SENTENCING GUIDELINES: STRUCTURING JUDICIAL DISCRETION

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
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REPORT ON THE FEASIBILITY STUDY

By

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ABSTRACT

Justice demands that two individuals convicted of similar offenses, with similar backgrounds and criminal histories, should receive sentences that are roughly the same. Nevertheless, perceived disparities in sentencing have led to public loss of confidence in the fair and impartial administration of criminal justice and have led many to advocate the elimination of the sentencing discretion of the trial court judge.

Building upon their earlier success in devising guidelines for parole decision-making, the research staff here describe their efforts at testing the feasibility of developing sentencing guidelines. Their report details the premises, methodology and findings of the two-year feasibility study which undertook to see whether or not a guideline system could make explicit the underlying sentencing policy of a given court system. The research staff relates such methodological concerns as site selection, pilot analysis, preliminary modeling, testing, and validation.

Hundreds of actual sentencing decisions from Colorado and Vermont were coded and analyzed to identify the significant information items actually used by judges to determine a sentence. The analysis showed that only a relatively small number of key items were used as the basis for the sentencing decision in the vast majority of cases. By showing the weights given to factors such as crime seriousness and prior criminal record of the defendant, the staff was able to develop a simple chart that provided judges with information on how their colleagues would have sentenced in the vast majority of similar cases. This series of charts summarizing actual sentencing practices in a jurisdiction, forms the heart of the guidelines system.

The system considers the guideline sentence as advisory only, but requires that a judge give written reasons for his decision to "go outside the guidelines" in a particular case. The guidelines system offers a middle course between retaining the present appearance of a lack of consistent policy, and mandatory sentences set by a legislature unaware of the particular circumstances surrounding a case on which a judge is required to pass sentence. Sentencing guidelines are seen as a means to guide and structure—not eliminate—judicial discretion, so as to aid judges in reaching a fair and equitable sentencing decision.

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This is one of a series of reports on the Sentencing Guidelines project prepared by members of the research team. The overall aim of the research is the testing, development, demonstration, and use of sentencing guidelines as a tool to aid trial court judges throughout the nation in achieving equity in the imposition of sentence.

The feasibility study concluded on June 30, 1976, and this report only deals with project activity up until that date. Limited distribution was made of a report dated October 1976 and this document is essentially similar to that report with only minor modifications. The feasibility phase was directed by Don M. Gottfredson, Jack M. Kress, and Leslie T. Wilkins. On July 1, 1976, the project entered a pilot implementation phase which incorporated additional project activities in Denver County (Denver, Colorado), Essex County (Newark, New Jersey), Cook County (Chicago, Illinois), Maricopa County (Phoenix, Arizona), and Philadelphia. The director of the implementation study is Jack M. Kress. Both phases of the Sentencing Guidelines project have been monitored for LEAA by Ms. Cheryl Martorana. The authors wish here to acknowledge their indebtedness to Ms. Martorana for her many contributions and tireless efforts in the quest for equitable sentencing.

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While our debt is obviously great to all of those who have helped us, the points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the United States Department of Justice or any of the other above named agencies, groups, or individuals.

PREFACE

I am proud to have been associated with this project for the past two years. Over that time, I have become convinced that there is really no way for judges in this country at this time to continue to defend unreasoned, guesswork, indeterminate sentencing. But there is also no reason to go to the other extreme (unfortunately being suggested by many today) of mechanical and inhuman mandatory sentencing. Sentencing guidelines are an attractive and intelligent compromise between these two extremes.

We only had a vague idea of what we were looking for when we started on this project. We knew there were problems with the way sentencing had always been performed, but couldn't put our finger on the sticking point. I have sentenced hundreds of criminal offenders and the difficult responsibilities that attach to sentencing haven't become any easier for me the longer I have done it.

From my own experience, about ten percent of the time involves a case in which I can't readily determine what I want to do. I've got to think about it for awhile, maybe confer with some of my colleagues. Figuratively speaking, it's a coin flip sometimes and that is rather drastic when you are talking about somebody's personal liberty.

A lot of people say sentencing is disparate. That is to say, I'm giving a writer of bad checks a probation and my colleague in Sioux City is giving another check-writer a ten year sentence. These two defendants, it is then claimed, are being treated unequally and, therefore, unfairly. Now, a lot of this criticism is misdirected because my check-writer may be a first timer with a good chance for rehabilitation while the Sioux City check-writer may be a hardened recidivist.

But, on the other hand, some of the criticism may be correct for sometimes the criminal behavior and the criminal's background may be sufficiently similar to warrant similar treatment. But no judge at present can rightly be blamed for treating these similarly situated individuals differently for there is no way today for either of us to know what the other is doing. We *are* sentencing differently, not out of malice, but out of sheer *ignorance,* or to put it another way, without guidelines—without the tool that tells each of us what the other is doing.

I think of these guidelines as the average of what I and all of my colleagues *would have done* in the case at hand if they had the same basic information as I had. Now, I may have *more* information than they do and therefore may still sentence differently, but the availability of guidelines means that I can sentence with the collected wisdom of all my veteran colleagues at my fingertips.

Sometimes there are no colleagues around a ıd you really would like to discuss a case, or other times you're simply too embarassed to admit that you don't know what to do. In either event, guidelines provide the missing link.

Part of the value guidelines have is, frankly, psychological. One other judge on our Steering and Policy Committee says he intends to use them to flag his own conscience. He'll first decide the case *without* looking at the guideline sentence and then he'll compare his "paper" decision with that suggested by the guidelines. When they agree (as they will in the vast majority of cases), he'll feel a lot more secure and comfortable in making that tough decision. When they disagree, it will force him to give the case a close, harder, second look and ask himself if

there is really some good reason to reach a different sentence or whether he has perhaps let some unconscious bias slip into his decision-making process.

Indeed, a very important value of the sentencing guidelines method spelled out in this report is that it will make it much easier to identify the really tough cases. One outcome might possibly be to round out the sharp edges of sentencing in either direction.

I have been chairing the project's Steering and Policy Committee and have had the opportunity to see a lot of doubting judges become "true believers" once they have been able to take the time to sit down with these guidelines and become familiar with them. One of those doubters—I don't think he would mind my saying so—was Newark Judge John Marzulli, another of my colleagues on the project, who now says that he sees the guideline project as "an exciting thing which has the potential for being the greatest contribution that I could make to the criminal justice system in my lifetime." I couldn't agree more. Indeed, I envy another of my colleagues, Denver District Judge Jim Flanigan, since he is leading his court into being the first in the nation to have operational guidelines.

We judges have always wanted that extra piece of information that guidelines provide—knowledge of what our colleagues are doing and would do in the same circumstances. There is nothing magical about guidelines. Once the system is worked through, you don't have to be a math whiz to figure out the guideline sentence. The guideline method is simple common sense and an idea whose time has come. We on the Steering and Policy Committee have all been fortunate to have been in on the beginnings of what will undoubtedly become an accepted commonplace everywhere in America within a decade. As you read this report, I hope you can share that same sense of excitement and enthusiasm which we all feel.

Anthony M. Critelli
District Court Judge
Fifth Judicial District of Iowa
Polk County (Des Moines), Iowa

EXECUTIVE SUMMARY

Judges have within their capabilities today the means by which they may sharply curtail, if not virtually eradicate, sentencing disparities in most American jurisdictions. This is the signal conclusion of the almost two-year effort which this report describes. We did not begin our work with such an immodest purpose, but we cannot shrink from the significance of our findings, as admittedly tentative as they are. Moreover, the solution is not the mechanical and inflexible one offered by proponents of mandatory sentencing legislation, but one that retains sufficient judicial discretion to ensure that justice can be individualized and humane as well as evenhanded in application. The guideline system, in brief, takes advantage of, and incorporates, the collective wisdom of experienced and capable sentencing judges by developing representations of underlying court policies. The system simultaneously articulates and structures judicial decision-making processes so as to provide clearer policy formulation, more cogent review and enhanced equity to criminal defendants everywhere.

Work on the "Sentencing Guidelines: Structuring Judicial Discretion" research project began in July 1974 and concluded in June 1976. It is important for us to stress that all of the work on this project so far has been during a tentative, feasibility phase. While, on July 1, 1976, we moved into a major implementation phase of the project, we still regard even this implementation phase as a time for validation and testing of the very tentative hypotheses that we have formulated during the feasibility phase.

The sentencing guidelines research project grew out of the successful completion of a study which developed operating guidelines for the United States Board of Parole (now called the Parole Commission). The principle feature of those guidelines is that a two-dimensional table relates the seriousness of the instant offense and the probability of recidivism (or salient factor score) to an expected time to be served before release on parole. A small range is provided within which parole hearing examiners must usually set the exact length of incarceration. Departures are permitted outside these limits but written reasons must be given for such departures. These are later reviewed, first by a panel of three decision-makers and then by the full Commission, both on a case-by-case basis and in terms of their overall policy implications. Although the Parole Commission's use of these guidelines has been challenged in several courts, the guidelines have been supported and at times strongly commended by the judiciary.

It appeared to the directors of that parole study that there was value in the guideline concept which could be adapted to many other decision-making problems, particularly to sentencing, and that state court judges might find their use beneficial. Therefore, we approached trial court judges in several American jurisdictions as to their willingness to engage in collaborative research and action along the lines of the methodology which proved its value in the study of parole decision-making. We selected four court sites to take part in our study—two as active participants and two as "observers" who were to be involved in all possible ways except that data would not actually be collected in those areas. Denver County, Colorado, and the State of Vermont, were selected as participant sites and Essex County (Newark), New Jersey, and Polk County (Des Moines), Iowa were chosen as observers.

Subsequent to site selection, a Steering and Policy Committee was established. It was our belief that the success of the project and the eventual acceptance of guidelines would, to a large part, depend upon the extent to which the judiciary made this project their own. Thus, it was our intention from the start to involve the judiciary in all stages of the project and each jurisdiction involved was represented by at least one judge at the quarterly meetings of this Committee.

The first research task to be undertaken was the collection of all items of information initially felt, by authorities in the literature and/or by the judiciary on our Steering and Policy Committee, to be possibly relevant to reaching the sentencing decision. Some 205 items of information from 400 randomly selected sentencing decisions (200 in each of the two participating courts) were collected. We attempted to have at our disposal all the information which was available to the judge for consideration in deciding upon an actual sentence. Nearly one-quarter of the 205 items turned out to be "missing" (or unavailable) in over 25 percent of the cases. Much of this missing information concerned factors relating to the offender's social stability (e.g., school attendance record, employment evaluation). Upon hearing these findings, members of the Steering and Policy Committee saw that they were not getting all the information that they at first thought they were taking into consideration in their sentencing decisions. Thus, the judges realized, for example, that they were more concerned with the *dimension* of social stability than with any specific item of information relating to that dimension. Hence, if one information item relating to social stability was missing, another piece of available data could easily be used as a substitute.

Next, that same information was analyzed for those offense/offender characteristics which statistically accounted for the largest percentage of variation in the sentencing decision. Our analyses indicated that the seriousness of the current offense and the extent of the offender's prior criminal record were the two most influential items of information. It should here be emphasized that we did not employ our own *pre*scriptive notions as to what would be a "right" sentence, but let the data furnish *de*scriptive indicators as to what underlying factors have influenced the sentencing decision and what weights have been accorded each of those factors.

Five preliminary guideline models were then designed. (A model in social science terms is essentially a simplification of a complex system designed to facilitate understanding and prediction.) These models attempted to demonstrate what the average, or a "modified" average, sentence of all the judges in that particular jurisdiction would have been in a particular case. By tapping the same data base available to the judges in constructing our models, we made valuable use of the accumulated knowledge of experienced sentencing judges. One of the models developed incorporated a statistically determined set of what items to include and their respective weights based on the above described 200–case samples. The others were based on both empirical and theoretical evidence. This approach permitted us to test if guideline models constructed on differing assumptions might not in fact achieve the same or a similar end result.

All of these models were presented to the Steering and Policy Committee whose members were then able to see clearly the potential value of even this rough sort of tool as an aid in the making of the sentencing decision. The Committee instructed the staff to further test the models against a sample of cases currently coming before the judiciary. This was completed against a one hundred case sample with the models found to be correctly "predicting" approximately 80 percent of the "in" (the decision to incarcerate) or "out" (the decision to grant probation or otherwise not incarcerate) part of the sentencing decision. It was interesting to note that each of the models was usually "missing" the same cases. Closer analysis also revealed

that most of these so-called "misses" could be regarded as examples of warranted variation because of some unusual facts or circumstances, some of which will be accounted for in more refined guideline models.

The Committee then asked the research team to formulate one model, perhaps a synthesis of the five preliminary ones. Guideline sentences of that model were then to be given to the Denver judiciary, after actual sentencing had taken place, for their own consideration and review during a statutory period available for that purpose. This somewhat cautious approach was taken to allow a little more time for "honing" the model. Because of the relative infrequency of incarcerative type sentences, it would take a slightly larger sample to collect an adequate number of "in" sentences from which to accurately estimate the "length" part of the sentencing decision. Moreover, it must be remembered that the primary concern of the current study was only testing the feasibility of guidelines, and not implementing them.

Thus, by the end of the feasibility phase, all six criminal court judges in the Denver District were receiving a guideline sentence some two to three days after sentencing. They were in turn providing the research team with feedback as to why they thought the actual sentence differed from the model sentence in those cases in which such a result occurred.

The guideline sentences were readily computed by giving assigned weights to particular aggravating and mitigating factors relating to pertinent characteristics of both the crime and the criminal, and locating those weights on a sentencing grid. The weights that resulted in an Offense Score (seriousness of the offense) were located on the Y axis and the Offender Score weights (prior record and social stability dimension) were located on the X axis. The cells of the grid contained the guideline sentence. By plotting the Offense Score against the Offender Score (much as one plots mileage figures on a road map), one is directed to the cell in the grid which indicates the suggested length and/or type of sentence. An example of a sentencing grid for Felony 4 offenses in Denver County is shown in Table 1.

TABLE 1

Demonstration Guidelines for Felony 4 Offenses
Denver District Court
(Feasibility Study)

OFFENSE SCORE	OFFENDER SCORE: −1 to −7	0 to 2	3 to 8	9 to 12	13+
10–12	Indet. Min. 4–5 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.
8–9	Out	3–5 month work project	Indet. Min. 3–4 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.
6–7	Out	Out	Indet. Min. 3–4 year max.	Indet. Min. 6–8 year max.	Indet. Min. 8–10 year max.
3–5	Out	Out	Out	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.
1–2	Out	Out	Out	Out	Indet. Min. 3–4 year max.

Colorado uses a Penal Code that contains five levels of felonies (with Felony 1 being the most serious and Felony 5 the least serious) and three levels of misdemeanors. Typical crimes that fall within the Felony 4 category are manslaughter, robbery, and second degree burglary. The statutory designated maximum incarcerative sentence for a Felony 4 offense is 10 years. No minimum period of confinement is to be set by the court. The term "out" refers to a non-incarcerative type of sentence such as probation, deferred judgment, or deferred prosecution. (See Appendix G for further information regarding the Denver Demonstration Model.)

It is important to keep in mind that, even when fully implemented, the guideline sentences are in no way intended to be binding, mandatory sentences. The judge as human decision-maker will still retain the discretion to override any suggested guideline. We are, however, suggesting that particularized written reasons be given when judges depart from the specific, narrowly drawn guideline sentence—and later when the guideline model system becomes fully operational—that judicial panels might perhaps be utilized in these more unusual cases. Moreover, the system we propose would feed back those departures into the data base used in constructing the guidelines, thus injecting a continuous element of self-improvement and regeneration into the guidelines. It is presently estimated that significant departures will amount to only a small percentage of the total number of cases.

In essence, we use the fact that information which provides guidance in case-by-case decisions is to be collected and processed differently from information on sentencing policy. Thus, we propose the retention of a judicial sentencing system, but with the safeguards of articulated reasoning and structured discretion. The quantitative and qualitative sentencing guidelines approach enlists the cooperation of trial court judges (who retain a collective responsibility for the control of the guidelines); rather than imposing restrictive sentencing upon them by fiat. It retains that degree of judicial discretion required for sentencing that is both humane and socially conscious, yet structures that discretion in such a manner as to prevent the injustices of the indeterminate or mandatory sentence systems.

We have only concluded a feasibility study and therefore all of our conclusions must fairly be described as very tentative ones. Nevertheless, bearing this caveat in mind, we may still fairly summarize our principal finding as follows:

(1) It is feasible to structure judicial discretion by means of sentencing guidelines: (a) the statistical wherewithall is neither excessively complicated, time-consuming, nor costly; and (b) conscientious judges across the country appear quite willing to adopt a guideline format.

(2) It is desirable to structure judicial discretion by means of sentencing guidelines: (a) totally unfettered judicial discretion and/or completely indeterminate sentencing are generally recognized today as necessarily leading to inequities; (b) attempting to completely eliminate judicial discretion would lead to rigidity and/or circumvention of the law; and (c) it does not appear that any other presently available alternative would be as just or as efficacious.

(3) Apart from achieving its primary purpose of providing a means by which sentencing equity may be enhanced and disparity reduced, an operational guideline system should have the following valuable by-products: (a) easier attainability for a number of Standards and Goals proposed by the National Advisory Commission on Criminal Justice Standards and Goals (see Appendix H); (b) a valuable judicial training device; (c) some reduction in court delay and backlog; (d) improved presentence investigative reports; (e) greater local quality control of sentencing policy; (f) an improved appellate review process; and (g) better relations between the judiciary and other components of the criminal justice system.

In addition to these principal findings, we have a number of tentative subsidiary findings, some of which may appear at first glance to be of interest only to researchers, but all of which, if conformed on further scrutiny, may have broad significance to all those concerned with the application of the criminal sanction.

(4) Our analysis leads us to conclude that the sentencing decision is a two-step process, or what decision theorists refer to as a branched or bifurcated one: the judge, first decides whether or not to incarcerate the convicted offender;

it is only if the decision is to incarcerate that the decision is made as to the length of incarceration.

(5) Only a limited amount of information is processed by the judge in reaching the sentencing decision.

(6) Many items of information in presentence reports are only available sporadically.

(7) The very absence of information, however, may occasionally imply the presence of other specific information.

(8) Many items of information in presentence reports are redundant, or when missing, may be substituted with another item. This is particularly true of such social stability indicators as employment record and school record.

(9) The core items of information utilized, as well as their weights, appear to remain constant over the vast majority of cases.

(10) All sentencing decisions are necessarily made on two levels, the explicit case-by-case level, and the usually implicit overall policy level.

(11) Required articulation of specific reasons for sentencing, in every case without exception, tends to trivialize the reason-giving process.

(12) The use of sentencing panels may be one means by which sentence variation can be reduced, although the required use of panels for even the most routine cases would similarly tend to trivialize a panel system.

(13) Once operational, the guideline system need add no additional personnel to the court. All the information can be collected and calculated by the same probation staff which presently prepares the presentence report.

(14) An operational guideline system should result in a net savings of time to the probation staff.

(15) For any model or system to be evolutionary, or flexible, it must possess an informational feedback loop so it may continually modify or redesign itself.

(16) Guidelines provide the flexibility to adjust for changing societal perceptions of offense seriousness.

(17) It would appear that offender variables (e.g., prior criminal history records) have a greater influence on the sentencing decision than do offense seriousness variables, unless the offense is an extremely serious one, in which case the seriousness of the offense variables seem to have a greater impact on the sentencing decision than do the offender variables.

(18) Given the high degree of interrelation between records of arrest and records of conviction, it seems that surprisingly little information is lost by including only records of conviction in a sentencing guideline model. Contrary to widely held beliefs, the addition of arrest records seems to add only a statistically insignificant amount of useful information to any model.

(19) It is possible to develop a variety of guideline models tailored to the specifics of a particular jurisdiction and thus enable local judges to choose a model which best meets their needs and concerns.

(20) Sentencing guidelines must be founded on a thorough and continuing systemic analysis of the particular court system, its environment, and its applicable penal code.

(21) Judges in different jurisdictions seem to evidence different priorities in their focal concerns.

The essentially descriptive nature of the guidelines must be emphasized. Based on recent practice in a given jurisdiction, the guidelines indicate the expected sentence for most cases and they identify the factors considered; they do not prescribe what the sentences or the criteria *ought* to be. This is a desirable limitation

as questions of the purposes of sentencing and the necessary judgments on the propriety of using various criteria must be made on both moral and scientific grounds. The development of explicit and clearly articulated sentencing policy, however, is a valuable first step, not only in and of itself, but also as a condition precedent to answering the "ought" question. The moral issues then may be debated more readily; the effectiveness issues can be tested more rigorously. The system can be revised and improved by the judges themselves, aided by the now informed views of others.

We should note that this report is only the first of a number of planned project reports, some of which have already appeared in unpublished, working paper form. These earlier drafts were initially prepared for the exclusive use of our Steering and Policy Committee. Revised and updated, these project reports will each more narrowly focus in upon, in greater depth, the separate issues touched upon in this summary report.

CHAPTER I. BACKGROUND

A. Variation and Disparity

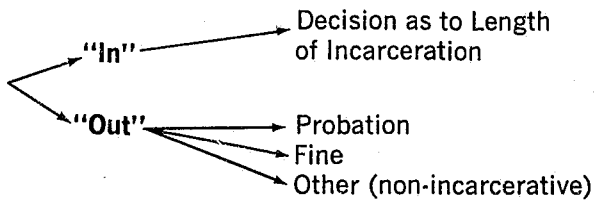
Criticism of judicial sentencing has taken two principal forms: that it is inequitable as evidenced by disparate sentences; or that it is unfair or ineffective in that, no matter how even-handed sentencing is, it is too harsh or too lenient. While this second pair of criteria may indeed have merit, it is more a matter of either effectiveness (with respect to different purposes or goals of sentencing) or of philosophy and ethics, concerning deserved punishment. The primary focus of this project is on the issue of equity rather than on all these complex concerns.

It is a common claim in the literature of criminal justice—and indeed in the popular press—that there is a considerable "disparity" in the sentencing of similarly situated offenders. The word "disparity" has become pejorative and the concept of "sentencing disparity" now carries with it the connotation of malicious practices on the part of judges. This is particularly unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. Not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Indeed, we would contend that dispositional variation which is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and/or of the offense is wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment—what is disparity to one person may simply be justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate.

An often overlooked facet of variation involves the two-step, or bifurcated, nature of the sentencing decision. Following judgment, the first decision to be made is whether or not to incarcerate an individual. After that comes a determination of time to be served: i.e., how long a sentence should be imposed? Thus, the sentencing decision might be diagrammed as a form of branching network (see Figure 1).

Figure 1

Sentencing as a Bifurcated Decision-Making Process



Judical discretion is nearly unlimited as to whether or not to incarcerate an individual and only bound by broad statutory maxima in setting the length of sentence. Thus, any complete study of variation must attempt to account for both the "in/out" variation and the separable issue of variation regarding length of sentence.[1]

The second major criticism of sentencing has focused on the so-called "soft" or "hard" judges and their "tough" or "lenient" sentencing practices. Again, as with disparity, any determination of what is a "correct" sentence must be tempered by the knowledge that it depends on one's point of view and not a fact. We tend to doubt that this controversy will ever really be resolved to the satisfaction of all.[2] Nevertheless, this does not mean that fairness in sentencing cannot be achieved. It is up to the judges in a jurisdiction to reach some sort of consensus as to what their policy should be and then to structure their discretion around it. The sentencing guidelines project has focused on the issue of equity as a necessary first step in achieving justice that is fair and proper as well as even-handed in application. Indeed, we feel that it is only when these problems

are tackled separately that workable solutions will result.

B. Earlier Studies

There have most frequently appeared two types of studies concerning the subject of sentencing: (1) empirical studies which have been primarily descriptive of sentencing variation, and (2) theoretical studies which have tended to be more prescriptive in orientation in that their purpose has been to suggest some method for reducing sentencing variation. Until recently, the descriptive literature has predominated; however, the number of prescriptive proposals has been increasing of late. Thus, a number of specific sentencing reform measures have been suggested in the last few years.

The descriptive studies typically have been characterized by an emphasis either on "proving" that sentencing variation does exist or on "explaining" such variation in terms of certain selected information. Some of these studies have restricted their analysis to a limited number of factors. For example, sentencing variation might be analyzed in terms of race [3] or socioeconomic status.[4] Others have tested a specific hypothesis, for example, whether the type of defense counsel makes a difference in the outcome of the sentencing process.[5] Most of the studies which may be labeled as descriptive have selected a narrow range of offenses to be analyzed in terms of the sentencing decision.[6] In other words, these studies do not take into consideration the full gamut of criminal offenses which come before a judge at sentencing. Significantly, little or no attention has been given to the provision of specific tools or aids which might help eliminate or at least reduce unwarranted variation (i.e., true disparity) in sentencing.

