1983 England	1980 Canada	1984 West Germany
Homicide	.070	.007	NA 1/	.012
Robbery	.268	.043	.181	.03
Burglary	.537	.369	.606	NA 2/
Larceny/ Theft	1.17	.706	1.16	.21

1/ Data on admissions to provincial institutions were not available on a national basis.

2/ Germany does not report data on a class of crime exactly the same as burglary. Burglary is included in the Larceny/Theft class.

Flow rates based upon arrest show a somewhat different pattern. The probability of incarceration given arrest is roughly the same for violent offenses in the United States, England and Canada, although England has a somewhat lower rate for homicide. Essentially the same is true for burglary and for the more inclusive class of property crime--Larceny/Theft. With the exception of homicide, the rates for both violent and property crime are still lower in the Federal Republic than they are in other countries. The rate for robbery is approximately one-half of that in the U.S. England, and Canada. For the Larceny/Thefts, the incarceration rate in Germany is approximately one-third that of the U.S. and somewhat more than one half that of England and Canada.

Table 3: Arrest-Based Incarceration Rates by Country and Offense

<u>Offense</u>	<u>Country</u>			
	1982 USA	1983 England	1980 Canada	1984 West Germany
Homicide	.706	.636	NA 1/	.766
Robbery	.364	.388	.414	.215
Burglary	.213	.219	.140	NA 2/
Larceny/ Theft	.118	.093	.095	.042

1/ Data on admissions to Provincial institutions was not readily available on a national basis.

2/ Germany does not report data on a class of crime exactly the same as burglary. Burglary is included in the Larceny/Theft class.

3/ The rates reported here are the average of the high estimates that use charged persons as the base and the low estimates that have suspects as the denominator. The range for each offense is reported below:

	High Estimate	Low Estimate
Homicide	81.6	71.6
Robbery	30.5	12.5
Larceny/Theft	5.5	2.9

Discussion

Cross-national studies of incarceration can suggest the limits of reform. Countries that maintain social order with minimal use of severe punishments like imprisonment can serve as models for more punitive countries. Comparative studies can identify countries that incarcerate less frequently with similar

could be adopted in the U.S. Critics of these comparisons have objected that observed differences in stock rates are due to the greater prevalence of crime in the United States relative to European countries. This analysis supports this contention. When the range of crimes examined is made more comparable in terms of seriousness and rates are standardized for differences in the level of crime cross-nationally, the extreme differences in the use of incarceration between the U.S. and several other Western democracies are lessened considerably and in some cases they disappear. To a large extent, observed differences in stock incarceration rates cross-nationally are due to differences in the types and levels of crime across countries.

The findings presented above also raise some doubts about the advisability of trying to compare national criminal justice policies on a single dimension of seriousness. Countries appear to sentence offenders differently for different types of offenses, rather than consistently sentencing all offenders more or less harshly regardless of the presenting offense.²⁶ Comparisons of sentencing practices cross-nationally should specify the offenses for which the comparisons apply.

This analysis attempted to control for some of the most obvious alternatives to punitiveness for explaining observed differences in prison populations. Other factors that could affect sentencing decisions should also be included in subsequent tests of the punitiveness hypothesis. Specifically, some attention should be given to differences in aggravating and

types of provocation and begin to eliminate competing explanations for why this occurs. Eventually, those procedures and practices which affect the use of incarceration can be evaluated for their transferability across countries. This study is a very limited step in this process. It raises questions about the common wisdom, perpetrated by comparisons of population-based, stock incarceration rates, that the U.S. has a much more punitive sentencing policy than any modern, industrialized democracy. It identifies differences in the use of imprisonment that deserve explanation. Finally, it suggests methods to facilitate cross-national research and thereby bring more minds to bear on the process of eliminating competing explanations for observed differences in prison populations.

Raising Some Questions

To a large extent, perceptions of the relative punitiveness of sentencing practices in the U.S. are shaped by cross-national comparisons of stock incarceration rates that control for differences in population size, but little else. These comparisons have lead to the somewhat misguided likening of criminal justice practices in the United States to those of notoriously repressive countries like South Africa and the Soviet Union. On the basis of these stock rates, other industrialized democracies and especially countries in Western Europe appear to use incarceration much less frequently than the U.S. and they have been held up as examples of criminal justice policies that

mitigating circumstances of crimes that are not distinguished in the broad and heterogeneous Index crime classifications. There is good reason to believe, for example, that robberies in the U.S. involve firearms more frequently than robberies in other countries. Approximately 40% of the robberies known to the police in the United States involve firearms,²⁷ while in Canada 29% of robberies known to the police involve firearms,²⁸ 12% in West Germany²⁹ and only 9% of robberies in England include guns.³⁰ If this aggravating circumstance was held constant, the U.S. incarceration rate for robbery may be considerably lower than that of other countries for crimes of comparable seriousness. Systematic differences in the criminal history of defendants across countries may also account for differences in prison use. If defendants in the U.S. generally have lengthier or more severe prior criminal histories than defendants in other countries, then differences in the use of incarceration may disappear or change direction when criminal histories are held constant. Subsequent explorations of cross-national differences in the use of incarceration should attempt to describe and perhaps control for both of these aggravating and mitigating circumstances that could explain observed differences.

Finally, we should underscore that the assumptions underlying this comparison of incarceration rates may overstate the use of incarceration in the U.S. relative to other countries. Specifically, this study assumes that charge reduction occurs only in the U.S. and not in the other countries

studied. Consequently, the U.S. rates were adjusted (generally upward) for charge reduction, while the rates for the other countries were not. There is good reason to believe that charge reduction is more prevalent in the U.S. than it is in the other countries, but some charge reduction undoubtedly occurs in England, Canada and West Germany. Since the data necessary to make appropriate adjustments in each country are not readily available, we chose to make the most conservative assumption--that there is no charge reduction outside of the U.S. Given the findings, this conservative assumption strengthens the conclusion that sentencing practices in the U.S. are not more punitive relative to those of other industrialized democracies. This assumption, however, may result in an overestimate of incarceration rates for the United States and it may be inappropriate to use these data to estimate the magnitude of the differences between countries.

Explaining Persistent Differences in Prison Use

Differences in the level of crime, however, do not entirely explain observed differences in the use of imprisonment. Germany appears to use incarceration much less frequently than the U.S. even when the arrest-based rates are employed. This finding raises, again, the question of whether incarceration needs to be used as frequently as it is in the U.S. It also gives direction to future research. The relative similarity of incarceration rates for countries with a common law legal tradition and the

markedly lower rate for the only code country included in the analysis, suggests that future comparative studies might focus on the differences between these two types of systems to explain the radically different use of incarceration. It may be that the differences observed here between common law and code countries are due to misinterpretations of procedures, definitions, or statistics used in code countries rather than a real difference in practice. Perhaps the differences are unique to Germany and not generalizable to other code countries. Only replication will tell.

The similarity of arrest-based rates in common law countries suggests further that substantial and pervasive differences in incarceration rates across countries are probably not due to minor differences in practice. England, for example, makes greater use of fines than the U.S., but this does not seem to contribute to an appreciably lower incarceration rate, at least for violent crimes. Large differences between countries in the use of incarceration are more likely due to major differences in the organization of the criminal justice system and the role that the justice system plays with respect to other institutions in the maintenance of social order. It can be argued, for example, that the need for a response by the criminal justice system will be much less in countries that fill their need for marginal labor with guest workers as opposed to citizens. Guest workers can be deported rather than incarcerated. The ranks of guest workers can be thinned by deportation as the economy slows and this may

preempt both crime and a justice system response. Future research exploring the differences in incarceration rates between countries with common law and criminal code traditions should emphasize relative contribution of differences in the role that criminal justice systems play relative to other institutions in society; differences in the major components of the justice process such as arrest, guilt determination and sentencing; and differences in definitions and statistics that may result in artifactual differences in rates. By distinguishing these general classes of explanatory variables, we will be in a better position to identify differences in criminal justice policy that can reduce the size of prison populations and that can be easily transferred to a new cultural context.

Facilitating Cross-National Research

One of the major obstacles to useful cross-national research in crime and criminal justice is the lack of uniformity in definitions and statistics. Given the problems of ensuring uniformity in nations with federal systems such as the U.S. or Canada, it is foolish to expect immediately more uniformity in definitions and statistics cross-nationally. Uniformity will flow from a perception of need. The perception of need may result from an increase in the volume of cross-national research. Several modest steps can be taken immediately to facilitate more and higher quality cross-national research on criminal justice practices. First, some form of compendium of

criminal justice and related statistics should be assembled to reduce the time and effort required to do cross-national comparisons.³¹ This compendium should include a brief description of the criminal justice system in the respective countries, a listing of major statistical sources, and a short bibliography containing explanations of these systems as well as substantive and methodological work done with the statistical data. If this initial document is well received, a more elaborate version might include excerpts from these statistical reports similar to the format of the Sourcebook of Criminal Justice, as well as a list of contacts who can give advice on the use of the data. The compendium could be restricted initially to industrialized democracies to maximize comparability and minimize effort. It could be made available in several languages. Although this aid to research will not directly encourage uniformity in definitions and statistics, it will encourage more researchers to identify those areas in which comparability may be a problem. Only by using statistical data can we identify its strengths and weaknesses. A second step that can be taken immediately to facilitate cross-national research would be the development of a functional as opposed to an organizational or positional description of national criminal justice systems. The similarity of functions across systems is greater than the similarity of actors who perform those functions. In countries that permit a great deal of prosecutorial discretion, for example, the prosecutor may perform a function more similar to

that of a magistrate in systems that severely restrict prosecutorial discretion. Police that also direct prosecution may be more similar to prosecutors in systems where there is separation of prosecution from the police. Researchers can spend a great deal of time establishing equivalency across systems and their knowledge may never be circulated in a fashion that would help others interested in accurate cross-national comparisons. In the meantime, inappropriate comparisons will be made that contribute to confusion rather than understanding. A document detailing the functional equivalency of actors in criminal justice systems cross-nationally would be a useful first step in producing the compendium referred to above.

Third, some immediate steps could be taken to obtain at low cost a reasonably comparable, but limited, set of indicators of crime and criminal justice practices. These steps should emphasize technologies that are least encumbered by bureaucratic and political restraints. Police court and correctional statistics are generally collected as part of an on-going system the main purpose of which is not the collection of statistical data. Consequently, gaining the cooperation of these systems in developing and adopting uniform procedures and definitions will be possible only to the extent that such behavior facilitates or at least does not disrupt, the main objectives of the organization. It is unlikely that such propitious circumstances will occur. In contrast vehicles such as victimization surveys are designed solely for the purpose of collecting statistical

data. The political problems of gaining uniformity in definitions and procedures should be less severe. Small scale victimization surveys could be conducted economically and a reasonably uniform instrument could be administered under the auspices of a multinational organization such as the United Nations. This survey could be conducted independently of the host country, but with its approval and support. The resulting data would give a limited, but comparable picture of the level of crime and police reaction cross-nationally. This would be a useful step in encouraging cross-national research on crime and criminal justice. When this research is disseminated, it may generate the interest necessary for more ambitious efforts toward building sets of comparable statistics for cross-national research.

