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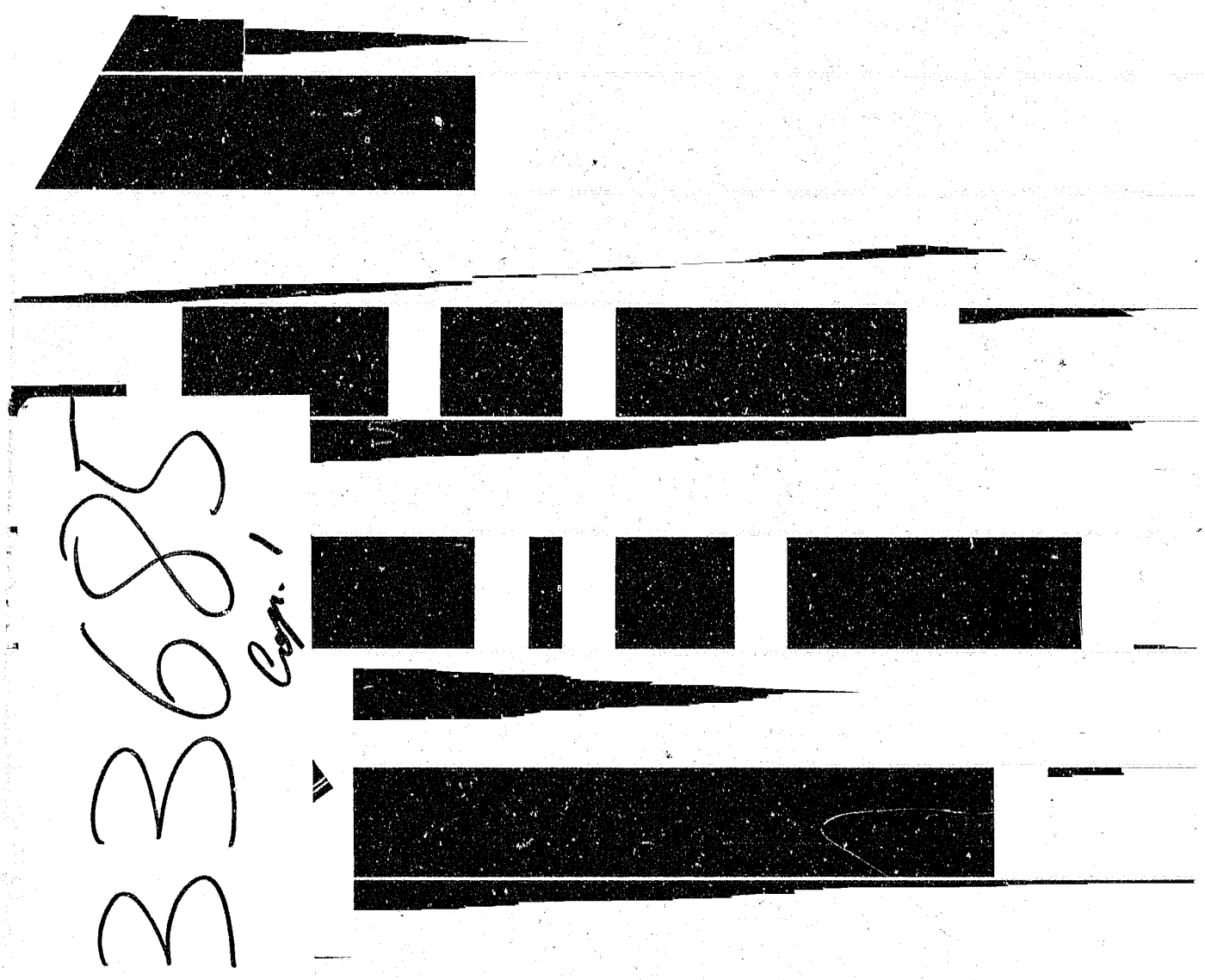
A Study of Geographical Variations



U.S. DEPARTMENT OF JUSTICE Law Enforcement Assistance Administration
National Criminal Justice Information and Statistics Service
UTILIZATION OF CRIMINAL JUSTICE STATISTICS ANALYTIC REPORT 18

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Utilization of Criminal Justice Statistics Project

ANALYTIC REPORT 18

FEDERAL SENTENCING PATTERNS: A Study of Geographical Variations

by **L. Paul Sutton**
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This project was supported by Grant No. 75-SS-99-6001, awarded to the Criminal Justice Research Center, Albany, New York by the Statistics Division, National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended; the project, entitled "Utilization of Criminal Justice Statistics," is being directed for the Criminal Justice Research Center by Michael J. Hindelang and monitored for LEAA by Sue A. Lindgren. Points of view or opinions stated in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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THE UTILIZATION OF CRIMINAL JUSTICE STATISTICS Project was funded initially in 1972 by the National Criminal Justice Information and Statistics Service of the Law Enforcement Assistance Administration. One primary aim of the project is the production of annual editions of the Sourcebook of Criminal Justice Statistics, a compilation of available nationwide criminal justice statistical data. A second aim has been and continues to be an examination of the utility that a variety of criminal justice statistical data bases have for addressing questions of practical and theoretical interest in the field.

One product of that examination is a series of analytic reports, of which this volume is one. These reports, written by research staff members of the Utilization of Criminal Justice Statistics Project, all have a common theme: the discussion of a central criminal justice topic using an exemplary or innovative criminal justice data base. Each report in the series not only discusses substantive findings in regard to particular issues, but also considers the qualities and limitations of the data, as well as techniques and problems of analysis, in relation to the substantive findings.

At a time when criminal justice statistics development is extensive, and often expensive, these analytic reports focus attention on one often overlooked function of criminal justice statistics—the analysis of current issues and questions based on available data. In fact, the utilization issue is perhaps as important as any in the area of criminal justice statistics. It often happens that data are collected—usually at great expense—without subsequent efforts to utilize such data to address the pressing problems that confront criminal justice. This series of Analytic Reports explores the problems and prospects inherent in the application of various sources of criminal justice statistical data to issues of interest and concern to agency personnel, planners, researchers, and the public alike.

MICHAEL J. HINDELANG
Project Director

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PREFACE

THE THIRD IN A SERIES of reports on criminal sentences imposed in the Federal district courts, this document explores the nature of sentences and sentencing patterns and the extent to which they vary from one jurisdiction to the next. Previous efforts have revealed that, at least for the major offenses and for the years studied, patterns have varied somewhat by offense, but relatively little over time. Sentences have generally appeared to be a function first, of the nature of the offense for which an offender is convicted, second, of the prior criminal record of the offender, and third, of the particular method by which the offender was found guilty. The influence of sex, age, and type of counsel was generally minimal, although the particular role of each seemed to be determined by the particular offense involved and whether the sentencing decision related to type (imprisonment versus probation) or length (maximum term of incarceration) of sentence.

The aim here is to assess how well those aggregate and offense-specific patterns observed at the national level hold for the individual circuit and district jurisdictions. Do judges in different courts across the land consider similar criteria and assign them approximately the same relative importance in the determination of criminal penalty? Or are sentences the consequence of unique sets of considerations that vary from one court to another? These and other questions will be addressed in this report.

These analytic reports are based on analyses completed in 1975, which are more fully presented in a document entitled *Criminal Sentencing: An Empirical Analysis of Variations in Sentencing Imposed in Federal District Courts*. This source document is available on loan from the Law Enforcement Assistance Administration Library, U.S. Department of Justice, Washington, D.C. 20531.

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Highlights of the Findings

THE THIRD IN a series of reports on criminal sentences imposed in Federal district courts, this document explores the extent to which sentencing patterns vary from one jurisdiction to the next. The factors that influence whether an offender is sentenced to prison or not as well as the factors that influence the length of a prison term appear to vary substantially in district courts across the Nation. Variation in sentences imposed for major focal offenses was most systematic (that is, the proportion of variance explained was highest) in the Midwest (Sixth and Seventh Circuits). Conversely, sentence variations were least systematically related to the predictors used in this study in the Northeast (Second Circuit). Despite some differences among the circuits, predictability was generally high (relative to the levels of predictability found at the offense-specific levels of the analysis) across all the circuits studied. The variability in sentencing patterns in the district-level analysis was generally less when offenses were considered in the aggregate rather than individually.

When analysis moved from aggregate to offense-specific analysis and from circuit to district focus, the predictive factors became increasingly distinguishable across jurisdictions. For example, although variation in severity of sentences imposed for robbery in one court (Southern District of New York) in 1971 turned on prior record and sex of the offender, they were best explained in another court (Eastern District of New York) by factors relating only to how the criminal case itself was initiated and disposed of.

The data were also explored in an effort to assess the uniformity and uniqueness of sentences in jurisdictions that use a sentencing council. The results suggest no definitive conclusions:

1. Contrary to popular belief, districts employing the sentencing council approach did not display sentences any more consistently related to the factors examined than did noncouncil districts;
2. Contrary to claims of previous studies, sentencing council district courts did not appear to produce sentences less variable over time than district courts without sentencing councils.