The more recent literature suggests a variety of methods designed to assist judges in making the sentencing decision. These proposals have been characterized by a tendency to rely heavily on the use of one or more uni-dimensional scales which were not directly and specifically tied to the sentencing decision. Often, the scales developed merely present, for example, some estimate of the probability of recidivism. Although the concept and application of prediction tables has been extensively explored in the past, neither parole boards nor judges have adopted or extensively used these in decision-making. This is understandable; besides the methodological problems inherent in many such devices, they have been developed with a specific, limited aim of prediction and have not been tied to any model of decision-making policy.[7]

One theme which sounds through all recent sentencing reform proposals is that the current practice of allowing the judiciary virtually unbridled discretion in setting sentences must be stopped. Five differing approaches to achieve that end have received a great deal of recent publicity.

C. Appellate Review

The first of these calls for the use of appellate review as a means of reducing disparity through the evolution of a common law of sentencing.[8] There is a great deal of merit in appellate review of sentencing, but, at least as its use is presently envisioned, it seems to us that it is unlikely to achieve any overall reduction in disparity. This is because appellate review, without an attached explicit statement of court policy, is likely to substitute the judgment of an appellate court as to the "correct" sentence in a given case for that of the lower court. While the presence of accompanying opinions will indeed aid in the evolution of a common law of sentencing, these opinions are not always forthcoming as appellate courts tend to reach decisions on an *ad hoc* basis without always considering whether or not there should be a considered overreaching policy behind them. Additionally, the appellate review process is quite time-consuming and a common law of sentencing may well take several decades to develop.

A further aspect of appellate review, which has been overlooked in most of the literature on the subject, is the uneven nature of review. Not only are appeals taken without regard for their precedential value, but they are one-sided. If a common law of sentencing is to develop rationally, and if appellate review is to be applied impartially, then review should be equally available to both defense and prosecution and sentences must be subject to being increased as well as decreased by the higher court. That, of course, is not presently the case. It is important to bear in mind that these aspects expressed concerning appellate review of sentencing are not criticisms of appellate review per se, but rather of review absent the sort of articulated criteria which guidelines will present.

D. Councils

The second proposal calls for the use of a sentencing council or panel. The panel idea involves either

a complete sharing of the sentencing decision among three judges or, more commonly, placing two of those judges in the position of advisers or consultants to the third judge who still maintains individual responsibility for the sentencing decision. It is argued that the group decision process tends to produce consensus and militates against anyone sentencing at the extremes of the available spectrum.[9] The panel concept has theoretical merit and properly seeks to make use of the accumulation of collegial experience, albeit to a lesser extent than guidelines. It should be obvious, however, that, in a time of serious economic concern, one of the lowest priorities any budgetary authority can have is the use of three judges to perform the work which one is now performing. Moreover, if used for every decision, the panel method would not only be prohibitively expensive, but would be likely also to become indiscriminately routinized, and hence, trivial. But, if panels are retained for use with only a small core of more unusual cases, there is a great deal of value that may still be extracted from the panel format.

E. Flat-Time

The flat-time concept allows the judge to choose between probation and imprisonment, but curtails judicial discretion in setting the length of any incarcerative sentence. Hence, the thrust of proposals for flat-time sentencing would have little impact on the important in/out decision. According to the most prominent flat-time plan, once the judge has elected to incarcerate the offender, the judge would then be bound by one of two penalty scales or tariffs, one for the typical offender and the other for the especially dangerous or repeat offender. The scales offered specify a particular sentence for each class of offense. For "typical" offenders, a range in mitigation or aggravation is set around that specific figure to permit minor adjustments for the facts of a particular case or for the seriousness of the offense as compared to others in the same class. A similar approach is taken in the "enhanced" scale except that the range provided allows only for increasing sentence if specified aggravating factors are present. This system would allow no discretionary release of offenders (i.e., no parole).[10]

Under such a system, a person convicted of a serious felony such as, say, armed robbery, may or may not be incarcerated, pending a judicial finding of "clear and present danger." If that person *is* incarcerated, the sentence imposed could vary from three to seven years under the "typical" offender sentencing statutes or from nine to eleven years under the "dangerous offender" provisions. Little guidance is given as to the specific kind or weight of various factors to be considered as aggravating or mitigating in setting sentence. We seriously question whether this approach will have any discernible effect in making the sentencing process more equitable.

F. Mandatory Sentencing

A fourth approach, advocated by former President Ford among others, calls for a mandatory incarceration of certain offenders committing certain crimes.[11] This has been a sharply limited approach in respect to the problem of "discretion" in sentencing. These "mandatory minimum imprisonment" proposals (whether they involve drug sales in New York or gun possession in Massachusetts) only concern themselves with a limited range of offenders committing a limited range of offenses. Thus, the overwhelming percentage of convicted offenders is completely unaffected by these proposals. Furthermore, although the use of "definite" sentences is suggested in these proposals, little, if any, guidance is offered as to what the length of the actual sentence imposed might be. The only actual constraint upon judicial discretion is one-sided—the offender must be incarcerated. The actual sentence, however, can be set anywhere within the broad range bounded by the "mandatory minimum" term on one end and the statutory maximum on the other.

A variant of mandatory sentencing, put forward by James Q. Wilson, calls for *some* deprivation of liberty upon conviction for every "nontrivial" offense. Yet, in stating that such a deprivation "need not and usually would not, entail confinement in a conventional prison," Wilson seemingly returns to the judge's uncontrolled discretion the decision as to how and where that sentence is to be served. Therefore, two similarly situated offenders convicted of the same crime may still find themselves confined in totally different environments, perhaps one in a maximum security prison and the other in a community-based treatment program. It is also questionable whether the Wilson approach would reduce unjustified "time" variation in sentencing. Wilson favors the inclusion of what he calls a "small" range to permit judicial discretion to take into account mitigating and aggravating circumstances. But he suggests that this range might be as wide as four years (from one to five years) for crimes calling for a "mandatory" term of confinement of only three years.[12]

G. Presumptive Sentencing

The fifth proposal, presumptive sentencing, has several variants. In the most frequently raised form, it means that upon conviction for a certain offense (and contingent on the establishment of certain factors), a particular legislatively specified sentence is the "presumptive" sentence to be imposed. Nevertheless, if the judge finds some extraordinary circumstances to exist, a sentence may be imposed that is more harsh or more lenient than the presumptive sentence—provided the judge can offer a written justification for such a deviation.[13] Thus, the presumptive sentencing approach could shift the locus of sentencing authority out of the hands of the judiciary and place it in the hands of the legislature. This is, however, neither a necessary nor a logical consequence of the presumptive sentencing concept, and it is not advocated by all who argue in favor of that concept.[14]

There are three arguments against legislatively imposed sentences. First, once legislatively fixed sentences have been established, they remain fixed for many years, and when change does come, it may well take the form of an overreaction. A dynamic criminal justice system instead requires a sentencing agency to possess the flexibility to change with changed circumstances. Adaptability to changes in population concentrations, societal attitudes to given offenses, or prison conditions is the hallmark of informed, on-the-spot, timely, judicial sentencing and not that of a distant legislature. Second, and especially troubling, is the remote and speculative, not to say unrealistic approach to the problem posed by legislative sentencing advocates. In making its *a priori* determination of the appropriate presumptive sentence in each case, the legislature apparently would rely only on its collective intuition. Legislative bodies are not constructed so as to facilitate reference to current judicial sentencing practices even as a minimal starting point upon which to build any set of presumptive sentences. Without such an empirically derived base, how can the legislature—far removed in thought and distance from the actual crime and criminal in question—intuitively predetermine the "best" sentence for a particular offender and offense years before the crime is committed? In such a system, insufficient regard is given to the human element or to the collective wisdom and experience of sentencing judges.

Third, even though an individual judge would still retain final, though limited, sentencing authority under a legislatively imposed presumptive sentencing system, the total effect would be to unfairly force a policy on a judiciary which has had little input into the formulation of that policy. Instead of opening up the sentencing system and making it a more visible process as the guideline approach proposes, what is likely to develop under presumptive sentencing is an implicit policy which, because of its secretiveness, has the potential to result in even more judge-shopping and "disparity" than we see today.

H. Common Flaws

The first three of the proposals do not give clear enough guidance to judges as to the bases for their decisions. The mandatory mimimum proposal is perhaps too explicit in a one-sided fashion, although for a sharply limited range of cases. The legislatively imposed presumptive sentencing approach is even more detailed, and this is particularly unfortunate as it shares the flaw common to the first four reform suggestions of an *a priori,* before the fact, approach to prescription, completely ignoring the collective experience which presently exists in the persons of today's sentencing judges.

Whether or not any given presumptive sentencing scheme would conflict with such collective experience is an empirical question. But, throughout our research, we have taken the view that problems of sentencing are primarily a judicial concern which the judicial machinery should itself resolve. Removing primary sentencing authority from the judges may solve nothing as attempts to impose solutions by fiat rarely work. Not only are they likely to incur the hostility of the judiciary, but they may also result in the counterproductive transfer of discretion backwards in the system placing it, less visibly, with prosecutors and police. Moreover, there is simply no need to create yet an additional bureaucratic layer to accomplish the ends of sentencing. The simpler, less costly, and more desirable solution is to improve the existing machinery. The guideline system that we are proposing aims to do just this.

I. Guidelines: The Parole Analogy

Webster defines the term "guideline" as "an indication or outline . . . of policy or conduct." The term "guideline," as we use it, also refers to a system of data which functions as a tool in assisting decision-makers in arriving at individual and policy determinations. It accomplishes this purpose by using some form of equation(s) to summarize the link among

the main concerns, or focal dimensions, of decision-makers and their decisions. The Parole Decision-making Study, which was directed by Don M. Gottfredson and Leslie T. Wilkins, represents the first successful application of guidelines as we have defined them in the criminal justice system. That three-year study, which involved a collaborative research effort with the United States Board of Parole (now the United States Parole Commission) has been using parole decision-making guidelines since 1972. In fact, approximately 80 to 85 percent of the parole decisions are accounted for by the guidelines.[15] Since that study provided the initial conceptual and methodological analogies for the present sentencing research project, a brief review of it will provide a useful frame of reference for understanding our research on sentencing guidelines.

In the parole study, the original research hypotheses were formulated in terms of a yes/no dichotomy with Board members reviewing each case and deciding whether or not to release the given applicant. The research staff soon realized, however, that what was involved was not simply a "yes/no" decision, but rather a question of length of time—when to release the applicant. The working assumption became that when minimum sentences are short or indeterminate, the parole decision is, in effect, a deferred sentencing decision.[16]

The Parole Commission itself initially declared that it had no overall official policy, but rather that each case was decided on its individual merits. The research task then became one of "predicting" the Parole Commission's decisions on the basis of case information. If such predictions could be made, there would have to be at least an implicit policy present regarding the decision to grant parole. In order to accomplish this, however, it was necessary for the research staff to identify not only what items of information were related to the Board's decisions, but also the specific weight or significance attached to those items. The initial research demonstrated that the decisions of the Parole Commission *could* be predicted from knowledge of the Commission's estimates of three dimensions, or focal concerns: (1) the seriousness of the criminal behavior involved in the offense, (2) the probability of recidivism, and (3) the institutional behavior of the individual. Since the third dimension appeared to carry much less weight in the Commission's decisions when compared to the other two dimensions, it was later deleted from consideration in the construction of the parole guidelines. The next step was to transform the subjective estimates of offense seriousness and parole prognosis into measures which were as objective as possible.[17]

The parole decision-making guidelines of this Commission are characterized by a two-dimensional model which links the intersection of the dimension of offense seriousness with the dimension of parole prognosis with a time (in months) to be served prior to release on parole (see Appendix A). The dimension of offense seriousness is measured by a six-category Offense Severity Classification System. This classification system was developed as a policy decision of the United States Parole Commission regarding its own subjective evaluation of the seriousness of the criminal behavior involved in an offense. It should be noted that (1) this system of classification is not based on the length of sentence imposed; and, (2) the cases involved are drawn only from that subgroup of offenders who were incarcerated in Federal prisons upon conviction. The parole prognosis dimension is measured by an eleven-point Salient Factor Score. The Parole Commission tends to give somewhat more weight to the dimension of seriousness than to that of risk. The Salient Factor Score, which is divided into four classes of risk, consists of nine weighted offender characteristics and attempts to provide a relatively objective estimate of the probability of recidivism.[18]

In actual use, a parole hearing examiner scores an individual case on offense seriousness and parole prognosis and then locates their cell of intersection which provides an expected range of months to be served. A range in time is provided to allow for some variation in the broad categories of risk and severity. If the examiner decides to depart from the range called for in a particular case, written reasons must be provided for doing so. In addition, there is a review process as the guidelines encompass a provision for appeal to the Parole Commission or to the courts.

The basic thrust of the parole guidelines is to assist the hearing examiner and the Parole Commission in achieving equity in parole decisions to assure ". . . that *similar* persons are dealt with in *similar* ways in *similar* situations." [19] But, early in the parole study, two separate levels of parole decision-making were identified: (1) the policy decision level; and (2) the case-by-case or individual decision level. Thus, in order to achieve the goal of equity, the guidelines were designed to serve two functions:

> 1 . . . (to) structure discretion to provide a consistent general parole board policy; and,
> 2 in individual cases . . . (to) serve to alert hearing officers and parole board members to

> decisions falling outside of the guidelines so that either the unique factors in these cases may be specified or the decision may be reconsidered.[20]

This concept of discriminating between decision levels also seems to be useful in dealing with such typical systemic problems as obsolescence and rigidity. On the individual decision level, the Commission semi-annually or quarterly receives data pertaining to departures from the guidelines. The reasons for these departures are analyzed not only for their appropriateness but also for their policy implications. On the policy decision level, the Commission is able to make the appropriate changes required to incorporate these results into its analysis and to accommodate such extrasystemic influences as new legislation. In effect, the Parole Commission has built into its system both a control and an adaptive function.

In summary, the parole guidelines are designed to structure parole discretion without removing it. They provide an articulated foundation for an equitable parole policy, while retaining the potential for individual variation justified by the facts of a particular case. Maurice H. Sigler, then Chairman of the United States Board of Parole, provided this evaluation of the intrinsic value of the guideline concept:

> At a minimum these guidelines help articulate the factors used—the severity of the offense, risk of recidivism, institutional performance—and the weights given to them in determining the time to be served before release. Undoubtedly, some will feel that these weights or these factors are inappropriate. Unquestionably, a broad range of opinion in the formation of *parole selection policy* is desirable. However, it is also unquestionable that in the administration of this policy by individual case decision-making, consistency is necessary from the standpoint of fairness and equity. Without explicit policy to structure the guide discretion, decision-makers, whether parole board members, hearing examiners, or judges, tend to function as rugged individualists. While this may be desirable in our economic system, its suitability for our system of criminal justice is extremely questionable. However, if we can make what we are presently doing explicit and, thus, more consistent, we can better argue over whether we are giving too much weight or not enough weight to the factors mentioned or any other factor or set of factors.[21]

CHAPTER II. FEASIBILITY RESEARCH

A. Introduction

Given the parallels between the two decision-making processes, paroling and sentencing, and the commonality of the issues inherent in these processes, it seemed logical to determine the applicability of the concept of guidelines as a judicial tool to aid in the sentencing of offenders. In spite of some obvious similarities, however between decisions by parole boards and judges, the research staff was alert to the significant differences between the two. Parole boards typically deal only with a more serious class of offenses and/or offenders than judges, i.e., the subclass which has resulted in an incarceration. On the other hand, judges must decide whether or not to incarcerate an individual, and for how long a time period the particular sanction chosen shall last. Therefore, it was clear that a parole board's decision to release or retain an inmate was not at all the equivalent of the sentencing judge's bifurcated decision. Consequently, while the concept of guidelines and the methods involved seemed to be transferable, it was expected that any sentencing guidelines were likely to be far more complex than those which sufficed for the United States Parole Commission.

Before embarking on a detailed description of the specific methods employed during the feasibility phase of the project, it would be in order to discuss some of our underlying concerns. We feel that any essay of a social scientific nature should fairly set forth its initial biases and preliminary hypotheses. Early difficulties of a mixed moral/pragmatic dimension ought also to be related here as they shape much of the subsequent discussion.

1. *Premises.* First, we intended to be constructive and not merely critical. We hoped to provide courts with a workable sentencing information system, upgrade the quality of probation reports and help judges in their most difficult task. In short, we consciously decided to work *with* the judiciary in a collaborative venture, and not on, around, or against judges. Our goal from the first was to assist judges rather than to study them.

Second, we assumed not only the existence of sentencing discretion and variation, but also its desirability to meet one of the two primary sentencing goals, that of individualized justice. We therefore found ourselves set in opposition to legislatively mandated sentences as being unrealistically rigid and mechanical, unworkable in practice, and philosophically undesirable. Similarly, we opposed the other extreme of the totally indeterminate sentence as removing too much control from the judge closest to the facts of the individual case and as being wholly unfair to the defendant in both a psychological and a material sense.

Third, we did nevertheless see a need for controls upon both discretion [22] and variation [23] to ensure meeting the other primary sentencing goal, that of equal justice. While this goal apparently conflicts in principle with individualized justice, we see only the balance—or more truly, the *synthesis*—of these two concepts as resulting in any rational notion of whole justice. We viewed the development of guideline models as wholly compatible with the control of discretion in such a way as to ensure consistency of overall policy without upsetting the necessary inconsistency inherent in the humanized treatment of individual cases.

Fourth, we were confident that there did exist an implicit policy formulation which acted as an underpinning for judicial decision-making in the sentencing area. Through careful analysis of present practice, we believed it possible to discover that implicit policy and make it explicit, thereby allowing in the future for clearer overall policy formulations, as well as more cogent review for individualized dispositions. We began with these premises, believe that we have checked them and found them valid, and continue to hold to them.

2. *Moral/pragmatic considerations.* We have fairly described our work as primarily descriptive, but it would be disingenuous of us to claim that prescriptive considerations did not often impinge upon our work. When we first asked the judicial members of our Steering and Policy Committee to suggest relevant factors which they considered in making the sentencing decision, their list encompassed almost everything ever discussed in the literature. In any event, we actually compiled a list of 205 factors.

Our experience with the United States Parole Commission, as well as prior research on decision theory, however, led us to expect that this would prove an unnecessarily large number. Nevertheless, we decided that in investigating this new area, it was preferable to err on the side of statistical over-inclusiveness; but this decision was not lightly made for we initially saw the potential for sharp conflict between our moral and pragmatic values. Pragmatically, we wished to consider any and all factors which would enhance the predictive utility of any guideline model. Morally, we looked toward an operational guideline system which would be based only upon statistically valid factors and weights which were simultaneously proper from an ethical standpoint. Thus, it was not without a good deal of debate and soul-searching within the Steering and Policy Committee that we eventually opted for inclusiveness on virtually all factors to be considered.

a. *Offense seriousness.* While the inclusion of a dimension of offense seriousness is easily agreed upon, the component factors to consider within that dimension raised the sort of mixed moral/pragmatic questions we have discussed. Were we to concern ourselves primarily with the statutory offense at conviction or with some asessment of the criminal behavior involved? If the former, then pleading considerations were to be ignored. Yet we saw from the start that plea-bargaining is regularly found in Denver and Vermont just as it is virtually everywhere else in America.

The judges on our Steering and Policy Committee obviously were aware of this and spoke of their concern for information regarding the "real" offense, i.e., their perception of the actual criminal behavior underlying the arrest and conviction. They felt that the sentencing decision required more information concerning the underlying physical harm and/or property loss suffered by the victim than the mere statutory label of a plea-bargained conviction would provide to them. While the United States Supreme Court has approved the consideration of such factors,[24] it did seem to us to raise questions as to whether or not a part of the plea "bargain" was being improperly taken away from the defendant without the defendant's knowledge. The data sources available for establishing the parameters of the "real offense" also gave us pause, for they often consisted of the least verified information contained in any presentence investigative report.[25] Nevertheless, here as elsewhere we "erred" on the side of pragmatic overinclusiveness in establishing our statistical data base, feeling that it would always be easier later to delete information first included than it would be to later include data first deleted.

b. *Social stability.* The judges on our Steering and Policy Committee expressed a desire for some measure of the offender's social stability to be reflected in the guidelines and the data bore out their concern. Nonetheless, the factors comprising this dimension were problematical. Would information as to marital status unfairly penalize the single or divorced? Even if information concerning a broken home had predictive value, what was its moral worth? Should a poor school record be forever held against an offender?

Troublesome as these questions were, a practical problem further intruded. The factors that necessarily comprised this contentious dimension were the very items most often found missing in our analysis of the presentence reports. This is not surprising in retrospect as the information desired is often subjective, usually outdated, and is never the normal object of criminal investigation as are the components of the offense seriousness or prior criminal record dimensions. Thus, we sometimes found ourselves forced to "substitute" one item of information relating to a defendant's social stability for another.

For several reasons, we eventually relied most heavily on length of employment information to tap the social stability dimension. First, it was the factor most often available. Second, it was one of the least subjective of these factors, and hence, potentially, the most accurate. Finally, previous studies have shown it to be the least class-linked of those data items comprising the social stability dimension.[26]

c. *Prior record.* A number of mixed moral/pragmatic questions again intruded themselves as we tried to isolate the relevant factors that made up the significant components of prior criminal record. Should all prior offenses be considered or only those deemed "serious"? Should relatively minor or trivial convictions be taken away from a judge's consideration as not being relevant, and as only intruding potentially prejudicial factors? Should the number or frequency of prior convictions be regarded as a significant demonstration of antisocial conduct, even though the offenses were trivial in and of themselves? Should we allow consideration only of prior offenses which were similar in nature to the present offense on the theory that even a series of prior rapes, say, could have no relevant, nonprejudicial bearing on the sentencing of an offender for, say, the crime of shoplifting? Should a "forgiveness" factor be built into any review of prior convictions with some mitigating allowance made for the amount of time,

or "decay" of record, since last conviction or release from prison?

Indeed, should prior record be considered at all? If an ex-convict has truly "paid for his crime," as is so often said, upon his release from custody or supervision, then it would arguably be morally invalid to exact any further payment from him in later years by giving him a greater sentence than a first offender otherwise similarly situated.[27] Nevertheless, while all these questions were discussed, we followed our judicial mandate and looked at all these factors for their possible relevance.

As we now look back on our results, we are glad that we chose overinclusiveness in our statistical analyses. In subsequent reports, we will explore these items in greater detail; and, having aired the moral questions here, we have ensured that they will not be ignored by those reviewing our work. Moreover, by taking the almost wholly descriptive route that we have, we have made it possible for future analysts to more cogently separate moral and pragmatic considerations. Finally, and most interesting of all, we have found some intriguing, albeit tentative, data to suggest that the apparent conflict between our moral and pragmatic values may in fact be nonexistent! The preliminary analysis of our initial data, for example, has led us to conclude tentatively that the total number of convictions and arrests are so closely related, that the addition of the putatively "amoral" factor (i.e., number of arrests) to the number of convictions simply makes no significant difference.

3. *Site selection.* Four different judicial jurisdictions participated in the sentencing project's feasibility phase: Denver District Court, Denver County, Colorado; the District Courts of the State of Vermont; Essex County Court, Newark, New Jersey; and Polk County Court, Des Moines, Iowa. The two former courts were designated as "participants"—that is, jurisdictions in which the project conducted onsite research (the latter two were designated "observer" courts). It was believed that this represented the minimum number which would provide an indication of the utility and generalizability of sentencing guidelines. Secondary factors in selecting only two participating courts were the constraints of time and cost. Increasing the number of participating courts would have (1) obviously increased the cost of the project, and (2) lengthened the time required to validate the feasibility of sentencing guidelines. Data collection, analysis and reporting in any research project, particularly one focusing on a complex decision-making process, is time-consuming and expensive. This is especially true if the research effort is an innovative, collaborative one, such as it was in this project.