Finally, some steps can be taken immediately to improve the quality of nationally representative statistics for highly decentralized countries like the U.S. and Canada. Countries with political and administrative decentralization have greater difficulty obtaining the cooperation of all jurisdictions in collecting criminal justice statistics. Some subnational jurisdictions refuse to submit statistics while others refuse to conform to uniform procedures for collection and submission. Recently, these countries have employed federally sponsored data collections using a systematic sample of jurisdictions in order to get high quality, nationally representative statistics. This approach has worked well. It tends, however, to be problem or

issue specific rather than systemic in its focus. As a result, we have information on some parts of the criminal justice system, but not others. In some cases, the information from two or more of these sample-based data collections will be different, even contradictory. More attention must be given to coordinating these sample-based efforts so that they can be used to report on the criminal justice system as a whole. First, existing sample-based systems must be identified and compared to information needs of the system as a whole. Gaps and redundancies should be identified. Second, steps should be taken to coordinate existing data collections and to explore sources of inconsistency. Samples for data collection could be drawn such that they overlap. Steps could be taken to compare the estimates from overlapping data collections or estimates from different data collections that should be consistently related. Where inconsistencies are found we should attempt to explain them. With the appropriate level of coordination, a system of recurring sample-based data collections could provide internally consistent and nationally representative information on all aspects of the criminal justice system.

Appendix A: Charges by Country

<u>Country</u>			
USA	England	Canada	West Germany
Murder Manslaughter	Murder Manslaughter Infanticide	Murder Manslaughter Infanticide	Mord (212) Totschlag (213, 211, 216)
Rape	Rape	Rape	Vergewaltigung (177)
Robbery	Robbery Assault with intent to rob	Robbery with Firearm Robbery with other weapon Other Robbery	Raub (249, 250, 252, 255, 316a)
Aggravated Assault	Wounding or endangering Other wounding	Wounding Bodily harm	Körperverletzung (223a-224, 225, 227, 229)
Burglary	Burglary in a dwelling Aggravated burglary in a dwelling Burglary in othr. bldg Aggravated burglary in other bldg.	Breaking and entering	Diebstahl unter ersch- werenden Umständen (243, 244) 1/

Country

USA	England	Canada	West Germany
Larceny	Theft from a person Theft in a dwelling Theft by an employee Theft from mail Shoplifting	Theft >200 Theft <200	Diebstahl ohne erschwerende Umstände (242, 247, 248a-c) 1/
Motor Vehicle theft	Theft or unauthorized taking of a motor vehicle	Theft-motor vehicle	

1/ The Federal Republic does not have classes of crime exactly comparable to burglary, larceny and motor vehicle theft. Other researchers have suggested using a broader category of larceny/theft which does not distinguish between the three subclasses.³²

Appendix B: The Mechanics of Rate Computation

Arrest-Based Flow Rates

Rate Computation for the United States Computing incarceration flow rates for the U.S. is complicated both by the decentralized nature of the government system and by the need to adjust for the prevalence of charge reduction. The responsibility for corrections in the U.S. is shared by the local, State, and Federal governments. These three levels of government are not included in a single unified statistical reporting system. Consequently, adjustments must be made to the numerator of the incarceration rate to include admissions to local jails as well as admissions to state and Federal prisons. A second set of adjustments must be made to correct for charge reduction bias. The rate computation for the U.S. will be presented in three phases--the derivation of the simple incarceration rate, correction of the rate for the inclusion of admissions to local jails, and the adjustment to correct for charge reduction bias. Both adjustments will have some error associated with them.

The Simple Incarceration Rate

The simple incarceration rate refers to the ratio of persons admitted to state prisons for a particular index offense in a given year to the number of persons arrested for that offense in that year. The denominator of this rate was obtained from Table 23 of Crime in the United States and represents an

estimate of the number of persons arrested for specific crimes in the United States in a given year. This estimate is based upon reports from departments serving 81% of the population that are weighted by size to reflect the total national population. The numerator was obtained from estimates of admissions to state prison³³ and from estimates of the proportion of admissions to prison for a particular type of crime as indicated in Prison Admissions and Releases, 1982.³⁴ The estimates of total admissions were multiplied by the proportion of admissions for a particular type of crime to obtain an estimate of the number of admissions for a particular year. Admissions to Federal institutions for each index crime were added to this estimate of total admissions. The information on admissions to Federal prisons was taken from The Source Book of Criminal Justice Statistics, 1983, Table 6.40.

The Jail Correction

This simple incarceration rate is an underestimate of the probability that a person arrested for a specific offense will be imprisoned because it excludes persons admitted to serve sentences in jails rather than state prisons. To correct for this, we estimated the number of persons serving sentences in jails for specific index offenses and added this number to the numerator of the rates. The estimates were obtained in two steps. First, we estimated the proportion of admissions to jails constituted by admissions under sentence for each specific index

crime. This was done with the Survey of Jail Inmates, which is a cross-sectional survey of a sample of inmates. Since the probability of selection in a cross-sectional survey is a function of sentence length, the survey will overestimate the proportion of prisoners serving sentences for index crime. To avoid this problem, we separated the sample into cohorts according to the time between admission and interview. The least biased estimate of the proportion serving a sentence for a particular crime can be obtained from the cohort with the shortest time between admission and interview, i.e. one day. This method is undesirable because it decreases bias at the expense of reliability. The number of persons interviewed one day or less after their admission is too small to afford a reliable estimate of the proportion of jail admissions under sentence for a particular crime. In order to obtain higher reliability, we made estimates of the parameter using increasingly longer intervals between admission and interview. These estimates were plotted according to the length of the interval between admission and interview. We fit a curve to these estimates and extrapolated the curve to the point where the interval between admission and interview was equal to zero. The resulting parameter was used as an estimate of the proportion of admissions to serve sentences for a particular index crime.

The second step involved estimating the number of admissions to jails in a given year. This was done in two ways. The first used the number of inmates interviewed within one day of their

admission in the Survey of Jail Inmates weighted to be representative of the population of jail inmates. This number was multiplied by 365 to obtain an estimate of jail admissions for the year. A second method for estimating jail admissions was based upon the National Prisoners Statistics (NPS) data on admissions and information from the Offender Based Transaction System (OBTS). The latter was used to obtain an estimate of the ratio of persons admitted to jail as opposed to prison in a given year. The NPS estimate of admissions was multiplied by this ratio to obtain an estimate of persons admitted to jail for the relevant offenses. The Survey-based estimate was 1,350,856 admissions to jail annually for Index crimes and the OBTS-based estimate was 2,000,000. Two sets of jail corrections were computed using these two different estimates of the jail population. In order to provide a more stringent test of the relative punitiveness of U.S. sentencing practices, we chose to use the larger of the two estimates.

The estimate of the proportion of jail admissions serving a sentence for an index crime was multiplied by the estimates of the number of admissions to jails to obtain the jail correction that was added to the numerator of each rate. The jail correction factors are presented in Tables 1 and 2 by type of crime and estimation method.

Table 1: Estimated Number of Persons Serving Sentences in Local Jails for Index Crimes and Components of the Estimates by Offense: Computed Using OBTS-Based Estimate of Jail Population.

<u>Component of the Estimate</u>			
<u>Offense</u>	Proportion of Admissions Serving Sentence	Estimate of Admissions to Jail	Estimate of Jail Correction
Homicide	.00135	2000000	2715
Rape	.00057	2000000	1148
Robbery	.008	2000000	16084
Aggravated Assault	.011	2000000	22977
Burglary	.024	2000000	48043
Larceny	.065	2000000	131597
MVT	.0003	2000000	627

Table 2: Estimated Number of Persons Serving Sentences in Local Jails for Index Crimes and Components of the Estimates by Offense: Computed Using Survey of Jail Inmates-Based Estimate of Jail Population.

<u>Component of the Estimate</u>			
<u>Offense</u>	Proportion of Admissions Serving Sentence	Estimate of Admissions to Jail	Estimate of Jail Correction
Homicide	.00135	1350000	1824
Rape	.00057	1350000	770
Robbery	.008	1350000	10807
Aggravated Assault	.011	1350000	14860
Burglary	.024	1350000	32421
Larceny	.065	1350000	87806
MVT	.0003	1350000	2702

The Charge Reduction Correction. Charge reduction refers to the practice of changing the original or arrest charge to a less serious charge for which the offender is prosecuted and ultimately sentenced. The charge may be reduced for a variety of reasons. The police may have arrested the offender on the wrong charge; the evidence that was sufficient for arrest was not sufficient for prosecution; reductions in charge may be exchanged for a guilty plea or information that will help in other prosecutions. Whatever the reason, charges are changed routinely and they are generally reduced, but it is possible for charges to be changed to more serious crimes, as in the case when a robbery victim dies and the robbery charge is changed to murder. Changes in charge regardless of their direction can affect the accuracy of the incarceration rates used here. If charges are reduced, then the ratio of admissions to arrests will underestimate the incarceration rate. Persons arrested for homicide, for example, who are ultimately incarcerated for simple assault will figure into the denominator of the incarceration rate for homicide, but they will not enter into the numerator because they were imprisoned for another crime. Conversely, a person arrested for robbery who is ultimately sentenced for homicide will result in an overcount of admissions for homicide and an undercount for robbery. The net effect of changes in charge will be the difference between charge increases and charge reductions.

The Offender Based Transaction System data for eight states were used to estimate the extent of charge reduction and to compute an adjustment factor. OBTS includes all cases that are disposed of in state courts in a given calendar year. The information collected on each case includes the arrest charge, the disposition charge, and the type of sentence imposed. With this information it was possible to determine the proportion of persons arrested for a particular charge who were incarcerated for that charge or any other charge. For purposes of adjusting the incarceration rate we are not interested in changes in charge that do not result in incarceration. Table 3 presents the proportion of persons incarcerated by arrest charge and disposition charge. It is clear that changes in charge are quite prevalent in U.S. criminal processing. Moreover, charge reductions are more frequent than increases in charge for the more serious crimes of homicide, rape, robbery, aggravated assault and burglary. Charge increases are slightly more prevalent for larceny and motor vehicle theft. This makes sense because charge reductions for these lesser crimes are less likely to result in incarceration of any sort.

The data in Table 3 can be combined with NPS and the jail correction information to estimate a charge reduction correction. We know from the NPS data the number of admissions to prison occurring in a given year for each offense. The jail correction estimated above indicates the number of persons admitted under sentence for each index crime. Table 3 indicates

the proportion of persons incarcerated for a given offense who were arrested for another. By multiplying this proportion by the sum of the NPS estimate and the jail correction, we obtain the number of persons arrested for homicide who were ultimately incarcerated for robbery. Where persons have been incarcerated for a charge less serious than the arrest charge, the estimate of the number of persons so incarcerated should be subtracted from the numerator of the less serious charge and added to the numerator of the rate for the more serious charge. In the case of persons being incarcerated for a more serious charge than the arrest charge, the number of person should be subtracted from the numerator of the more serious charge and added to the numerator of the lesser charge. The difference between the number of charge increases and charge decreases constitutes the charge reduction correction that will be added to the numerator of the rate. The estimates of admissions to incarceration as well as the jail and charge reduction corrections are presented in Table 4.

Table 3: Arrest Offense by Disposition Offense for Persons Sentenced to Incarceration from OBTS Data, 1982: Proportion of Offenders Sentenced Arrested for a Specific Charge

Table 4: Estimates of Admissions to Incarceration and Rate Components by Offense: Jail Correction Based on OBTS Estimate of Total Jail Admissions

<u>Offense</u>	<u>Components of the Rate</u>				<u>Total Admissions</u>
	Admissions to State and Federal Institutions 1982	Jail Correction	Charge Reduction	Corrections	
Homicide	11447	2715	1945	16107	
Rape	4303	1148	767	6218	
Robbery	30077	16084	15904	62065	
Aggravated Assault	11032	22977	-2135	31874	
Burglary	44889	48043	31479	124411	
Larceny	18534	131597	-11737	138394	
MVT	3228	4000	1914	9142	

The total admissions presented in Tables 4 and 5 were divided by the arrest data from the UCR referenced earlier to obtain the arrest-based incarceration rates for each type of Index crime. Since there was evidence that the rates in Table 4 were superior to those in Table 5 or vice versa, the rates were averaged to produce an estimate of the arrest-based incarceration rate for each type of crime.