In short, this analysis does not support the position that sentencing councils are instrumental in generating any kind of systematic sentencing practices.

FEDERAL SENTENCING PATTERNS:
A Study of Geographical Variations

The Significance of Geographical Variation

THE GEOGRAPHIC DIMENSION commends itself to analysis for both methodological and substantive reasons. In the first place, the researcher must be aware of the methodological problems inherent in aggregation, particularly when the data being analyzed cover a number of dimensions. The data used in this report, for example, are aggregated both by offense and by jurisdiction. It should be clear that conclusions derived from analyses of the whole universe of cases under investigation may not be applicable to important subgroups of that universe, hence the need for analysis beyond the aggregate level. In a previous report, national sentencing patterns were found to vary in some important respects for the different offense groups studied. In order to affirm the accuracy and generality of these national aggregate and offense-specific findings, it is necessary to test their applicability within a variety of selected jurisdictions.

Aside from the methodological implications noted above, the geographical focus bears serious substantive implications as well. As discussed in the first of these reports on sentencing,[1] a few individuals have addressed the question of regional variation in Federal sentences, generally concluding that much of the variation obser ed was not clearly justifiable.[2]

That a bank robber convicted in a California *State* court should receive a different sentence than a bank robber convicted in a New York *State* court is not necessarily improper. First, the definition of the offenses may vary substantially across State jurisdictions. Second, the statutory penalties allowed are likely to be quite different across States. Third, it is now a well-grounded Holmesian doctrine that the individual States are not bound by a common social design, that they are essentially free (within the bounds of the Constitution) to "experiment," if you will, with a variety of social, political, and economic institutions, choosing those deemed most conducive to their respective aims. Thus, even if offenders in two different States are convicted of the same illegal behavior and are subject to the same penalty, that principle alone would allow their differential judicial treatment.

However, none of these sources of variation in State-imposed sentences is applicable to the Federal scene, a fact that should simplify the evaluation of the propriety of Federal-level criminal sentencing once the anlaysis is complete. First, all the Federal jurisdictions studied here are guided by a single penal code. They are regulated by essentially the same set of criminal procedures. They are empowered by the same sentencing structure. Finally,

[1] L. Paul Sutton, **Federal Criminal Sentencing: Perspectives of Analysis and a Design for Research**, Analytic Report SD-AR-16 (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service) 1978, [hereinafter cited as **Design for Research**].

[2] See, for example, W. Zumwalt, "The Anarchy of Sentencing in the Federal Courts," 57 **Judicature** 96 (October, 1973); and Harries and Lura, "The Geography of Justice: Sentencing Variations in U.S. Judical Districts," 57 **Judicature** 392 (April, 1974).

the principles of Federalism and States' rights—relevant to legal differences *among* States and *between* the States and the Federal jurisdiction—cannot justify differences among individual *Federal* jurisdictions.

Variation in Sentences Versus Variation in Sentencing Patterns—An Important Distinction

It is essential to distinguish two topics that this analysis will address. At one level, the focus will be on variations in sentences. Clearly, individual sentences are expected to vary in severity. That kind of variability can justifiably turn on a multitude of factors relating to the nature of the specific cases involved (specifically, the offense, the age and criminal record of the defendant, and so on). At this level, the focus will be on the propriety of the individual criteria that are apparently brought to bear on the determination of penalty as well as the degree to which those criteria are able to "explain" observed variations.[3]

The other level concerns *jurisdictional* variability in sentencing *patterns*. In other words, just as sentences vary within and among jurisdictions, so the patterns—that is, the respective configurations of sentence predictors and the overall predictability of sentences—that characterize those sentences may also vary from one jurisdiction to another. In this regard, it is altogether probable and understandable that sentences vary, but it is quite a different matter to suggest that the *bases* of that variation—and, indeed, the explicability of that variation—should also vary geographically.

Dimensions of Analysis

The principal analytic technique used here is stepwise multiple linear regression analysis, a technique that explores the multivariate relation among a variety of independent variables (predictors) and a single dependent variable—for example, sentence weight, sentence length, or sentence type. The stepwise method measures the independent contribution of each predictor variable to variation in the dependent variable, selects the best predictor, controls for its effects, then searches for the best predictor of the variation that remains, and so on. Repeating the process, the technique, as used here, produces a constellation of predictor variables individually "weighted" in a fashion that yields the most accurate prediction of sentence outcome, assuming a linear, additive, non-interactive model.[4]

The multiple R^2 statistic specifies the proportion of the total variation in the dependent variable (sentence outcome) that is "explained" by the specially weighted configuration of predictors yielded by the regression solution. In general, R^2 is thought to reflect the degree of consistency that underlies sentencing decisions at the particular level under investigation. A relatively high figure, for example, $R^2 = .800$ suggests that variations in sentences correspond quite closely with variations in those independent variables designated in the regression solution; a low figure would probably, but not necessarily, indicate the converse.[5]

The Predictors

The independent or predictor variables on which this analysis is based are of four kinds—those relating to the offense, the offender, the manner of disposition, and the workload of the judicial district of conviction. The specific offender attributes included in the analysis are the age, race, sex, and prior criminal record of the offender. Factors describing aspects of criminal procedure and case disposition include: whether the case was formally initiated by grand jury indictment or by the defendant's waiver of the right to a "hearing" before the grand jury;[6] the interval of time elapsed from the filing of the case to its disposition (imposition of sen-

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[3]Variability in sentences imposed across the Nation was explored in an earlier work. See L. Sutton, **Variations in Federal Criminal Sentences: A Statistical Assessment at the National Level**, Analytic Report SD-AR-17 (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service) 1978, [hereinafter cited as **A Statistical Assessment**].

[4]The limitations of regression analysis and the inferential constraints imposed by those limitations are discussed in more detail elsewhere. See, for instance F. Kerlinger and E. Pedhazur, **Multiple Regression in Behavioral Research** (New York: Holt, Rinehart and Winston, Inc.) 1973; and H. Blalock, Jr., **Social Statistics** (2d Ed.) (New York: McGraw-Hill) 1972, especially pp. 362-376.

[5]For a discussion of the inferential constraints of regression analysis as applicable to the data used here, see L. Sutton, **Design for Research**, op. cit.

[6]When the right to an indictment is waived, the defendant is consenting to be charged by an "information"—an affidavit prepared by the prosecutor's office briefly setting forth the nature and circumstances of the charge and the defendant's alleged role in the offense.

tence); whether the defendant was represented by legal counsel and, if so, whether counsel was privately retained or appointed by the court; and how the conviction was effected—whether the defendant pled guilty originally, changed the plea to guilty after an original plea of not guilty, was convicted by trial before a judge with no jury (bench or court trial), or was convicted by jury trial. Finally, a variety of factors characterizing the judicial districts were developed in an effort to discover what influence the court milieu might have on sentencing patterns. Of these aggregate measures, only a handful emerged as even marginally significant in preliminary analyses. These six[7] were also introduced into each of the aggregate and offense-specific regression solutions performed at the district and circuit levels. However, their impact remained minimal. Eight major Federal crime categories were selected for analysis: bank robbery, bank embezzlement, counterfeiting, larceny from interstate commerce, auto theft, narcotics offenses, and Marihuana Tax Act and Selective Service Act violations.[8] The appendix lists the names, definitions, and coding conventions used for the predictor variables used in this analysis.

Measuring Sentencing Outcome

It is fortunate when analysis of criminal sentencing can preserve the important distinction between the determination of *type* and *length* of sentence. In the second sentencing report in this series, the bifurcation was explored with respect to these data[9] and will be addressed to a lesser extent here. However, when comparisons become numerous and complex and the number of cases becomes too small to sustain analysis (particularly with respect to anlaysis of sentence length, since it is restricted to persons sentenced to imprisonment), it becomes necessary and useful to employ an index of sentence severity that combines the two phases of the sentence decision into a single continuous measure of severity. The weighting scheme used for this purpose is outlined in Table 1.

It would appear that the primary difficulty of scaling "sentence severity" is the assignment of specific interval-level values to the spectrum of available sentences, especially where these sentences differ both quantitatively (length of sentence) and qualitatively (type of sentence). That is, if a suspended sentence (i.e., no imprisonment or probation) is assigned a value of "0" and 1 year of probation is valued at "1," the obvious and difficult problem becomes that of deciding how to weight 2 years of probation (2?); 4 years of probation (4?); 1 year of imprisonment (less than 4? more than 4? how much more than 4?); 10 years of imprisonment (10 times the value of 1 year? more or less than 10 times the value of 1 year?); and so on. A second issue relates to whether different sentences should be treated "independently" for weighting purposes or whether they might be usefully grouped (e.g., prison sentences of from 6 years to 10 years) and assigned the same "weight."