There were three major criteria used in the selection of both participating and observer courts. First, we wanted to involve both urban and rural jurisdictions, and large and small population concentrations, to test the potential for nationwide applicability of guidelines. Second, we wished to work in jurisdictions in which the number of judges was small enough to facilitate direct communication between the judges and a research staff member based in each participating site. Our third major criterion was that we wanted to work in courts in which the judge *actually sentenced.* Although we expected to find that variant of plea bargaining referred to as charge-bargaining, we wanted courts in which there was no sentence-bargaining. This latter practice involves a "bargained" sanction or penalty determined by negotiations between the prosecution and defense. In such instances, it seemed to us that the judge may be more the ratifier of the decisions of others rather than the primary decision-maker. Our initial research focused on the concept of guidelines as related to *decision processes* and not to compromises, negotiations, or ratifications. The main problem is that as soon as more than one decision-maker enters the process, the variations increase exponentially. Thus, we simplified our research design by avoiding sentence-bargaining and were able to assume with increased confidence that the responsibility and action of sentencing were accountable to the same individual—the sentencing judge. (We should note that we now feel confident that a developed guideline system will be able to accept numerous modifications and hence cope with the increased complexity of other kinds of sentencing processes such as sentence-bargaining.)

The two observer courts (the Essex County Court, Essex County, Newark, New Jersey; and the Polk County Court, Polk County, Des Moines, Iowa) participated in every way in the project, except that the project staff did not collect or analyze data from these jurisdictions. The inclusion of observer courts increased judicial advice to the research effort. It was thought also that the judges from these courts would be less likely to be affected by any possible "Hawthorne effect" linked to the direct involvement of being a participating jurisdiction.[28] We believed that participating jurisdictions might be less stringent in their criticisms of the concept of sentencing guidelines simply because they were actively participating in the research. In addition, observer courts provided the opportunity to examine how dissemination of the

concept and methodology might be best accomplished in jurisdictions other than the participating ones.

B. The Pilot Study

1. *Introduction.* A basic working assumption of the sentencing research project staff has been that, while judges in a particular jurisdiction are making sentencing decisions on a case-by-case or individual level, they are simultaneously and as a byproduct making decisions on the policy level. In other words, the gradual buildup of case-by-case decisions results in the incremental development of a sentencing policy. If an equation can be developed which "predicts" sentencing decisions on the basis of case information, this ability to "predict" decisions may be seen as the identification or description of a latent sentencing policy. Thus, the first analytic task of the research staff might be considered a descriptive one; that is, we attempted to predict the sentencing decision (the dependent or criterion variable) from our knowledge of information items (the independent variables) contained in presentence investigation reports. The resulting equation (or equations) may be thought of as a mathematical model or description of sentencing policy.[29] From such a basic description of implicit sentencing policy, we could begin to develop and test different approaches to sentencing guidelines.

Our first direct research activity, therefore, was a preliminary analysis of the data available in the two participating jurisdictions. The Pilot Study was designed to determine the quality as well as the quantity of the information available to the judges at sentencing. It formed the data base for our initial attempt to account for variation in sentencing, and these data were used to support our early effort to construct models of sentencing guidelines. In addition, the Pilot Study provided the opportunity to develop the data base needed to test some of our theoretical assumptions.

2. *Methods.* As the initial step in "predicting" or describing sentencing decisions, the research staff planned to gather a simple random sample of 200 individual sentencing decisions (hereafter referred to as cases) in each participating jurisdiction for two consecutive years. We attempted to collect 205 different items of information for each case (see Appendix B). The specific items of information to be collected were determined on the basis of theoretical and empirical considerations in conjunction with suggestions from the judges on the Steering and Policy Committee.

To predict sentencing decisions, one must identify not only the independent variables which influence sentencing, but also the weight of those variables. In slightly more technical terms, it is necessary to analyze both the direct (individual) contribution and the indirect (collective) contribution of independent variables to the variation of a dependent variable. This task can be accomplished by the use of a general statistical method known as multiple regression analysis which seeks to explain or account for the variation in the dependent variable in terms of a set of independent variables. Multiple regression may be thought of as a search technique in which a computer is used to solve the unknowns in a series of simultaneous equations. One commonly used technique is designed to first identify that one independent variable which by itself accounts for the greatest amount of variation in the dependent variable. Once this variable has been identified, the search begins again in an effort to identify that variable which, by itself, accounts for the greatest amount of the remaining unexplained variation. This process is then repeated until all the variation in the dependent variable has been explained or until the search for meaningful independent variables has been completed.[30] Like any other statistical technique, multiple regression is based on certain assumptions which limit its applicability. Violation of these assumptions may lead to misleading interpretation of the results of the analysis.[31]

In our use of multiple regression analysis, the independent variables consisted of those items of information about the offender, and the related offense, which were contained in the presentence investigation report. The criterion or dependent variable was the actual punishment imposed on the offender—the formal or official sentence of the court.[32] The resulting multiple regression equation expresses the relation between the independent variables and the dependent variables, and this simple equation can then be used to predict subsequent sentencing decisions.[33]

As might be expected, the research method for the Pilot Study had to be modified to meet requirements peculiar to the participating jurisdictions. The randomness of the 200 case sample drawn in Denver was affected by the manner in which the sampling frame was established. The sampling frame used consisted of the court docket files. Usually, court docket files will contain the presentence investigation report and other supporting documents of only one defendant. In those instances in which there were codefendants, however, the Denver court docket files

contained the documents pertaining to all codefendants. It was decided to randomly sample only one individual case from those court docket files which contained codefendants in order to include only individual sentencing decisions. While that problem did not arise in Vermont, the randomness of the 200 case Vermont sample was affected by a staff decision to sample only the more serious cases sentenced in Vermont. The Vermont District Courts deal with a greater range of offenses in terms of seriousness (as defined by the statutory maximum penalty) than does the Denver District Court. In Denver, the court only deals with offenses which were initially classified as felonies at complaint warrant. Therefore, to establish some compatibility between the samples in terms of offense seriousness, the research staff employed a filtering process which excluded offenses classified as misdemeanors at a point in the Vermont criminal justice process similar to the complaint warrant in Denver.

In addition, the research staff did not include in either sample those sentencing decisions which did not involve convictions for a new offense. In other words, judicial decisions which dealt solely with sanctions for probation revocation rather than with sentencing for the conviction of a *new* criminal offense were excluded. It was believed that decisions dealing with sanctions for probation revocations might involve different issues as well as different information and decision-making processes, and might only confound the initial analysis.

3. *Results and discussion.* The amount of time needed to collect the data was underestimated. Complications in collecting the data were attributable in large measure to the complexity of the sentencing process and limitations as to the quality as well as quantity of the information available about the offender and the offense. For example, even the coding of the actual sentence imposed created far greater problems than anticipated. Five separate variables had to be used to identify exactly the judge's sentencing decision in a particular case. The large number of variables collected in each jurisdiction slowed down our data collection efforts. Furthermore, in contrast to Denver where the judges and probation staff were centrally located, the Vermont court locations and supporting staffs were widely scattered, creating logistical difficulties in collecting data from eleven separate sites.[34] Anyone considering a statewide study of sentencing should preliminarily include some mechanism for surmounting the data collection problems posed by scattered court locations.

Our analysis of the data collected during the Pilot Study began with an examination of the amount of missing information. We were interested in determining which items of information were generally available to the sentencing judge. We found that in the Denver Pilot Study sample of 200 cases, there were 48 items of information missing in at least 25 percent of the cases. In addition, a further 21 information items were missing in from 11 to 24 percent of the cases. In the Vermont sample, 32 items of information were absent in at least 25 percent of the 200 cases; a further 26 items were missing in from 11 to 24 percent of the cases. These missing items of information appeared to be almost evenly scattered throughout the cases in each sample.[35] (See Appendix C).

This analysis lends support to the contention that while decision-makers claim to use all available information, the quality and quantity of this information may be quite skimpy. Obviously, information which is not available to the judge cannot be used in making sentencing decisions. Consequently, information which is missing in a large percentage of cases (or only sporadically available) cannot be considered for inclusion as part of a regularized guideline system. The social stability or personal history variables were particularly hard hit by missing information. From the research staff's discussions of these results with the judges on the Steering and Policy Committee, however, it appears that this does not represent an insurmountable obstacle for certain items of information are often viewed as interchangeable. Judges apparently look more for a particular dimension than for any one specific item of information. Thus, if one item of information relating to the concept of social stability is missing, another piece of data which is available may take its place.

But, are there instances in which *missing* information is, in fact, information? For example, if there is no mention in a presentence investigation report, or other accompanying documents, of an offender having a prior criminal history record, may it be reasonable to assume that the offender has none? Probably so! Yet, one must be careful in making such assumptions. What if there is no mention of the defendant having dependents or job skills? Can it be safely assumed that the defendant has neither? This is obviously an area where one must move only with the greatest of care.

While the descriptive equation developed during the Parole Decision-Making Project accounted for approximately 65 percent of the variance in paroling decisions, we did not expect to account for a similar amount of variance in sentencing decisions. As

pointed out earlier, parole authorities are concerned with a more homogeneous range of serious offenses and offenders in comparison to judges who must deal with a wider range of behavior. Parole boards need to decide only the issue of release from incarceration; judges must decide whether or not to incarcerate an individual and the length (and type) of sentence. We also expected to account for more of the variance in sentencing in Denver than in Vermont, since the judges in Denver had a greater opportunity for face-to-face contact which would have provided greater potential for the development of an implicit consensus regarding sentencing policy. In fact, both of these expectations seem to have been confirmed.

The results of our application of multiple regression analysis are detailed in Table 2 which describes the outcome for Denver and Table 3 which describes the results for Vermont. The independent variables are listed in Column 1 of each table in descending order of importance according to the amount of variation each item of information explains in the context of all these items. Column 2 shows the increase in the total amount of variation accounted for as variables are included in the multiple regression equation. Column 3 presents the amount of variation explained by each individual piece of data when the variables are entered in this order. The fourth column provides the so-called raw score weight of the different items. (This raw score weight is known to statisticians as an unstandardized regression coefficient. Raw score weights may be used to predict an individual's sentence directly from the information contained in the presentence investigation report.) The fifth column of each table provides the standardized regression coefficient or standardized weight for each independent variable. Since the unstandardized (raw score) weights are calculated on different units with differing variablities (such as weapon usage in terms of the type of weapon used and prior incarcerations in terms of the number of previous prison sentences), standardized weights provide the only sound means of comparing the relative weights of the different items of information.

In Denver, fourteen items of information accounted for 53 percent of the variation in sentencing decisions (see Table 2). Only six of these variables, however, were statistically significant ($p<0.01$) in *this* equation:

(1) number of offenses for which the offender was convicted;

(2) number of prior incarcerations (both adult and juvenile);

(3) seriousness of offense at conviction in terms of maximum sanction which can be imposed (see Appendix D);

(4) use of weapon in commission of the offense;

(5) legal status of offender at the time of the offense (e.g., was the offender on probation?); and,

(6) length of offender's employment prior to offense.

These six variables, by themselves, explained 50 percent of the variation.

In Vermont, 27 percent of the variation was explained by thirteen variables (see Table 3). There, only four items of information were statistically significant ($p. <0.01$) in this equation:

(1) number of prior incarcerations (both adult and juvenile);

(2) the use of a weapon in the commission of the offense;

(3) seriousness of the offense at conviction in terms of the maximum sanction which can be imposed (see Appendix D); and

(4) alcohol abuse.

These four variables explained 24 percent of the variation in sentencing decisions.

In both jurisdictions, only a small set of information items were needed to account for most of the explained variation. The use of additional items did not significantly increase the amount of explained variation (see Appendix E). Although our research indicates that different sets of information items are used in the two jurisdictions, there does seem to be some agreement as to the relative importance of certain items, i.e., prior incarcerations, offense seriousness, and weapon usage. Thus, our research strategy sought to develop some simple model or models for each court based on the information items we identified as having the most significant impact on sentencing decisions in each jurisdiction.[36] These models could then be refined and improved on the basis of feedback from their operation. In this process, we were particularly interested in those cases where the models were initially inaccurate—the experience with errors provides the input for correction and refinement.

C. Preliminary Modeling

1. *Introduction.* Based on the initial results of the Pilot Study, efforts to predict sentencing decisions continued. The staff decided to develop several different models as the development of only one model at this

TABLE 2

Step-Wise Multiple Regression Solution for the Sentencing Decision as an Interval Variable, Denver Pilot Study Sample (N = 120)

Dependent Variable	The Sentencing Decision Defining All "Out's" as Zero and All "In's" in Terms of Years to be Served			
Independent Variable	Explained Variation (R^2)	Variation Explained by Each Independent Variable (R^2 Change)	Unstandardized Weights (b)	Standardized Weights (beta)
Number of offenses of which offender was convicted *	.23217	.23217	.17411	.45085
Number of prior incarcerations (juvenile and adult)*	.35971	.12754	.47513	.21908
Seriousness of the offense at conviction [1] *	.43577	.07606	.49031	.21316
Weapon usage [1] *	.45984	.02407	.39514	.15411
Legal status of offender at time of offense [2] *	.48986	.03002	.44794	.13657
Employment history *	.50453	.01467	−.05613	−.13156
Number of probation revocations (juvenile and adult)	.51559	.01106	.80848	.10362
Injury to victim [1]	.52067	.00508	.30196	.08694
Educational level (in years)	.52336	.00269	.08173	.04995
Narcotics abuse [2]	.52533	.00197	.04316	.03852
Number of prior convictions (juvenile and adult)	.52673	.00141	.07756	.05602
Alcohol abuse [2]	.52788	.00115	−.15480	−.04107
Number of parole revocations (juvenile and adult)	.52836	.00047	.14408	.03199
Age at first conviction (juvenile and adult)	.52841	.00005	.00251	.00801

[1] An ordinal measure treated as an interval measure.
[2] A dichotomous variable.
* Significant at the .01 level of confidence.

early stage in the research was seen as potentially restricting rather than facilitating the full expression of the variety of issues and concerns discussed and debated by the judges during meetings of the Steering and Policy Committee. In addition, focusing exclusively on the construction of one model alone might well have prematurely cut off potentially useful avenues of research in the design of sentencing guidelines. Consequently, each of the models was based on somewhat different theoretical and/or empirical considerations. In some of the models, the parameters (that is, the items of information used) also differed according to prescriptive assumptions embodied in the modeling design. For example, two of the preliminary models included the prescriptive assumption that juvenile records should not be incorporated within their parameters. Finally, rather than applying the same preliminary models to each of the participating courts, the staff developed some models which were specifically tailored to each participating juris-

TABLE 3

Step-Wise Multiple Regression Solution for the Sentencing Decision as an Interval Variable, Denver Pilot Study Sample (N = 147)

Dependent Variable	The Sentencing Decision Defining All "Out's" as Zero and All "In's" in Terms of Years to be Served			
Independent Variable	Explained Variation (R^2)	Variation Explained by Each Independent Variable (R^2 Change)	Unstandardized Weights (b)	Standardized Weights (beta)
Number of prior incarcerations (juvenile and adult)*	.14509	.14509	.19636	.28777
Weapon usage[1] *	.18366	.03857	.35665	.20396
Seriousness of offense at conviction[1] *	.21816	.03450	.12873	.15205
Alcohol abuse[2] *	.23916	.02100	.13318	.14655
Narcotics abuse[2]	.25212	.01296	.13666	.09947
Legal status of offender at time of offense[2]	.25763	.00551	.13497	.08359
Age at first conviction (juvenile and adult)	.26199	.00436	–.01044	–.08463
Educational level (in years)	.26690	.00492	–.04586	–.07044
Employment history	.26954	.00264	–.00845	–.05215
Number of parole revocations (juvenile and adult)	.27031	.00077	.08719	.02614
Number of offenses at conviction	.27047	.00016	–.01788	–.01379
Injury to victim[1]	.27061	.00014	–.04410	–.01589
Number of convictions (juvenile and adult)	.27075	.00014	.00519	.01761

[1] An ordinal measure treated as an interval measure.
[2] A dichotomous variable.
* Significant at the .01 level of confidence.

diction. At the direction of the Steering and Policy Committee, none of the preliminary models were based on the concept of the sentencing decision as a bifurcated decision-making process. This concept would require three separate equations to predict the sentencing decision—one equation for each branch of the decision tree. The complexity of this concept—while intellectually satisfying—seemed to limit its usefulness as the basis for preliminary models describing sentencing policy, and probably would prove cumbersome in an operational guideline system.

2. *Methods.* Five models of sentencing guidelines were developed: in Denver—Models A, B, and C; in Vermont—Models D and E.[37] Each of these models used a grid system design to predict sentencing decisions. All of the models were based on theoretical readings, empirical analysis of data, and advice from the judges on the Steering and Policy Committee. Although each of the models was developed on the basis of construction samples, only Models A, D, and E were constructed from the exact same data base—the Vermont and Denver Pilot Study samples. Both Model B and Model C were constructed and validated on different nonrandom samples gathered in Denver during the spring and summer of 1975 owing to the fact that, by their very nature, the Pilot Study samples did not contain (nor were they meant to contain) the more refined ele-

ments required to meet the assumptions and prescriptions of Model B and Model C. All the models used simply weighting systems on the assumption that these would hold up better over time than more complex weighting systems such as those based on regression coefficients.[38]

3. *The concept of a decision matrix.* Each of the preliminary models of sentencing guidelines employed some form of a two dimensional decision-making grid or matrix. The advantage of this type of model is that "the number of different categories is large without the discrimination in any one factor being critical or needing to be finely tuned." [39] It is this concept that was implemented successfully by the United States Parole Commission. The vertical axis of the Parole Commission's grid is divided into six levels of seriousness; the horizontal axis, into four levels of salient factor scores. Thus, the interior of the matrix consists of 24 cells or categories each of which contains a "paroling" decision. In any particular case, the appropriate decision or cell is identified by plotting the intersection of the individual's score or coordinate on the horizontal axis and that same individual's score on the vertical axis.

The concept of a multidimensional model of decision-making is informed by Ashbey's Law of Requisite Variety: that only variety can control variety.[40] It has been argued elsewhere that decisions are not made about people, but about *information.*[41] Since human beings are capable of a virtually infinite variety of behaviors, the amount of information available about such behavior is also nearly infinite. Therefore, in order to be of use in determining case-by-case issues as well as policy matters, a sentencing guideline model must be nearly equal in complexity to human behavior. In other words, it must have considerable information handling capacity and response variety. As Stafford Beer has pointed out, ". . . . the proper regulation of any complex system is itself a complicated affair, involving *interplay* of different dimensions of control." [42] The interplay or intersection of focal dimensions serves to amplify information. Thus, the most useful means of attaining the variety needed in sentencing guidelines seems to be some form of information amplifier which would serve as a generator of varietv. The map analogy presented by Beer provides a clear example of the utility of multidimensionality in amplifying information and thereby increasing variety:

> Suppose that we have a square map containing grid squares individually numbered from 1 right through to 40,000. We are looking for a tiny place name, and we have no idea where it is. Therefore, we search through one grid square after another until the name is discovered. On the average, we will have to search 20,000 squares to find the answer. If, however, we are able to develop a trick whereby we can identify both the row and the column in which this place is to be found, we shall have generated a *map reference* that takes us straight to it. Once that trick has been mastered, the problem of searching the horizontal axis involves an act of selection of one-in-two-hundred; and we shall find the correct column (on the average) after searching a hundred columns. Similarly, with the vertical axis and the detection of the correct row. Therefore, we shall have used information that has cost us a search of two hundred elements in total, instead of the original cost of a 20,000 square search—and we shall have become a hundred times more effective.[43]

The problem then becomes one of identifying the needs or dimensions and the factors which tap into those dimensions.

4. *Model A.* This model was constructed on the basis of the multiple regression equations developed for Denver during the Pilot Study. Model A used a single decision matrix rather than a series of grids as did the other models. The matrix was constructed by placing a measure of offense seriousness on the vertical axis and an offender score scale on the horizontal axis. The seriousness scale was devised by placing the offense at conviction into one of four categories without regard to the statutory classification system in the jursdiction. This categorization was accomplished by a staff ranking of the seriousness of the offense at conviction as defined by statute. The basic method employed was a card-sort with disagreements being resolved by consensus. The Pilot Study samples did not contain specific, explicit descriptions of the so-called "real" offense. Therefore, in order to tap into the real offense, it was decided to increase the seriousness ranking of an offense if one or both of the following factors were present:

(1) the use of a dangerous weapon; and/or
(2) the existence of physical harm suffered by the victim.

The computation of the Offender Score was extremely simple—all terms were additive. Only a limited range of weights were used, and scoring was in terms of "rewarding" rather than penalizing the offender. The following summary presents the point

system for the offender scale score developed in Denver:

Information Item	*Points*
Item #1: *Legal Status At Time Of Offense*	
Free of supervision by criminal justice agency	+1
Otherwise	0
Item #2: *Prior Conviction Record (Juvenile and/or Adult)*	
No prior convictions	+2
One or two prior convictions	+1
Three or more prior convictions	0
Item #3: *Age At First Conviction (Juvenile and/or Adult)*	
25 years or older	+1
Less than 25 years	0
Item #4: *Prior Incarceration Record (Juvenile and/or Adult)*	
No prior incarcerations	+2
One or two prior incarcerations	+1
Three or more prior incarcerations	0
Item #5: *Probation/Parole Revocations*	
None	+1
Otherwise	0
Item #6: *Employment (Or Attendance At School At Time Of Offense Or Time Of Sentencing*	
At least half-time employment (or attendance at school) for a minimum of three months	+1
Otherwise	0

The highest number of points which could be assigned was eight.

5. *Model B.* Model B resembled the grid approach to guidelines, but did not isolate or restrict independent focal concerns or dimensions to separate axes. Model B relied on a hierarchical series of scales for what appeared to be different dimensions. The scales which were plotted on the horizontal axis of the matrix formed a set of crude vectors. The vertical axis of the matrix represented the legal or penal code classifications of the offense at conviction. This model assumed that each statutory class of offense required a separate scale of its own. (There were eight such classes in Colorado.) The classes or categories were arrayed from the least serious class (in terms of statutorily assigned sanction) at the bottom of the vertical axis to the most serious category (again in terms of sanction) at the top.

To determine an individual's guideline sentence, one merely located the legal category of the offense at conviction on the vertical axis of the matrix and then used the scale score on the horizontal axis to determine the specific sanction—the higher the score, the more severe the sanction imposed. Model B used eighteen items of information to calculate an individual's scale score. These items of information were classified into three groups, each of which related to or tapped into one of the following focal concerns: (1) seriousness of the instant offense; (2) prior criminal history of the offender; and (3) the social stability of the offender. Fifteen variables or information items were used to measure the first and second dimensions, and three variables were used to measure social stability.

Model B assumed that two broad categories of offenses were inherently more serious than others: (1) crimes against the person; and (2) drug offenses which involved the sale of drugs. Points were added to the scores of offenders convicted of these crimes in the following manner:

(1) *two extra points* were added to an individual's score if the individual was convicted of a crime against the person classified in one of Colorado's four most serious penal code categories—Felony One, Two, Three, or Four;

(2) *two extra points* were added if the individual was convicted of an offense which involved the sale of drugs if that offense was similarly classified in one of the four most serious penal code categories—Felony One, Two, Three, or Four; and,

(3) *one extra point* was added if an individual was convicted of a crime against the person classified among Colorado's four less serious penal code categories—Felony Five and Misdemeanor One, Two, or Three.

(4) *one extra point* was added if the individual was convicted of an offense which involved the sale of drugs if that offense was classified among the four less serious penal code categories—Felony Five and Misdemeanor One, Two, or Three.

Model B involved a unique approach to the inclusion of the "real offense." The researchers keyed the scoring of the "real offense" to the statutory definitions of the offense at conviction as the basis for determining the seriousness of any illegal act. If the criminal code description of the offense at conviction called for "some injury" to occur and "some

injury" "really" occurred, then the offender's actions were viewed as being consistent with the statutory definition of the offense and no additional penalty was assessed. Similar reasoning applied to offenses calling for the presence and/or use of weapons or the sale of drugs. If, however, the statutory definition of the offense at conviction did not allow for either physical injury, a weapon, or the sale of drugs, the "real" occurrence of such activity then counted against the offender. It should be noted, however, that only a maximum of two extra points could be assessed for any of these "real offense" variables. To some extent, this assessment may be considered a minor corrective to account for the plea bargaining process.

The dimension of the offender's prior criminal history focused on the offender's prior *adult* record only—convictions, incarcerations over thirty days, probation or parole revocations, and the individual's legal status at the time of the present offense. Points were deducted from the score of an individual with no prior convictions, thus enabling the lack of any prior record to act in mitigation of the sentence imposed. For example, an offender with no previous adult felony convictions would have a "0.7" deducted, while an individual with one such conviction would have one point added to the score. Up to four extra points were added for additional felony convictions. Prior adult misdemeanor convictions also counted against an individual, but were weighted approximately fifty percent as much. Model B penalized an offender according to the recency of prior convictions. If a prior conviction occurred within the twelve months preceding the commission of the instant offense, a fraction of a point was added to the offender's score. If a prior conviction occurred more than twelve months before (but less than 36 months before) the commission of the instant offense, the offender's score was increased by a small fraction of a point. Moreover, if the instant offense was similar to one for which the offender had previously been convicted, an additional fraction of a point was added to the offender's score.