Table 5: Estimates of Admissions to Incarceration and Rate Components by Offense: Jail Correction Based on Jail Inmate Survey Estimate of Total Jail Admissions

<u>Offense</u>	<u>Components of the Rate</u>				Total Admissions
	Admissions to State and Federal Institutions 1982	Jail Correction	Charge Reduction	Corrections	
Homicide	11447	1824	1455		14726
Rape	4303	770	539		5612
Robbery	30077	10807	11544		52428
Aggravated Assault	11032	14860	-985		24907
Burglary	44889	32421	23054		100364
Larceny	18534	87806	-7456		98884
MVT	3228	2702	1419		7349

Rate Computation for Canada. The problems of computing incarceration rates for Canada are similar to those for the U.S.. Canada is a federal system in which the responsibility for criminal justice matters, including criminal statistics, are shared by the Federal and Provincial governments. The federal government can not guarantee provincial compliance with data collection initiatives. This results in information gaps, the most notable of which is the absence of systematic data on the courts. More importantly for this study, the required data on admission offense is not routinely tabulated by the provinces and

it is not readily available. The Canadian Correctional Service has this data for Federal prisoners, but Federal jurisdiction is limited to persons sentenced to two years or more. This would exclude a large number of offenders sentenced to terms in Provincial institutions. Without this information, we cannot compute offense specific incarceration rates. Fortunately, the Canadian government commissioned a study of sentencing practices in 1983 which included information on the charge at admission to prison.³⁵ This study made possible the computation of offense specific incarceration rates for Canada.

The numerator of the incarceration rate was computed by taking the proportion of total admissions for each Index crime as indicated in the report, Sentencing Practices and Trends in Canada, Vol.1, Figure A8, and multiplying it by the total number of admissions (excluding persons sentenced for failure to pay fines). The total number of admissions to prison was obtained from Correctional Services in Canada, 1980/1981. Fine defaulters were removed from the total by multiplying the proportion of admissions for non-payment of fines present in Table 5 of Correctional Services in Canada, 1980/1981 by the total number of sentenced admissions presented in Table 3 of that report. The resulting number was subtracted from the total admissions figure. When estimates of the proportion of fine defaulters was not available for 1980/1981, estimates of that proportion were taken from Table 16 of Adult Correctional Services in Canada, 1982/1983. The data included in Sentencing Practices is based

upon a systematic sampling of records from nine of the twelve major provincial/territorial jurisdictions in Canada, and the Federal Correctional Service of Canada. Alberta, the Northwest Territory and the Yukon were not included. Nonetheless, the jurisdictions studied include approximately 85% of the Canadian population and can serve as a reasonable basis for making statements about the nation as a whole. The number of persons charged by the police for each type of index crime was used as the denominator of the rate. These data were made available in special tabulations done by the Canadian Center for Justice Statistics. Only persons arrested in the jurisdictions included in Sentencing Practices were included in the denominator of the rate.

Rate Computation for England and Wales. The computation of incarceration rates for England and Wales was reasonably straightforward because of the administrative centralization of the British criminal justice system. The numerator--persons admitted to prison to serve sentences for Index crimes-- was taken from the annual report, Prison Statistics England and Wales (Tables 3.2,4.1,5.1). Persons under 17 years of age were excluded from the numerator to make it more comparable with U.S. statistics in which admissions to juvenile facilities are not included. The British police arrest suspects, but there are no routinely produced statistics on arrests. We estimated arrests by combining the number of persons cautioned for each

offense as reported in Table 5.4 of Criminal Statistics England and Wales, 1983 with persons proceeded against in Magistrates Court as reported in Tables 6.4 to 6.6 of the same publication. Cautions are formal--written or oral--warnings issued by police officials to persons suspected of committing a crime. Warnings are supposed to be issued only when there is sufficient evidence to proceed with a prosecution, but it is not entirely clear what happens in practice. They may be issued in cases where evidence is not sufficient to warrant prosecution, but the police have good cause to believe that the suspect is guilty.³⁶ Bottomley and Pease³⁷ suggest that cases involving cautions are substantially weaker than those proceeded against in Magistrates Court. Since all persons who are ultimately prosecuted are proceeded against in Magistrates Court even if they are tried in Crown Courts, the sum of those proceeded against and cautioned should be a reasonable approximation of arrest in U.S. If cautioning involves less probable cause than does arrest in the U.S., as Bottomley and Pease data suggest, then our count of arrests in England will be too high and the resulting incarceration rate too low. This procedure was followed for all offenses except homicide. More detailed information on homicide suspects was available in Chapter 4 of Criminal Statistics England and Wales, 1983 and these data were used to estimate the incarceration rate for that offense.

Admissions to incarceration for homicide included all persons sentenced to prison or as listed in Table 4.8. Arrests

were estimated using total suspects (586) less those who died or committed suicide before processing was completed (31), since it was not clear that these persons had before or after they had been taken into custody. Arrest in the U.S. requires that the person be taken into custody. The data in Chapter Four were altered somewhat because they are based on cohorts according to the year in which a person became a suspect. At the time of the report, not all of the suspects identified in 1983 had completed processing. The estimates of proportion convicted and sentenced to incarceration from those who had completed processing were used to estimate admissions to incarceration for the full 1983 suspect cohort. At the time of the report, 365 suspects had been processed by the police and the courts. Of these, 301 (82.5%) had been convicted for homicide and 20 (5.5%) had been convicted of another charge. Approximately 80% (240) of those convicted of homicide were incarcerated. These proportions were applied to the total population of homicide suspects that would be processed by the court to obtain an estimate of total number of suspects incarcerated. This estimation procedure is presented below.

$$\text{Admissions} = \frac{\text{Total 1983 Suspects}}{\text{Processed}} * (\frac{\% \text{ processed}}{\% \text{ convicted}} * \frac{\% \text{ convicted}}{\% \text{ incarcerated}} + \frac{\% \text{ convicted}}{\% \text{ of lesser charge}})$$

$$\text{Admis-} \\ \text{sions} = (494 * (.825 * .80)) + (.055 * 494) = 353$$

The computational method employed for homicide is different from that employed in other countries and for other crimes in England and it may affect comparisons in unknown ways. This

approach was required because the data on homicide suspects proceeded against in Magistrates Court were not available in Criminal Statistics England and Wales. Consequently, the procedure for estimating arrests could not be used for homicide and the suspect data included in Chapter 4 was the best alternative. Moreover, the offense classifications in Prison Statistics England and Wales were not exactly compatible with those in Chapter 4 of Criminal Statistics. Specifically, it was not clear what proportion of the "other homicide" category should be included in the numerator of the incarceration rate. This prohibited the straightforward use of the Prison Statistics data as the numerator of the rate.

Rate Computation for the Federal Republic of Germany. As in the case of England and Wales, the administrative centralization of the German criminal justice system facilitates rate computation. The numerator of the incarceration rate is admissions to prison for particular offenses as indicated by the sentences given to persons convicted of these offenses. These data were taken from the annual report of prosecution statistics, Strafverfolgung, Rechtspflege Reihe 3, 1984, Table 6. The denominator of the rate was estimated in two ways. First, all suspects, that is persons whom the police have sufficient reason to believe committed an Index crime, were used. These data were taken from the annual report of police statistics, Polizeiliche Kriminalstatistik, 1984, sections 2.1 through 2.6.

The status of suspect (*Tatverdächtige*), however, is more inclusive than arrested person in the U.S., since suspects need not be taken into custody and the standard of probable cause required to make someone a suspect is considerably less than that necessary for arrest.³⁸ Consequently, we also employed a more restrictive definition of "arrest" by using only those persons actually charged with a crime in an official judicial proceeding (*Auklage*). These data were obtained from Table 1, Strafverfolgung, Rechtspflege Reihe 3, 1984. "Persons charge" is more restrictive than arrest in the U.S. This is more equivalent to that segment of arrests that prosecutors in the U.S. decide to proceed with. Therefore, using this as the denominator of the incarceration rate will result in an inflated rate. By using both denominators, we produced two rates -- a suspect-based rate that is too low and a charged person-based rate that is too high. The rate most comparable to those of the other countries studied lies somewhere in between. Although this will not permit an exact comparison of the Federal Republic with the other countries, it does provide an upper and lower limit which can serve as a basis for comparison. If the high West German rate is lower than that for other countries, then we can be confident that the West Germans employ incarceration less frequently. If the lower rate is higher than that for other countries, then it is likely that incarceration is used more frequently in the Federal Republic.³⁹ The two estimates will be combined to produce an average for tabular display.

The only departure from the simple ratio calculation described above occurred for homicide. In the U.S., attempted homicide is classified as aggravated assault, while in West Germany the same event is classified as attempted murder. In order to ensure comparability, we removed attempted murder from the denominator of the rate by multiplying the number of suspects for murder and manslaughter by the proportion of reported offenses that were classified as other than attempts. While this is not exact, it should approximate the number of persons suspected of homicide as opposed to attempted homicide. It is unclear from available statistics how many admissions to prison were for attempted homicide. consequently the incarceration rate for homicide presented here is probably an overestimate, but leaving the attempted homicides in the denominator of the rate undoubtedly produces a larger underestimate.

Adjusting Rates for Juveniles

The numerators of the flow rates described above are based upon admissions to adult institutions, while the denominators include all arrests regardless of the age of the suspect. This approach was taken because of the ambiguity of the distinction between adult and juvenile. Some juveniles will be admitted to adult institutions, especially those juveniles convicted of serious crimes, so excluding juveniles from the base would result in an overestimate of the incarceration rate. More importantly, with the available statistics, it was difficult to remove

juveniles from the denominators of all rates. We assumed that if juveniles were treated consistently across all countries, the resulting rates would still be a good scale on which to compare countries on their use of incarceration. While this assumption is reasonable, including juvenile arrests and excluding the bulk of juvenile admissions produces rates that cannot be interpreted as the probability of incarceration given arrest. For this reason, efforts were made to remove juveniles from the denominators of the rates. The adjustments are described below.

The rates with juveniles in the denominator were adjusted to remove juveniles by dividing the rate by the proportion of arrests involving adults for each index offense. Table 6 presents the proportion of arrests involving adults by country and offense. Table 7 includes the adjusted rates by country and offense.

Table 6: Proportion of Arrests Involving Adults by Country and Offense

Offense	Country			
	1982 USA	1983 England	1980 Canada	1984 W Gr
Homicide	.915	NA	.968	.951
Robbery	.736	.815	.81	.776
Burglary	.604	.73	.612	NA
Larceny/	.653	.68	.70	.70

Table 7: Arrest-Based Flow Rates Adjusted for Juvenile Arrests by Country and Offense

Offense	Country				
	High USA	Low England	Canada	W Gr	
Homicide	.807	.738	NA	NA	.862
Robbery	.535	.452	.475	.537	.109
Burglary	.39	.315	.30	.286	NA
Larceny/ Theft	.20	.164	.137	.171	.026

Population-Based Stock Rates

Population-based stock incarceration rates are the ratio of the number of prisoners in custody on a specific day to the total population of the country. We were able to estimate this rate for all countries except Canada and for most offenses. Canada does not routinely produce nationally representative counts of the number of persons in Provincial institutions by index.

offenses. Our efforts to obtain comparable counts from every province was not particularly successful. Consequently, we could not estimate population-based stock rates for Canada.

Stock Rate Computation for U.S.