In attempting to resolve the first issue, i.e., selection of appropriate "weights" for various sentence categories, several weighting schemes were tested. In the simplest, an ordinal ranking of weights from 0 to 17 was applied to the sentence categories listed in Table 1. Other, more complex interval-level weighting schemes were also devised and tested, including the original scale used by the Administrative Office of the U.S. Courts. Regression analysis was performed on each weighting scheme, such that the same set of predictors was used to predict variations in outcome, as measured by each of the respective schemes. It is notable that among all the scaling models tested, the range in the level of variance explained (R^2) was less than 5 percent points. Thus, the precise calibration of sentence weights beyond a simple ordinal ranking appears almost inconsequential when fewer than two dozen categories of penalty are used. Nevertheless, the scheme ultimately selected for this analysis, presented in Table 1, represents the model that yielded

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[7]The aggregate district-related measures include the number of criminal cases disposed of per judge (in 1971) in the district in which an offender was convicted; the median time required by the district to dispose of a criminal case in 1971; the proportions of the convicting court's 1971 dispositions that were effected by dismissal and by conviction; the proportion of a district's total trials that were heard by a jury (versus a judge sitting without a jury present); and an index (juror usage index) measuring the convicting court's relative efficiency with respect to the proportion of jurors who *actually serve* on a jury of those who have been *paid* to serve.

[8]The criteria that guided the selection of these particular offenses are discussed in L. Sutton, **Design for Research**, op. cit.

[9]The reference is to the previous analysis of the 1971 aggregate and offense-specific sentencing patterns at the national level. See L. Sutton, **A Statistical Assessment**, op. cit. It should be noted that the decisions relating to type (prison versus probation) and length (maximum prison term) varied substantially with respect to both their overall predictability and the specific factors that best predicted the outcome of the respective decisions.

TABLE 1 Sentence weight index

Actual sentence	Weight assigned by the Administrative Office scheme[a]	Weight used in this study
Suspended sentence or fine only	0,1	0
Probation:		
Less than 3 years	1, 2	1
3 years to less than 5 years	4	2
5 years or more	4	3
Prison:		
Less than 6 months	3	4
(Split sentence) prison 0 to 6 months and probation	4	5
6 months to less than 1 year	5	6
(Mixed sentence) prison 6 to less than 12 months and probation	Not applicable	7
1 year to less than 2 years	8	8
2 years to less than 3 years	10	10
3 years to less than 4 years	12	12
4 years to less than 5 years	14	14
5 years to less than 6 years	25	20
6 years to less than 10 years		30
10 years to less than 15 years	50	40
15 years to less than 20 years		50
20 years to less than 45 years		65
Life		80

[a]The Administrative Office's weighting scheme is reported in Hindelang, Dunn, Aumick, and Sutton, **Sourcebook of Criminal Justice Statistics—1974,** U.S. Law Enforcement Assistance Administration (Washington, D.C.: U.S. Government Printing Office) 1975.

the highest level of explained variance of all the models tested.

The second issue was resolved by modeling the weighting scheme to be used in this study on that designed by the Administrative Office of the U.S. Courts (A.O.) to facilitate comparison of sentences of all kinds across jurisdiction and over time. The A.O. scheme groups sentence outcomes largely according to the categories listed in Table 1. It should be noted that the A.O. model was adapted somewhat to produce the scheme used in this study. The primary differences lie in (1) the new scheme's attempt to divide some of the A.O.'s rather inclusive sentence categories into smaller categories (e.g., the A.O. scheme used a single category with a weight of "50" for all prison sentences of from 10 years to life; the scheme used in this study employs 4 categories and 4 weights for that group) and (2) the new scheme's treatment of *all* sentences of imprisonment as more severe than *any* sentence of probation.

Because this analysis will focus on the district level and will often be restricted to a single offense, caseload size makes the independent exploration of each decision (sentence type and sentence length) impracticable. Similarly, because practices along

several dimensions will be compared simultaneously, the weighting scheme should prove especially helpful in keeping the analysis manageable.

The Focal Jurisdictions

In order to explore the comparability of sentencing over different areas, five circuits and six districts were selected for this investigation. At the district level, six jurisdictions were chosen, principally on the basis of the total number of offenders sentenced for the eight focal offenses, the heterogeneity of the caseload within the district with respect to those offenses, and region of the country in which the district was located. Six districts, representing four geographic areas, were chosen: Eastern District of New York and Southern District of New York from the Northeast; Southern District of Texas from the South; Northern District of Illinois and Eastern District of Michigan from the Midwest; and Central District of California from the West.[10] Three of these districts—New York East, Illinois North, and Michigan East—employ sentencing councils or panels, a fact that will also enable comparison of the effects of that sentencing technique with the conventional approach of the autonomous judge.

Focusing on the patterns exhibited by all six districts should shed some light on the extent to which different jurisdictions exhibit distinct sentencing patterns. At the same time, some of the effects that sentencing councils may have on the extent and correlates of sentence variation can begin to be addressed.

Unfortunately, despite the careful selection of both offenses and districts, the district-level inquiry frequently encountered an insufficient number of cases to sustain analysis. Consequently, the analysis at that level is often restricted to fewer than the eight focal offenses and the six focal districts. Therefore, circuits were also used as "jurisdictions." For this purpose, data from the five circuits—the Second, Fifth, Sixth, Seventh, and Ninth—which include the six focal districts mentioned earlier, were also used. The Federal district and circuit boundaries are outlined in Figure 1.

Before proceeding, it should be made quite clear that, for this study, the circuit is not properly thought of as a "jurisdiction"; rather, it is a geographical aggregate of several district courts. With regard to some matters—for example, appellate cases and some special types of civil cases—the circuit court exercises exclusive jurisdiction as a court; however, the circuit is not a single judicial entity for the purpose of trying criminal cases, as are the district courts. Analysis of circuit-level sentencing patterns, therefore, represents a compromise necessitated by the frequently small criminal caseloads of even the largest Federal district courts. One of the concerns in the regional analysis will be to determine how accurately circuit-level patterns portray the practices of individual *district* courts contained therein.

It was felt that the regional analysis could safely proceed on the basis of this number of circuit and district jurisdictions because the jurisdictions selected accounted for the preponderance of the 1971 Federal criminal caseload. Cases disposed of in the five circuits mentioned constituted nearly three-quarters (72.4 percent) of the 1971 Federal caseload of focal offenses. The total number of cases disposed of in the six districts by themselves comprised nearly one-fourth (22.0 percent) of the national total.

Circuit-Level Variability: Aggregate Analysis

One would fully expect to find that different areas would vary, perhaps markedly, in the severity of criminal sentences actually imposed. The variability in the circuit-level aggregate sentencing measures presented in Table 2 affirms that expectation. Imprisonment rates ranged from the Midwest's (Seventh Circuit) low of 44.3 percent to the Northeast's (Second Circuit) high of 63.0 percent. Mean maximum terms of imprisonment imposed similarly varied by circuit, ranging from a low of about 4 1/3 years (52.4 months) in the West (Ninth Circuit) to the Northeast's (Second Circuit) high of just over 6 years (72.8 months). When the weighted sentence measure was used, the geographic variability is similarly apparent, ranging from 9.0 (Seventh Circuit) to 15.2 (Second Circuit). For all but the Sixth Circuit, the mean figure for each circuit studied was different from the national mean.

However, as noted earlier, variation per se is understandable, since differences in sentence may be based on any number of legitimate criteria. Indeed, as Table 2 also shows, the case profiles for the

[10]The Central District of California was created by statute in 1966. Therefore, 1964 analysis focused on the Southern District of California, a district that included the area that later constituted the new Central District in 1966.