Included in the criminal history dimension were two prior punishment or sanction variables. If an offender was "currently" on probation or parole (what Model A called "legal status at time of offense"), or if the offender had been previously on probation or parole and this status had been revoked, the offender's score was increased. Those offenders who previously had been confined (for over 30 days) after a prior conviction also had one point added to their scores.

Two of the three social stability factors focused on employment, that is, whether the individual was employed, and if so, for how long. Attendance at school (for younger offenders) was generally considered the equivalent of employment. Finally, an offender who had dependents and was actually *supporting* them had a fraction of a point deducted from his or her score.

6. *Model C.* This model also was based on the assumption that it was necessary to create a series of sentencing guidelines—one for each class of offense as specified by the penal code in Colorado. Thus, theoretically, Model C would consist of eight separate sets of guidelines. In reality, only six sets were developed, since the study sample provided no experience with Felony One or Felony Two offenses. Each set of guidelines was constructed as a grid which linked an Offense Index on one axis with an Offender Index on another. There is a separate offense index for each grid whereas the offender index remains constant over the six grids. The intersection of specific scores on each of the two indices indicates the sentencing decision.

The Offense Index was a measure of the dimension of offense seriousness. The offense indices were developed by the research staff and focused specifically on the offense at conviction. Relying on strict statutory offense definition, the research staff ranked each according to perceived levels of seriousness, within its appropriate statutory class. In order to accommodate the so-called "real offense" variable, however, Model C included an "harm/loss modifier" which was used to adjust the initial intraclass ranking of an offense at conviction. The following formula was used to determine this score of an individual case on the dimension of offense severity:

(1) $C = R + (R)(M)$, where:

C is the Crime (or Offense) index;

R is the ranking of the offense at conviction;

M is the harm/loss modifier.

The Offender Index was intended to be a measure of different dimensions. It consisted of two separate, but related, sets of concerns: (1) Personal Offender Variables; and (2) Prior Adult Conviction Record. Model C used the following items of information as Personal Offender variables: age, alcohol abuse, narcotics abuse, employment, current legal status, residential stability, and community ties. The scores on these items were then added together to create a total score or numerical value (VT). The average item score was termed the Personal Variable coefficient (PV).

In calculating the Prior Adult Conviction Record, Model C took into account only convictions which occurred during the decade prior to the date on which the present offense was committed. A unique feature of Model C was that these convictions were "decayed," that is, scores measuring prior convictions were transformed as decreasing monotonic functions of, first, seriousness rankings, and second, elapsed time from the prior conviction until the present one. The weight of each individual conviction was determined by two equations.

(2) PW = R + SC, where:
PW = the Previous Crime (or Prior Adult Conviction) Weight:
R = the Rank of the offense according to an intraclass ranking system;
SC = the Statutory Classification Value.*

(3) TAW = PW(T), where:
TAW = the Time Adjusted Weight for any one conviction;
PW = the Previous Crime Weight;
T = a monotonically decreasing time modification value.

When an individual had more than one prior conviction these convictions were added as follows:

(4) $TAW_T = \sum_{i=1}^{N} TAW$, where:
TAW_T = the sum of the individual TAW's;
TAW = the Time Adjusted Weight for one conviction;
i = the first conviction.

The total TAW score (TAW_T) was then divided by a constant of "5" to produce the Adjusted Record coefficient (AR):

(5) $AR = \frac{TAW_T}{5}$, where
AR = the Adjusted Record coefficient;
TAW_T = the total Time Adjusted Weight score;
5 = a constant used to adjust the TAW_T So that the resulting AR was compatible with the PV.

Thus, the calculation of the Personal Variable coefficient (PV) and the Adjusted Record coefficient (AR) served to adjust the total Personal Variable score (VT) and total Prior Adult Conviction score (TAW_T). Once both scores were converted to convenient units, the Adjusted Record coefficient was doubled and added to the Personal Variable coefficient to calculate the Offender index (0):

(6) $0 = 2AR + PV$

7. *Model D.* This model was designed on the basis of the multiple regression equations developed for Vermont. Like Model A in Denver, it used a single decision matrix which encompassed all classes of offenses. Offense severity was placed on the vertical axis, an offender score, on the horizontal axis. The offense score for this model was developed in the same manner as was the offense score in Model A. Obviously, the titles and definitions of the offenses at conviction differed as Model A was tailored for Denver and Model D for Vermont.

The calculation of the offender scores for Models A and D was similar—that is, all terms were additive; only a limited range of weights was used; and scoring was in terms of rewarding rather than penalizing the offender. The following summary presents the Offender Scale score for Model D in Vermont:

Information Item	*Points*
Item #1: *Legal Status at Time of Offense*	
Free of supervision by criminal justice agency	+1
Otherwise	0
Item #2: *Prior Conviction Record (Juvenile and/or Adult)*	
No prior convictions	+2
One or two prior convictions	+1
Three or more prior convictions	0
Item #3: *Age at First Conviction (Juvenile or Adult)*	
25 years or older	+1
Less than 25 years	0
Item #4: *Prior Incarceration Record (Juvenile and/or Adult)*	
No prior incarcerations	+2
One or two prior incarcerations	+1
Three or more prior incarcerations	0
Item #5: *Probation/Parole Revocation*	
None	+1
Otherwise	0
Item #6: *Employment (or Attendance at School) at Time of Offense*	
At least half-time employment (or attendance at school) for a minimum of three months	+1
Otherwise	0

* The Statutory Classification Value was a transformation of the legal classes of felonies and misdemeanors where Felony One offenses were given a weight of eight and the weight of subsequent classes were decreased by one.

Item #7: *Dependence on Drugs*

No current dependence on drugs	+1
Otherwise	0

Item #8: *Dependence on Alcohol*

No current dependence on alcohol	+1
Otherwise	0

The highest number of points which could be assigned was ten.

8. *Model E.* For this model it was assumed necessary to develop a sentencing grid for each of the eight derived categories of offenses in Vermont. Each grid placed seriousness of the offense on the vertical axis and an offender score on the horizontal axis. The Offense Score consisted of an Intra-Class Ranking and a Harm/Loss Modifier. The Intra-class Ranking focused on the offense at conviction. The offenses at conviction which fell into each of the derived categories were ranked (by staff consensus) into one of three or four groups, depending on the particular derived category. In order to account for the effect of the "real crime," a Harm/Loss Modifier was developed which was added to the Intra-Class Ranking to reflect more accurately the seriousness of the offense at conviction.

The Offender Score consisted of six variables: legal status at time of present offense, prior conviction record, prior incarceration record, alcoholism, narcotics addiction, and employment (or school) history. Unlike Model B and Model C, Model E considered both juvenile and adult records. Again, the computation of the Offender Score in Model E was kept extremely simple—all terms were additive. Only a limited range of weights was used and scoring was transformed so as to "reward" rather than to "penalize" the given offender.

The following summary presents the point system for the Offender Score scale developed for Model E:

Information Items	*Points*
Item #1: *Legal Status at Time of Offense*	
Free of supervision by criminal justice agency	+1
Otherwise	0
Item #2: *Prior Conviction Record (Juvenile and/or Adult)*	
No prior convictions	+2
One or two prior convictions	+1
Three or more prior convictions	0
Item #3: *Prior Incarceration Record (Juvenile and/or Adult)*	
No prior incarcerations	+2
One or two prior incarcerations	+1
Three or more incarcerations	0
Item #4: *Dependence on Alcohol*	
No current dependence on alcohol	+1
Otherwise	0
Item #5: *Dependence on Drugs*	
No current dependence on drugs	+1
Otherwise	0
Item #6: *Employment (or Attendance at School) at Time of Offense or Time of Sentencing*	
At least half-time employment (or attendance at school) for a minimum of three months	+1
Otherwise	0

D. Model Testing

1. *Introduction.* One possible approach to the selection of a model or models to demonstrate the feasibility of sentencing guidelines would have been to ask the judges on the Steering and Policy Committee to choose either one model for testing in both jurisdictions or—more in keeping with the idea that different jurisdictions might require different models—permit them to choose a different model for each jurisdiction. Since the models had not been tested on a common validation sample, however, a better strategy seemed to be to first validate the different models on a common data sample, and then see which one or ones best represented or mapped sentencing decisions in a particular jurisdiction. At the time, we felt that it was distinctly possible that one model would predict sentencing decisions appreciably better than the others. Should this have occurred, the selection of one model—all other factors being equal—would have been obvious. On the other hand, all models might have performed equally well. In that case, the range of choices would have been much broader; and, rather than select one model, the judges might have preferred to have a "synthesis" model which would incorporate—as appropriate—certain aspects of each model. In any event, the judges would then have been in a position to make their decisions with full knowledge of two significant factors: (1) the design and construction of the models; and, (2) the comparative ability of the models to map sentencing decisions.

This phase also provided the opportunity to test the models and to correct some of the problems we had encountered in the Pilot Study. In addition, during this period, the data base would be enlarged permitting additional statistical analysis.

Moreover, two major new research tasks were also included. First we wanted to test the use of a brief and concise Sentencing Information System developed

by the research team. Second, we wanted to obtain the judges' subjective estimates of three focal concerns or dimensions in sentencing: (1) seriousness of the offense; (2) seriousness of the offender's prior record; and, (3) their estimate of the probability of recidivism.

2. *Methods.* In Denver, we tested Model A, Model B, and Model C; in Vermont, Models D and E. Our comparison of the efficiency of the various models was based on two different criteria:

(1) the number of cases which fell outside of the guidelines of a particular model, i.e., the absolute number of errors in prediction for that model; and,

(2) the percentage reduction in error achieved by using the model predictions of sentencing decisions as compared to predicting all sentencing decisions as "out."

The Sentencing Information System consisted of 20 items of information which were selected on the basis of: (1) the multiple regression equations developed from the Pilot Study data; and (2) the general information requirements of the various preliminary feasibility models. These information items were presented to the judges in the form of a Sentencing Information Sheet (SIS) which accompanied the presentence investigation report (see Appendix F). Beginning in November 1975, the probation officers in each participating jurisdiction were requested to complete as SIS for each case on which they prepared a presentence investigation report. The judges were then asked to review the SIS which accompanied each case and to indicate any additional items of information which they had taken into account in reaching their sentencing decision in that particular case. We felt that an analysis of such items might have revealed shortcomings in the SIS. In those instances in which the actual sentencing decisions differed from the predictive ones, these information items might also have indicated the reasons for such variations.

The judges were also requested to rate their assessment of the following dimensions for each case:

(1) public disapprobation of the seriousness of the offense;

(2) public disapprobation of the offender's prior criminal record; and,

(3) the probability of recidivism.

They were to check off one of seven categories arranged on a scale from low to high for each dimension. Obviously, dimensions one and two related to the focal concerns of offense seriousness and seriousness of prior record. A more direct approach would, of course, have been to ask the judges to make their own estimates rather than an estimate of public condemnation. For example, the question might have been phrased in the following manner: "What is your estimate of the seriousness of the offense?" However, we felt that the judges may have been reluctant at this stage to make such estimates, perhaps reasoning that any such ranking—particularly of offense seriousness—was a legislative rather than a judicial responsibility. In retrospect, we were probably overcautious; e.g., the judges on the Steering and Policy Committee frequently spoke of these scales in terms of their own estimates of seriousness of the offense and prior record. In completing the scales, one participating trial court judge, in fact, crossed out "public disapprobation" and wrote in "seriousness."

We attempted to define equations, by a multiple linear regression analysis, to predict sentencing decisions on the basis of these subjective estimates of judicial concerns at sentencing. The use of the subjective estimates as independent variables offered another opportunity to describe implicit sentencing policy in a quite different manner. In addition, we might have been able to detect priorities in focal concerns and differences in these priorities between these two jurisdictions. We then could have built models using objective measures related to the prioritized focal dimensions specific to each jurisdiction.

It would have been possible to draw another random sample in both jurisdictions had the validation of models and equations been our only purpose. Since, however, we wanted simultaneously to obtain the judges' estimates of these three focal concerns as well as their feedback regarding the sentencing information system we had developed, we elected to draw a nonrandom sample of cases as they were processed through the judicial system at sentencing. We should note here a further concern: in order for any sentencing model to be useful to judges, that model must handle cases in terms of the sentencing process as it occurs in reality; in other words, a model must be built which can deal with cases on a nonrandom basis. Accordingly there was a need to test the models in the "real time," or ongoing environment of the sentencing process. Therefore, a 221 case sample was drawn in Denver, and, in Vermont a 113 case sample. During this phase, the data collection instrument was pared down to 81 items of information, not including the judges' scaling. With the exception of a few demographic

variables, the items of information sought by this instrument were those required by the feasibility models developed by the research staff. Again, probation revocation cases were excluded.

3. *Results and discussion.* In both sites, we were faced with the problem of waiting for cases and the attached SIS's to move through the system. Consequently, the size of the sample grew very slowly and unevenly. In order to validate the various preliminary feasibility models, it was believed that at least 100 cases were necessary. By mid-January 1976, prior to a meeting of the Steering and Policy Committee, a sample of this size had been collected in Denver. Shortly afterwards, an additional 121 cases filtered through the system and were included in the Denver data base. A sample of the requisite size (N = 113) was not available for Vermont until mid-April 1976. During this validation, the criterion used to evaluate the effectiveness of the models was the ability of each of the models to predict correctly the "in-out" decisions.

4. *Models.* Model A was tested on the entire 221 case sample collected in Denver. Eighty-four percent (185 cases) of the "in-out" decisions fell within the guideline model. The percentage reduction in error was 23 percent. Model B was validated on the initial 100 cases gathered in Denver. This model correctly mapped 80 percent of the cases for a percentage reduction in error of 16 percent. Model C was tested on the same sample as Model B. Seventy-nine percent of the sentencing decisions fell within the guidelines of Model C. The percentage reduction in error was 13 percent.

In Vermont, Model D correctly mapped 73 percent (76 cases) of the sentencing decisions. A percentage reduction in error of 48 percent was achieved. Model E was applied to this same sample, but the small number of cases (N = 113) which necessarily were distributed throughout seven grids (the sample did not contain any Category One offenses) made the idea of developing a different grid for each category of offense impractical. Indeed, in the majority of grids in the construction sample there was not a sufficient number of cases to allow the development of even the crudest decision rules. Consequently, the scarcity of cases in some of the grids limited our effective experience to only two Vermont grids which dealt with the following categories of offenses:

(1) Category Three offenses, of which there were 53 cases in the construction sample and 18 cases in the validation sample; and,

(2) Category Four offenses, of which there were 53 cases in the construction sample and 27 cases in the validation sample.

Of the 45 cases contained in Categories Three and Four, 83 percent (38 cases) fell within the guidelines of Model E. The percentage reduction in error was 65 percent.

5. *Sentencing information system.* In Denver, there did not seem to be any consistent demand for items of information in addition to those mentioned in the SIS. Of course, this might be attributable to the fact that the judges could readily find the additional information in the attached presentence investigation reports and fail to realize that they had indeed, perhaps unconsciously, taken additional items of information into consideration. (Staff interviews with the judges, as well as our observations as to the conscientious manner in which forms were reviewed and filled out, suggest otherwise.) Among those items which *were* mentioned by the judges as being additionally relevant in particular cases were the following: juvenile criminal history records, adult arrest records, the fact that the offense was part of a marital or lovers' dispute, or that the offender was in some type of rehabilitation program such as a drug treatment project. While we list these in order of frequency of occurrence, no clear-cut pattern seemed to emerge in Denver; and similar results were obtained in Vermont.

6. *Subjective judgments.* The judges' judgments, in relation to their sentences, were studied by seeking the linear combination of these scores that best predicted decisions. The method used, again, was multiple regression. It should be noted that certain assumptions underlying the use of this method are not met; for example, the subjective ratings yield ordinal, but not necessarily interval, data. Perhaps more importantly, readers should be aware that any interpretation of the results will be based only on intercorrelations of the ratings and decisions. Thus, the analysis does not show what "causes" the decision; nor can it demonstrate conclusively what the judge has taken into account. For example, a rating could be highly correlated with decisions but further study could demonstrate the rating given to be a rationalization for the decision. Despite such limitations, analysis of subjective judgments seems to have some merit in that such implicit evaluations appear to be actually made by judges during the sentencing process. In Denver, the judicial estimate of the probability of recidivism appeared to be the most important of these variables (see Table 4). In Vermont, however, the judicial estimate of the seriousness of prior record was the item of information most closely

associated with the decision (see Table 5). In both jurisdictions, the seriousness of the offense was the second most important variable among those studied, in terms of accounting for variation in sentencing decisions.

Our analysis indicates that the priorities among focal concerns may be quite different in the jurisdictions studied. Consequently, different approaches to sentencing guidelines and sentencing information systems may prove to be necessary in these two judicial systems. The research tasks then became one of objectifying—insofar as possible—these subjective measures.

The reader should be aware that the results obtained in Vermont are regarded by the research staff as extremely tentative for two basic reasons. First, administrative and logistic problems restricted our sampling to less than a majority of the judges in the Vermont District Courts. Second, in order to obtain at least a 100 case sample for the Model Phase, it was necessary that the judges included in the sample provide feedback on the SIS's and make

TABLE 4
Step-Wise Multiple Regression Solution for the Sentencing Decision as an Interval Variable, Denver Model Testing Sample (N = 221)

Dependent Variable	The Sentencing Decision Defining All "Out's" as Zero and All "In's" in Terms of Years to be Served			
Independent Variable	Explained Variation (R^2)	Variation Explained by Each Independent Variable (R^2 Change)	Unstandardized Weights (b)	Standardized Weights (beta)
Judicial estimate of probability of recidivism *	.17701	.17701	.69412	.2898
Judicial estimate of public disapprobation of the offense	.18868	.01167	.26100	.10109
Judicial estimate of public disapprobation or prior record	.19705	.00837	.29897	.13240

* Significant at the .05 level of confidence.

TABLE 5
Step-Wise Multiple Regression Solution for the Sentencing Decision as an Interval Variable, Vermont Model Testing Sample (N = 113)

Dependent Variable	The Sentencing Decision Defining All "Out's" as Zero and All "In's" in Terms of Years to be Served			
Independent Variable	Explained Variation (R^2)	Variation Explained by Each Independent Variable (R^2 Change)	Unstandardized Weights (b)	Standardized Weights (beta)
Judicial estimate of public disapprobation of prior record *	.23283	.23283	.13132	.29677
Judicial estimate of public disapprobation of offense *	.28662	.05380	.13679	.20026
Judicial estimate of probability of recidivism *	.31336	.02674	.10009	.21713

* Significant at the .01 level of confidence.

their estimates of focal concerns on noncurrent cases.

7. *Conclusions.* In summary, the models tested in Denver achieved approximately the same results in spite of differences in their design and construction. In fact, they often "missed" the very same cases. The performance of the various Denver models and the assumptions on which they were based were reviewed for the judges on the Steering and Policy Committee.

One interesting pattern revealed in our analysis of the models was that offender variables (e.g., prior criminal history records) appeared to have a greater influence on the sentencing decision than did offense seriousness variables. When the offense was one of a vary serious nature, however, (e.g., one involving serious personal injury to the victim), the seriousness of offense variables seemed to have a greater impact on the sentencing decision than did the offender variables.

In the presentation which followed the discussion of alternative models, the judges did not seem to favor one to the exclusion of the others. Attention therefore turned to the development of some type of "synthesis" model.

The first major issue debated was that of "decay." Judicial members of the Committee were against any system of sentencing guidelines which would automatically decay prior convictions. The second issue raised was whether to include adult arrest and/or juvenile records in a model. On this subject the judges reiterated their position that such information helped to provide an overall picture of the offender, a pattern, perhaps, of that offender's criminal behavior. On the other hand, it was pointed out that since some measure of prior convictions apparently would be included in any guidelines, adult arrest records and juvenile records might add little, if anything, to the predictive power of the model. It was further suggested that, in cases in which the weighing of arrest and/or juvenile history did result in a sanction that differed from the normative sentence suggested by the guidelines, the judge might wish explicitly to offer the consideration of such information as the reason for departing from or overriding the guideline sentence. Debate on the third issue—how to handle "seriousness" of the current offense—resulted in unanimous agreement among the judges that the "real" offense *must* be considered a sentencing. Moreover, after reviewing several alternatives, the judges indicated their preference for some intra-class ranking of offenses according to perceived seriousness.

E. Demonstration Model

1. *Introduction.* This phase of the research was designed to develop and test a synthesis model in terms of the "in/out" decision. With the collaboration of the judges, we wanted to demonstrate how a feedback loop might be developed which would hone or sharpen the model in terms of both its predictive ability and its utility in the court system. We hoped to learn of any administrative problems that might ensue as a result of inserting the calculation of a guideline in the case processing flow; also we wished to determine how the results might best be forwarded to the judges. Thus, after the January 1976 meeting of the Steering and Policy Committee, the research staff developed a synthesis model for the Denver Court. (Since the basic 100 case model testing sample had not yet been completely collected in Vermont, however, a similar synthesis model could not be developed and tested for the Vermont courts.)

It is imperative to note that the demonstration model described herein was developed by the staff of the Sentencing Guidelines research project on the basis of analysis of nearly 400 sentencing decisions made by the Denver District Court over the past two and one-half years, input from members of the project's Steering and Policy Committee, and a review of both the theoretical and empirical literature on sentencing. This model is not put forth as having been accepted and/or implemented by the judges of the Denver Court, but rather as a product which we feel clearly demonstrates the feasibility and usefulness of sentencing guidelines as a tool to aid the sentencing decision-maker. It was developed, after all, during the feasibility phase of this project and we had no greater plans or expectations for it. The basic objective in its design was that it be computationally simple, yet efficient in charting what underlying factors have influenced decisions in the past and in estimating what weights have been accorded each of these factors. Before any guidelines can be operationalized, however, it is assumed that the local judiciary must first collectively make all of these initial decisions (see Appendix G).

2. *Methods.* The Denver Demonstration Model used a grid system with one grid for each category of the felony-misdemeanor class system. Each grid placed a measure of offense seriousness of the vertical axis and an offender score on the horizontal axis. The model sentences (in terms of the "in/out" decision) were given to the Denver judges only after formal imposition of sentences so as to minimize the possibility of interjecting some bias into their decisions.

When the model sentence differed from the actual decision, the judges were asked to indicate why they thought the model decision did not correctly estimate their actual "in/out" dicision.

Staying within the boundaries posed by the Colorado statutory constraints, offenses within each class were divided by estimated seriousness into three or four groups. Rankings were determined by consensus among staff members on the basis of their analysis of the statutory definition of each offense. The higher the group's rank, the more serious the offense.

The major problem next addressed concerned the practice of sentencing an offender on the basis of offense behavior which often was not consistent with that normally expected in the commission of the offense for which a conviction took place. As noted earlier, charging and plea bargaining practices seem to underlie much of this variance between the offense of conviction and the "real offense." A harm/loss modifier was, therefore, developed to more accurately reflect the judicially perceived seriousness of the offense. This modifier, which ranges in value from zero for a victimless crime to five for death, is figured on the basis of the most heinous activity described. It is then added to the intraclass rank with the total score becoming the offense axis of each two-dimensional grid.

The offender score consists of five items of information: prior incarcerations; probation or parole revocations; legal status of the offender at time of offense; prior convictions; and employment history. The first four variables attempt to provide a measure of the offender's prior adult criminal history record. Although the inclusion of juvenile records apparently would tend to improve the model's performance, it was believed that the improvement was not sufficient to warrant use of these records in light of the moral arguments against their use. For related reasons, arrest records (both adult and juvenile) were excluded from this model.

If the offender previously had been incarcerated for more than 30 days (as the result of an adult conviction), six points were added to the offender's score. Four points were added to the offender's score if a prior adult parole or probation had been revoked. Should the offender have committed the instant offense while on some form of supervised release as the result of a prior adult conviction, then the offender's score was increased by six points. A zero is recorded for each nonaffirmative finding for each of these three items.

The Denver Demonstration Model did not use a decay or forgiveness factor in dealing with prior adult convictions. It did, however, penalize certain general categories of prior convictions more heavily than others according to the following tariff:

(1) a felony against a person, then four points were added to the score;
(2) a felony not against a person, then three points were added to the score;
(3) a misdemeanor against a person, then two points were added to the score;
(4) a misdemeanor not against a person, then one point was added to the score.