The numerator of the rate was computed by adding the persons serving sentences for Index offenses in State and Federal institutions and the number of persons serving sentences for Index crimes in local jails on a given day. The number of state and federal prisoners was estimated using the total number of prisoners in state and federal custody on December 31, 1982 as presented in Prisoners in State and Federal Institutions on December 31, 1982.⁴⁰ This figure was multiplied by the proportion of prisoners serving sentences for specific Index offenses taken from the Survey of Prison Inmates, 1979. There was no inmate survey conducted in 1982. We assumed that the offense distribution would not change radically in the intervening two years and that the 1979 data would be a good approximation. The number of inmates serving sentences in local jails for Index crimes was computed using the average daily population of jails as presented Jail Inmates, 1982.⁴¹ This number was multiplied by an estimate of the proportion of the jail population serving a sentence for particular Index crimes taken from the Survey of Inmates in Local Jails, 1983. The estimate of persons serving sentences in jails for a specific offense on a given day was added to the estimates of persons

serving sentences in prisons for a specific offense on a given day to obtain the numerator of the stock rates.

The denominator was the total resident population of the United States in 1982 as reported in Table 1 of Crime in the United States, 1982.⁴² This is the Census Bureau's estimate of the resident population.

Stock Rate Computation for England and Wales

The count of prisoners in custody on a given day was taken from Table 1.5 of Prison Statistics England and Wales, 1983.⁴³ This table presents all persons in custody on June 30, 1983. Some of the prisoners included in this table are under 17 years of age. Consequently, they would not appear in the prisoner counts for other countries, since younger juveniles are treated in a separate system and the statistics are reported separately, if at all.⁴⁴ We attempted to exclude younger juveniles by eliminating all persons in Table 1.5 who were residing in Youth Correctional Centres and Junior Detention Centres. The conclusions reached using all persons in the table are not greatly affected by this attempt to exclude younger juveniles. Since we are not especially confident that this adjustment is appropriate and it appears to make little substantive difference, we have used all the persons listed in Table 1.5. This will result in an overestimate of the Stock rate for England.

The denominator of the rate is the total resident population

of England and Wales in 1982. This number was kindly provided by Pat Mayhew of the Home Office.⁴⁵

Stock Rate Computation for West Germany

The number of prisoners in custody for Index offenses on a given day was computed from Table 6 of Strafvollzug, Rechtspflege Reihe 4, 1984. All persons in custody for the pertinent charges were added to form estimates for specific Index offenses. The estimate of the resident population that served as the denominator of the rate was taken from Polizeiliche Kriminalstatistik, 1984, page 223.

Population-Based Flow Rates

Population-based flow rates were computed for each country by taking the numerator from the arrest-based flow rates described above and the denominator from the population-based stock rates.

Footnotes

1. Doleschal, "Rate and Length of Imprisonment: How does the U.S. Compare with the Netherlands, Denmark and Sweden," Crime and Delinquency (1977); Doleschal, "Fact Sheet on Crime and Criminal Justice in the United States, the Netherlands, Denmark, Sweden, and Great Britain", National Council on Crime and Delinquency Information Center (n.d.); Waller and Chen, "Prison Use: A Canadian and International Comparison," 3 Crim. L. Q. (17) (1975).
2. Morris & Hawkins, The Honest Politician's Guide to Law Enforcement (1970).
3. U.S. Bureau of Justice Statistics, Criminal Victimization in the United States 1982 (1984); U.S. Federal Bureau of Investigation, Crime in the United States 1982 (1983).
4. W. Young, "Influences Upon the Use of Imprisonment: A Review of the Literature," 25 The Howard Journal (2) (1986).

5. In many countries, the comprehensive, representative and detailed statistics on crime and criminal justice required for rigorous comparisons are simply not available routinely.

Statistics for many decision points, e.g. sentencing, are often inadequate. Simply obtaining this information is a daunting experience.

6. Doleschal, 1975, op. cit. supra.

7. U.S. Federal Bureau of Investigation, op. cit. supra.

8. The crime classes chosen were quite similar in their defining characteristics, but they may differ in terms of aggravating and mitigating circumstances that could affect judgements concerning the seriousness of the crime. The crime class "Robbery", for example, has the same defining characteristics in all of the countries studied. Events in that class must include 1) theft and 2) violence or threat of violence. In this sense, robbery is comparable across countries. Robberies in Germany or the U.S., however may routinely involve greater degrees of threat or violence than robberies in other countries. This kind of

intra-class variation in seriousness of crimes across countries cannot be assessed in this study.

9. Inmates admitted for Index crimes comprise approximately 72% of the population of state prisons in the U.S. on any given day.

10. Mayhew, "Residential Burglary: A Comparison of the United States, Canada and England and Wales" (1986).

11. Biderman, Cantor & Reiss, "A Quasi-experimental Analysis of Personal Victimization Reporting by Household Respondents in the National Crime Survey", Proceedings of the American Statistical Association (1982).

12. Biderman & Lynch, "Recency Bias in Self-Report Surveys of Victimization," Proceedings of the American Statistical Association (1981).

13. Bushery, "Results of the NCS Reference Period Research Experiment," U.S. Census Bureau Memorandum (1981).

14. Jacoby, Mellon, Ratledge & Turner, Prosecutorial Decision-making (1982).

15. Langbien, "Land without Plea Bargaining: How Do the Germans Do It," 78 Michigan L. Rev. (2) (1979).

16. U.S. Bureau of Justice Statistics (1982), op. cit.supra;

Cuniff, Felony Sentencing in 18 Local Jurisdictions, Special Report, U.S. Bureau of Justice Statistics (1985); Brosi, A Cross-City Comparison of Felony Case Processing (1979).

17. In 1984, the Offender-Based Transaction System (OBTS), the largest of the court data bases included only eight states and one territory. The Prosecutors Management Information System (PROMIS) includes 36 jurisdictions, most of which are large urban counties. The National Association of Criminal Justice Planners (NACJP) routinely collects samples of court dispositions in 18 large, urban counties. While these data sets provide extensive information on court processing, the participating jurisdictions are not a representative sample of the nation. Consequently, these data cannot be used to estimate national trends without substantial adjustment, if at all.

18. Department of Justice Canada, 1 Sentencing Practices and Trends in Canada (1983).

19. D. Black, The Manners and Customs of the Police (1980).

1. L. Leigh, Police Powers in England and Wales (1975).

21. Griffiths, Klein & Verdun-Jones, Criminal Justice in Canada (1980).

22. Vera Institute of Justice, "Felony Arrests -- Their Prosecution and Disposition in New York City's Courts," (1978); Brosi (1979), op. cit. supra.

23. Griffiths, Klein & Verdun-Jones, op. cit. supra.

There is very little comprehensive data on plea bargaining in Canada. Several studies of local jurisdictions suggest that the rate of plea bargaining for indictable offenses is between 20 and 30 percent. These studies are reviewed in Griffiths, Klein and Verdun-Jones (1980), but there is no information presented on the proportion of these negotiations that involve charge reduction as opposed to count or sentence reduction. It would be very difficult to make an adjustment with the information on hand.

Consequently, for purposes of this report, we have assumed that there is virtually no charge reduction in Canada. This will cause an underestimate of the incarceration rate for most index offenses and a conservative test of the assertion that the U.S. has higher incarceration rates than Canada.

24. D. A. Thomas, "Sentencing in England," 42 Maryland L. Rev. (1983); A. Sanders & G. F. Cole, "The Prosecution of Weak Cases in England and Wales", 7 Crim. Justice Rev. (2) (1982).

25. Langbien, op. cit. supra; Weigend, "Sentencing in Germany," 42 Maryland L. Rev. (1983).

26. Steenhuis, Tigges & Essers, The Penal Climate in the Netherlands -- Sunny or Cloudy (1982).

27. U.S. Federal Bureau of Investigation (1982), op. cit. supra.

28. Canadian Centre for Justice Statistics, Statistics Canada (1985).

29. Teske, "The Involvement of Firearms in Selected Crime Categories: The Federal Republic of Germany 1976-1985," Unpublished Table (1987).

30. Home Office, Criminal Statistics England and Wales, 1983
(1984).

31. There are a number of compendia of international statistics, but they emphasize economic indicators and give short shrift to crime and criminal justice. A collection that emphasizes crime and criminal justice statistics is required.

32. Teske & Arnold, "Comparison of Crime Statistics of the U.S. and the Federal Republic of Germany" (1982).

33. Admissions include only new court commitments and not persons readmitted to prison for parole violations and the like.

34. U.S. Bureau of Justice Statistics, Offender-Based Transaction Statistics, 1982 (1985).

35. Department of Justice Canada (1983), op. cit. supra.

36. Leigh (1975), op. cit. supra.

37. Bottomley & Pease, Crime and Punishment -- Interpreting the Data (1984).

38. This will result in an artificially low incarceration rate.

39. This discussion of suspects relies heavily upon a letter from Dr. Hans-Jörg Albrecht of the Max Planck Institute to Dr. Steven Schlesinger, Director of the U.S. Bureau of Justice Statistics, dated January 8, 1987.

40. U.S. Bureau of Justice Statistics (1984), op. cit. supra.

41. U.S. Bureau of Justice Statistics, Jail Inmates, 1982 (1983).

42. U.S. Federal Bureau of Investigation, op. cit. supra.

43. Home Office (1984), op. cit. supra.

44. This is true for Canada and the United States, but not for Germany. Statistical reports for the Federal Republic do include younger juveniles in their counts. In an effort to assure comparability we have excluded younger juveniles from the admissions and population counts in this report.

45. The exact definition of the resident population may differ across countries. There may be slight differences in the handling of citizens travelling abroad, resident aliens and illegal aliens. These differences should not make a great deal of difference for our comparisons.

Proceedings of

The National Conference on Punishment for Criminal Offenses

Chapter 14

PUBLIC OPINION ABOUT PUNISHMENT AND PUBLIC POLICY RESPONSES

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THE ISSUES

The identification and sanctioning of the criminally deviant is an inherently political process. This political process involves mechanisms through which public demands are translated into legal prohibitions, legislative sentencing structures, and the actual punishments imposed on convicted offenders. The translation process requires that public opinion be mobilized, by either elected political leaders or by persons independent of the formal political process. Recent experience in two areas illustrate the political salience of such public demands. Since 1978, many states have passed determinate and mandatory sentencing statutes. (Blumstein, 1984) Leadership for the passage of this legislation was provided by legislators and other elected officials who were able to successfully mobilize public opinion in support of such changes. The most successful recent effort that was organized independently from the formal political process has been the drive to improve enforcement against and to increase sanctions for drunken drivers. (Heinzelmann, 1985)

Research into the criminal justice policy formation process has made it clear that public beliefs and preferences are important influences. (Flanagan, 1987) However, the specific mechanisms through which public desires are translated into penal sanctions are not well understood. On the other hand, recent studies of both public attitudes about punishment (Cullen, et al., 1985; Langworthy and Whitehead, 1986) and studies of legislative attitudes concerning criminal justice policy issues (McGarrell and Flanagan, 1986) have suggested that fundamental beliefs about the causes of crime are critical in shaping attitudes about criminal punishments. On the basis of their research with New York State legislators, McGarrell and Flanagan identified the views of constituents as important components in defining the ideological sets to

which legislators' criminal justice policy choices were closely tied. (1986)

While public opinion is an undeniably important influence in the development and prosecution of criminal sanctions, the proper role of public preferences is a matter of debate. The debate has been intensified by recent attempts to recast criminal sanctions into deserts-oriented models advocated by individuals such as vonHirsch (1976) and Fogel (1976). Many students of punishment structures recognize that attempts to operationalize these models should be guided by public preferences. (See, e.g., Nevares-Muniz, 1984) However, Blumstein and Cohen (1980, p.225) suggested three baseline requirements that must be met if sentencing policy is to be predicated on public opinion. First, there must be substantial agreement about what sentences are appropriate. Second, there must be a high positive correlation between judgments about offense seriousness and the severity of punishments desired. Finally, they argue that responsible policy formation requires that there be substantial correspondence between the severity of punishments the public desires and the punishments actually being imposed.