FIGURE 1 The Federal judicial system

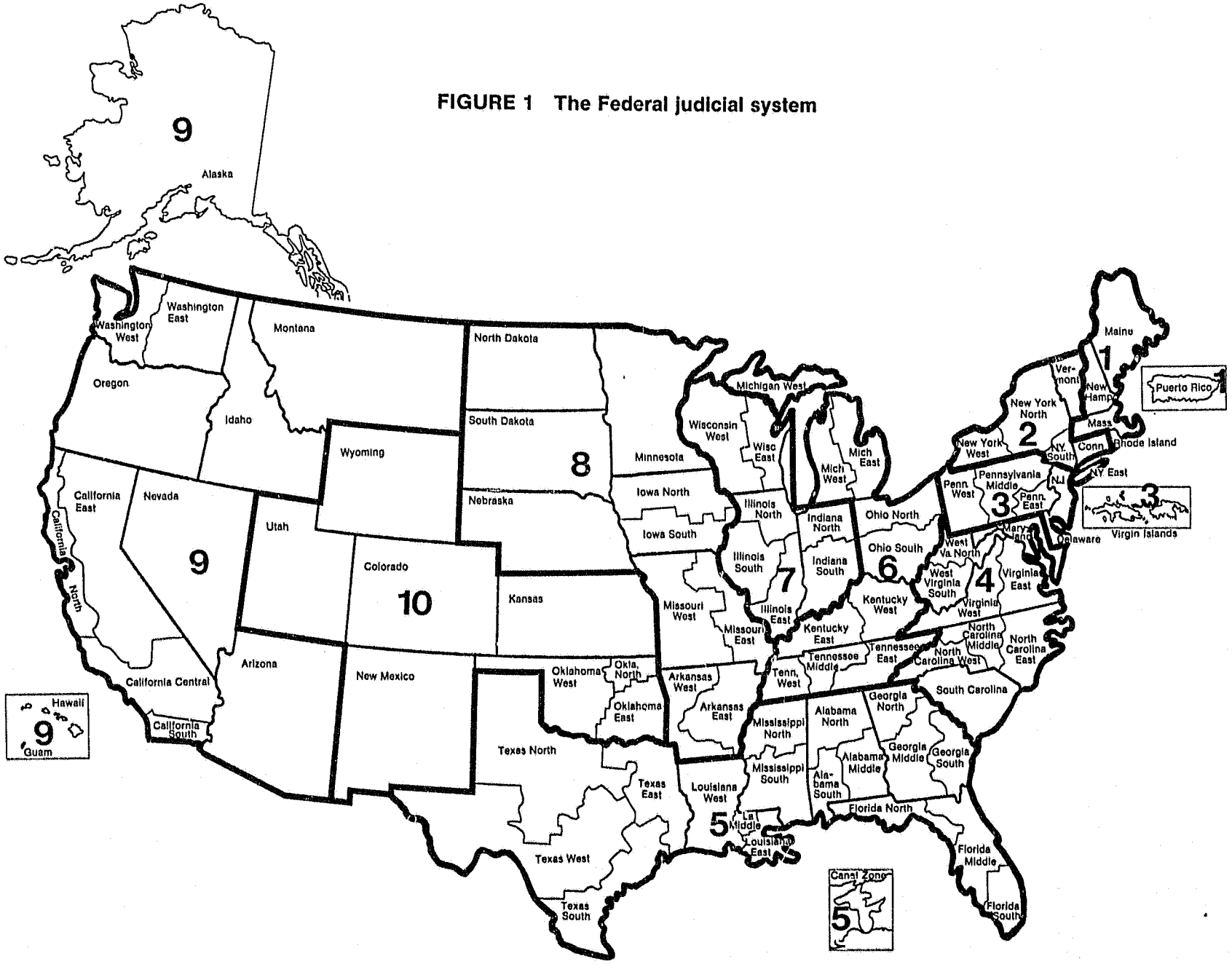

FIGURE 1 The Federal judicial system

FIRST CIRCUIT
- Maine
- Massachusetts
- New Hampshire
- Rhode Island
- Puerto Rico

SECOND CIRCUIT
- Connecticut
- New York North
- New York East
- New York South
- New York West
- Vermont

THIRD CIRCUIT
- Delaware
- New Jersey
- Pennsylvania East
- Pennsylvania Middle
- Pennsylvania West

FOURTH CIRCUIT
- Maryland
- North Carolina East
- North Carolina Middle
- North Carolina West
- South Carolina
- Virginia East
- Virginia West
- West Virginia North
- West Virginia South

FIFTH CIRCUIT
- Alabama North
- Alabama Middle
- Alabama South
- Florida North
- Florida Middle
- Florida South
- Georgia North
- Georgia Middle
- Georgia South
- Louisiana East
- Louisiana West
- Mississippi North
- Mississippi South
- Texas North
- Texas East
- Texas South
- Texas West

SIXTH CIRCUIT
- Kentucky East
- Kentucky West
- Michigan East
- Michigan West
- Ohio North
- Ohio South
- Tenessee East
- Tennessee Middle
- Tennessee West

SEVENTH CIRCUIT
- Illinois North
- Illinois East
- Illinois South
- Indiana North
- Indiana South
- Wisconsin East
- Wisconsin West

EIGHTH CIRCUIT
- Arkansas East
- Arkansas West
- Iowa North
- Iowa South
- Minnesota
- Missouri East
- Missouri West
- Nebraska
- North Dakota
- South Dakota

NINTH CIRCUIT
- Alaska
- Arizona
- California North
- California East
- California Central
- California South
- Hawaii
- Idaho
- Montana
- Nevada
- Oregon
- Washington East
- Washington West

TENTH CIRCUIT
- Colorado
- Kansas
- New Mexico
- Oklahoma North
- Oklahoma East
- Oklahoma West
- Utah
- Wyoming

[Numerals indicate the Courts of Appeals The heavy lines represent the jurisdictional boundaries of each circuit The thin lines represent State boundaries The broken lines represent jurisdictional boundaries of District Courts in States having more than one district]

respective circuits are distinguished in a number of important (sentence-related) respects. The proportions of bank robbers and narcotics offenders disposed of in the Second Circuit, which exhibited the severest sentence outcome statistics, for example, were about twice the national figures and well over twice the figures for most of the other focal circuits. Because robbers and narcotics offenders received the harshest sentences overall, one could well expect that jurisdictions whose caseloads are marked by particularly high proportions of these kinds of cases would rank comparatively highly on overall sentence severity. The regions also vary with respect to other factors—like offenders' records and the procedures by which they were processed and convicted—that have also been found to be strongly related to sentence outcome.[11] Thus, variation in the sentences imposed by different jurisdictions may merely reflect important distinctions in the respective caseloads of the jurisdictions: it cannot be taken as presumptive evidence of random or discriminatory sentencing.

The propriety of geographic differences in sentences is not so easily resolved. To get at that issue, one must address both the predictability and the correlates of variations in sentences imposed in different jurisdictions. That is, on the one hand it must be determined whether observed variations in sentences are highly (or at all) correlated with the objective criteria used in the analysis. If sentence predictability is consistently low or if there exist marked discrepancies in the ability to explain sentences from one court to another, then there may be cause for concern. Irrespective of predictability levels, there must be a concern for the correlates of sentence variations, since similar levels of predictability across districts do not necessarily signify comparable sentencing practices. Variations in one district, for example, might have been based on the race of the offender, while sentences in another were based principally on the seriousness of the conviction offense, even though sentences in the two districts proved similarly predictable.

Therefore, in comparing the characterizing sentencing across districts, it is useful to assess patterns from the perspectives of both the overall predic-

[11] L. Sutton, **A Statistical Assessment**, op. cit.

TABLE 2 Profile of offender, offense, processing, and sentencing characteristics of offenders convicted in five focal circuits, 1971

NOTE: The multiple R^2 statistic refers to the proportion of total variance in sentence weights imposed in the respective jurisdictions that could be explained on the basis of the predictors enumerated here. See Figure 1 for a list of the district courts in each circuit.

Independent variables	Nation	Circuit				
		Second Circuit	Fifth Circuit	Sixth Circuit	Seventh Circuit	Ninth Circuit
Multiple R^2 (sentence weight)	.578	.498	.577	.695	.605	.519
Number of offenders convicted of a focal offense	9,384	811	2,002	965	585	2,226
Offense variables:						
Percent convicted of robbery	11.5	20.2	7.1	13.4	12.0	7.7
Percent convicted of narcotics	10.8	23.1	10.1	2.4	6.8	5.8
Offender variables:						
Percent male	91.3	89.2	91.2	91.2	91.6	90.7
Percent white	78.3	72.6	81.0	70.9	78.2	84.4
Prior record (mean)	1.5	1.3	1.5	1.8	1.1	1.2
Age (mean)	30.1	32.5	30.1	30.3	30.9	28.3
Process variables:						
Mean interval from filing to disposition of case	5.0	7.5	4.1	5.4	5.5	3.7
Percent convicted by unchanged plea	50.2	44.6	58.5	50.2	44.4	53.9
Percent convicted by changed plea	30.5	34.9	27.4	33.3	39.5	25.6
Percent convicted by trial	19.3	20.5	14.1	16.6	16.1	20.5
Percent convicted by court trial	13.2	3.0	2.4	3.2	5.6	10.2
Percent convicted by jury trial	6.0	17.5	11.7	13.4	10.4	10.4
Sentence variables:						
Mean length of imprisonment	62.1	72.8	58.6	58.5	54.9	52.4
Percent imprisoned	54.4	63.0	61.3	57.1	44.3	48.4
Mean sentence weight	11.7	15.2	12.4	11.5	9.0	9.6

tability of sentence and the specific correlates of outcome. In this regard, should the study show that sentences vary across jurisdictions, or more importantly, that the predictability of and criteria for sentencing also vary substantially from one Federal district to another, there may be cause for concern about the propriety of the sentencing decision.