The final variable (in two parts) in this demonstration model reflects judicial concern for some indicator of the offender's social stability. Current employment/school was selected over other possible items because of its statistical significance and its potential as the least biased of an assortment of such indicators. Moreover, this particular variable was relatively stable over time as compared to other social history factors and was more likely to be present consistently in presentence investigation reports. Four points were deducted from an offender's score if at the time of sentencing (or prior to detention, if detained), the offender was employed or attending school on a full-time basis. Three points were deducted for part-time work or school. (An additional two or three points could have been deducted if such activity was for a period of over two months or over one year.)

The model is designed to classify the offender on the basis of both the offense and offender score. The Y axis (or offense score) is the sum of the intraclass rank of the offense at conviction and the harm/loss modifier. The X axis (or offender score) is the total of the sum of the offender's prior conviction, legal status, revocation, and incarceration scores *minus* the sum of the two parts of the social stability status score.

3. *Results and discussion.* The Denver Demonstration Model was developed originally on the first 100 cases collected during the Model Testing Phase in Denver. When an additional 121 cases collected during that same period were received by the research staff, these cases were added to the data base. While the additional cases did not necessitate any modification of the model, they did increase our experience with sentences of differing lengths of incarceration. Thus, we were able to begin to design with some confidence the "how long" stage of the Demonstration Model.[44] In the construction sample, (N = 221), 90 percent of the "in/out" decisions fell within the guideline model. An additional five

percent of the cases were considered to have fallen outside of the guidelines as a result of a sentence to a period of incarceration which varied from the range suggested by the guidelines by more than one year—a figure we chose in a conscious effort to be conservative with regard to any variation from a suggested guideline length of sentence. Thus, 85 percent of the sentences in the construction sample gathered in Denver from November 1975 to mid-January 1976 fell within the guidelines, both as to whether or not the offender was incarcerated, and also—if the sentence was to a period of incarceration—as to the length of incarceration. The model was validated on a sample of cases (N = 137) drawn in Denver from March to April 1976.[45] In this sample, 12 percent of the cases fell outside of the guidelines on the basis of the "in/out" decision. An additional eight percent of the cases was considered to have fallen outside the guidelines as a result of an incarceration term which varied by more than one year from the range specified in the guidelines. Thus, 80 percent of the cases in the validation sample fell completely within the guidelines.

The research staff did not encounter any problems in inserting the calculation of a guideline into the case processing flow. The question becomes one of deciding who is in the best position to calculate the sentence in any operational system. The judges were of the opinion that the guideline sentences should be calculated by their court clerks. They believed that the probation officers might be unduly influenced in making their recommendations if they had to calculate the guideline sentences.

F. Findings

1. *Information uses and needs.* Within the last 25 years, we have witnessed a growing movement to make more and more information available to the sentencing decision-maker. The United States Supreme Court, by virtue of its 1949 opinion in *Williams v. New York*[46] set the precedent for allowing a wide range of information to be considered at sentencing:

> A sentencing judge . . . is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant—if not essential—to his selection of an appropiate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.[47]

This trend has garnered nearly unanimous acceptance without questions being raised as to whether such a large quantity of information is either necessary or desirable in order to make the sentencing decision. Within the last year, however, there has been some movement toward providing *less* information to the court. This reduction is perhaps linked to recent widespread disillusionment with the rehabilitative ideal and the growing call for a return to retributive or "just deserts" principles.[48]

In general, we agree with those calling for a reduction in the amount of information being collected routinely and presented to the judge, though we do differ in our rationale. Throughout this project we have viewed sentencing as a decision-making problem and have accepted two significant working hypotheses from previous research in the field: (1) decisions are made not about people but about information about people; and (2) only a limited amount of information actually is or can be processed in making a decision.[49]

Since sentencing deals with an infinite variety of human behavior, it is impossible to plan in advance all possible circumstances which might arise which would justify going outside the guidelines. (If one *could* identify and include all these factors in the guidelines, the result would be a system which would be far more cumbersome than that which exists today!) Thus, if limits were not placed on the information items included in the guideline model, it would not be a model in the definitional sense of the word, but rather the universe it is supposed to represent.

But this raises an important methodological concern which faced the research staff: how *much* information should be included in the guidelines? Again, there is no one correct answer. Eventually, we adopted the economic concept of diminishing returns. After a certain point in time, it simply becomes too "costly" to continue collecting information since additional items provide little, if anything, in the way of increased accuracy. Any gain in accuracy must be weighed against the cost (in terms of time and energy, as well as physical and fiscal resources) of collecting and processing the information. For example, is it worth including an extra item which it takes a probation officer a full day to collect if adding that item will only increase the accuracy of the guidelines by one percentage point? Obviously, some trade-off must be made between our desire for accuracy and the limits we place on our expenditures. While we think we have reached a useful compromise so far, we are keenly aware of the limitations of a

feasibility study and are, therefore, keeping the trade-off point a most flexible one.

We have tentatively concluded that all sentencing decisions utilize a small core of information containing approximately 6 to 12 items whose weight remains constant or—it must be assumed—changes only slowly over time. It is important to note, however, that there is no one core of information; within some limitations, the type and number of these items may vary, and not significantly affect the overall accuracy of the guidelines.

While this basic core of information may be utilized in deciding all cases, the total set of required decisions still can be divided into two distinct groups. The first group is composed of the "more usual" cases. All of the decisions in this group, which encompasses approximately 85 percent of the total sentences being imposed by a court, can be accounted for by evaluating just those 6 to 12 items which make up the information core.

In contrast, the decisions in the second group cannot be similarly accounted for, and hence we say that the sentence in those cases falls outside the guidelines. This result might occur for one of two reasons: (1) some additional piece, or pieces, of information not included in the core—or incorrectly weighted in the core—causes the decision to deviate from the expected norm; or, (2) the case is an example of an unjustified or disparate decision.

Unfortunately, it is very difficult, if not impossible to unequivocally state which of these explanations is, in fact, the reason why a case cannot be directly accounted for by the suggested guideline sentence. Close analysis of the data, however, plus advice from the judges on our Steering and Policy Committee and in our participating courts, has enabled us to make an "educated estimate" that approximately 50 percent of the cases in this second group would simply be considered "more unusual" because of the presence of some particular item or items of information lacking in the basic core. This is not to say that the core of information is being ignored in these cases; rather, the presence of this infrequent, yet significant, additional factor has had a superseding effect.

Despite our hypothesis that a dozen items of information is all that is needed to make the vast majority of sentencing decisions, we are not proposing that presentence reports be reduced to that small a level. A broadly based report on the offender still is advisable because we have no way yet of knowing in advance what information will be uncovered or what effect it may have on the court's sentencing decision. Thus, we suggest that the basic format and purpose of the presentence report be retained for its sentencing purposes in its present state except for some reductions we would recommend in the social stability information categories. Both the data we have collected, and statements of our participating judges, have indicated to us that multiple indicators of an offender's social stability are redundant, and therefore ignored, in making sentencing decisions.

What we are trying to stress in terms of judicial information needs is that probation officers might better allocate their time in relation to the importance of the information they are collecting. While less time should be spent collecting excess social stability data, at least some extra effort should be made to ensure the accuracy of those items contained in the core; and perhaps a summary of those items should be provided to the judge on the first page of the report, along with the suggested guideline sentence. This slight modification would better organize the judge's information needs, constructively structure the judge's thought and decision-making processes, and should lead to more just and equitable sentences.

2. *Seriousness of offense.* A key finding of our work concerns the judicial practice of sentencing on the basis of the judge's individual interpretation or conceptualization of the actual criminal behavior of the offender. Analysis of the data, simulation research we have conducted, and discussions at our Steering and Policy Committee meetings all have made it abundantly clear that when judges weigh the seriousness of the offense in determining sentence, they are weighing the harm or loss suffered by the crime victim in what they perceive to be the "real offense." The information is provided to them either in an "official version of the offense" section of the presentence report or via a copy of the police arrest report.

This finding is not announced with any claims of novelty or as a revolutionary breakthrough in the theory of sentencing. Several studies have alluded to this fact and several appellate courts have upheld lower court statements which clearly indicated that the actual offense committed—and not merely the offense of conviction—was being considered in setting sentence.[50] It is, however, significant to note it here because the implementation of guidelines will necessitate that "real offense" sentencing be made far more explicit than it has been in the past. With use of such guidelines, appellate courts no longer will be able to ignore the importance of this practice by distinguishing away its actual, specifically weighted effect on the sentence to be imposed.

The judicial members of our Steering and Policy

Committee were unanimous in their support of the legitimacy of this practice and its inclusion in guidelines. They believed that making explicit what to date had been their implicit policy was the only honest approach to this issue. Nevertheless, some concern regarding this practice exists because, potentially, it enables prosecutors to avoid having to prove all elements of an offense beyond a reasonable doubt. Consequently, when there is some doubt as to the State's ability to obtain a conviction for the "real offense," prosecutors may perhaps settle for a plea to a lesser offense realizing that the offender still will be actually sentenced on the basis of having committed the more serious offense—within statutory and pleading confines, of course.

This in turn has important ramifications for any evaluation of the true effects of plea-bargaining. By sentencing an offender—to some extent—on the basis of the "real offense," judges appear to have devised, in effect, a method for retracting much of the present benefit a defendant supposedly gets in return for a plea of guilty. We think most experienced practitioners would agree with the statement that most defendants who plead guilty do so primarily in the hope of receiving a more lenient sentence than they would likely receive had they stood trial and been convicted. Yet, our preliminary analysis indicated that judges are sentencing on the basis of their perception of the "real offense" irrespective of the specific offense of conviction and regardless of the means by which such an adjudication was obtained.

This is not at all to say, however, that all defendants are being deceived or that they receive nothing in exchange for their plea; indeed, there are many defendants who receive immediate sentencing leniency for having saved the State the time and expense of a trial. Defendants who will receive a lighter sentence are those who plead guilty to a lower class of offense *and* who otherwise would have received a more severe sentence than is now statutorily permissible.

Perhaps the easiest and most understandable way to explain this is through an example. Let us assume that a person has committed a robbery, a Felony Four offense in Colorado. Based on the description of the offense behavior in the presentence report, and the relevant characteristics of this particular offender let us further assume that the judge would have imposed a prison sentence of indeterminate minimum length to five years maximum. This then would be the judge's perception of an appropriate sentence regardless of whether the defendant pleaded guilty or was convicted after a trial. Let us suppose now that this same defendant pleads guilty to the lesser offense of theft from the person, a Felony Five in Colorado. If the judge actually sentences, as we assert, on the basis of what the offender is perceived to have done and not on the basis of what the defendant was convicted of, the defendant would receive the identical indeterminate to five year sentence. Thus, the offender recives no sentence reduction benefit by pleading guilty.

Suppose, however, that under the given circumstances, the judge would have imposed a *seven* year sentence on the defendant for the robbery upon conviction. In such a case (which has a five year statutory maximum penalty), by accepting a plea to the Felony Five theft offense, the judge is prevented from imposing a seven year sentence. Therefore, the offender, by thus hypothetically crossing this real penalty line, receives a five-year sentence—two years less than he or she would have received if found guilty of committing a robbery.

Before leaving this contentious area, we should note that—while immediate sentencing benefits appear to be applicable only to a limited number of defendants—potential *long term* "gain" for all offenders is substantial. The most significant deferred benefit occurs if the offender is later convicted of another offense. Because there was an earlier plea of guilty to a less heinous crime than that which was actually committed, the offender's prior record will not appear to be as serious to the later judge, and, in some circumstances, this may result in a more lenient sentence for the later offense. This is especially true where, through even lateral "charge" bargaining, an offender is able to avoid the stigma generally attached to convictions for, say, sex offenses, by pleading guilty to, say, a simple assaultive crime, or where, by pleading to a misdemeanor rather than a felony, the provisions of a habitual offender type of statute are evaded.[51]

3. *Towards implementation.* Members of the research team and of the Steering and Policy Committee are in complete agreement that the successful followup of the work begun in this project contains the potential to revolutionize the sentencing process. This study has clearly demonstrated the feasibility of sentencing guidelines. Such feasibility has been shown on two levels: methodological and practical. On the first level, we have designated specific, weighted, and objective items of information which have been able to account for a large percentage of sentencing decisions made in a given jurisdiction. The real significance of this achievement lies in what it says about sentencing in general. Much verbal support has been given in the past to the notion that each case,

handled on an individual basis, is incapable of categorization and, therefore, no mathematical guidelines could accurately map or chart sentencing patterns. We have found this to be an inaccurate portrayal of the decision-making process. Unquestionably, an individual sentence determination is made for each offender, but this case-by-case sentence is consistently formulated within overall policy constraints, however latent they may be. Once it becomes possible to make that basic policy visible, one can then develop, as in this collaboration of judges and research workers, a system of handling individual cases within it.

The other level upon which the feasibility of guidelines has been demonstrated is on a practical level. Judges have been willing to take an active part in this study and have made many valuable contributions to it. Although, as of this date, guidelines have been implemented in only one jurisdiction, we do expect the full cooperation and willingness of other judges to use them when the results of this project became more widely known. Our Steering and Policy Committee has worked extremely well in fostering judicial acceptance of guidelines. As emphasized earlier, when we criticized legislatively mandated sentencing, we assume that when a body has been part of the change process, the chances for successful implementation of that change are increased.

The next step involved the operationalizing of guidelines. This was accomplished in the Denver District Court in the fall of 1976. Staff met with the Denver judges in an attempt to familiarize them with the implementation process and also to ask the judges as a collective body to resolve several important policy questions. The judges were then asked to design the actual guidelines they would be using. Staff had worked out and tested various models utilizing slightly differing combinations of information. Alternative solutions to problems were laid open for consideration by the judges along with any options they might have suggested. The only limitation was that the judges develop a guideline system that was capable of being statistically operationalized into an efficient product.

If we are to succeed in our attempts at guideline implementation, then it is imperative that the judges in each jurisdiction consider the guidelines their own. The judges must be totally familiar with what is and what is not in the guidelines, and with what the guidelines do and do not do. This is necessary not only for their support in the use of guidelines, but also for their sense of self-confidence when going outside the guidelines.[52] We have often spoken of "going outside the guidelines." We must make clear that when we use that phrase, we are referring to those situations in which a judge decides to hand down a sentence other than the specifically suggested guideline sentence. Since, however, such judicial decisions are an integral part of the operationalized guideline system we envision, while the judge may be overriding or departing from a guideline *sentence,* the judge is staying *within* the overall guideline *system.* Knowledge of this, plus a complete understanding of the guideline concept and its workings, can minimize any tendency towards overcompliance or rigidity in guideline usage.

4. *Sentencing guidelines in operation.* Sentencing guidelines will provide an empirically derived proposed sentence to each trial court judge specifically tailored to the case at issue in relation to the overall policy of the court. As has already been stressed, this guideline sentence is intended as a statistical aid and in no way provides a binding, prescriptive sentence to be automatically imposed in every case. Indeed, local judicial expertise thoroughly informs the guideline model, and the sentencing judge, as human decision-maker, still retains the discretion to override any suggested determination. By this means, judicial discretion is accommodated, and, more importantly, judicial experience is exploited. The guideline sentence is merely additional—but very significant—information for the sentencing judge, explaining what the "average" sentence of all the judges in that jurisdiction in the recent past would have been in the actual individual case before the judge.

Judges will receive the guideline sentence some time in advance of formal imposition of sentence. In jurisdictions such as the two with which we have worked on a participant level—the Denver District Court, Denver County, Colorado and the District Courts of the State of Vermont—presentence investigative reports are prepared for nearly all cases. There, the guideline sentence will be provided to the judge as another piece of information in this report. Once a guideline model has been adopted, the computation of the guideline sentence becomes a relatively simple process, and it is estimated that probation officers will be able to calculate the sentence for each case in approximately five minutes. In relation to the total time it takes to research and write a presentence report, this is an insignificant amount of additional time. Indeed, since we recommend the deletion of some presently collected items of information, we expect the guideline sentence

scheme to result in a net gain of time for probation staff.

In those jurisdictions in which presentence reports are infrequently used—sentencing taking place immediately after conviction—the guideline sentence will have to be computed by the judge or someone in the court designated by the judge, perhaps the clerk of the court. The reader should bear in mind that the guidelines have been developed with ease of calculation in mind as an important consideration; hence, we do not view even this as unduly burdening an already overworked judiciary. We would argue that the value of this piece of information outweighs the negligible time and expense involved in providing it to the sentencing judge.

We envision that the judge will use the guideline items as a sort of benchmark, or check, against which to measure the sentence the judge tentatively plans to impose. If that sentence is within the range provided for by the guidelines, the judge need not provide particularized reasons for imposing the particular sanction, but will probably feel more comfortable in handing down that sentence. The guidelines themselves (i.e., the information base which makes up the guidelines) provide the reason for the sentence. The guidelines do not suggest an exact sentence but offer a small range so that the judge may distinguish between offenses and/or offenders which are grouped into somewhat broad categories. For example, the guidelines may consider only the offender's total number of prior felony convictions, but, by providing a range, the guidelines permit the judge to more heavily weigh a past robbery conviction than one for petit larceny without having to go outside the guidelines.

If, however, the judge wishes to impose a sentence outside the guidelines—which we estimate will normally happen about 10-20 percent of the time—either above or below, then the judge of course has the absolute freedom to do so. Nevertheless, we are suggesting that written reasons be given for such a departure. This much we believe is due the defendant, society, and the judge's colleagues. It is imperative that the reasons not simply be an expression of something already contained in the guidelines, or some phrase made meaningless through rote repetition (which we believe would occur frequently were written reasons required for *all* sentences), but that they instead be a thoughtful and "reasoned" justification for why the guidelines are inappropriate for the case at hand. A judge may still refer to an item in the guidelines, but rather than merely state the obvious—that the particular item was considered—the judge should explain why a different weighting was given the item.

These articulated reasons are not only intrinsically and intuitively valuable, but they will provide the focal point for three protections against abuse of the system—appellate review, peer review, and "self" review. First, the reasons will furnish a record upon which an appeal can be based. The criticisms voiced earlier were not of appellate review *per se,* but of appellate review without articulated guidelines. Under a guideline system, appellate review can be used more effectively in deciding policy issues, a function more in line with that which we view as its best purpose. This way, those factors initially included in the guidelines—and their respective weights—can be subject to meaningful review on appeal. (Furthermore, those sentences falling outside the guidelines will be subject to appeal also, but review will now be based more cogently on the judicially articulated reasons for departure.) Therefore, it is in conjunction with guidelines that appellate courts will best be able to perform at their peak by focusing on the salient issues in deciding the propriety of a sentence.

In the future, we envision a second possible protection against abuse of a guideline system, and that is the use of panels for those cases in which the judge wishes to depart from the guidelines. To those who suggest that panels be used in *every* case, we would argue that such a use of panels (just as a universal use of written reasons for sentencing) would trivialize a procedure which, if used properly, could be an effective tool to aid the judge in reaching sentencing decisions. A better procedure would be to use panels *in conjunction with* guidelines. The panel should operate in a strictly advisory capacity to the judge who wishes to impose a sentence outside the guidelines. The final decision, as always, would rest with the original judge; but in this small percentage of out-of-the-ordinary and more difficult cases, we expect that the opinions of fellow judges would be welcomed.

The third distinguishing feature of guidelines which is vital to its adaptability and "protects" against abuses is the cybernetic feedback mechanism. We envision that, in a fully operational guideline system, at least twice a year, the judges in the jurisdiction would meet as a collective body and monitor the previous six months' use of the guidelines. They would review the effectiveness of the guidelines in accurately reflecting the policy of the courts. They would review those decisions which have fallen outside the guidelines to see if such departures represent desirable policy revisions which

should be reflected in a reconstructed guideline model, or whether they simply represent the presence of extremely unusual circumstances which justified a guideline override. An example of how this aspect of the system may operate is given by the United States Parole Commission's implementation of their guidelines. When the offenses were first ranked by seriousness, selective service violations were ranked as being of "moderate" seriousness. After the Vietnam war ended, however, hearing examiners set numerous parole dates for this offense outside—in this case, under—those called for by the parole guidelines. Apparently, with the war over, the offense was no longer regarded by the examiners as being quite as serious as it had been before. The Commission considered these cases, consciously agreed with the policy implications, and reduced such offenses to a lower seriousness class.

5. *Conclusions.* When comparing sentencing guidelines to legislatively mandated sentencing proposals, the most striking positive practical attribute of the guideline system is that it is judicially implemented and judicially controlled. Governmental change is at best a slow process in which overt hostility and resentment or at least passive resistance, can be expected to result from forced change. In a judicially developed and controlled guideline system, however, sentences need not be specifically prescribed by any outside body. This is especially important if one recognizes sentencing to be a legitimate judicial function. When change takes place under the direction of those whose present authority and responsibilities are to be directly affected by its enactment, then future acceptance of it is more likely to be relatively problem-free. The use of sentencing guidelines should lead to less circumvention because it is the existing policies of the court itself that are initially being made explicit.

Moreover, a guideline system can be enacted carefully, incrementally, and locally—jurisdiction by jurisdiction, court by court. A guideline system can encourage and support local autonomy. It does not require or suggest a set of rigid, nationally imposed standards. Guidelines may be locally developed, controlled and administered. They can adjust to community/area/state variations and account for them. They can be designed to suit the individual needs of each particular judiciary. We do not argue as to whether sentences *should* be uniformly consistent on a national basis, or even throughout a given state. For example, may urban court sentences rightfully differ from those in rural areas? Should each county be able to impose sentences which reflect the values of that area? At some later time these questions may be resolved or a consensus of opinion reached about them, but they are beyond the scope of the present project. In the meantime, guidelines enable the existing system of jurisdictional autonomy to be maintained, albeit with the interim achievement of increased equity in sentencing. At the same time, issues such as these are more clearly articulated to provide for more cogent debate and rational resolution.

We should note that, even within a given jurisdiction, the guideline concept could be tailored for differing types of courts. Most urban courts have tangentially connected courts of limited or special jurisdiction which help to reduce the caseload of the courts of general jurisdiction by siphoning off cases: e.g., narcotics, weapons, gambling, prostitution, misdemeanors or petty offenses. Guidelines, ensuring greater sentencing equity, could be developed independently for each of these courts. The guideline system is a wholly voluntary one adaptable to the ever-changing requirements of a flexible criminal justice system.

We see our model of sentencing guidelines as possessing advantages for all parts of the sentencing system, from implementation as a new reform measure, through utilization at the sentencing decision point to lessen disparity, to rationalization of the sentencing appeal process. Moreover, it contains advantages for the sentencing system seen as an ongoing process which must absorb both new judges and new policies as necessitated by changes outside the system.

But it is not just judicial sentencing that can be improved, for operational guidelines ultimately will have effects on all other components of the criminal justice system. The ease of guideline sentence computation should affect plea-bargaining, making it a more open system with greater information in the hands of both sides. Prosecutor management should be improved as preliminary estimated computations would likely suggest the desirability of reallocations of prosecutor resources. In those states without parole guidelines, parole boards may find sentencing guidelines a useful intermediate step. Moreover, as the critical importance of the small number of key variables becomes widely known, there will be great pressure brought to bear to ensure the utmost accuracy in those items; and hence reforms in the agencies responsible for the establishment of those items of information may be expected.

We expect that approximately 80-90 percent of a court's sentencing decisions will fall within the small

range provided for by the guidelines. This may be taken to mean that a large percentage of sentencing decisions are not particularly extraordinary and that the sentence to be imposed might even be rather obvious to any experienced judge working in the jurisdiction. Even for experienced judges, however, guideline use serves three important functions. First, it will significantly reduce unjustified variation from the established norm by making the established policy of the court explicit. Judges should then be able to avoid virtually all unintentionally disparate sentences. Second, it will add speed and certainty to the judge's *own* decision-making process, providing the positive reinforcement of empirical evidence to the judge's own tentative decisions which fall within the guidelines. Third, for those cases in which the judge's preliminary sentencing decision fall *outside* the guidelines, that very fact should impel the judge to give further, careful consideration to the tentative decision. This may be expected since guidelines have the effect of organizing information for judges and structuring their decision-making processes. The fact that a judge will now have an empirical foundation upon which to base decisions should highlight those cases in which the guidelines must be overridden to ensure the imposition of a fair and just sentence.

Although this project has focused on the problem of "disparity," we believe that operational guidelines, albeit to a smaller degree, can help alleviate also the problems of court delays and backlogs. While the public may be unaware of it, those working in the courts may agree that much delay is purposely brought about by the defendant and defense attorneys, since delay usually works to the advantage of the criminal defendant—witnesses die, leave the jurisdiction, or their memories fade. While guidelines can do little to counter this sort of delay, they can help eliminate the defense attorney's practical search for judges more sympathetic to the particular concepts of the case involving the attorney's client. It may be expected that there will be less resort to this tactic, known as "judge-shopping," when every judge in the jurisdiction will be in possession of the guideline sentence.