Empirical studies of punishment preferences have produced mixed results with respect to these requirements. The stability of discriminant distances between public judgments about sentence severity has not been great; that is, standard deviations have been large causing sentencing categories to overlap. Blumstein and Cohen (1980, p. 248) indicated that the high variance in their study of public attitudes in Allegheny County, Pennsylvania were due to distributions of judgments that were skewed by a small number of respondents who desired punishments considerably more severe than the norm. In a survey of public attitudes in Boston by Rossi, Simpson and Miller (1985, p. 83) they

found that high standard deviations were positively correlated with the high mean severity punishment preferences. On the other hand, empirical studies have found considerable stability among judgments about relative crime seriousness (Wolfgang, et al., 1985), and substantial structural correspondence between crime seriousness and punishment severity. (Hamilton and Rytina, 1980; Rossi, Simpson and Miller, 1985)

The third requirement articulated by Blumstein and Cohen is the most problematic. It is important that relative judgments about punishment structures be anchored into the actual punishments imposed in a jurisdiction. The most consistent empirical finding in this area is that the severity of punishments actually imposed by the criminal justice system are greatly exceeded by the punishment levels the public would like to see imposed. (Blumstein and Cohen, 1980)

On the other hand, it has been argued that the public systematically misunderstands many issues related to crime and justice, and that the level of public misunderstanding is particularly acute in the area of punishment policy. As Blumstein and Cohen observed about their survey respondents, "It is possible that the sentences called for derived more from a misconception of current practice than from disagreement with it." (1980, p. 259)

It is also important to note that citizen beliefs about appropriate punishment are often strong and powerfully articulated. (Flanagan, 1987) The argument against basing criminal sanctions on public opinion was forcefully made by Durham:

Using public judgments to determine the penalty for burglary of a residence may be akin to the use of such opinions to determine the prime rate, the percentage of hydrocarbons that is to be tolerated in the atmosphere, or the rules for testing new drugs prior to release into the open market. Matters relating to crime and punishment may seem different than these other kinds of affairs simply because citizens tend to have opinions, often strongly held opinions, about crime. Few citizens become emotional about the prime rate. However, the strength of convictions offers no assurance that public views are reasonable. (1985, p. 204)

As suggested above, the core problem with basing sentencing policies on public preferences is the disparity between those preferences and current practice. Blumstein and Cohen, for example, found that in general their respondents desired incarceration with about twice the frequency than such sentences were actually imposed in Pennsylvania. (1980, p. 258) In addition, they found that the mean incarceration periods desired were generally larger than actually imposed, and that among repeat offenders public preferences about time served were about double the times being served by Pennsylvania offenders. (p. 252) Such differences are probably due to the public being misinformed about crime-related issues (Bohem, 1986) and to the absence of decision consequences when citizens are asked for their judgments. This may be the worst of all worlds if public opinion is to be used for determining sentencing policy. First, the public incorrectly assesses the prevalence, incidence and seriousness of crime in society, and secondly they are constrained neither by current practice nor by the actual ability of government to provide jail and prison space.

From a rational public policy perspective, it may be fortunate that the normal process by which the public influences sanctioning policy is political and indirect. Usually, the legislature, executive agencies, and the judiciary act as a brake on the unconstrained public appetite for higher sanctions.

However imperfect, this process operates as a governor on the degree to which public preferences fuel the engine of criminal sanctions. It also suggests the inappropriateness of directly interpreting public preferences as valid indicators of aggregate societal requirements for criminal punishments.

This paper reports the results of a study of these policy issues as they relate to a recent national survey of Public Attitudes Concerning Criminal Offenses. This survey will subsequently be referred to as the "National Punishment Survey" or "NPS." In view of the foregoing discussion, it seems important to interpret the NPS findings within a broader political context. The analytical approach was to develop an operational baseline against which to evaluate the punishment preferences of this representative national sample. The potential public policy consequences of the preferences expressed in the survey were estimated by applying the punishment preferences to a recent conviction cohort from New York State. The likely impact was assessed through comparisons between the 1985 New York baseline outcomes and the modifications to sentencing practice that would result from the unconstrained punishment preferences expressed in the National Survey. Providing such real-world anchors for the NPS data should contribute to subsequent discussions about their meaning and their utility in the policy process.

THE NATIONAL SURVEY OF PUBLIC ATTITUDES CONCERNING CRIMINAL OFFENSES

Public attitudes about criminal punishment were assessed through a national telephone survey that was conducted at the Bowling Green University Population and Society Research Center from August to October of 1987. This survey was sponsored by a cooperative agreement between the U.S. Bureau of Justice Statistics and Bowling Green University. The survey was based on a

national sample of 1,920 randomly selected American Adults. Utilizing a series of structured vignettes, the survey obtained information about the punishment that respondents wanted to impose on convicted defendants.

Each vignette was constructed by randomly designating a constellation of case information from a series of 15 information dimensions. These dimensions were:

- A. Offender's Age (8 characterizations)
- B. Offender's Sex (2 characterizations)
- C. Larceny Offenses (5 offenses)
- D. Other Offenses (19 offenses)
- E. Victim's Age (8 characterizations)
- F. Victim's Sex (2 characterizations)
- G. Offender's Employment History (5 characterizations)
- H. Offender's Mental Condition (2 characterizations)
- I. Offender's Drug Dependence/Alcohol Abuse (4 characterizations)
- J. Offender's Prior Convictions for Violent Offenses (5 characterizations)
- K. Offender's Prior Convictions for Property Offenses (5 characterizations)
- L. Offender's Previous Incarcerations (5 characterizations)
- M. Length of Offender's Previous Incarcerations (6 characterizations)
- N. Weapon Used in Assaults (5 characterizations)

Eight vignettes were generated by a computer program for each interview and these became the stimuli for obtaining respondents' judgments about the punishment that should be imposed. For each vignette, the Survey obtained information about whether offenders should be incarcerated and, if so, the preferred lengths of confinement. This procedure produced punishment judgments about 15,360 randomly generated vignettes.* The large number of judgments about these randomly constructed vignettes permitted the separate estimation of aggregate, single dimension, and interaction effects. (Rossi, Simpson and Miller, 1985)

*For a more complete description of the NPS survey scenarios and procedures, see: Jacoby and Dunn, 1987.

Prior research in this area suggest that punishments preferred by the public will be more severe than the normal punishments that are actually being received by defendants. (Blumstein and Cohen, 1980) Addressing this question with the NPS was not a straightforward process because there are no comparable national-level data on the actual punishments being received by defendants in the United States. However, using inferences from data that are not directly comparable, it was possible to get a general sense of the direction and magnitude of differences.

First, because New York State data will be used to generate baseline information, it is important to compare New York sentencing practice with the sentences imposed in other states. Comparative sentencing data are not routinely available, although a recent report from the Bureau of Justice Statistics contained information about the sentencing practices of 13 states. (Koppel, 1984) Table 1 contains data from that report concerning the proportions of convicted felons who were incarcerated in seven states. These data indicate that the percentage of New York defendants who were incarcerated (44.5%) was in the middle of the distribution of the seven states. These

TABLE 1

Proportions of Convicted Offenders Incarcerated in Seven States*

<u>State</u>	<u>Year(s)</u>	<u>Percentage of Felons Incarcerated</u>
Minnesota	1980-81	15.0%
Illinois	1979-81	33.3%
New York	1982	44.5%
Maryland	1981-82	58.3%
Connecticut	1979-80	59.6%
N. Carolina	1981-82	62.8%

*Source: Koppel (1984)

states do not include a western state, but the east, south and midwestern regions are represented. Given this coverage and the range of incarceration percentages, it seems likely that the percentage of felons convicted who are incarcerated in New York would be characteristic of states in the middle range of the distribution of all states.

Table 2 contains the mean sentence lengths from in the Bureau of Justice Statistics report. These sentence means are more difficult to interpret than the data about the percentage of offenders incarcerated because states have different sentencing and good-time structures. These differences mean that sentences imposed translate into different amounts of time served. For example, in New York and Pennsylvania there was no good time off the minimum

TABLE 2
Mean Sentence Lengths of Incarcerated Felons in Six States*

State	Year(s)	All Felonies				Mean Sentence			
		Min	Max	Violent	Property	Min	Max	Min	Max
Pennsylvania	1981	14	39	25	70	13	38	9	25
New York	1982	40	79	53	99	25	59	26	59
California**	1979&81			59				36	
Wyoming	1981-84			69	112	25	55	19	43
Oklahoma**	1978-82			123		46		39	
Illinois	1979-81	80	173	131	277				
Illinois**				102					

*Source: Koppel (1984)

**Determinate or Fixed Indeterminate Sentencing System

which means that offenders must serve their entire minimum sentence before being eligible for parole. There were determinate sentencing systems in California and Oklahoma and, for part of the period, in Illinois which means that the sentences imposed reflect the time that will actually be served by

offenders. Although these data are not directly comparable across jurisdictions, they do suggest that prison sentences in New York were generally in the middle range, except when convictions involved drug-related offenses.

Together the data from the Bureau of Justice Statistics report suggest that sentences imposed in New York are not atypical of sentencing practices in other states. It therefore seems reasonable to examine the sentencing preferences from the NPS against a baseline of New York State Sentencing Practice.

THE DATA

Data concerning New York sentencing practices were obtained from the Offender Based Transaction Statistics capability maintained by the New York State Division of Criminal Justice Services. The Conviction Trends dataset that supported this analysis was drawn from the New York Computerized Criminal History Database. In addition, information about times served by defendants was provided by the New York State Department of Correctional Services. The year used as a baseline for the analysis was 1985.

Before it was possible to make meaningful comparisons between the NPS results and 1985 New York practice, several adjustments had to be made in both data sets. First, there were 1,165 scenarios for which respondents provided no sentencing information. Excluding these brought the number of usable scenarios to 14,195. Because reliable juvenile arrest and disposition information is not available from the New York Computerized Criminal History System (NYS CCH System), it was not possible to construct meaningful

comparisons for the sentences preferred by NPS respondents for those scenarios involving the 14 year old offender. Excluding these 956 scenarios reduced the number of scenarios that were usable for comparative purposes to 13,239.

Four major modifications were required to create a New York State analysis data set that was comparable to the scenarios involved in the NPS survey. First, the convictions that took place in 1985 were screened to exclude all adult convictions of offenders who were under 16 years old. It is possible in New York for juveniles to be convicted in the adult system when certain serious crimes are involved, and to make the data comparable these convictions of juveniles were excluded. Second, persons who are between 16 and 18 years old can be adjudicated as Youthful Offenders in New York State. Persons adjudicated under this option generally receive less punishment than those convicted as adults. However, this option is normally used with younger persons in the eligible category (16 and 17 year olds), and few 18 year olds are given Youthful Offender treatment. It also was not possible to obtain offense-specific information from the Department of Corrections concerning the times served by Youthful Offenders. Thus, this category of offenders was excluded from the NYS data set. A third group excluded from the analysis data set was individuals who were convicted for attempting to commit crimes. These cases were excluded because only completed crimes were included in the NPS vignettes. Finally, the analysis data set was restricted to New York State convictions that matched, as closely as possible, the NPS vignettes in terms of the crimes involved and the harm done. When these cases were excluded, the analysis data set (hereafter referred to as the NYS data) contained 49,684 convictions, a reduction of 202,188 from the total number of 1985 New York State adult convictions.