Predictability Across Circuits

At the aggregate national level, however, there appears to be little problem in this regard. As Table 2 shows, sentences imposed in the five focal circuits were fairly comparable in terms of the predictability of sentence weight. Sentence weights in the Second Circuit (New York, Vermont, and Connecticut) were least predictable (49.8 percent of the variance was explained); those in the Sixth Circuit (Tennessee, Kentucky, Ohio, and Michigan) were most systematic in terms of the predictors used here (R^2 = .695). Irrespective of the minor variability from circuit to circuit in the amount of sentencing variance able to be explained, it is interesting that the absolute level of explanation for the circuits was consistently high.

Moreover, the consistency appears to have derived rather remarkably from essentially the same objective criteria. Tables 3 through 7 present the summary aggregate regression solutions for each of the focal circuits. Most striking of all is that the same four factors—robbery conviction, narcotics conviction, criminal record, and method of conviction—that emerged as the best predictors of sentence weight at the national level also constituted the optimal predictors for each of the circuits studied. Offense clearly accounted for the greatest portion of variation in sentence weight, followed by record of the offender and the method of conviction.

For each circuit, whether the offender was convicted of robbery versus any of the other focal offenses was the best independent predictor of sentence weight, accounting for at least one-fourth of the total variance in sentences imposed in each of the circuits. Its independent contribution varied considerably, however, across jurisdiction. In the Second Circuit (Table 3), 27.8 percent of the total variance in sentence weight turned on whether the offense involved was bank robbery. Three-fifths of the total variance in sentences imposed in the Sixth Circuit (Table 5), on the other hand, could be explained by that factor alone.

TABLE 3 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Second Circuit, 1971

NOTE: Although the solution yielded at least 12 variables that were statistically significant at the .01 level, they were not considered substantively significant unless they independently accounted for more than 1 percent of the variance in the dependent variable. Consequently, such insubstantial variables were excluded from the summary tables and from the discussion. Variables are fully defined in the appendix.

In the table below, the *r* statistics represent the simple zero-order Pearson's product moment coefficients between each variable and the outcome variable.

The *multiple R* figures represent the cumulative product amount coefficients between the outcome variable and various linear combinations of predictors.

The R^2*'s* are the squares of the respective multiple R figures and measure the cumulative proportion of variance explained in the dependent variable by the specified combinations of predictor variables.

R^2 *change* measures the additional proportion of variance in outcome which is independently accounted for by *each* predictor. The predictors were introduced in step-wise fashion in the solution presented below, meaning that the variable appearing first exhibited the strongest zero-order correlation with the outcome variable; the variable appearing second exhibited the strongest correlation with the outcome variable when the effect of the first variable was controlled; the variable appearing third exhibited the strongest correlation with the outcome variable when the effects of the first two variables were controlled; and so on.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.527	.278	.278	.527
Narcotics	.644	.415	.137	.211
Trial	.680	.463	.048	.337
Record	.706	.498	.035	.404

Once the effect of being convicted for robbery is removed, whether the offender was convicted of a narcotics violation best explained the variance that remained in two of the five circuits. The prior record

TABLE 4 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Fifth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.624	.389	.389	.624
Narcotics	.701	.491	.102	.260
Record	.746	.557	.066	.338
Trial	.759	.577	.019	.229

TABLE 5 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Sixth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.777	.604	.604	.777
Record	.824	.679	.076	.393
Jury trial	.834	.695	.016	.267

TABLE 6 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Seventh Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.643	.414	.414	.643
Record	.699	.489	.076	.454
Narcotics	.751	.564	.075	.207
Jury trial	.778	.605	.041	.289

of the offender and the method of conviction—(jury) trial versus plea of guilty—were the other two most important predictors. The single exception to this consistent pattern was that a narcotics conviction did not appear at all as a significant predictor of sentence outcome in the Sixth Circuit, a fact that is not surprising, because narcotics offenses comprises fewer than 3 percent of the dispositions for focal offenses in that circuit.

TABLE 7 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Ninth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.589	.347	.347	.589
Jury trial	.660	.436	.089	.358
Record	.697	.485	.050	.418
Narcotics	.718	.516	.030	.150

Sentence Length Versus Sentence Type

Analysis elsewhere[12] has shown that the determinants and predictive levels of sentence type versus sentence length are notably discrepant. At the aggregate national level, for example, sentence length was much more predictable than was sentence type. At the same time, the in-out decision turned first on the prior record of the offender and the method of conviction, while the length decision turned almost wholly on the offense involved.

The circuit-level findings summarized in Table 8 are fairly consonant with those patterns. In the first place, for each of the five circuits, the length of incarceration appears considerably more predictable—ranging from an R^2 of .368 for the Second Circuit to a figure of .651 for the Sixth—than was the antecedent decision about whether or not to imprison an offender convicted of one of the eight focal offenses—the predictability levels for that decision ranging from the Ninth Circuit's .172 to the Sixth Circuit's .387. In the second place, the national level predictors emerged fairly consistently across the circuits as well. For four of five regions, the decision about whether to imprison an offender was more strongly related to the offender's prior record than to any other factor studied.[13] For all five of the cir-

[12]See note 9, supra.

[13]The only exception was the Second Circuit, where an embezzlement conviction was the best predictor of imprisonment; the prior record of the offender ranked second.

TABLE 8 Proportion of variance explained in and significant predictors of sentence outcome for all eight focal offenses in five focal circuits, 1971

NOTE: This table is derived from the totality of 1971 offense-specific regression solutions for sentence weight (SWT), sentence length (SL), and sentence type (ST). Each of the circuit columns below represents a single regression solution. Predictors were assigned a value from four to one according to the following specifications: the best independent predictor received a value of four; the second best, three; the third, two; all other significant predictors—down to and including the first variable in the solution that could independently account for less than 2 percent but more than 1 percent of the variance—were assigned a value of one. Variables ranking fourth and lower were not assigned differential scores because for most solutions the R^2 change was relatively small for all variables that entered the equation after the third predictor. The mean value column represents the sum of the rank values for each dependent variable across the five circuits, divided by five. See Figure 1 for a list of the district courts in each circuit.

Independent variables	Nation			Mean value			Circuit														
							Second Circuit			Fifth Circuit			Sixth Circuit			Seventh Circuit			Ninth Circuit		
	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST
Multiple R^2	.578	.499	.264	Not applicable			.498	.368	.290	.577	.524	.295	.695	.651	.387	.605	.499	.298	.516	.481	.172
Number of cases	9,384	5,100	9,384	Not applicable			811	510	811	2,002	1,227	2,002	965	551	965	585	259	585	2,226	1,172	2,226
Offense variables:																					
Robbery	4	4	2	4.0	4.0	1.8	4	4	1	4	4	2	4	4	3	4	4	3	4	4	
Larceny					.4			1			1										
Auto theft		1	1		1.2	.5					2	1		3	2		1				
Embezzlement						.8			4												
Counterfeiting																					
Marihuana																					
Narcotics	3	3	1	1.8	1.8	1.2	3	3	1	3	3	3				2	3	2	1		
Selective Service																					
Offender variables:																					
Sex						.4			2												
Race: White						.2												1			
Black																					
Record	2		4	2.2	1.0	3.0	1		3	2	1	4	3		4	3	2	4	2	2	4
Age																					2
Process variables:																					
Indictment																					
Waiver					.4			1												1	
Interval to desposition																					
Plea of guilty:																					
Unchanged																					
Changed																					
Trial:																					
Court																					
Jury	1	2	3	1.2	1.2	.6							2	2		1	1		3	3	3
Trial (court or jury)				.6	.4	.8	2	2	1	1		1						1			
Counsel:																					
Assigned																					
Retained																					
None/waived																					
Court variables[a]																					

[a]None of the court-related variables appeared in any of the aggregate solutions.

cuits, explainable variations in the length of incarceration appear to have been almost wholly a function of the offense. In fact, for all but the Ninth Circuit, the first *two* predictors of sentence length related to commitment offense.

Offense-Specific Patterns at the Circuit Level

It is abundantly clear at this point that type of offense is the best predictor of sentence when the focal population includes all the offenses studied. When the effect of type of offense is removed by looking at sentence patterns for each of the individual offenses, proportionately much less of the variation can be accounted for. The aim in this section will be to explore how much these prediction patterns vary from one jurisdiction to another, once offense is controlled.

Because robbery and narcotics offenses accounted for considerable variation by themselves, because they are relatively serious crimes, and because they were sufficiently frequent at the circuit level to sustain independent analysis, they were selected as the bases for the offense-specific exploration. Because auto theft offense constitute such a large proportion of all Federal offenses, and because auto theft is a typical kind of "State" offense, as well, it was also included. Because the Second, Fifth, Sixth, and Ninth Circuits disposed of a substantial number of these offenders in 1971 and because they represent a fair geographic cross-section of the Nation, they will provide the geographical focus for the ensuing discussion.