Moreover, if probable guideline sentences (i.e, those exacted upon conviction) may readily be computed by defense attorneys and prosecutors, *prior* to adjudication, there is provided an incentive to early disposition. It is a common practice in American courts to reward those who plead guilty—and thereby save the state time and money—by giving them a lesser sentence than those who refuse to so plead, go to trial, and are eventually convicted.[53] While most defendants may vaguely expect this now, guidelines should spell it out for them specifically and thereby encourage early pleading. Furthermore, guidelines provide an element of certainty to a defendant who may wish to get court proceedings over with as soon as possible. In such a case, there is no incentive to delay since a plea now or six months from now may be expected to result in the same guideline sentence.

Finally, with respect to court delay, most analysts consider the time between arrest and conviction; but, while the delay between adjudication and sentencing is relatively slight in most jurisdictions, it is measurable and it should be shortened somewhat when the judge's presentence investigative report is improved and guidelines made operational.

Perhaps the single greatest advantage of guidelines may be found in their usefulness to judges newly placed on the criminal bench as an instruction tool, preventing much of the "education" by serious error that newer members of the judiciary must unfortunately, but necessarily, make. Newly rotated, appointed or elected judges need to know the "going rates," as it were, and the descriptive guideline sentence appended to every presentence report will provide that in a much more accurate manner than collegial gossip ever can. The collective wisdom of the entire local judiciary is at the new judge's fingertips. If new judges wish to change the present sentencing structure, then nothing we have suggested will prevent them from doing so. The difference is that, under a guideline system, those changes will be made consciously and with forethought. They will not be made out of a lack of familiarity with present practice.

An explicit sentencing policy also can help end the ignorance of sentencing practices on the part of those outside the judiciary. The guidelines are conceived as public information, available to prosecutors, defendants, and defense attorneys. As a result, the visibility of those practices currently operating implicitly within the court should be increased. For example, improved attorney-client relationships and a more open and informed plea-bargaining process may be provided as valuable by-products of an operational guideline system.

Possible criticisms of guidelines as a reinforcement of a system which is fundamentally unfair and unjust may be anticipated. This relates to a point which we have found to be frequently misunderstood. The research which undergirds the guidelines developed, and the guidelines themselves, are essentially descriptive, not prescriptive. They summarize expected sen-

tences in a given jurisdiction on the basis of recent practice, and they indicate the relative weights given to what apparently are the most important factors considered. They do not tell what either the sentences of the criteria *ought* to be. This is at once an important limitation and a major strength.

The limitation, that the research cannot show what the guidelines or included criteria *should* be, is a consequence of two distinct, but complex and related, sets of issues. First, judgments concerning deserved punishment, the appropriate aims of sentencing, or the propriety of including various criteria, often involve moral or ethical issues. The research may shed light on the present handling of these issues; but whether future changes should be made is a question which must depend on moral judgments. Second, judgments of criteria to be used in sentencing may be based not only on moral but on scientific grounds. Thus, whether a given guideline element *should* be included may depend also on the evidence that the factor is or is not related to any particular proved goal of sentencing.

The strength is given by the circumstance that the development of a guideline system requires the explicit description of sentencing policy. Hence, it is open, public, and available for public review and criticism. Indeed, a central feature of the system is its provision for repeated review and revision. This allows for, indeed invites, subjecting the sentencing criteria now in use to rigorous scrutiny with respect to both the moral and effectiveness issues raised. The moral issues may be debated more clearly; the effectiveness issues can be tested more cogently. In short, the principal long-term advantage of guidelines may actually be in the restraint we have exercised in *not* burdening a descriptive system with our prescriptive opinions. Once the sentencing process and sentencing criteria are made more visible (and, we expect, more equitable, then the foundation will have been laid from which further rational, purposeful and desirable change may evolve.

Guidelines will provide information to judges which has hitherto been unavailable to those either inside or outside the judiciary. It is, finally, our view that once the judges of a given jurisdiction are accurately informed as to what they *have* been doing in the past, then they can more clearly focus on what they *should* do in the future. And, these changes, made by the judges themselves, are much more likely to be accepted and implemented in practice.

APPENDIX A

UNITED STATES PAROLE COMMISSION GUIDELINES*

* 28 C.F.R. Section 2.20 (1976)

SALIENT FACTOR SCORE

Case Name_____ Register Number _____

Item A ..... ☐
No prior convictions (adult or juvenile) = 2
One or two prior convictions = 1
Three or more prior convictions = 0

Item B ..... ☐
No prior incarcerations (adult or juvenile) = 2
One or two prior incarcerations = 1
Three or more prior incarcerations = 0

Item C ..... ☐
Age at first commitment (adult or juvenile) 18 years or older = 1
Otherwise = 0

Item D ..... ☐
Commitment offense did not involve auto theft = 1
Otherwise = 0

Item E ..... ☐
Never had parole revoked or been committed for a new offense while on parole = 1
Otherwise = 0

Item F ..... ☐
No history of heroin or opiate dependence = 1
Otherwise = 0

Item G ..... ☐
Has completed 12th grade or received GED (prior to this commitment) = 1
Otherwise = 0

Item H ..... ☐
Verified employment (or full-time attendance) for a total of at least 6 months during the last 2 years in the community = 1
Otherwise = 0

Item I ..... ☐
Release plan to live with spouse and/or children = 1
Otherwise = 0

TOTAL SCORE ..... ☐

TABLE 6

ADULT

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW				
Immigration law violations Minor theft (includes larceny and simple possession of stolen property less than $1,000). Walkaway	6 to 10 mo...	8 to 12 mo...	10 to 14 mo..	12 to 16 mo.
LOW MODERATE				
Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Drugs: marihuana, simple possession (less than $500) Forgery/fraud (less than $1,000) Income tax evasion (less than $10,000) Selective Service Act violations Theft from mail (less than $1,000)	8 to 12 mo...	12 to 16 mo..	16 to 20 mo..	20 to 25 mo.
MODERATE				
Bribery of pubic officials Conterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (less than $5,000). "Soft drugs", possession with intent to distribute/sale (less than to $5,000)... Embezzlement (less than $20,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (single weapon-not sawed-off shotgun or machinegun). Income tax evasion ($10,000 to $50,000)... Interstate transportation or stolen/forged securities (less than $20,000) Mailing threatening communications Misprison of felony Receiving stolen property with intent to resell (less than $20,000). Smuggling/transporting of aliens Theft/forgery/fraud ($1,000 to $19,999).. Theft of motor vehicle (not multiple theft or for resale).	12 to 16 mo..	16 to 20 mo..	20 to 24 mo..	24 to 30 mo.

HIGH	
Burglary or larceny (other than embezzlement) from bank or post office. Counterfeit currency (passing/possession $20,000-$100,000). Counterfeiting (manufacturing)..... Drugs: Marihuana, possession with intent to distribute/sale ($5,000 or more). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000). Embezzlement ($20,000 to $100,000)..... Firearms Act, possession/purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Interstate transportation of stolen/forged securities ($20,000 to $100,000). Mann Act (no force—commercial purposes) Vehicle theft (for resale)..... Receiving stolen property ($20,000 to $100,000) ..... Theft/forgery/fraud ($20,000 to $100,000)	16 to 20 mo . 20 to 26 mo.. 26 to 32 mo.. 32 to 38 mo.
VERY HIGH	
Robbery (weapon or threat)..... Drugs: "Hard drugs" (possession with intent to distribute sale) [no prior conviction for sale of "hard drugs"]. "Soft drugs", possession with intent to distribute/sale (over $5,000). Extortion ..... Mann Act (force)..... Sexual act (force).....	26 to 36 mo . 36 to 45 mo.. 45 to 55 mo.. 55 to 65 mo.
GREATEST	
Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury. Aircraft hijacking..... Drugs: "Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs"). Espionage ..... Explosives (detonation) ..... Kidnapping ..... Willful homicide	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

APPENDIX B

ITEMS OF INFORMATION COLLECTED IN PILOT STUDY

TABLE 7

Variable	Title
1	Date of Complaint Warrant Information Warrant
2	Amount of Bail for Present Offense
3	Source of Charge: Present Offense
4	Statutory Charges Against Offender at Initial Appearance, Present Offense—First
5	Statutory Charges Against Offender at Initial Appearance, Present Offense—Second
6	Statutory Charges Against Offender at Initial Appearance, Present Offense—Third
7	Statutory Class of Offense at Initial Appearance, Present Offense—First
8	Statutory Class of Offense at Initial Appearance, Present Offense—Second
9	Statutory Class of Offense at Initial Appearance, Present Offense—Third
10	Number of Charges Brought Against Offender at Initial Appearance, Present Offense
11	Statutory Charge Against Offender at Formal Filing of Charges, Present Offense —First
12	Statutory Charge Against Offender at Formal Filing of Charges, Present Offense —Second
13	Statutory Charge Against Offender at Formal Filing of Charges, Present Offense —Third
14	Offender's Use of Aliases
15	Offender's Age
16	Offender's Place of Birth
17	Offender's Sex
18	Offender's Address
19	Type of Defense, Present Offense
20	Offender's Race
21	Offender's Height (in Inches)
22	Offender's Weight(in Pounds)
23	Original Plea (the Plea Given at First Opportunity to Plea)
24	Final Plea of Case
25	Statutory Charge Against Offender at Information Warrant, Present Offense—First
26	Statutory Charge Against Offender at Information Warrant, Present Offense—Second
27	Statutory Charge Against Offender at Information Warrant, Present Offense—Third
28	Statutory Class of Offense at Information Warrant, Present Offense—First
29	Statutory Class of Offense at Information Warrant, Present Offense—Second
30	Statutory Class of Offense at Information Warrant, Present Offense—Third
31	Number of Charges Brought Against Offender at Information Warrant, Complaint Warrant, Present Instance
32	Type of Crime, Present Offense
33	Date of Present Offense
34	Date of Arrest for Present Offense
35	Number of Offenders Involved in Present Offense
36	Role of Property Harm: Present Offense
37	Property Value Appropriated: Present Offense
38	Property Value Damaged: Present Offense
39	Harm Inflicted: Present Offense
40	Role of Physical Harm: Present Offense
41	Weapon Usage: Present Offense
42	Type of Weapon Used: Present Offense
43	Type of Property Involved: Present Offense
44	Victim Classification: Present Offense
45	Number of Personalities/Targets Involved in Present Offense
46	Participation of Others in Victimless Crime
47	Number of Witnesses in Present Offense
48	Day of Week Offense Occurred
49	Time of Day of Offense, Military Time
50	Was There any Mention of Victim Precipitation in Presentence Report?
51	Defendant's Use of Alcohol or Drugs in Crime
52	Offender's Relationship with Criminal Justice System at Time of Offense
53	Offender's Liberty Status Between Arrest and Sentencing: Present Offense
54	Special Conditions of Presentence Release: Present Offense
55	Adjustment in Offender's Pre-Trial Liberty Status
56	Property Value Recovered

Variable	Title
57	Value of Contraband Involved: Present Offense
58	Statutory Minimum Sentence in Months for Present Offense—First
59	Statutory Minimum Sentence in Months for Present Offense—Second
60	Statutory Minimum Sentence in Months for Present Offense—Third
61	Statutory Maximum Sentence in Months for Present Offense—First
62	Statutory Maximum Sentence in Months for Present Offense—Second
63	Statutory Maximum Sentence in Months for Present Offense—Third
64	Offender's Minimum Parole Eligibility if Incarcerated on Offense (in Months)
65	Statutory Minimum Fine for Present Offense—First
66	Statutory Minimum Fine for Present Offense—Second
67	Statutory Minimum Fine for Present Offense—Third
68	Statutory Maximum Fine For Present Offense—First
69	Statutory Maximum Fine for Present Offense—Second
70	Statutory Maximum Fine for Present Offense—Third
71	Available Dispositions for Offense
72	Did the Judge Have the Offender Evaluated at an Evaluation Facility or by an Evaluation Specialist?
73	Offender's Behavior at Arrest—Present Offense
74	Disposition of Co-defendant(s) (if any)
75	Pending Actions
76	Nature of Offender's Juvenile Record
77	Number of Juvenile Arrests
78	Number of Juvenile Dispositions
79	Offender's Number of Previous Misdemeanor Arrests
80	Offender's Number of Previous Felony Arrests
81	Offender's Total Number of Previous Arrests
82	Offender's Age at First Arrest
83	Offender's Number of Previous Misdemeanor Convictions
84	Offender's Number of Previous Felony Convictions
85	Offender's Total Number of Previous Convictions
86	Offender's Age at First Conviction
87	Number of Times Offender Previously Fined After Conviction
88	Largest Fine Given on any Previous Conviction
89	Number of Times Offender Previously Given Probation After Conviction
90	Probation Revocation History
91	Number of Times Offender Previously Incarcerated After Conviction
92	Longest Incarceration Sentenced to on any Previous Conviction (in Months)
93	Number of Times Offender Previously on Parole
94	Parole Revocation History
95	Number of Times Offender Previously Arrested for Offense Similar to Instant Offense
96	Number of Times Offender Previously Convicted for Similar Offense
97	Number of Times Offender Fined After Conviction for Similar Offense
98	Number of Times Offender Placed Under Non-incarcerative Supervision for Similar Offense
99	Number of Times Offender Incarcerated After Conviction for Similar Offense
100	Number of Times Offender Previously Paroled for Similar Offense
101	Offender's Longest Time Free Between Contacts With Criminal Justice System (in Months)
102	Length of Time in Month Since Offender's Last Contact With Criminal Justice System
103	Offender's Escape History
104	Residential Status of Offender
105	Offender's Length of Residence at Present Address (in Months)
106	Longest Residence by Offender at Any One Place, Excluding Parental Home (in Months)
107	Offender's Citizen Status
108	Offender's Wedlock Status
109	Marital Explanation for Offender's Current Parents
110	Is the Offender's Family Willing to Provide Assistance in Current Situation?
111	Offender's Spouse's Liberty Status
112	Offender's Marital Status
113	Children by Present Marriage
114	Offender's Total Number of Dependents

Variable	Title
115	If the Offender Has Support Obligations, Is He Meeting Them?
116	Offender's Previous Marriages
117	Offender's Children by Previous Marriages
118	Offender's Illegitimate Children
119	Offender's Intelligence Evaluation
120	Offender's Attendance at School
121	Offender's Behavior at School
122	Offender's Reason for Leaving School
123	Highest School Grade Attained by Offender
124	Highest Education Certificate Attained by Offender
125	Offender's Job Status at Time of Offense
126	Offender's Job Status at Second Most Recent Offense
127	Type of Offender's Job at Time of Present Offense
128	Type of Offender's Job at Time of Second Most Recent Offense
129	Offender's Length of Employment/Unemployment at Present Offense—Most Recent Job (in Months)
130	Offender's Length of Employment/Unemployment at Second Most Recent Offense—Second Most Recent Job (in Months)
131	Employment Evaluation at Present Offense—Most Recent Job
132	Employment Evaluation at Second Most Recent Offense—Second Most Recent Job
133	Longest Service by Offender in Any One Job (in Months)
134	Amount of Offender's Income (Per Month)
135	Offender's Primary Income Source
136	Offender's Assets
137	Amount of Offender's Indebtedness at Time of Offense
138	Offender's Military Service
139	Physical Health of Offender
140	Offender's Permanent Physical Disabilities
141	Offender's Use of Alcohol
142	Offender's Use of Drugs
143	Number of Official Contacts With Mental Health System by Offender
144	Most Significant Contact With Mental Health System by Offender
145	Offender's Present Religion
146	Offender's Religious Involvement
147	Offender's Sexual Orientation
148	Offender's Proposed Program After Present Offense
149	Probation Officer's Presentence Investigation Assessment of Offender's Nonincarceration Program
150	Offender's Attitude to Current Offense—Offender's View
151	Recommendation on Presentence Report (if Made) on Present Offense
152	Offender's Attitude to Current Offense: Presentence Investigator's View
153	Disposition After Sentence for Present Offense
154	Total Fine for Present Offense(s)—if Any Imposed
155	Length of Probation (in Months) (if Imposed)
156	Minimum Possible Time of Incarceration (if Given) in Months
157	Maximum Possible Time of Incarceration (if Given) in Months
158	Victim's Address
159	Victim's Liberty Status at Time of Offense
160	Sex of Victim
161	Statutory Class of Offense at Arrest: Present Offense—First
162	Statutory Class of Offense at Arrest: Present Offense—Second
163	Statutory Class of Offense at Arrest: Present Offense—Third
164	Charge Against Offender at Arrest: Present Offense—First
165	Charges Against Offender at Arrest: Present Offense—Second
166	Charge Against Offender at Arrest: Present Offense—Third
167	Number of Charges Against Offender at Arrest: Present Offense
168	Number of Charges Against Offender at Preliminary Hearing: Present Offense
169	Charge Against Offender at Preliminary Hearing: Present Offense——First
170	Charge Against Offender at Preliminary Hearing: Present Offense—Second
171	Charges Against Offender at Preliminary Hearing: Present Offense—Third
172	Statutory Class of Offense at Preliminary Hearing: Present Offense—First
173	Statutory Class of Offense at Preliminary Hearing: Present Offense—Second

Variable	Title
174	Statutory Class of Offense at Preliminary Hearing: Present Offense—Third
175	Date of Arraignment: Present Offense (Month/Day/Year)
176	Number of Charges Against Offender at Arraignment: Present Offense
177	Charge Against Offender at Arraignment/ Deferred Prosecution Proposal: Present Offense—First
178	Charge Against Offender at Arraignment/ Deferred Prosecution Proposal: Present Offense—Second
179	Charge Against Offender at Arraignment/ Deferred Prosecution Proposal: Present Offense—Third
180	Statutory Class of Offense at Arraignment/Deferred Prosecution Proposal: Present Offense—First
181	Statutory Class of Offense at Arraignment/Deferred Prosecution Proposal: Present Offense—Second
182	Statutory class of Offense at Arraignment/Deferred Prosecution Proposal: Present Offense—Third
183	Date of Bail Recovation Hearing: Present Offense
184	Date Trial Began, Present Offense
185	Number of Charges Against Offender at Trial: Present Offense
186	Charge Against Offender at Trial: Present Offense—First
187	Charge Against Offender at Trial: Present Offense—Second
188	Charge Against Offender at Trial: Present Offense—Third
189	Statutory Class of Offense at Trial: Present Offense—First
190	Statutory Class of Offense at Trial: Present Offense—Second
191	Statutory Class of Offense at Trial: Present Offense—Third
192	Date of Conviction/Acceptance of Deferred Prosecution: Present Offense (Month/Day/Year)
193	Number of Charges Offender Convicted of/Deferred Prosecution Agreed to: Present Offense
194	Charge for which Offender Convicted/ Deferred Prosecution: Present Offense—First
195	Charge for Which Offender Convicted/ Deferred Prosecution: Present Offense—Second
196	Charge for Which Offender Convicted/ Deferred Prosecution: Present Offense—Third
197	Statutory Class at Conviction/Deferred Prosecution: Present Offsense—First
198	Statutory Class at Conviction/Deferred Prosecution: Present Offense—Second
199	Statutory Class at Conviction/Deferred Prosecution: Present Offense—Third
200	Date of Sentencing: Present Offense (Month/Day/Year)
201	Time Range from Criminal Event to Sentencing: Present Offense (in Days)
202	Was There Competence Hearing in Case?: Present Offense
203	Number of Continuances (Continuances = Request for Delay) in Case Between Arraignment and Conviction
204	Appeal Against Conviction in Case
205	Is Restitution Being Made?

APPENDIX C
SUMMARY OF MISSING INFORMATION IN PILOT STUDY

TABLE 8

Items of Missing Information in at Least 25 Percent of the Cases in the Denver Pilot Study Sample (N = 200)

Information Item	Title
4	Statutory Charges Against Offender at Initial Appearance, Present Offense—First
5	Statutory Charges Against Offender at Initial Appearance, Present Offense—Second
6	Statutory Charges Against Offender at Initial Appearance, Present Offense—Third
7	Statutory Class of Offense at Initial Appearance, Present Offense—First
8	Statutory Class of Offense at Initial Appearance, Present Offense—Second
9	Statutory Class of Offense at Initial Appearance, Present Offense—Third
10	Number of Charges Brought Against Offender at Initial Appearance, Present Offense
28	Statutory Class of Offense at Information Warrant, Present Offense—First
49	Time of Day of Offense, Military Time
64	Offender's Minimum Parole Eligibility if Incarcerated on Offense (in Months)
73	Offender's Behavior at Arrest—Present Offense
105	Offender's Length of Residence at Present Address (in Months)
106	Longest Residence by Offender at Any One Place, Excluding Parental Home (in Months)
110	Is the Offender's Family Willing to Provide Assistance in Current Situation?
120	Offender's Attendance at School
121	Offender's Behavior at School
122	Offender's Reason for Leaving School
126	Offender's Job Status at Second Most Recent Offense
128	Type of Offender's Job at Time of Second Most Recent Offense
131	Employment Evaluation at Present Offense—Most Recent Job
132	Employment Evaluation at Second Most Recent Offense—Second Most Recent Job
134	Amount of Offender's Income (Per Month)
145	Offender's Present Religion
146	Offender's Religious Involvement
149	Probation Officer's Presentence Investigation Assessment of Offender's Non-incarceration Program
150	Offender's Attitude to Current Offense —Offender's View
152	Offender's Attitude to Current Offense: Presentence Investigator's View
161	Statutory Class of Offense at Arrest: Present Offense—First
162	Statutory Class of Offense at Arrest: Present Offense—Second
163	Statutory Class of Offense at Arrest: Present Offense—Third
164	Charge Against Offender at Arrest: Present Offense—First
165	Charge Against Offender at Arrest: Present Offense—Second
166	Charge Against Offender at Arrest: Present Offense—Third
167	Number of Charges Against Offender at Arrest: Present Offense
168	Number of Charges Against Offender at Preliminary Hearing: Present Offense
169	Charge Against Offender at Preliminary Hearing: Present Offense—First
170	Charge Against Offender at Preliminary Hearing: Present Offense—Second
171	Charge Against Offender at Preliminary Hearing: Present Offense—Third
172	Statutory Class of Offense at Preliminary Hearing: Present Offense—First
173	Statutory Class of Offense at Preliminary Hearing: Present Offense—Second
174	Statutory Class of Offense at Preliminary Hearing: Present Offense—Third
180	Statutory Class of Offense at Arraignment/Deferred Prosecution Proposal: Present Offense—First
185	Number of Charges Against Offender at Trial: Present Offense

Information Item	Title
186	Charge Against Offender at Trial: Present Offense—First
187	Charge Against Offender at Trial: Present Offense—Second
188	Charge Against Offender at Trial: Present Offense—Third
197	Statutory Class at Conviction/Deferred Prosecution: Present Offense—First
203	Number of Continuances (Continuances = Request for Delay) in Case Between Arraignment and Conviction

TABLE 9

Items of Missing Information in at Least 25 percent of the Cases in the Vermont Pilot Study Sample (N = 200)

Information Item	Title
2	Amount of Bail for Present Offense
37	Property Value Appropriated: Present Offense
53	Offender's Liberty Status Between Arrest and Sentencing: Present Offense
55	Adjustment in Offender's Pre-Trial Liberty Status
73	Offender's Behavior at Arrest—Present Offense
74	Disposition of Co-defendant(s) (if any)
104	Residential Status of Offender
105	Offender's Length of Residence at Present Address (in Months)
110	Is the Offender's Family Willing to Provide Assistance in Current Situation?
119	Offender's Intelligence Evaluation
120	Offender's Attendance at School
121	Offender's Behavior at School
122	Offender's Reason for Leaving School
129	Offender's Length of Employment/Unemployment at Present Offense—Most Recent Job (in Months)
130	Offender's Length of Employment/Unemployment at Second Most Recent Offense—Second Most Recent Job (in Months)
131	Employment Evaluation at Present Offense—Most Recent Job
132	Employment Evaluation at Second Most Recent Offense—Second Most Recent Job
133	Longest Service by Offender in Any One Job (in Months)
134	Amount of Offender's Income (Per Month)
136	Offender's Assets
137	Amount of Offender's Indebtedness at Time of Offense
139	Physical Health of Offender
140	Offender's Permanent Physical Disabilities
141	Offender's Use of Alcohol
142	Offender's Use of Drugs
146	Offender's Religious Involvement
147	Offender's Sexual Orientation
148	Offender's Proposed Program After Present Offense
149	Probation Officer's Presentence Investigation Assessment of Offender's Non-incarceration Program
150	Offender's Attitude to Current Offense —Offender's View
152	Offender's Attitude to Current Offense: Presentence Investigator's View
203	Number of Continuances (Continuances = Request for Delay) in Case Between Arraignment and Conviction