Next, the results from the NPS were reweighted by applying the distributions of actual sentences observed in the NYS analysis data set. This procedure was required to make meaningful comparisons between the NYS and NPS sentences. Sentences from the two cannot be directly compared because, although similar cases were present in both final data sets, the mix of cases about which judgments were made in the NPS was substantially different from the mix of cases actually sentenced in New York. Selected comparisons between the proportions of offenses in the two data sets are shown in Table 3.

TABLE 3

Distribution of Cases by Crime Type for the NPS and NYS Data Sets

CRIME TYPE	NPS	NYS
Larceny	31.4%	34.6%
Harassment	3.8%	14.3%
DWI-No Death	4.3%	24.4%
Murder/Manslaughter	12.1%	0.8%
DWI-Death	4.2%	0.1%

Larcenies were the modal offense category in both the NPS and the NYS data, but they constituted about 4 percentage points more of the New York convictions than of the NPS vignettes. The discrepancy was in the same direction, but larger, for the Harassment and DWI-No Death offense categories. Such differences from the New York proportions in those categories results in overestimates of the aggregate probabilities of incarceration and in the aggregate mean times served. Differences in the proportion of cases in the

Murder/Manslaughter and DWI-Death categories are in the opposite direction, but have the same net effect. Because these very serious crimes are so heavily overrepresented in the NPS scenarios compared with their actual occurrence in New York, they inflate aggregate punishment levels in ways that hinder meaningful comparisons. It should be noted that all aggregate raw punishment data from the NPS survey are valid only if one is willing to accept as meaningful the distribution of vignettes.

The results of both the NPS exclusions and the NPS reweighting process on the sentences imposed are illustrated in Table 4. The exclusion of

TABLE 4

Probabilities of Incarceration and Mean Time Served for:
Unweighted NPS Data, Weighted NPS Data, and NYS Analysis Data

	<u>Number of Sentences</u>	<u>Overall Percent Incarcerated</u>	<u>Overall Mean Time Served</u>
Unweighted NPS Data*	14,195	71.4%	135.7 months
Unweighted NPS Data: No Juveniles	13,239	76.8%	136.3 months
NPS Data Weighted: NYS Distribution	13,239	52.3%	57.1 months
NYS Analysis Data Set	49,684	42.0%	14.5 months

*Source: Jacoby and Dunn (1987)

the 956 juvenile vignette from the NPS data had an impact on the overall sentences desired. As would be anticipated, incarceration was less frequently desired for juveniles, and without these juvenile cases the percent of

respondents desiring incarceration increased from 71.4% to 76.8%. The mean time served, however, increased only slightly; from 135.7 months to 136.3 months. When the NPS sentences were reweighted using the distribution of 1985 New York offenses, only 52.3% of the actual New York cases would have been incarcerated and the mean time served for those cases dropped to 57.1 months. That is, the actual distribution of offenses reduced the total proportion incarcerated by about 32% and the time served by almost 60%. Finally, Table 4 shows the aggregate difference between the punishment preferences of the NPS respondents and the actual punishments that were involved in the 1985 New York conviction cohort. About 10% fewer defendants were incarcerated in New York and the average time served was about 3 1/2 years less than punishments based on the NPS responses.

COMPARING THE NPS AND NYS DATA

As anticipated from prior research concerning public attitudes about punishment, the NPS respondents were more punitive than the 1985 New York practice. As illustrated in Table 5, this differential generally existed for both the imposition of incarceration and for the lengths of times served. Table 5(a) shows the difference in overall incarceration probabilities was in the expected direction for female defendants, for young and old males (over 40) and for defendants with no prior convictions. The NPS respondents would have incarcerated fewer defendants with prior felony convictions than were actually incarcerated in New York.

NPS scenarios that resulted in punishments involving times served of more than one year, for purposes of this analysis, were considered to be prison sentences. When the NPS sentences involving more than one year are

TABLE 5 (a)

Probabilities of Incarceration, Jail and Prison and Mean Time Served in Jail and Prison
Overall, and by Defendant's Sex, Age and Prior Felony Convictions
Based on 1985 New York State Convictions and the 1987 National Punishment Survey*

	% of Tot. NYS Cases <u>N=49,684</u>		Overall Incarceration Probability	Probability of Jail	Mean Time Served Jail	Probability of Prison	Mean Time Served Prison
TOTAL CONVICTIONS	100.0	NYS NPS	.420 .523	.309 .240	2.5 5.7	.112 .283	47.6 100.6
- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
Females	14.3	NYS NPS	.338 .352	.308 .183	2.0 5.4	.030 .169	34.2 89.9
Males	85.7	NYS NPS	.434 .551	.309 .243	2.6 5.8	.125 .302	48.2 101.6
Young Males	73.4	NYS NPS	.464 .553	.326 .238	2.6 6.1	.138 .315	47.9 100.3
Old Males	12.3	NYS NPS	.255 .542	.206 .319	2.2 4.8	.049 .223	53.6 112.6
- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -
Nb Prior Felony Convictions	84.1	NYS NPS	.353 .433	.276 .236	2.4 5.6	.077 .246	43.9 93.1
Prior Felony Convictions	15.9	NYS NPS	.774 .736	.479 .261	2.8 6.8	.295 .475	58.8 107.5
- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -	- - - - -

*The New York data were drawn from the State's Computerized Criminal History System. The OCH data reported here include only the National Punishment Survey Offenses. The National Punishment Survey results reported here were reweighted using the distribution of 1985 New York State convictions.

TABLE 5 (b)

Probabilities of Incarceration, Jail and Prison and Mean Time Served in Jail and Prison
By Crime Types Similar to Those Used in the Uniform Crime Reports
Based on 1985 New York State Convictions and the 1987 National Punishment Survey*

	% of Tot. NYS Cases <u>N=49,684</u>		Overall Incarceration Probability	Probability of Jail	Mean Time Served Jail	Probability of Prison	Mean Time Served Prison
PART 1 UCR OFFENSES							
Murder and Manslaughter	0.8	NYS NPS	1.000 .954	NA .007	NA 4.7	1.000 .947	87.6 373.0
Forcible Rape	0.4	NYS NPS	1.000 .935	NA .049	NA 7.9	1.000 .887	79.4 208.2
Robbery	5.5	NYS NPS	.956 .850	.071 .201	5.6 7.6	.885 .649	51.3 123.4
Aggravated Assault	2.0	NYS NPS	.840 .755	.379 .177	4.5 6.3	.461 .578	37.2 108.0
Burglary	4.4	NYS NPS	.861 .628	.256 .289	5.6 6.5	.605 .388	37.0 77.9
Larceny	34.6	NYS NPS	.595 .503	.559 .243	2.5 6.4	.036 .259	23.4 87.7
Arson	0.1	NYS NPS	.897 .724	.138 .103	5.0 5.8	.759 .621	38.5 112.1
PART 2 UCR OFFENSES							
Drug Offenses	0.7	NYS NPS	.832 .546	.534 .240	3.2 7.7	.298 .306	77.3 119.7
DWI Involving Death	0.1	NYS NPS	.929 .857	.500 .107	5.4 6.4	.429 .750	38.1 171.2
DWI	24.5	NYS NPS	.097 .446	.097 .270	1.6 4.8	NA .176	NA 77.3
Simple Assault	7.8	NYS NPS	.522 .773	.521 .284	2.7 6.9	NA .489	NA 96.3
Harassment	14.3	NYS NPS	.133 .364	.133 .174	0.3 4.7	NA .190	NA 78.4

compared with the NYS prison sentences, it is clear that the public demand for punishment was greater than occurred in New York. NPS respondents would have imposed prison sentences in over 28% of these cases, almost 3 times as frequently as actually occurred. In addition, the overall NPS mean time served was over 100 months (8 1/3 years) in these cases; longer than New York practice by a factor of 2. This differential is consistent across the Sex, Age and Prior Record disaggregations.

The probability of receiving a sentence of incarceration in local jail (sentences of 12 months or less) was higher in actual NYS practice than if the NPS respondent preferences had been the basis for this determination. The probability of incarceration in jail in the NPS data was about 24%, which is 1/3 lower than NYS practice. This pattern was consistent across the Table 5(a) disaggregations, with the exception of Old Males (over 40). This group actually received jail sentences about 21% of the time, but would have received jail sentences about 32% of the time from NPS respondents. The overall average jail time served preferred by NPS respondents was about 6 months; again about double the time served by New York Jail inmates.

One factor that may have exacerbated the differential between the desired and actual times served is the way survey respondents understood the relationship between time served and sentence lengths in their jurisdiction. Although respondents were asked to indicate the amount of time offenders should be incarcerated, it is likely that their responses were influenced by sentencing practices in their jurisdiction. Whether respondents were able to make the distinction between sentences imposed and time actually served by offenders is not known, but it seems likely that many responded to the survey

with sentences as their frame of reference. Further, it seem likely that respondents' perceptions of sentencing were influenced by media accounts in publicized cases and this is likely to further to distort their conception of how much time offenders actually serve.

The data indicate the same trends when offense-specific comparisons are made between the NPS results and NYS practice. These data, disaggregated by UCR-like offense categories, are presented in Table 5(b). At first blush the offense based comparisons suggest that the differential between NPS and NYS is different than suggested in the overall analysis. This is particularly true with the prison times served. As indicated above, the ratio of NPS to NYS mean prison time served estimates are consistently about 2 in Table 5a, however the ratios are in many cases greater when specific crime types are considered (as shown in Table 5b). Such differences are hidden in Table 5a as a function of the differential distribution of crimes for prison bound persons in the NPS and NYS data. Two-thirds of the New York State convictions with sentences to prison are represented by the two crimes of burglary and robbery. Three offenses; DWI, simple assault and harassment; can not receive prison sentences. Using the NPS responses to incarceration and sentence length, two-thirds of the convictions with sentences to prison would be represented by the crimes of larceny, DWI, and simple assault.

The data in Table 5(b) do suggest the impact that public sentiment might have if directly translated into penal policy. New York State actually incarcerated a higher proportion of very serious offenders than the NPS respondents would have preferred. Convictions involving Murder/Manslaughter and Forcible Rape require mandatory imprisonment in New York under the 1978

Violent Felony Offender Statutes. Thus the probability of prison for these crimes in NYS exceeds that obtained from NPS respondents. However, the NPS respondents would have imprisoned at a higher rate persons convicted of Aggravated Assault, Larceny and DWI Involving Death. Finally, they would have sent to prison a substantial proportion of persons convicted for DWI (.176), Simple Assault (.489) and Harassment (.190). These offenses are misdemeanors under New York State law, and prison sentences cannot flow from conviction. For these three offenses any NPS prison incarcerations exceed the number possible in New York.