Table 9 summarizes the level of prediction achieved (R^2) and specifies those factors that best explained the variance in sentence weights of offenders convicted of robbery, auto theft, and narcotics in the Northeast (Second Circuit), the Midwest (Sixth Circuit), the South (Fifth Circuit), and the West (Ninth Circuit). Most prominent in Table 9 is the shrinkage in prediction from the aggregate (see Table 8) to the offense-specific prediction. Despite the overall decrease in predictability for the individual offenses, the predictability of sentences within each of the three offense groups was fairly consistent across the regions studied. However, there appear to be notable differences in the configurations of predictors that best explained sentence variations within each of the respective jurisdictions.

Robbery

Sentences in the Second and Ninth Circuits appeared to turn on essentially similar considerations and in roughly comparable proportions: in Federal courts in both Northeastern and Pacific areas, the extent of a bank robber's prior record was the most salient factor in the determination of the sentence. Thereafter, the offender's sex and the method of conviction accounted for the preponderance of variation that remained. It is interesting that although the third predictor for both circuits relates to method of conviction, the specific predictors were not the same. Specifically, inasmuch as sentence in the Northeast turned on method of conviction at all, it appeared most strongly related to whether an offender pled guilty at arraignment vis-a-vis some other method of conviction ($r_{SWT,UPLEA} = -.222$; versus $r_{SWT,\ CPLEA} = .033$ and $r_{SWT,\ JTRIAL} = .195$—not shown in table). Conversely, in the West a conviction by an unchanged plea of guilty had no zero-order effect on sentence weight at all ($r = .001$—not shown in table). Instead, it was type of trial that bore the strongest relation to sentence severity: court trial conviction was negatively associated with sentence weight ($r = -.235$); at the same time, conviction by jury trial was likely to elicit a heavy sentence ($r = .230$). Apart from this distinction, sentencing of robbers in the Second and Ninth Circuits—insofar as it can be explained—appears to have turned on essentially comparable considerations. Tables 10 and 11 illustrate the specific results of the regression analyses for these two circuits.

On the other hand, as shown in Table 12, bank robbers sentenced in the South (Fifth Circuit) faced a quite different set of criteria. There, criminal record, per se, did not appear at all in the solution for robbery sentences. Instead, the sex of the offender accounted for more variation in sentences than did any other single variable. When sex was controlled, age appeared the best remaining predictor, such that the older the offender, the more severe the sentence. Thereafter, process variables exerted marginal influence, suggesting that offenders offering the least resistance to conviction fare better at sentencing than those who invoke the full panoply of "due process" protections available.

Of course, the method used in this study does not permit unequivocal inferences about the motivation, thoughts, or intentions of judges at the time of

TABLE 9 **Proportion of variance explained in and significant predictors of** sentence weights for selected offenses in selected circuits, 1971

NOTE: See Note, Table 8. For a list of the district courts in each circuit, see Figure 1.

Independent variable	Robbery				Auto theft				Narcotics offenses			
		Circuit				Circuit				Circuit		
	Nation	Second Circuit	Fifth Circuit	Ninth Circuit	Nation	Fifth Circuit	Sixth Circuit	Ninth Circuit	Nation	Second Circuit	Fifth Circuit	Ninth Circuit
Multiple R^2	.250	.197	.216	.283	.235	.218	.271	.294	.419	.481	.381	.411
Number of cases	1,078	164	142	187	2,027	628	307	234	1,014	187	201	388
Offender variables:												
Sex	3	3	4	3							1	
Race: White												
Black										1		
Record	4	4		4	4	4	4	4	3	2	3	1
Age			3						1		2	3
Process variables:												
Indictment			2			2	2		2			
Waiver		1								3		
Interval to disposition	1									1		
Plea of guilty:												
Unchanged		2	1									4
Changed												
Trial:												
Court				2								
Jury	2			1	3		3					
Trial (court or jury)						3		3	4	4	4	2
Counsel:												
Assigned												1
Retained									1	1	1	
None/waived												
Court variables[a]												

[a]Not applicable.

TABLE 10 **Proportion of variance explained in sentence weight imposed** for robbery in the Second Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.283	.080	.080	.283
Sex	.372	.139	.059	.252
Unchanged plea	.424	.180	.041	−.222
Waiver	.444	.197	.017	−.232

TABLE 11 **Proportion of variance explained in sentence weights imposed** for robbery in the Ninth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.430	.185	.185	.430
Sex	.483	.233	.049	.292
Court trial	.514	.264	.031	−.235
Jury trial	.532	.283	.019	.230

TABLE 12 **Proportion of variance explained in sentence weights imposed** for robbery in the Fifth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Sex	.374	.140	.140	.374
Age	.419	.175	.036	.244
Indictment	.452	.205	.029	.149
Unchanged plea	.464	.216	.011	.013

sentencing. On the basis of the results just discussed, for example, it could be concluded that Southern judges actually based their decisions on the sex of the offender, whereas their counterparts in the Northeast and West relied principally on prior criminal record to direct their decisions. That is only one interpretation of the results: Nothing in the data or the analytic method demands or necessarily allows such a conclusion. In the first place, only about one-fourth of the total variation in robbery sentences can be accounted for in each of the jurisdictions studied on the basis of the variables used. Thus, there remains the possibility that some factor(s) as yet unidentified could constitute a better predictor than any of those used here. In the second place, the analytic model, as used in this report, assumes linear relationships. If one of the predictors used (or some factor not identified) bears a strong curvilinear relationship to sentence, then we would be altogether unable to identify it or to assess its impact. Third, there is the omnipresent methodological problem of measurement. Does the variable sex really measure what we intend or assume it measures? Or is it a "mask" for some other factor (e.g., criminal record)? Of course, regression is "partially" responsive to this problem, insofar as important intercorrelations among predictor variables that are actually defined in the data set. Fourth is the problem of coding. If variables (dependent as well as independent) were to be coded in some other fashion, the magnitude of the observed correlation might be different.

These caveats are not intended to cast doubt on the validity or utility of the results of the analysis but instead are intended to remind the reader of the need to withhold judgment on their substantive interpretation, particularly when observed differences in comparison samples are slight. What can be concluded is that, of the variables considered here, the sex of the robbery offender was the best single predictor of sentence weight in the South; in the Northeast and West, the prior record of an offender rose above other factors as the best indicator of sentence outcome, and so on.

Auto Theft

Table 9 indicates that with auto theft—as with robbery—there was considerable shrinkage in the

ability to predict sentence weight when offense is controlled. However, as for robbery, the prediction level for auto theft did not vary much across the circuits studied. The Ninth Circuit was again the jurisdiction for which sentence variation could best be explained ($R^2 = .294$), yet as Table 9 reveals, all three jurisdictions were fairly low in explained variation.

Most notable with respect to the auto theft group was the equivalence of sentence predictors across the circuits, as sentences for auto theft consistently appeared to turn on the same two or three factors. Tables 13,14, and 15 show that the prior record of the offender was overwhelmingly the best single linear indicator of sentences imposed against auto theft offenders convicted in the Fifth, Sixth, and Ninth circuits alike ($r_{REC, SWT} = .430, .410$, and .532 for the three regions, respectively). When the effects of record were removed, conviction by trial became the best—albeit marginal—predictor of sentence weight in the Fifth and Ninth Circuits. In the Sixth Circuit, a conviction by jury trial, in particular, accounted for an additional 8.7 percent of the total variance when record was controlled. Within each circuit a conviction by trial or jury trial was positively correlated with sentence severity.

Beyond record and method of conviction, the solutions for the Fifth and Sixth Circuits yielded one additional predictor—whether the offender's case was initiated by formal indictment as opposed to some other process such as by "information." Although the independent sentencing impact of having been indicted within either juridsiction was slight, it is curious that the direction of the effect was different for the two regions. The zero-order correlation between sentence severity and having one's case initiated by indictment was .229 in the Midwest (Sixth Circuit), but −.144 in the South (Fifth Circuit).

TABLE 13 Proportion of variance explained in sentence weights imposed for auto theft in the Fifth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.430	.185	.185	.430
Trial	.448	.201	.016	.100
Indictment	.467	.218	.017	−.144

TABLE 14 Proportion of variance explained in sentence weights imposed for auto theft in the Sixth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.410	.168	.168	.410
Jury trial	.505	.255	.087	.298
Indictment	.521	.271	.016	.229

TABLE 15 Proportion of variance explained in sentence weights imposed for auto theft in the Ninth Circuit, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.532	.283	.283	.532
Trial	.542	.294	.011	.160

Narcotics Offenses

Sentences imposed for narcotics offenses have been found to be among the most predictable of sentences imposed for any crime.[14] The data in Table 9 show that the pattern seems to hold at the circuit as well as the national level because the Second, Fifth, and Ninth Circuits each exhibit fairly high as well as similar levels of predictability for narcotics sentences. In this instance, the Second Circuit appears most "systematic" of the three focal circuits in terms of the criteria included in this analysis ($R^2 = .481$); the Fifth Circuit presents the least explanation in terms of those factors ($R^2 = .381$). Clearly, the *absolute* range of explanatory levels from circuit to circuit is greater for narcotics than for robbery or auto theft offenses. However, relative to the respective national aggregate predictability figures, the

[14] L. Sutton, **A Statistical Assessment**, op. cit. See also C. Engle, **Criminal Justice in the City: A Study of Sentence Severity and Variation in the Philadelphia Criminal Court System** (Temple University: Unpublished Ph.D. Dissertation) 1971.

regional variability in the predictability of sentences is about the same for all three of the offenses studied here.