TABLE 10

Items of Missing Information in 11 to 24 Percent of the Cases
in the Denver Pilot Study Sample
(N = 200)

Information Item	Title
20	Offender's Race
21	Offender's Height (in Inches)
37	Property Value Appropriated: Present Offense
55	Adjustment in Offender's Pre-Trial Liberty Status
56	Property Value Recovered
76	Nature of Offender's Juvenile Record
77	Number of Juvenile Arrests
81	Offender's Total Number of Previous Arrests
85	Offender's Total Number of Previous Convictions
101	Offender's Longest Time Free Between Contracts With Criminal Justice System (in Months)
125	Offender's Job Status at Time of Offense
127	Type of Offender's Job at Time of Present Offense
130	Offender's Length of Employment/Unemployment at Second Most Recent Offense—Second Most Recent Job (in Months)
133	Longest Service by Offender in Any One Job (in Months)
135	Offender's Primary Income Source
136	Offender's Assets
141	Offender's Use of Alcohol
143	Number of Official Contacts With Mental Health System by Offender
144	Most Significant Contact with Mental Health System by Offender
147	Offender's Sexual Orientation
181	Statutory Class of Offense at Arraignment/Deferred Prosecution Proposal: Present Offense—Second

TABLE 11

Items of Missing Information in 11 to 24 Percent of the Cases
in the Vermont Pilot Study Sample
(N = 200)

Information Item	Title
1	Date of Complaint Warrant Information Warrant
21	Offender's Height (in Inches)
22	Offender's Weight (in Pounds)
33	Date of Present Offense
34	Date of Arrest for Present Offense
38	Property Value Damaged: Present Offense
47	Number of Witnesses in Present Offense
49	Time of Day of Offense, Military Time
51	Defendant's Use of Alcohol or Drugs in Crime
56	Property Value Recovered
57	Value of Contraband Involved: Present Offense
64	Offender's Minimum Parole Eligibility if Incarcerated on Offense (in Months)
95	Number of Times Offender Previously Arrested for Offense Similar to Instant Offense
101	Offender's Longest Time Free Between Contacts With Criminal Justice System (in Months)
115	If the Offender Has Support Obligations, Is He Meeting Them?
126	Offender's Job Status at Second Most Recent Offense
128	Type of Offender's Job at Time of Second Most Recent Offense
135	Offender's Primary Income Source

138 Offender's Military Service

143 Number of Official Contacts With Mental Health System by Offender

144 Most Significant Contact with Mental Health System by Offender

145 Offender's Present Religion

168 Number of Charges Against Offender at Preliminary Hearing: Present Offense

169 Charge Against Offender at Preliminary Hearing: Present Offense—First

183 Date of Bail Revocation Hearing: Present Offense

205 Is Restitution Being Made?

APPENDIX D

COLORADO AND VERMONT OFFENSE CLASSIFICATIONS

Colorado criminal offenses were categorized in a class system ranging from Felony One to Felony Five and Misdemeanor One to Misdemeanor Three (the higher the class the more serious the offense). Drug offenses were not included in this system and had to be "forced" into a class by research staff on the basis of their maximum possible penalty. For example, those drug offenses with a potential maximum sentence of 14 years were categorized as Felony Fours. Descriptions of the categories plus examples of offenses follow:

FELONY ONE
Minimum sentence:
life imprisonment
Maximum sentence:
death
Offense examples:
18–3–102 Murder in the First Degree
18–3–301(2) First Degree Kidnapping

FELONY TWO
Minimum sentence:
probation or 10 years imprisonment
Maximum sentence:
50 years imprisonment
Offense examples:
18-3-103 Murder in the Second Degree
18-3-402 Sexual Assault in the First Degree

FELONY THREE
Minimum sentence:
probation or 5 years imprisonment
Maximum sentence:
40 years imprisonment
Offense examples:
18–4–302 Aggravated Robbery
18–3–202 Assault in the First Degree

FELONY FOUR
Minimum sentence:
probation or $2,000 fine or indeterminate imprisonment
Maximum sentence:
10 years imprisonment
Offense examples:
18–3–104 Manslaughter
18–4–203(2) Second Degree Burglary
18–4–401(2) Theft

FELONY FIVE
Minimum sentence:
probation or $1,000 fine or indeterminate imprisonment
Maximum sentence:
5 years imprisonment
Offense examples:
18–4–502 First Degree Criminal Trespass
18–5–205(3c) Fraud by Check

MISDEMEANOR ONE
Minimum sentence:
probation or $500 fine or 6 months imprisonment
Maximum sentence:
24 months imprisonment
Offense examples:
18–3–204 Assault in the Third Degree
18–12–102 Possession of an Illegal Weapon

MISDEMEANOR TWO
Minimum sentence:
probation or $250 fine or 3 months imprisonment
Maximum sentence:
12 months imprisonment
Offense examples:
18–8–102 Resisting Arrest
18–4–105 Fourth Degree Arson

MISDEMEANOR THREE
Minimum sentence:
probation or $50 fine
Maximum sentence:
6 months imprisonment
Offense examples:
18–7–202 Soliciting for Prostitution
18–5–204 Criminal Possession of Credit Device

Vermont criminal offenses were classified into 8 categories on the basis of the most severe maximum punishment which could be statutorily imposed. Descriptions of the categories plus examples of offenses falling into each category follow:

CATEGORY ONE
Most severe maximum sentence possible:
30 or more years imprisonment or death
Offense examples:
13–501 Arson Causing Death
12–2301 Murder in the First Degree

CATEGORY TWO
Most severe maximum sentence possible:
more than 18 years but less than or equal to 30 years
Offense examples:
13–608(A) Assault and Robbery
13–2401 Kidnapping

CATEGORY THREE
Most severe maximum sentence possible:

imprisonment for more than 12 years but less than or equal to 18 years
Offense examples:
13–1024(A1) Aggravated Assault
13–1201 Burglary in Nighttime

CATEGORY FOUR
Most severe maximum sentence possible:
imprisonment for more than 6 years but less than or equal to 12 years
Offense examples:
13–1202 Burglary in Daytime
13–2503 Larceny From the Person

CATEGORY FIVE
Most severe maximum sentence possible:
imprisonment for more than 3 years but less than or equal to 6 years
Offense examples:
13-1024(A3) Aggravated Assault
13–2601 Lewd and Lascivious Conduct

CATEGORY SIX
Most severe maximum sentence possible:
imprisonment for more than 1 year but less than or equal to 3 years
Offense examples:
13–504 Third Degree Arson
18–4223 Fraud or Deceit

CATEGORY SEVEN
Most severe maximum sentence possible:
imprisonment for more than 6 months but less than or equal to 1 year
Offense examples:
13–2022 Bad Checks
13–3705(C) Unlawful Trespass

CATEGORY EIGHT
Most severe maximum sentence possible:
imprisonment less than or equal to 6 months
Offense examples:
13–2502 Petit Larceny
13–3701(C) Unlawful Mischief

APPENDIX E
MULTICOLLINEARITY AND REDUNDANCY

As noted in the main body of this report (see p. 12), only a small set of items were needed to account for most of the explained sentencing variation in Denver and in Vermont. There is an exception to this statement, however, which involves the inclusion of arrest information in the multiple regression equation. For example, in Denver, when the total Number of Arrests (Juvenile and Adult) and the Age at First Arrest (Juvenile and Adult) were considered along with the 14 variables listed in Table 2 (see page 13), the amount of variation explained increased from 52 percent to 57 percent (see Table 12 in this Appendix for the results). The reader should be aware of the fact that although 16 variables were eligible for inclusion [54] in the multiple regression equation, only 15 were actually used. The variable "education" was excluded when the two items dealing with arrest information were entered in the regression. There was no change in the order of the six most influential variables:

(1) number of offenses of which the offender was convicted;
(2) number of prior incarcerations (juvenile and adult);
(3) seriousness of the offense at conviction;
(4) weapon usage;
(5) legal status of the offender at time of offense; and,
(6) employment history.

There were shifts in the ordering of the other variables. In addition, there were changes in the amount of variation accounted for by the individual variables as well as their standardized and unstandardized weights.

An inspection of Table 12 reveals that the variable "number of arrests" was selected before the variable "number of convictions." The nonstatistician might find it curious that the *b* weight and the *beta* weight of the number of arrests would have a negative value indicating that when the influence of the other variables were controlled, the relationship between the sentencing decision and the number of arrests is an inverse one. That is, as the number of arrests increase, the severity of the sentence decreases. Intuitively, such a relationship does not make sense. In comparison, the *b* weight and *beta* weight of convictions are positive indicating that as the number of convictions increase the severity of the sentence tends to increase. Such apparent contradictory results may be attributed to the high interrelationship (Pearson's r = 0.75) between number of arrests and number of convictions. Statisticians refer to the phenomenon of a high degree of interrelationship between independent variables which in turn are closely related to a dependent variable as multicollinearity.

> It is possible to examine a large body of data and find the one piece of information which on its own is the most useful in predicting a particular criterion. This would be that item which was most highly correlated with the criterion. Clearly we can select only one criterion at a time because the item which is most highly correlated with one criterion may not be that which is most highly correlated with another criterion. When we have identified the most powerful item of information, we can search the field of information, for another item which, *given the first item,* is *then* most highly correlated with the criterion. It is, of course, necessary, to find a means for taking out of the reckoning the power of the first item before we add the second or even attempt to assess its contribution to the prediction of the criterion. This is usually termed the problem of "overlap." If two items of information are highly correlated with each other, then, when we have taken the first into consideration, the second will have lost almost all of its power.[55]

One solution is to create a new variable which is a composite of the overlapping variables. Such an approach does not seem useful in this situation since we are dealing only with numbers of arrests and numbers of convictions. A second solution is to use only one of the variables which seem to tap into the same underlying dimension. We have chosen this solution and have used convictions in lieu of arrests to obtain some measure of seriousness of prior record.

Of course, we recognize that our solution might not be applicable if certain classes of prior offenses are deemed more serious than others, e.g., offense against the person might be considered more serious than drug offenses. In such a situation, the problem becomes much more complex. Experimental research provides the potential for resolving this problem.[56]

TABLE 12

Step-Wise Multiple Regression Solution for the Sentencing Decision as an Interval Variable, Denver Pilot Study Sample (N = 120)

Dependent Variable: The Sentencing Decision Defining All "Out's" as Zero and All "In's" in Terms of Years to be Served

Independent Variable	Explained Variation (R^2)	Variation Explained by Each Independent Variable (R^2 Change)	Unstandardized Weights (b)	Standardized Weights (beta)
Number of offenses of which offender was convicted *	.23217	.23217	.17673	.45762
Number of prior incarcerations (juvenile and adult)*	.35971	.12754	.72965	.33644
Seriousness of offense at conviction *[1]	.43577	.07606	.46217	.20093
Weapon usage *[1]	.45984	.02407	.40012	.15605
Legal status of offender at time of offense *[2]	.48986	.03002	.53604	.16343
Employment history *	.50453	.01467	–.05481	–.12848
Number of probation revocations (juvenile and adult)*	.51559	.01106	1.35505	.17368
Number of prior arrests (juvenile and adult)*	.53272	.01713	–.25128	–.35005
Number of prior convictions (juvenile and adult)*	.54710	.01438	.24088	.17399
Age at first arrest (juvenile and adult)*	.55770	.01060	.05135	.14922
Injury to victim[1]	.56376	.00605	.37140	.10693
Alcohol abuse[2]	.56802	.00426	–.26576	–.07052
Age at first conviction (juvenile and adult)	.56880	.00078	–.01306	–.04163
Narcotics abuse[2]	.56953	.00074	.03071	.02741
Number of parole revocations (juvenile and adult)	.57000	.00047	.13786	.03061

[1] An ordinal measure treated as an interval measure.
[2] A dichotomous variable.
* Significant at the .01 level of confidence.

APPENDIX F
SENTENCING INFORMATION SHEET

SENTENCING INFORMATION SHEET

1. Age _____ 2. Sex _____ 3. Marital Status _____

4. Current Conviction(s) Offense Name	Statute Number(s)	Criminal Code Class.
A.		
B.		
C.		

5. Basis For Adjudication _____ 6. Weapon Usage _____

7. Offense Behavior _____

_____

8. Legal Status At Time Of Arrest _____

9. Prior Adult Convictions

	Felony	Misdemeanor
Against Person		
Other		
Total		

10. Prior Incarcerations _____ 14. Mental Health _____

11. Prior Prob./Parole Revoc. _____ 15. Employment/School _____

12. Alcohol Use _____ 16. Longest Period Of Employ. _____

13. Narcotics Use _____ 17. Education _____

19. Residential Stability _____ 20. Supportive Ties _____

FOR JUDGE'S USE ONLY

1. Please list any additional information items which were taken into account:

_____

_____

_____

APPENDIX G

DEMONSTRATION GUIDELINE MODEL DENVER DISTRICT COURT DENVER, COLORADO[1]

[1] A preliminary report to the Steering and Policy Committee of the Feasibility of Guidelines for Sentencing research project, May 1976.

Introduction

It is important to note that the model described herein was developed by the staff of the "Feasibility of Guidelines for Sentencing" research project on the basis of analysis of nearly 400 sentencing decisions made by the Denver District Court over the past two and one-half years, input from members of the project's Steering and Policy Committee, and a review of both the theoretical and empirical literature on sentencing. This model is not put forth as having been accepted and/or implemented by the judges of the Denver Court, but rather as a product which we feel clearly demonstrates the feasibility and usefulness of sentencing guidelines as a tool to aid the sentencing decision-maker.

It should also be noted that we did not employ our own prescriptive notions as to what would be a "right" sentence but let the data furnish descriptive conclusions as to what the average or "modified" average sentence of all the judges in a particular jurisdiction would have been in a particular case.

The basic objective in the design of this model was that it be computationally simple, yet efficient in charting what underlying factors have influenced decisions in the past and what weights have been accorded each of these factors. However, before any guidelines can be operationalized, the local judiciary must first collectively make these initial decisions.

Offense Score

Perhaps the most difficult problem faced in the development of a model concerns "seriousness of offense." There are a variety of methods for handling offense seriousness, each having its individual strengths and weaknesses. It is clear that not all crimes are of equal seriousness. This holds true whether one is talking about crimes within the same broad statutory classification, e.g., Felony or Misdemeanors, or those within a specific class, e.g., felony 4 or misdemeanor 2.

In Colorado, we were faced with a criminal code which utilized this latter, Model Penal Code, type of classification. Staying within the boundaries posed by these statutory constraints, offenses within each class were divided by estimated seriousness into three or four groups and assigned values of 1, 3, 5, and 7. Rankings were determined by consensus among staff members on the basis of their analysis of the statutory definition of each offense. The higher the group's rank, the more serious the offense.

Yet, as might be expected, the legislature did not include all possible criminal or quasi-criminal offenses in the class system, instead giving many their own individual penalties. Ranking of offense seriousness is further complicated by second offense clauses and habitual offender statutes. In order to simplify our handling of these offenses, we placed them into classes based on the minimum and maximum sentence permissible for each. Where the possible punishment did not exactly match a class category, the offense was placed into the closest appropriate class. For example, an offense having a 1 year minimum and 14 year maximum possible sentence was arrayed with Felony 4's where the maximum possible penalty is 10 years. Most of these unclassified offenses are drug-related.

The next problem concerned the practice of sentencing an offender on the basis of offense behavior which often was not consistent with that normally expected in the commission of the offense for which a conviction took place. A harm/loss modifier was, therefore, developed to more accurately reflect the seriousness of the offense. This modifier, which ranged in value from zero for a victimless crime to five for death, is figured on the basis of the most heinous activity described. It is then added to the intraclass rank with the total score becoming the offense axis of each two-dimensional grid.

Offender Score

Two basic decisions were made by the staff here, both of which reflect only their interpretation of the literature and data. First, it was decided to count only convictions and not arrests. Although it is legally permissible in Colorado to consider any prior arrests, there have been several courts in other jurisdiction which have ruled to the contrary.

In addition, close analysis of the data indicated that because of their high intercorrelation, conviction records were just as good a predictor of the sentence as arrests. Therefore, we chose what we felt was the more "moral" path and excluded arrests from the model. Similar logic held for the exclusion of juvenile court records (both arrest and conviction).

This is not to say that such information cannot or should not be used by the judge. For example, in an operational guideline system, when consideration of a prior arrest or a juvenile record results in a sentence that is more severe than that normally expected, the judge might merely record that as the reason for departing from the guidelines.

The next thee variables (legal status, prior revocations, and prior incarcerations) are self-explana-

tory. Again, as with prior convictions, the model takes into account only the offender's adult criminal history. If a defendant is currently under some form of supervised release (e.g., probation or parole) as a result of another prior adult conviction, then six points are added to the score. If the offender has a previous adult probation or parole revoked or had been incarcerated for over 30 days (as a result of a prior adult conviction), four points are added to the score. A zero is recorded for each nonaffirmative finding for each of these three items.

The final variable in this demonstration model reflects judicial concern for some indicator of the offender's social stability status. Current employment/school was selected over other possible items because of its statistical significance and its potential as the least biased of an assortment of such indicators. Moreover, this particular variable was relatively stable over time as compared to other social history factors and was more likely to be consistently present in presentence investigation reports. Four points are deducted from an offender if at the time of sentencing (or prior to detention if detained), he or she is employed or attending school on a full-time basis. Three points are deducted for part-time work or school. An additional two or three points can be deducted if such activity is for a period of over two months or over one year.

Computation

As alluded to earlier, the model works on the basis of the interactive effect of the offense and offender score. The Y axis (or offense score) is the sum of the intraclass rank of the offense at conviction and the harm/loss modifier. The X axis (or offender score) is the total of the sum of the offender's prior conviction, legal status, revocation, and incarceration scores *minus* the sum of parts of the social stability status score. A completed sample worksheet can be found [on the next page of this Appendix. The sentencing decision-making matrices can be found on the pages immediately following.]

Validation Sample Results

This model was constructed from a 221 case sample collected in Denver, Colorado, during the period of November 1975 to January 1976. In a later validation sample (N = 137), 12 percent of the cases fell outside the guidelines on the basis of an "in" or "out" decision. An additional 8 percent were considered to be outside the guidelines as a result of an incarceration term which varied from the range provided in the guidelines by more than one year. Thus, 80 percent of the sentencing decisions made by the Denver District Court in a 137 case sample during March and April of this year were accounted for by the demonstration guideline model.

SAMPLE WORKSHEET

NAME John Doe DOCKET NUMBER 5671

OFFENSE(S) CONVICTED OF: Theft

18–4–401(2)

SENTENCE Probation

DATE OF SENTENCE 4–27–76

OFFENSE SCORE OFFENSE CLASSIFICATION

3	+	1	=	4	Felony 4
INTRA-CLASS RANK		HARM/LOSS MODIFIER			

OFFENDER SCORE

1	+	0	+	0	+	0	=	1
PRIOR CONVICTIONS		LEGAL STATUS		PRIOR REVOCATIONS		PRIOR INCARCERATIONS		

3	+	2	=		−	5
EMPLOYMENT/ SCHOOL STATUS		LENGTH EMPLOYMENT/ SCHOOL				

= −4

MODEL SENTENCE Out

COMMENTS:

SENTENCING DECISION-MAKING MATRICES

TABLE 13

FELONY 3*

OFFENDER SCORE

OFFENSE SCORE	−1 to −7	0 to 2	3 to 5	6 to 8	9+
8–10	Out	7–8 year min. 14–17 year max.	10–12 year min. 17–20 year max.	15–18 year min. 20–25 year max.	20–25 year min. 25–35 year max.
6–7	Out	Out	Out	5–6 year min. 10–12 year max.	7–8 year min. 14–17 year max.
3–5	Out	Out	Out	Out	5–6 year min. 8–10 year max.
1–2	Out	Out	Out	Out	5–6 year min. 8–10 year max.

* The statutory designated minimum incarcerative sentence for a felony 3 offense is 5 years. The maximum is 40 years.

TABLE 14

FELONY 4*

OFFENDER SCORE

OFFENSE SCORE	−1 to −7	0 to 2	3 to 8	9 to 12	13+
10–12	Indet. Min. 4–5 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.
8–9	Out	3–5 month work project	Indet. Min. 3–4 year max.	Indet. Min. 8–10 year max.	Indet. Min. 8–10 year max.
6–7	Out	Out	Indet. Min. 3–4 year max.	Indet. Min. 6–8 year max.	Indet. Min. 8–10 year max.
3–5	Out	Out	Out	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.
1–2	Out	Out	Out	Out	Indet. Min. 3–4 year max.

* The statutory designated maximum incarcerative sentence for a felony 4 offense is 10 years. No minimum period of confinement is to be set by the court.

TABLE 15

FELONY 5*

OFFENDER SCORE

OFFENSE SCORE	−1 to −7	0 to 3	4 to 7	8 to 11	12+
10–12	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.	Indet. Min. 4–5 year max.
8–9	Out	Out	Indet. Min. 3–4 year max.	Indet. Min. 3–4 year max.	Indet. Min. 4–5 year max.
6–7	Out	Out	Out	Indet. Min. 3–4 year max.	Indet. Min. 4–5 year max.
3–5	Out	Out	Out	Indet. Min. 2–3 year max.	Indet. Min. 4–5 year max.
1–2	Out	Out	Out	Out	Indet. Min. 4–5 year max.

* The statutory designated maximum incarcerative sentence for a felony 5 offense is 5 years. No minimum period of confinement is to be set by the court.

TABLE 16

MISDEMEANOR 1*

OFFENDER SCORE

OFFENSE SCORE	−1 to −7	0 to 5	6 to 8	9 to 11	12+
10–12	18–24 months	18–24 months	18–24 months	18–24 months	18–24 months
8–9	Out	Out	18–24 months	18–24 months	18–24 months
6–7	Out	Out	16–20 months	18–24 months	18–24 months
3–5	Out	Out	Out	8–10 months	12–15 months
1–2	Out	Out	Out	Out	9–12 months

* The statutory designated minimum incarcerative sentence for a misdemeanor 1 offense is 6 months. The maximum is 24 months. A definite term of incarceration is generally set by the court.

TABLE 17

MISDEMEANOR 2*

OFFENDER SCORE

OFFENSE SCORE	−1 −7	0 2	3 5	6 8	9 13	14+
10–12	Out	Out	9–12 months	9–12 months	9–12 months	9–12 months
8–9	Out	Out	Out	9–12 months	9–12 months	9–12 months
6–7	Out	Out	Out	Out	8–10 months	9–12 months
3–5	Out	Out	Out	Out	8–10 months	9–12 months
1–2	Out	Out	Out	Out	Out	9–12 months

* The statutory designated minimum incarcerative sentence for a misdemeanor 2 offense is 3 months. The maximum is 12 months. A definite term of incarceration is generally set by the court.

TABLE 18

MISDEMEANOR 3*

OFFENDER SCORE

OFFENSE SCORE	−1 −7	0 5	6 13	14+
8–10	Out	Out	4–6 months	4–6 months
6–7	Out	Out	4–6 months	4–6 months
3–5	Out	Out	3–5 months	4–6 months
1–2	Out	Out	Out	4–6 months

* The statutory designated maximum incarceration sentence for a misdemeanor 3 offense is 6 months. A definite term of incarceration is generally set by the court.

APPENDIX H

NATIONAL ADVISORY COMMISSION'S STANDARDS AND GOALS

As an aid to those persons and agencies who are interested in, or actively engaged in, the implementation of the systemic Standards and Goals promulgated by the National Adivsory Commission on Criminal Justice Standards and Goals, we here list those specific standards which could either be effectuated through, affected by, or helped by, the development of sentencing guidelines. Those marked by an asterisk (*) appear to be of special relevance.