Finally, it is important to note that in all cases, the preferences of NPS respondents was for substantially longer times served than NYS offenders were actually serving. There are important offense specific differences between the NPS and NYS average prison and jail times served, however. Among prison times served, there was the greatest agreement between NPS respondents and NYS practice with respect to drug crimes where the differential was only about 1.5 to 1. NPS respondents would like to have seen drug offenders serve an average of about 120 months, but they serve only 77 months in New York. It may be that the narrowness of this differential reflects the relative severity of the New York State drug laws compared with other states. The highest differential of 4.5 to 1 is associated with DWI offenses involving a death. In these cases the NPS respondents would have preferred to see offenders serve about 171 months (14 1/4 years) whereas when these offenders are imprisoned they serve only about 38 months in New York. These survey results are consistent with evidence reported elsewhere that clearly indicates the general public takes a much more serious view of this offense than does the criminal justice system in general. (Heinzelmann, 1985)

A somewhat different trend is evident with respect to offense specific jail times served. While the NPS respondents preferred longer times served than were actually imposed in New York, there was greater congruence with respect to more serious crimes. Excluding Murder and Forcible Rape which are Violent Felony Offenses and thus cannot be disposed as misdemeanors, the average NPS preferred jail time served for the more serious offenses was somewhat more than 6 months. The time served differential for these more serious offenses receiving jail sentences was 1.2 to 1 (Burglary, Arson and DWI-Death) and 1.4 to 1 (Robbery and Aggravated Assault). The differentials were greater for the less serious offense categories. As the desired punishment severity of NPS respondents decline among these offenses, the differential between them and NYS practice increased. The NPS times served and the ratio of differences from NYS practice for these crimes were ordered as follows:

Drug Offenses	7.7 months	2.4 to 1
Simple Assault	6.9 months	2.6 to 1
Larceny	6.5 months	2.6 to 1
DWI	4.8 months	3.0 to 1
Harassment	4.7 months	15.6 to 1

In general, when the offenses involved were more serious the NPS respondents less frequently chose shorter jail-like terms. When such terms were deemed appropriate, however, they tended to more closely reflect the actual 1985 NYS practice than when less serious offenses were involved.

The comparison of these two data sets illustrate the importance of interpreting the NPS survey results very carefully. Information about punishment from the NPS survey must be disaggregated to the offense level if generalizations are to be made about the actual punishments that would result. Generalizations concerning the impacts of NPS punishments that are made at a

more aggregate level require information about the relative distribution of sentences in the jurisdiction to which the generalizations are being made. Erroneous inferences would be made, for example, by interpreting the NPS data as indicating that following public preferences would result in 71% of all defendants being incarcerated and that the mean time served for these defendants would be 135.7 months. It would probably be more accurate to infer that overall 52% of defendants would be incarcerated based on NPS, and that the best point estimate of the average mean time served would be 57.1 months. This inference is limited, of course, by the extent to which the New York distributions of offenses are representative of such distributions across the United States. It is clear, however, that the New York offense distribution is more representative than the distribution of offenses in the NPS survey, and the available data do suggest that New York is not atypical with respect to the distribution of arrests (UCR, 1986) or, as discussed above, the severity of sentences imposed. Given this broad level of representativeness, New York practice seems an appropriate baseline against which to assess the potential impact of the NPS respondent preferences on correctional practice.

THE MODELING PROCESS

The methods used to estimate the impact on incarcerated populations that would result from public preferences being directly translated into punishment practice in New York were based, in part, on prior simulation work undertaken at the New York State Division of Criminal Justice Services. This work has included assistance to the New York Sentencing Guidelines Commission in their efforts to convert the current indeterminate sentencing system to a determinate sentencing system, development of a general purpose model to

estimate the impact on prisons of proposed modifications to the existing indeterminate sentencing laws, and the development of a demographically-driven prison population projection model (see Greenstein, et al., 1986). From these projects, data sets have been collected and techniques developed for making estimates of expected number of incarcerations and their estimated time served; some of these were used in the present undertaking.

In past efforts aimed at modeling the impact of proposed legislation, it was possible to deal with specific penal law offenses and known or proposed modifications to sentencing provisions for these offenses. Such was not the case with the analysis reported here. Instead, the NPS vignettes referred to generic offenses and the "sentencing" information referred only to how long the person should be incarcerated for this particular crime. Respondents were not asked to specify New York-like minimum or maximum terms.

Comparisons could only be made based on the proportions of offenders given incarcerative sentences within broad offense categories and based on the times they would like to see offenders serve. To make a translation to a New York experience and make the comparison between the NPS results and NYS practices, a means had to be developed to weigh the NPS responses to reflect the occurrence of these events in the 1985 New York conviction cohort. Separate estimates of the probability of incarceration (jail or prison) and the preferred average length of sentence (12 months and under, over 12 months) were developed for 120 specific disaggregations of the NPS vignettes. The disaggregations were based on the age and sex of offenders (males 18-39, males 40+, females), their prior criminal history (no prior felony-like conviction, felony-like conviction), and the generic offense type (aggregated into 20

offense types). Comparable estimates of actual practice were developed for the NYS conviction cohort for each of these 120 disaggregations.

For comparison purposes, NPS estimates of the probabilities of incarceration for jail and prison were applied to the actual number of convictions within each of these cells to generate expected jail and prison admissions under the preferred NPS survey responses. These could be directly compared with the actual number jail and prison admissions found within the conviction cohort. Any desired aggregation could be produced by simply summing the appropriate cells of the expected or actual admissions and convictions. From these, new probabilities of incarceration were calculated at the desired level of aggregation.

Comparison involving the NPS estimates of appropriate time served required the estimation of actual time served for the NYS conviction cohort. Information within the conviction cohort consisted only of the determinate jail sentence or the indeterminate minimum and maximum prison sentence. To develop time served estimates, two different approaches were used. In New York for every 2 days served on a jail sentence 1 day of "good time" is earned and taken off the length of the sentence. This good time is almost uniformly granted. Because of this, time served estimates for jail sentences were set at two-thirds the value of the jail sentence.

The estimation of actual time served for prison sentences was developed from the New York State Department of Correctional Services 1982 - 1984 first release records of those persons released upon parole, conditional release, or maximum expiration of sentence. Linear regression equations were developed using total time served as the dependent variable and minimum sentence length

as the independent variable. Separate regression coefficients were estimated for specific groups formed on the basis of sex, type of commitment crime, and prior felony conviction. Among males, 40 separate equations were developed. The small number of female releases prohibited using such detailed disaggregations. Instead, 6 separate equations based on New York State felony class and violent felony distinctions were developed. These regression equations were then applied to the minimum prison sentences found within the conviction cohort to arrive at estimated prison time served. For two crimes (Murder 2nd and Criminal Sale of a Controlled Substance 1st), considered A-1 Felonies in New York, the releases were atypical and the regression equations were abandoned. Instead, the actual minimum sentence was substituted for the estimated time served. From these time served estimates separate average time served estimates for jail and prison were calculated for the 120 specific disaggregations.

It was possible to directly compare these estimates of correctional impact to similar estimates that were based on the punishment preferences of the NPS respondents. Since the survey did not ask the respondents to make a distinction between jail and prison, time served lengths less than or equal to one year were categorized as jail and those greater than 1 year as prison sentences. Comparisons above this disaggregation required the weighting of each average time served by the appropriate estimate of the number of persons going to jail or prison. Finally, total jail and prison sentences were calculated by applying the appropriate incarceration probabilities to the number of cases in each subgroup and total Person/Years of time incarcerated was estimated by multiplying the number incarcerated by each estimated mean time served.

ESTIMATED EFFECTS OF THE PUBLIC DEMAND FOR PUNISHMENT

It is first important to reiterate from Table 5(a) that following NPS survey respondent preferences would result in the probability of receiving a jail sentence being reduced from .309 (NYS) to .240 (NPS). The average time served would, however, increase from 2.5 months (NYS) to 5.7 months (NPS) if the survey results were applied to New York Practice. The NPS trend to desire fewer persons to serve less than one year was more than compensated for by the survey respondent's desire to punish a higher proportion of offenders with long sentences that would involve sentencing to state prison. When applied to the New York distributions, the NPS respondent preferences would have resulted a prison incarceration probability of .283 which is more than double the actual 1985 New York practice ($p = .112$). As with Jail sentences, the NPS Prison sentences were substantially higher than NYS practice (100.6 months compared with 47.6 months).

The New York model for projecting correctional practice was first estimated for current practice using New York practice for the crimes involved in the NPS vignettes. It should be emphasized that the results of this process reflect the expected sentence types (prison/jail) and the expected times that the 1985 offenders would serve for the limited set of offenses involved in the NPS study. Direct translations therefore cannot be made to actual jail and prison populations. The results of the "Current Practice" model are reported in Table 6. It is estimated that the NPS offense and offender characteristics would have resulted in 15,330 jail admissions and 5,544 admissions to prison in 1985. When the disaggregated admissions were applied to the average times served it was estimated that the cumulative

TABLE 6

Number of Jail and Prison Sentences and Resulting Person/Years of Incarceration Overall, and by Crime Types Similar to Those Used in the Uniform Crime Reports Based on 1985 New York State Convictions and the 1987 National Punishment Survey

		Sentences to <u>Jail</u>	Estimated Person/Yrs Served	Sentences to <u>Prison</u>	Estimated Person/Yrs Served
TOTAL POPULATION	NYS	15330	3203.22	5544	22002.76
	NPS	11926	5752.25	14055	117824.46
PART 1 UCR OFFENSES					
Murder and Manslaughter	NYS	NA	NA	412	3010.20
	NPS	3	1.17	390	12120.95
Forcible Rape	NYS	3	1.67	180	1190.46
	NPS	9	5.91	164	2845.88
Robbery	NYS	194	90.94	2414	10310.18
	NPS	549	347.59	1769	18197.22
Aggravated Assault	NYS	382	142.98	465	1441.76
	NPS	178	93.13	583	5245.70
Burglary	NYS	555	256.75	1311	4044.14
	NPS	627	338.87	733	4757.81
Larceny	NYS	9600	1994.56	617	1201.87
	NPS	4179	2214.42	4452	32520.48
Arson	NYS	4	1.67	22	70.55
	NPS	3	1.45	18	168.20
PART 2 UCR OFFENSES					
Drug Offenses	NYS	194	51.19	108	695.51
	NPS	87	55.51	111	1106.97
DWI Involving Death	NYS	14	6.28	12	38.10
	NPS	3	1.59	21	299.53
DWI	NYS	1422	184.40	NA	NA
	NPS	3956	1583.41	2575	16579.74
Simple Assault	NYS	2017	449.12	NA	NA
	NPS	1101	628.55	1892	15180.56
Harassment	NYS	945	23.66	NA	NA
	NPS	1231	480.65	1347	8801.41

impact of these sentences was 3,203 Person/Years of jail time and 22,003 Person/Years of prison time.

Interpreting these data in operational terms is not a straight forward process. For the jail sentences, all of these involve times served of a year or less which means that several offenders could be serving terms concurrently or consecutively during the year. For example, four offenders sentenced to jail terms of 3 months could be incarcerated at the same time, thereby occupying four beds, or they could be incarcerated sequentially, thereby occupying one bed for the entire year. The problem of interpretation is further complicated because offenders would be serving their sentences in county jails across New York State, in a variety of separate county-level institutions. Thus understanding the net impact on jail space would require specific information about the actual distribution of jail spaces currently allocated to offender types included in the NPS vignettes. Such information is not available. The result of these problems is that there is no way to translate the estimated new jail admissions and Person/Years served into information about estimated jail capacity requirements. However, it was possible to estimate the differential in maintenance costs. In 1983 the statewide average daily maintenance costs incurred for local jail inmates was \$22.14 in New York state. (Guider, 1985) Multiplying these average maintenance costs by the estimated Person/Years that would have been served under NYS practice and under NPS times served, provides an index of the additional financial cost that would be associated with basing punishment directly on public preferences. These costs were calculated in the following manner, using the data in Table 6:

Total Estimated Inmate Maintenance Costs =
(Person Years) * (365 days/year) * (Average Daily Per Capita Cost)

$$\begin{aligned} \text{NYS} &= 3,203.22 * 365 * \$22.14 \\ &= \$25,885,541 \end{aligned}$$

$$\begin{aligned} \text{NPS} &= 5,752.25 * 365 * \$22.14 \\ &= \$46,484,506 \end{aligned}$$

The estimated maintenance costs that would be associated with using public preferences to sentence offenders to local jails would be more than double the amount spent on these inmates in the current practice model (about \$20.6 million more). It should be noted that the total amount spent on incarcerating jail inmates in New York during 1983 was about \$336.6 million, so the costs associated with the NPS vignettes in the NYS current practice model were about 6.7% of the actual amount spent on inmate maintenance. Using the NPS model, the maintenance costs for those inmates would have been about 13.8% of the actual amount of public funds spent on maintaining jail inmates in 1983.