It may be recalled that at the national level the criteria for the determination of narcotics sentences were quite different from those apparently used in decisions regarding other kinds of offenses such as robbery, auto theft, larceny, and counterfeiting, where the prior record of the offender was of paramount concern in the sentencing decision.[15] At the national and rather consistently at the circuit level (Table 9), sentences imposed against narcotics offenders appeared to turn first on *how the offender was convicted:* specifically, whether by trial conviction versus some other means in the Second Circuit ($r_{TRIAL,SWT}$ = .505) and the Fifth Circuit ($r_{TRIAL,SWT}$ = .402); and whether by an original plea of guilty versus some other means in the Ninth ($r_{UPLEA,SWT}$ = −.520).

Another of the unusual features of narcotics sentences at the national level was the relatively large number of predictors yielded by the regression solution. When jurisdiction was controlled, at least five significant predictors of sentence weight in any given jurisdiction were found. From Table 16, which outlines the regression results with regard to narcotics sentences within these three circuits, it is clear that although the "order" and, no doubt, the weights of the predictors within the circuits varied considerably, *narcotics sentences in each of the three focal circuits were characterized by roughly the same configuration of predictors.* Method of conviction, the prior record of the offender, and the type of legal representation[16] (privately retained versus court-appointed counsel) appeared to play a part in sentencing decisions within *all three jurisdictions.* In addition, the age of the offender at sentencing appeared to be a significant factor in two of the three circuits—the Fifth (South) and Ninth (West)—where it independently explained over 6 percent of the residual variance in sentences imposed in each area.

The principal distinction that can be shown among the three circuits relates to the *types* of factors that bear most heavily on sentence outcome. Sentences in the Second Circuit appear to have turned rather largely on the process-related factors of method of conviction and waiver of indictment (R^2 change = .255 and .080, respectively) followed by two offender-related factors, prior criminal record and race (R^2 change = .063 and .051, respectively). In the Fifth and Ninth Circuits two process-related factors were most significantly related to sentencing narcotics offenders, method of conviction (R^2 change = .161) and unchanged plea of guilty (R^2 change = .270), respectively. In these two circuits the second best predictors were offender-related factors. In the Fifth Circuit, prior criminal record (R^2 change = .121) was the second best predictor, and in the Ninth Circuit, age (R^2 change = .062) was the second best predictor of narcotics sentences.

One of the most notable features in Table 16 is the appearance of race as a predictor of sentence severity. Its appearance here is particularly interesting because of its general absence throughout the analysis to this point.[17] Specifically, *after* the sentencing effects of method of conviction, method of case initiation, and the prior record of the offender have been systematically controlled, the race of the offender is still able to independently account for 5 percent of the total variance in narcotics sentences imposed in the Second Circuit (New York, Vermont, and Connecticut). Furthermore, it is notable that the correlation between sentence severity and being black was negative, indicating that black narcotics offenders received less severe sentences than did their white counterparts.

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[15] Ibid.

[16] It is interesting that type of counsel appears in all three solutions, suggesting that sentences imposed on narcotics offenders are directly or indirectly affected by whether the offender retained private counsel to assist in the defense or whether—due to defendant indigence—the court assigned an attorney. Especially intriguing is the apparent impact of type of counsel. The results shown in Table 16 indicate that convicted narcotic offenders who retained their own attorneys incurred harsher sentences than those who were represented by court-appointed counsel. The pattern could indicate that assigned lawyers are more adept at bargaining as a result of their more routine contact with prosecutorial and judicial personnel than are privately retained lawyers. By the same token, it could be that appointed counsel (including public defenders) are more inclined as a result of pressing caseload or disinterest to bargain for a lesser sentence. Yet, recalling that type of counsel emerged as a predictor *after* the effects of method of conviction had been controlled, neither of the preceding interpretations is wholly satisfactory. It could simply be that the "worst" narcotic offenders, realizing the danger they would face upon conviction, are the most likely to marshal or to already possess the means to privately retain an attorney. The correlation between type of counsel and sentence severity would be spurious in such cases, because those offenders would already have been pre-disposed to more severe sentences.

[17] The only other appearance of race as a significant predictor of sentence outcome—on the basis of these data—was at the national level with regard to counterfeiting offenses. Its power as a predictor at that point, however, was marginal. See L. Sutton, **A Statistical Assessment**, op. cit. Here, on the other hand, its impact is quite significant.

TABLE 16 Predictors of sentence weights for narcotics offenders in selected circuits, 1971

NOTE: See Figure 1 for a list of the district courts in each circuit.

Second Circuit			Fifth Circuit			Ninth Circuit		
Independent variable	R^2 change	r	Independent variable	R^2 change	r	Independent variable	R^2 change	r
Trial	.25499	.50496	Trial	.16145	.40181	Unchanged plea	.27047	-.52007
Waiver	.08039	-.47637	Record	.12120	.38164	Age	.06242	.37735
Record	.06260	.29776	Age	.06349	.31370	Trial	.03561	.46551
Black	.05147	-.24048	Sex	.02216	.23586	Assigned counsel	.02059	-.27931
Retained counsel	.02081	.16978	Retained counsel	.01310	.11625	Record	.02216	.26275
Interval	.01036	.06539						
Multiple R^2	.48062		Multiple R^2	.38140		Multiple R^2	.41126	

Review of Sentencing Variation Across Circuits

As expected, considerable variation in sentences was found both within and among jurisdictions. But variation alone does not really reveal anything about the nature or propriety of the sentencing enterprise because variations, per se, may have a multitude of legitimate explanations. Thus, the focus here has not been with the magnitude of the difference between sentences or between jurisdictions, but rather with (1) the extent to which actual variation in sentences could be explained in terms of a specific set of offense, offender, and process-related factors; (2) how the explanatory levels differed across region; (3) the specific factors that best predicted sentence weight; and (4) how the configuration of predictors varied from one jurisdiction to another. Variability in the criteria that underlie the determination of sentence and variability in their respective contributions to sentence are certainly issues of greater import than is a finding of any absolute differences in criminal sentences.

At both the aggregate and offense-specific levels of analysis, there appeared to be only minor differences across circuits in the proportion of total variance explained in terms of those factors defined as predictors, though explanatory levels for the aggregate analysis were notably higher than those yielded for any of the specific offenses.

The pattern with regard to predictive criteria was not so clear. At the aggregate level, for all five focal circuits, four predictive dimensions—robbery conviction, narcotics conviction, prior record, and method of conviction—explained essentially all of the variance in sentence weight that could be explained by the totality of predictors introduced into the analysis. At the same time, the relative importance of each within each jurisdiction was also remarkably consistent.

When individual offenses were considered, however, the predictive criteria were not so consistent across jurisdiction. In fact, whether the same criteria constituted the best predictors of sentence weight for each jurisdiction seemed to depend on the particular offense being studied. For auto theft cases, for example, all three regions exhibited the same configuration of sentence predictors. For robbery cases, the predictive criteria were less than identical across jurisdictions. The optimal predictors of narcotics sentences were even more divergent. In the grossest terms, these results suggest that for each of the offenses studied within a particular offense group, sentences are similarly predictable across circuits; but at the same time, the comparability sentencing patterns (i.e., configurations of predictors) across circuits depends very much upon the particular offense involved.

Variability of Sentences at the District Level

The judicial circuit was the geographic basis of the foregoing discussion of regional variation because of the dearth of cases at the district level—particularly when offense was controlled. Despite the restrictions imposed by so refined a focus, the district court remains an important dimension in this analysis of Federal sentencing, principally because it constitutes the lowest common denominator of the Federal judiciary. In short, the district court is the trial court of the Federal judicial system. It is where criminal cases are actually initiated and disposed of, where guilt is adjudicated and sentence imposed. Much of whatever informal policies or prejudices influence or guide the exercise of judicial discretion is likely to be the product of the social-political-professional milieu of the district court. Moreover, because sentencing decisions are actually rendered in district courts, to ignore them is to ignore the sentencing implications of specific institutions—for example, the sentencing council—that have been developed and introduced at that level with the specific aim of systematizing or regularizing sentences.