Community Crime Prevention

2.3 Public Right-to-Know Laws
2.4 Informing the Public

Corrections

5.1 The Sentencing Agency
5.2* Sentencing the Nondangerous Offender
5.3* Sentencing to Extended Terms
5.4 Probation
5.6* Multiple Sentences
5.7* Effect of Guilty Plea in Sentencing
5.8 Credit for Time Served
5.9 Continuing Jurisdiction of Sentencing Court
5.11* Sentencing Equality
5.12* Sentencing Institutes
5.13* Sentencing Councils
5.14* Requirements for Presentence Report and Content Specification
5.15 Preparation of Presentence Report Prior to Adjudication
5.16 Disclosure of Presentence Report
5.17 Sentencing Hearing—Rights of Defendants
5.18 Sentencing Hearing—Imposition of Sentence
16.7 Sentencing Legislation
16.8 Sentencing Alternatives
16.10 Presentence Report

Courts

3.1 Abolition of Plea Negotiation
3.2 Record of Plea and Agreement
3.3* Uniform Plea Negotiation Policies and Practices
3.4 Time Limit on Plea Negotiations
3.5 Representation by Counsel During Plea Negotiations
3.6* Prohibited Prosecutorial Inducements to Enter a Plea of Guilty
3.7 Acceptability of a Negotiated Guilty Plea
3.8 Effect of the Method of Disposition on Sentencing
5.1* The Court's Role in Sentencing
6.1 Unified Review Proceeding
6.9 Stating Reasons for Decisions and Limiting Publication of Opinions
9.2 Presiding Judge and Administrative Policy of the Trial Court
9.3* Local and Regional Trial Court Administrators
9.4 Caseflow Management
10.2 Court Information and Service Facilities
10.3* Court Public Information and Education Programs
10.5 Participation in Criminal Justice Planning
11.1* Court Administration
12.7 Development and Review of Office Policies

Criminal Justice System

3.1 Coordination of Information Systems Development
3.2 State Role in Criminal Justice Information and Statistics
3.3 Local Criminal Justice Information System
3.4* Criminal Justice Component Information Systems
5.3 Court Management Data
5.5* Research and Evaluation in the Courts
7.1 Date Elements for Offender-Based Transaction Statistics and Computerized Criminal History Records
7.2 Criminal Justice Agency Collection of OBTS-CCH Data
7.3 OBTS-CCH File Creation
7.4 Triggering of Data Collection
7.5* Completeness and Accuracy of Offender Data
7.6 Separation of Computerized File
7.7 Establishment of Computer Interfaces for Criminal Justice Information Systems
7.8 The Availability of Criminal Justice Information Systems
8.1 Security and Privacy Administration
8.2 Scope of Files
8.3 Access and Dissemination
8.4 Information Review
8.5 Data Sensitivity Classification
8.6 System Security
8.7 Personnel Clearances
8.8 Information for Research
10.1 Legislative Actions
10.2 The Establishment of Criminal Justice User Groups
10.3 System Planning
11.3* Impact Evaluation
13.1 Criminal Code Revision
13.2 Completeness of Code Revision
13.3* Penalty Structures
13.5 Organization for Revision
13.9 Continuing Law Revision

NOTES

[1] The primary concern of many with regard to variation has been that aspect of variation cited as a contributing cause to prisoner dissatisfaction and prison violence—apparently disparate length of sentence. See New York State Special Commission on Attica, *Attica: The Official Report of the New York State Special Commission on Attica* (New York: Bantam Books, 1972), and David Fogel, "We Are the Living Proof," *The Justice Model for Corrections* (Cincinnati: W. H. Anderson, 1975). It would seem, however, that the issue of unjustified variation affecting the decision to incarcerate is, at a minimum, of equal importance. In any event, both the quality and quantity decision must be separately addressed. Nevertheless, attention should be called to the discussion *infra,* page 45, as to the limited use so far made by us of the branching network model.

[2] Much prior sentencing literature has exclusively addressed the philosophical theories of punishment. See for example, H.L.A. Hart, *Punishment and Responsibility* (New York: Oxford University Press, 1968); Franklin E. Zimring and Gordon J. Hawkins, *Deterrence* (Chicago: University of Chicago Press, 1973); and Sir Leon Radzinowicz, *Ideology and Crime* (New York: Columbia University Press, 1966). This has, however, often led to rhetorical conflict rather than practical results. See S. R. Brody, *The Effectiveness of Sentencing—A Review of the Literature* (London: Her Majesty's Stationery Office, 1976); and Douglas Lipton, Robert Martinson, and Judith Wilks, *Effectiveness of Correctional Treatment—A Survey of Treatment Evaluation Studies* (New York: Praeger Press, 1975).

[3] Henry Bullock, "Significance of the Racial Factor in the Length of Prison Sentences," *Journal of Criminal Law, Criminology and Police Science,* 52:411 (1961); Edward Green, "Inter- and Intra-Racial Crime Relative to Sentencing," *Journal of Criminal Law, Criminology and Police Science,* 5:348 (1964); and Comment, "Discretion in Felony Sentencing—A Study of Influencing Factors," *Washington Law Review,* 48:857 (1973).

[4] Stuart Nagel, *The Legal Process From a Behavioral Perspective* (Homewood, Illinois: The Dorsey Press, 1969) and Hugo A. Bedau, "Capital Punishment in Oregon, 1903–64," *Oregon Law Review,* 45:1 (1965).

[5] Comment, "Texas Sentencing Practices: A Statistical Study," *Texas* Law Review, 45:471 (1967); and Steven F. Browne, John D. Carr, Glenn Cooper, and Thomas A. Giancinti, *Adult Recidivism: Characteristics and Recidivism of Adult Felony Offenders in Denver* (Denver High Impact Anti-Crime Program, 1974).

[6] Marvin E. Wolfgang and Marc Riedel, "Race, Judicial Discretion, and the Death Penalty," *The Annals of the American Academy of Political and Social Science,* 407:119 (1973) (rape); Charles J. Judson, James P. Pandell, Jack B. Owens, James L. McIntosh, Dale S. Matschullat, "A Study of the California Penalty Jury in First Degree Murder Cases," *Stanford Law Review,* 21:1297 (1969) (first degree murder); and Lawrence P. Tiffany, Yakov Avichai, and Geoffrey W. Peters, "A Statistical Analysis of Sentencing in Federal Courts: Defendants Convicted After Trial, 1967–1968," *The Journal of Legal Studies,*

4:369 (1975) (bank robbery, auto theft, transportation of forged securities, and forgery).

[7] Leslie T. Wilkins, *Evaluation of Penal Measures* (New York: Random House, 1969), pp. 60–73. See also Leslie T. Wilkins, *Statistical Methods of Parole Prediction: Their Effectiveness and Limitations,* paper presented at the Annual Meeting of the American Academy of Psychiatry and the Law (Boston, October 1975), pp. 4–8.

[8] For a comparative discussion of various recent proposals, see Vincent O'Leary, Michael Gottfredson and Arthur Gelman, "Contemporary Sentencing Proposals," *Criminal Law Bulletin,* 11:555 (1975). On the subject of appellate review, see generally, Marvin E. Frankel, *Criminal Sentences* (New York: Hill and Wang, 1972); Norval Morris, *The Future of Imprisonment* (Chicago: University of Chicago Press, 1975); Robert J. Kutak and J. Michael Gottschalk, "In Search of a Rational Sentence: A Return to the Concept of Appellate Review," *Nebraska Law Review,* 53:463 (1976); and Marjorie Fine Knowles, "Lawlessness in Our Criminal Law: Criminal Sentences and the Need for Appellate Review," *Alabama Lawyer,* 35:450 (1974). Note the discussion, infra, page 98.

[9] See generally Sherwood E. Zimmerman, "Sentencing Councils: A Study by Simulation," (Ph.D. dissertation, School of Criminal Justice, State University of New York at Albany, 1975); Theodore Levin, "Toward a More Enlightened Sentencing Procedure," *Nebraska Law Review,* 45:505–508, 511–512 (1966); Amiram Vinokur, "Review and Theoretical Analysis of the Effects of Group Processes Upon Individual and Group Decisions Involving Risk," *Psychological Bulletin,* 76:231–250 (1971); and Shari Seidman Diamond and Hans Zeisel, "Sentencing Councils: A Study of Sentence Disparity and Its Reduction," *University of Chicago Law Review,* 43:108 (1976). Note the discussion, *infra,* page 98–99.

[10] See David Fogel, *op. cit.*

[11] "President's Message to Congress on Crime," *Criminal Law Reporter,* 17:3089 (June 25, 1975).

[12] James Q. Wilson, *Thinking About Crime* (New York: Basic Books, 1975).

[13] The Twentieth Century Fund Task Force on Criminal Sentencing, *Fair and Certain Punishment* (New York: McGraw-Hill, 1975).

[14] For an analysis of this argument, see Andrew von Hirsch, *Doing Justice: The Choice of Punishments* (New York: Hill and Wang, 1976). This author notes that the legislature is not the only agency that might see standards for presumptive sentencing and that this task could be performed by the courts. He argues that the formulation of standards could be undertaken by a trial court which might, by some means, prescribe tentative guidelines, and in this context he refers to the present project.

[15] For example, in a sample of nearly 6,000 parole decisions drawn from January to June 1975, 83.8 percent of the cases fell within the guidelines. See Peter B. Hoffman, *Federal Parole Guidelines: Three Years of Experience,* Research Report 10 (United States Board of Parole, November 1975).

[16] Don M. Gottfredson and Peter B. Hoffman, *Paroling Policy Guidelines: A Matter of Equity,* Supplemental Report Nine (hereinafter cited in *NCCD* 9) (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973), pp. 3–4.

[17] See generally Peter B. Hoffman, *Paroling Policy Feedback,* Supplemental Report Eight (hereinafter cited as *NCCD 8*) (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973).

[18] *NCCD 8,* p. 16.

[19] Leslie T. Wilkins, "Some Philosophical Issues—Values and the Parole Decision," Introduction, *NCCD 9,* p. xii.

[20] Maurice H. Sigler, Preface, *NCCD 9,* p. viii.

[21] Sigler, *ibid,* p. x.

[22] See generally Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (Baton Rouge, Louisiana: Louisiana State University Press, 1969); Robert O. Dawson, *Sentencing: The Decision as to Type, Length, and Conditions of Sentence* (Boston: Little, Brown and Company, 1969); and Donald J. Newman, *Introduction to Criminal Justice* (Philadelphia: J. B. Lippincott Company, 1975), pp. 36–37.

[23] See American Friends Service Committee, *Struggle for Justice* (New York: Hill and Wang, 1971).

[24] *Williams v. New York,* 337 U.S. 241, 247, 69 S. Ct. 1070, 93 L. Ed. 1337 (1949). See also *People v. Carter,* 527 P. 2d 874 (Colorado 1974); and *State v. Cabrera,* 127 Vt. 193, 243 A. 2d 784 (1968) *cert. denied,* 393 U.S. 968, 89 S. Ct. 404, 21 L. Ed. 2d 379 (1968).

[25] See John C. Coffee, "The Future of Sentencing Reform: Emerging Legal Issues in the Individualization of Justice," *Michigan Law Review,* 73: 1425–1427 (1975). See also *United States v. Weston,* 448 F. 2d 6261 (9th Cir. 1971), *cert. denied,* 404 U.S. 1060 (1972).

[26] See for example, Francis H. Simon, *Prediction Methods in Criminology* (London: Her Majesty's Stationery Office, 1971), pp. 67–71, 145–147.

[27] See von Hirsch, *op. cit.,* p. 103.

[28] Generally, the Hawthorne effect refers to changes which occur as a result of the attention focused on those subjects participating in an experiment. See Martin A. Levin, *The Impact of Criminal Court Sentencing Decisions and Structural Characteristics* (Springfield, Virginia: National Technical Information Service, 1973), pp. 14–17.

[29] The fitting of an equation to the variables provides the model, while the model can also be thought of as a representation of the sentencing policy being studied.

[30] Fred N. Kerlinger and Elzar J. Pedhauser, *Multiple Regression in Behavioral Research* (New York: Holt, Rinehart and Winston, 1973), pp. 2–50.

[31] Generally, multiple regression assumes that the information items are measured on an interval or ratio scale and that the relationship among the items are linear and additive. It is also assumed that once an equation is developed the random error term is normally distributed, has a mean of zero, is homoscedastic and nonautocorrelated. Furthermore, analysts prefer to have a ratio of 30 to 40 cases for every variable entered into a multiple regression equation. In general, criminal justice data do not meet the assumption of interval data. The Pilot Study samples did not meet the rule of thumb ratio of cases-to-variables.

Regression analysis represents only one tool which can be used to conceptualize a model which is viable and usable. There are, of course, other means of analysis which might be applied by researchers interested in explaining variation in sentencing. Among these methods are discriminant function analysis, multidimensional contingency table analysis and tobit analysis.

The results of any analyses represent only one set of imputs into the conceptualization of a tool designed to assist judges in decision-making. As an action research project, the staff developed models of sentencing guidelines in collaboration with judges using their advice as well as policy decisions. This is exactly the process which would be used in the implementation of guidelines. The proof of the validity of any policy model is whether or not it actually works, that is, it is valid over time. For example, the proof of the validity of the parole guidelines is that the Parole Commission is using them and they are working.

It should be noted that a basic assumption of the Sentencing Guidelines project was that the task of sentencing an offender was not the same as the task of research into sentencing variation. These are two distinct tasks that require different approaches. If guidelines are to represent the policy decisions of judges, the judges themselves must have continual input into the development of guidelines and make the final decisions as to what items of information are to be included and the importance of those items. The results of any analysis, even simple zero order correlations, provide indicators of what factors might be considered by the judges.

[32] In both jurisdictions, the sentencing decision was treated as an interval variable. All incarcerative sentences were assigned a value according to the number of years to be served. All nonincarcerative sentences were assigned a value of zero. Split sentences (a term used to define a sentence which includes a short term of incarceration followed by a longer term of probation) were classified as a nonincarcerative sentence in Denver, but an incarcerative one in Vermont. The Colorado penal code defines the jail term in a split sentence as a condition of probation. Although our experience with such sentences is relatively limited, the term of incarceration tended to be brief (30 days or less) and was frequently served only on weekends. In Vermont, on the other hand, split sentences were classified as an incarcerative sentence because of the length of the incarcerative terms imposed (at least, those which we sampled), and hence its primary nature (i.e., deprivation of liberty).

[33] The multiple regression equation would be written as follows:

Sentencing Decision = $W_1I_1 + W_2I_2 \ldots + W_nI_n + C$, where:

W = weights of the items of information;

I = the items and their values in a particular case; and,

C = a constant required where the information is taken without any standardization of unit measurements (e.g., directly from a presentence investigation report).

For example, suppose that the following variables were identified as having the most significant impact on the sentencing decision in Denver: number of prior convictions with a weight of "+.3;" ranking of the seriousness of the offense with a weight of "+.2;" and the length of the offender's employment with a weight of "−.1." Suppose further that an offender had the following profile of scores or values on these variables:

(1) the offender had four prior convictions;

(2) the present offense was ranked as having a value of five (very serious) on a ranking scale ranging from one to six;

(3) the offender was employed for six months prior to commission of the present offense.

To predict the sentencing decision for this offender, the equations would be as follows:

$$\text{Sentencing Decision} = (.3)(4) + (.2)(5) + (-.1)(6) + \text{a Constant}$$

[34] The reader should be aware of the fact that the collection of data in Vermont consistently took longer to accomplish than it did in Denver. For example, the collection of the Pilot Study sample was completed in Denver at least two months earlier than in Vermont. Consequently, the cleaning, correction and analysis of the Vermont Pilot Study data was correspondingly late. This time difference in the completion of research activities between the two jurisdictions gradually increased as the project moved through its various task stages. For example, during the Model Testing Phase (which will be described in full detail later on), the sampling of cases was completed in mid-January 1976 for Denver, but in Vermont it was not completed until mid-April 1976. The time lag between activities in the two sites became increasingly crucial in the latter stages of the project when we were collecting live data, that is, current cases as they flowed through the system. In one of these phases, it was necessary to wait for cases, with brief information summaries prepared by the research staff attached, to trickle down the system to the sentencing judges. The cases then had to be retrieved by the research staff after the judges completed estimates of some focal dimensions such as seriousness of the offense and provided feedback regarding the adequacy of the information summary. Obviously, the widely scattered court locations in Vermont created logistical and administrative difficulties in collecting this data. Thus, while similar tasks were begun in both jurisdictions at the same time, they were completed at different times. However, for the sake of continuity, the results of task activities with any time discrepancies will be reported together.

[35] In using stepwise multiple regression to develop the equations for Denver and Vermont, we selected the most conservative option of dealing with missing information, i.e., listwise deletion. The application of this method results in the exclusion (from the calculation of the multiple regression correlation coefficients) of any case with missing value on each information item entered in the regression equation. Generally, the net effect of listwise deletion is a reduction in the number of cases on which the correlation coefficient is based. Case attrition may result in a violation of the "rule of thumb" ratio of cases-to-variables suggested as necessary in multivariate analysis. However, the listwise deletion option does insure that the multiple regression equations and correlation coefficients are based on the same subgroup of the sample and not on different cases or even different subgroups.

Consequently, the use of listwise deletion resulted in the size of the Denver sample shrinking from 200 cases to 120 cases; the Vermont sample, from 200 cases to 147. There are several basic explanations for missing information. The most obvious reason is that the items of information were never included in the presentence investigation reports. Information items which have been recorded may not be amendable to coding in the exhaustive, mutually exclusive categories required for data analysis. Again, errors may be identified in that information which is present. The information may have been reported inaccurately in the presentence investigation report or may have been inaccurately coded from the presentence investigation report to the data collection instrument.

[36] Given the data limitations and the percentage of missing data, the research staff views the results of the multiple regression analysis as only tentative indicators

of the items of information (and their respective weights) which most strongly influence sentencing decision.

[37] A sixth model which viewed sentences as a percentage of the maximum allowed by statute was designed, but never developed beyond the theoretical stage.

[38] We may attribute this phenomenon to the fact that the quality of the information from which decision-makers in the criminal justice system must make their decisions does not meet the assumption on which the more sophisticated statistical techniques are based. Thus, as the members of the Parole Decision-Making Project noted:

> (The) most efficient statistical methods suffer considerable shrinkage. Often the shrinkage is greater for the more "powerful" methods than for the simple methods of addition, such as that employed by Burgess nearly half a century ago. As a result, the several studies which have been published, together with our own data in the present project, may be summarized as follows: the more powerful and efficient the statistical procedures for the addition of information into a prediction score, the better the score fits the "construction" sample; however, when a variety of possible methods are used on one set of data and tested on validation sample; the less powerful methods shrink less and may (and indeed, usually do) end up in practice more efficient than the sophisticated techniques.

See Leslie T. Wilkins, *The Problem of Overlap in Experience Table Construction Supplemental Report Three* (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973, pp. 14–15.

[39] Leslie T. Wilkins, "Statistical Methods of Parole Prediction: Their Effectiveness and Limitations," paper presented at the Annual Meeting of the American Academy of Psychiatry and the Law: Boston, October 1975, p. 15.

[40] Stafford Beer, "The Law and the Profits," The Sixth Frank Newsame Memorial Lecture delivered at The Police College, Bramshill, England, October 29, 1970, pp. 3–6.

[41] Leslie T. Wilkins, *Evaluation of Penal Measures* (New York: Random House, 1969), p. 106. See also Wilkins, *Information Overload: War or Peace With the Computer,* Supplemental Report Eleven (hereinafter cited as *NCCD 11*), (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973), pp. 12–15.

[42] Beer, *op. cit.,* p. 1. See generally Beer, *Decision and Control: The Meaning of Operational Research and Management* Cybernetics (New York: John Wiley and Sons, 1966), pp. 270–344.

[43] Beer, "The Law and the Profits," p. 5.

[44] During the early stages of guideline implementation in Denver, the research staff oversampled incarcerative sentences in order to gain additional experience with the length of sentence. Of course, this does raise the problems of biasing the sample. The incarcerative sentences which the Demonstration Model mispredicted in terms of the "in/out" question were therefore screened out of the sample. Similar procedures were followed in the development of an implementation guideline system under the policy decisions of the Denver judiciary.

[45] It was decided to sample current cases because the Steering and Policy Com-

mittee wanted to see how the Demonstration Model would fare in mapping the decisions of the judges' sentencing in Denver at that point in time. Any retrospective sample would be likely to contain cases which had been used in one or more of the preliminary guideline systems. The guideline sentences were given to the judges within 48 hours after their sentencing decisions. The judges were asked to provide reasons for those cases in which they felt the guideline sentence was inappropriate. Thus, a feedback loop could be established and the reasons for departure could be analyzed to determine modification of the model. A retrospective sample would not have accomplished these purposes and would be likely to contain cases which had been used to develop one or more of the preliminary guideline models.

[46] 337 U.S. 241, 69 S. Ct. 1070, 93 L. Ed. 1337 (1949).

[47] *Ibid*, p. 247.

[48] von Hirsch, *op. cit.*; M. Kay Harris, "Disinquisition on the Need for a New Model for Criminal Sanctioning Systems," *West Virginia Law Review* 77:263 (1975).

[49] See generally Robin William Burnham, "A Theoretical Basis for a Rational Case Decision System in Corrections," (Ph.D. dissertation, University of California at Berkeley, 1969). See also Leslie T. Wilkins, *Evaluation of Penal Measures* (New York: Random House, 1969), p. 106, and pp. 12–15. See especially George A. Miller, "The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information, *Psychological Review* 63:81–97 (March 1956).

[50] Browne, *et al., op. cit.*; Carl E. Pope, *Sentencing of California Felony Offenders* (Washington, D.C.: U.S. Government Printing Office, 1975); *Henry v. State* 173 Md. 131, 328 A. 2d 293 (Ct. App. 1974); *State v. Shlarp*, 25 Ariz. App. 85, 541 P. 2d 41 (1975).

[51] It is surprising that previous writers have failed to emphasize the significant fact that plea-bargaining most often aids recidivist, career criminals and provides far fewer rewards to the one-time, or first time, offender. See generally Donald J. Newman, *Conviction: The Determination of Guilt or Innocence Without Trial* (Boston: Little, Brown and Company, 1966).

[52] Departures from the guidelines—both in the statistically technical sense of the term as well as in general—are to be expected and also are to be encouraged. Failure to depart sufficiently often might indicate that simple rote acceptance (or ratification) of the guideline model has taken place. We emphasize again that the guidelines are not laws inscribed in stone. They are useful tools, but only *guides*. The individual human decision-maker must take account of those infrequent, unusual, or unique characteristics which—on the average—should arise in 10 to 20 percent of the cases examined. Thus, too close agreement with suggested guidelines may be cause for as much concern as too much disagreement!

[53] Donald J. Newman, *op. cit.*; Jack M. Kress, "Progress and Prosecution," *The Annals of the American Academy of Political and Social Sciences*, 423–99 (1976).

[54] Jae-Om Kim and Frank J. Kohout, "Multiple Regression Analysis: Subprogram Regression," in: Norman H. Nie, C. Hadlai Hull, Jean G. Jenkins, Karin Steinbrenner, and Dale H. Bent (eds.), *Statistical Package for the Social Sciences* (2nd ed.) (New York: McGraw-Hill, 1975), pp. 320–367.

[55]Wilkins, Leslie T., *The Problem of Overlap in Experience Table Construction,* Supplemental Report Three (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973). pp. 6–7.

[56] Wilkins, Leslie T., *Inefficient Statistics,* Report Number Six, (Davis, California: Parole Decision-Making Project, National Council on Crime and Delinquency Research Center, June 1973).

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U.S. Department of Justice
Law Enforcement Assistance Administration

USER EVALUATION QUESTIONNAIRE

SENTENCING GUIDELINES: STRUCTURING JUDICIAL DISCRETION

Report on the Feasibility Study

Dear Reader:

The Criminal Justice Research Center and the Law Enforcement Assistance Administration are interested in your comments and suggestions about this report, produced under the Sentencing Guidelines research project. We have provided this form for whatever opinions you wish to express about this report. Please cut out this page and fold it so that the Law Enforcement Assistance Administration address appears on the outside. After folding, use tape to seal closed. No postage stamp is necessary.

Thank you for your help.

1. For what purpose did you primarily use this report?

2. For that purpose, the report ( ) met most of my needs.
( ) met some of my needs.
( ) met none of my needs.

3. Are there any specific aspects of this report which you would like to see treated in greater detail?

( ) Analysis of earlier sentencing research
( ) Comparative discussion of other sentencing alternatives
( ) Parole guidelines
( ) Moral/pragmatic considerations
( ) Coding manuals and/or raw data generated
( ) Data analysis
( ) Decision theory and alternative modeling techniques
( ) Findings
( ) Implementation activity and results
( ) Other (please specify) _____

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4. Please suggest other topics you would like to see addressed in future analytic reports on sentencing matters or make any additional comments you wish.

5. In what capacity did you use this report?

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6. Would you be interested in attending a seminar or workshop which would address itself further to the issues discussed in this report?

( ) Yes ( ) No

7. Would you or an agency you work with be interested in receiving technical assistance in developing and implementing sentencing guidelines?

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If you wish to receive further information about Sentencing Guidelines, participate in a seminar or workshop, or receive technical assistance, please print your name, title, and address in the space below.

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