The cost differential with respect to offenders expected to be incarcerated in state prison under the two models is even greater. First, the NPS respondents would have sent some 14,055 offenders to prison in 1985, compared with the 5,544 actually sentenced to prison for the NPS crime types. This is an increase of 8,511 offenders who would have been sent to prison if public preferences, as expressed through the NPS survey, had determined sentencing practice. Accommodating these additional 8,511 sentences to state prison would have required 8,511 beds. This can be estimated with relative certainty, in contrast to the jail space requirement problem. This is first because all persons sentenced would go a single state correctional system and secondly because none of the times served would be for less than a full year.

This means that all those incarcerated would have required a separate bed. In 1985 the York State Department of Corrections was operating at capacity, which means that 8,511 new beds would have been required. New prisons in New York come in about 500 bed increments, which means that about 17 new prisons would have to be constructed to support this level demand for new bedspace. The construction costs for new bedspace in New York are about \$100,000 per maximum security bed and about \$60,000 per medium security bed. Only 7.8% of the New York prison inmates were held in minimum security facilities in 1983, and it is probable that these new admissions would not be likely candidates for minimum security settings during their first year of incarceration. Thus, assuming that all 8,511 were classified to maximum and medium security institutions on the basis of the 1983 distribution between those facilities, (Guider, 1985) 5,413 would have required maximum security space (63.6%) and 3,098 would have required medium security space (36.4%). Applying these percentages to the construction costs:

$$\begin{aligned} \text{Cost of Constructing Additional Bedspace} &= \\ &[(\text{Max. Security Beds Required}) * (\text{Max. Security Const. Costs})] + \\ &[(\text{Med. Security Beds Required}) * (\text{Med. Security Const. Costs})] \end{aligned}$$

$$\begin{aligned} \text{Cost} &= (5,413 * \$100,000) + (3,098 * 60,000) \\ &= \$541,300,000 + \$185,880,000 \\ &= \$727,180,000 \end{aligned}$$

That is, under the assumptions specified, the cost for construction of new facilities that would have to be incurred by New York State if the NPS public preferences had been directly translated into practice would have exceeded \$727 million.

It is also possible to calculate projected maintenance costs for the larger prison population, and these costs also reflect the longer times served that would be associated with the NPS preferences. The NPS offenses under New

York practice would have generated 22,002.76 Person/Years of time to be served by the 5,544 prison inmates involved. The NPS respondents would have imprisoned 14,055 inmates requiring an estimated total prison time of 117,824.46 Person/Years of prison time. To the difference of 95821.70 additional Person/Years the proportions of maximum and medium security inmates, noted above, were applied. The average annual inmate maintenance cost in 1983 was \$16,801 for maximum security inmates and \$23,687 for medium security inmates. (Guider, 1985) Applying these maintenance costs to the additional prisoner/years that would have to be served if the NPS punishment preferences had been operating:

$$\begin{aligned} \text{Cost of Maintenance for Total Person/Years of Incarceration} &= \\ [(\text{Max. Security Person/Years}) * (\text{Max. Security Maint. Costs})] + \\ [(\text{Med. Security Person/Years}) * (\text{Med. Security Maint. Costs})] \end{aligned}$$

$$\begin{aligned} \text{Cost} &= (60,942.60 * \$16,801) + (34,879.10 * \$23,678) \\ &= \$1,023,896,623 + \$825,867,330 \\ &= \$1,849,763,953 \end{aligned}$$

The maintenance costs for the additional prisoners who would have been incarcerated on the basis of NPS respondent preferences was thus estimated at about \$1.850 billion over the period of their incarceration.

The offense specific estimates of additional jail and prison admissions and times served illustrate the effects of applying the NPS punishment preferences to the distributions of the NYS offenses that were involved in the survey. The largest difference among jail sentences was with DWI offenses. The actual probability of incarceration for these offenses was .097 and the mean time served was 1.6 months. The proportion of DWI offenders who would have been received jail sentences from NPS respondents was .270 and the preferred time served was 4.8 months. Because DWI offenses were relatively numerous in actual practice (24.5% of the cases using the NYS distributions),

the impact of these differences was great. Survey respondents would have jailed 3,956 of these offenders, 2,534 more than were actually incarcerated in New York during 1985. The longer time served desired by NPS respondents for DWI offenses further separated the consequences of their preferences from actual practice. The NYS defendants sentence for DWI received a total of 184 Person/Years of jail incarceration. However, the NPS respondents would have sentenced offenders to a total of 1,583 years of jail, which is more than 8.5 times more than actual NYS practice. There is a similar trend with Harassment offenses, where the Person/Years differential exceeds 20 to 1, but the actual numbers involved are considerably smaller (480.65 Person/Years for the NPS data, 23.66 Person/Years for NYS practice).

The picture is somewhat different for persons receiving sentences of more than a year (prison). Actual practice in New York resulted in a greater number of offenders convicted of Murder, Forcible Rape, Robbery and Aggravated Assault being sentenced to prison than would have been the case if the NPS respondents preferences were followed. In each case, however, the longer times served preferred by NPS respondents resulted in longer estimated Person/Years of prison time to be served by the smaller group of offenders they identified for imprisonment.

Offenders convicted of Larceny would have been incarcerated at a higher rate by NPS respondents and in addition, the mean preferred time served was considerably longer than NYS practice. The result was that for this high volume offense (34.6% of all survey offenses in actual practice) NPS respondents would have sent 4,452 offenders to prison compared with 617 who were actually imprisoned. The NPS offenders would have spent a total of

32,5201.48 years in prison, compared with the estimated 1,201.87 total years which the NYS offenders actually were required to serve.- In addition, the NPS respondents would have sentenced to prison a substantial number of offenders who were convicted of DWI, Simple Assault, and Harassment. These offenses are Misdemeanors in New York; convicted offenders would not have been eligible for prison sentences. The net effect of prison sentences for these offenses would have been an estimated additional 5,814 prison admissions, and these offenders would have been required to serve an estimated 13,216.23 Person/Years of time. The handling of these offenders accounted for about 11% of the total increase in Person/Years of time served in prison associated with the NPS preference structure.

SUMMARY AND IMPLICATIONS

First it is important to reiterate that it is incorrect to interpret the NPS survey results as reflecting what public preferences would do to sentencing if they were applied nationally or to any jurisdiction.* Interpreting the meaning of the NPS data at aggregate levels requires that the public's preferences be examined in terms of the actual distribution of NPS offenses within the jurisdiction. Given the selection of offenses involved in the NPS scenarios, it is clear that the overall incarceration percentages and times served seriously overstate the actual changes that would result if public preferences were directly translated into punishment practice.

The NPS respondents, however, did desire substantially more punishment than was imposed for the Survey offenses in New York during 1985. The Survey respondents would have incarcerated 52% of the New York offenders and the average time they would like these offenders to have served was over 57

months. In practice New York judges incarcerated 42% of these offenders and the estimated time served was about 14 months. These data suggest the nature of the differential was in the direction that would have been predicted from the prior literature on public punishment preferences.

The primary purpose for undertaking this analysis was to provide a baseline against which public preferences about punishment can be assessed. Financial costs to government associated with differing policy alternatives are one measure that is frequently used for such baselines. Comparing alternatives in terms of projected costs is convenient because the underlying unit of comparison is well understood and is interpreted in a similar fashion by many people. It is also useful because it suggests how much of the limited governmental fiscal pie will be required to support a particular policy option. The baseline for examining the NPS respondent preferences was an assessment of the additional governmental costs that would have been associated with applying those preferences to the New York offenders who would have been involved in 1985. The results of this analysis indicate the costs of a policy in which actual sentencing practice closely paralleled the NPS respondent preferences would be very high.

When the estimated \$727 million of new prison construction costs that would have been incurred are added to the \$1.850 billion of estimated total inmate maintenance costs, the total additional cost to New York State Government would have exceeded \$2.5 billion if the NPS respondent preferences governed 1985 practice. When added to the estimated additional maintenance expenditures that would have been required for local jails, the estimated total cost would increase to about \$2.6 billion for one year of admissions to

the correctional system in New York State, plus the costs associated with any additional local jail construction that would have been necessitated.

Because the NPS mean expected jail time served was about 6 months, admissions and releases can be expected to equalize within the first year which means the additional maintenance costs would stabilize within one year. Thus, if convictions in subsequent years were to remain at 1985 levels and if sentences were based on 1985 NPS practice, the continuing estimated additional cost to local New York governments would be \$20.6 million each year.

The additional 8,511 admissions that would have taken place in New York if NPS preferences determined sentencing in 1985 would have increased actual prison admissions by 68% over the 12,461 actually admitted in that year. In December, 1985 the New York State prison population stood at 35,554. Assuming none of the new admissions were also released in 1985, the 8,511 new admissions would have increased the prison population to 44,065, an increase of almost 24%.

The additional 1985 State level costs associated with NPS practice would include \$727 million for prison construction, assuming the funds to construct the additional space needed were expended in 1985. The 1985 maintenance costs for the 8,511 additional prisoners, assuming a 64% to 35% distribution of maximum and medium security classification assignments, would be \$231 million. Thus, the estimated total additional expenditures that would have been incurred by following NPS preferences in 1985 amount to \$958 million. The total FY 1984-85 disbursements by New York State were \$35.4 billion (1984-85 New York Statistical Yearbook p. 344), which means that almost 3% of the

entire state budget that year would have been required to accommodate the additional NPS prisoners.

Again assuming that convictions in subsequent years were to remain at 1985 levels and that sentences continue to be based on 1985 NPS practice, an estimate of the total additional costs can be generated. Under these assumptions, additional prison construction and maintenance costs of similar magnitudes would be incurred on an annual basis and would accumulate until the state level process stabilized with relatively equal numbers of admissions and releases. With an NPS mean prison time served of over 100 months it would be about 8 years before additional annual costs would stabilize. The total NPS related estimated cost in the eighth year would be about \$2.6 billion. The estimated total net additional cost to New York State associated with following NPS respondent punishment preferences for 8 years would be about \$14.14 billion. After the eighth year construction costs would no longer be a factor, and the estimated additional annual maintenance costs would stabilize at about \$1.85 billion each year thereafter.

Public preferences about punishment are largely unconstrained by the consequences associated with those choices. That is not to say that the public choices are bases on whimsy, or that public preferences should be ignored in determining penal policy. This is also not an attempt to portray our fellow citizens as unthinking louts who harbor ugly desires for draconian revenges. It does seem likely, however, that most citizens are unaware of many collateral consequences that would flow from the unconstrained pursuit of their expressed desires. In addition, it seems reasonable to suppose that if the public were better informed about such issues, they would use this

information to modify their punishment preference structures. It seems unlikely, however, that political leaders and the media will behave differently in the future, as it is not in their interest to defuse public misperception about the issues of crime and punishments.

On the other hand, it seems likely that no state could afford to pursue a policy of totally satisfying the public demand for punishment. As imperfect as the political process is for translating public preferences into punishment policy, there are constraints that effectively moderate excesses. Legislative and executive department decision makers tend to be especially sensitive to the fiscal implications of policy options, so it is most important to make them aware of the costs associated with the unconstrained public appetite for criminal punishment.

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