The districts used for this part of the study were selected from the five focal circuits discussed in the previous section. Thus, they represent a rough geographical sampling, though admittedly not random, of the Nation's Federal district courts. Moreover, three jurisdictions—the Eastern District of New York, the Eastern District of Michigan, and the Northern District of Illinois—were specifically selected because of their use of the sentencing council in the determination of sentence.[18]

[18] In districts that employ this approach (only the three mentioned do so), judges generally meet in a panel before the sentence hearing is actually conducted. Having previously reviewed the presentence reports of those cases due for sentencing, *each* judge notes the factors pertinent to sentencing, then issues a recommendation about disposition. The sentence ultimately imposed, however, remains the exclusive responsibility of the judge who was originallly assigned the case.

TABLE 17 Proportion of variance explained in and significant predictors of sentence outcome for all eight offenses in six focal districts, 1971

NOTE: See NOTE, Table 8.

Independent variable	Mean value			District																	
				Eastern New York			Southern New York			Southern Texas			Eastern Michigan			Northern Illinois			Central California		
	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST	SWT	SL	ST
Multiple R^2	Not applicable			.513	.436	.312	.512	.620	.375	.561	.485	.237	.812	.737	.609	.512	.583	.200	.594	.577	.289
Number of cases	Not applicable			330	232	330	312	186	312	419	220	419	186	95	186	255	109	255	563	252	563
Offense variables:																					
Robbery	3.7	3.8	1.5	4	4		4	4	1	3	4	1	4	4	3	3	3	3	4	4	1
Larceny		1.0	.2		1	1		1						2						2	
Auto theft		.8									1			3			1				
Embezzlement		.2	1.3			4		1	4												
Counterfeiting		.2	.2			1		1													
Marihuana	.2	.2	.3			1		1		1											
Narcotics	2.3	1.7	1.5	3	3		3	3	1	1		2				4	4	4	3		2
Selective Service		.2	.2			1		1													
Offender variables:																					
Sex			1.0			2			3			1									
Race: White	.2	.5						1		1	2										
Black		.5	.5						1						2					3	
Record	1.8	.3	2.7	1		3	1		1	4	1	4	3		4	1	1		1		4
Age	.3	.7								1	3					1	1				
Process variables:																					
Indictment																					
Waiver	.5	.5	.2		1		2		1								1		1	1	
Interval to disposition		.2						1													
Plea of guilty:																					
Unchanged		.8			2			2									1				
Changed		.5	.2		1			1									1				1
Trial: Court	.3															1					
Jury		.3	.5													2	2		2		3
Trial (court or jury)	.8		1.2	2			1		2	2		3						2			
Counsel:																					
Assigned																					
Retained																					
None/waived																					
Court variables[a]																					

[a]None of the court-related variables appeared in any of the aggregate solutions.

One of the aims of the district-level focus, therefore, will be to assess the impact of sentencing councils in terms of the predictability and predictors of sentences imposed in districts where the council approach is employed. Another aim is to validate the findings regarding regional variations in sentencing that were generated by the circuit-level analysis.

Aggregate District-Level Analysis of Sentence Weight

When all eight focal offenses were considered, each district except the Eastern District of Michigan displays about the same level of predictability for sentence weight. Table 17 shows that the multiple R^2 levels ranged from about .500 to .600—the same as was found at the national and circuit levels. The Eastern District of Michigan, using a sentencing council, exhibits a considerably higher level of explained variation—81.2 percent.

In general, the same aggregate sentence weight predictors (robbery, narcotics, criminal record, and method of conviction) observed for the circuits were also operative across the districts, as can be seen from the district "mean value" column in Table 17. Yet there was considerably more variation in the configuration of predictors for specific jurisdictions at the district level than at the circuit level. In the previous section, it was noted that *each* circuit exhibited the same four aggregate level predictors (robbery conviction, narcotics conviction, prior record, and method of conviction). Table 17 shows that the districts are not so consistent in the exclusive reliance upon these four elements. Because all but one of the districts do exhibit these four predictors, the dissimilarity lies in their differential priority across districts and in the number and nature of *other* predictors that appear in the district but not in the circuit solutions, as shown in Tables 18 through 23.

In the first place, a robbery conviction was not the most powerful determinant for all the districts studied. For the Southern District of Texas (Table 20), *criminal record* (r = .528) was, by itself, more important to sentence than was a conviction for either robbery (r = .497) or a narcotics offense (r = .213) or for that matter, any other offense, offender, or process-related factor. Similarly, in the Northern District of Illinois (Table 22) a conviction for robbery was no more powerful a predictor than was a conviction for a narcotics offense: indeed, the latter factor entered the regression solution first.

TABLE 18 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Eastern District of New York, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.517	.267	.267	.517
Narcotics	.645	.416	.149	.243
Trial	.689	.474	.058	.343
Record	.716	.513	.039	.380

TABLE 19 Proportion of variance explained in sentence weights imposed for all eight focal offenses in the Southern District of New York, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.441	.195	.195	.441
Narcotics	.644	.415	.220	.302
Waiver	.684	.467	.053	−.254
Record	.705	.497	.030	.363
Trial	.716	.512	.015	.344

Moreover, more predictors emerged as significant predictors of sentence outcome at the district than at the circuit level. Whether or not the defendant's case was commenced by a waiver of indictment, for example, appears to have been an important sentencing factor in the Southern District of New York (R^2 change = .053) and in the Central District of California (R^2 change = .012) (Tables 19 and 23, respectively). Because foregoing the right to an indictment and offering a plea of guilty at the first formal opportunity are often highly correlated with each other, the independent influence of a waiver on sentence outcome was more likely a function of a general conciliatory attitude on the part of the defendant than of the defendant's decision, per se, to waive the right to a "hearing" before a Federal grand jury.

TABLE 20 **Proportion of variance explained in sentence weights imposed** for all eight focal offenses in the Southern District of Texas, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.528	.279	.279	.528
Robbery	.627	.393	.114	.497
Trial conviction	.674	.454	.060	.254
Narcotics	.703	.494	.040	.213
White	.722	.522	.028	.053
Age	.736	.542	.020	.334
Marihuana	.749	.561	.019	−.326

TABLE 21 **Proportion of variance explained in sentence weights imposed** for all eight focal offenses in the Eastern District of Michigan, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.826	.682	.682	.826
Record	.901	.812	.130	.609

TABLE 22 **Proportion of variance explained in sentence weights imposed** for all eight focal offenses in the Northern District of Illinois, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Narcotics	.422	.178	.178	.422
Robbery	.596	.356	.178	.362
Jury trial	.667	.445	.090	.341
Age	.688	.473	.028	.176
Court trial	.705	.497	.023	.017
Record	.715	.512	.015	.257

TABLE 23 **Proportion of variance explained in sentence weights imposed** for all eight focal offenses in the Central District of California, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Robbery	.666	.443	.443	.666
Narcotics	.716	.513	.070	.158
Jury trial	.741	.549	.036	.302
Record	.763	.582	.033	.428
Waiver	.770	.594	.012	−.129

In addition, in the Northern District of Illinois and the Southern District of Texas, the age of the defendant appears to have played some role in sentence outcome, independently explaining 2.8 and 2.0 percent of the total variance in sentences in the two districts, respectively. Finally, race and an additional offense-related variable—a marihuana conviction—appeared as significant predictors of sentence at the district level but only for sentences imposed in Southern Texas (Table 20).

According to these data, more factors were systematically reflected in sentences imposed in Southern Texas than in those of any other district studied, suggesting either that all the judges employ a multitude of factors in arriving at a decision or that each systematically focuses on a select and unique few. When sentencing in the district as a whole is considered, seven criteria emerge as salient predictors, together accounting for over half the variance in 1971 sentence weights. Even after the effects of an offender's having been convicted of robbery or a narcotics offense, prior criminal record, and the method of conviction are controlled, three additional factors—race, age, and offense (if it was a marihuana conviction)—still play some role in "determining" sentence. It is interesting to note that being white, although exhibiting a low zero-order correlation with sentence (r = .053), independently accounts for nearly 3 percent of the total variance in sentence when the effects of the first four predictors are controlled. The considerable zero-order impact of age (r = .33) and a conviction for marihuana (r = −.326), conversely, are almost wholly erased by the

controls; their respective independent contributions were reduced to 2.0 and 1.9 percent of the variance.

Distinguishing Sentence Length and Sentence Type at the District Level

By repeatedly focusing the analysis on the sentence weight measure, there is a risk of failing to acknowledge important distinctions between the sentence type and the sentence length decisions. The aim now will be to assess the magnitude of this distinction at the district level.

In the first place, the districts proved no exception to the notably higher predictability of the sentence-length decision. Not only were the explanatory levels for maximum terms imposed consistently high for each of the focal jurisdictions—ranging from a low of 43.6 percent for the Eastern District of New York to a high of 73.7 percent for the Eastern District of Michigan—they were also fairly comparable across district.[19] Conversely, decisions relating to type of sentence were comparatively much less explainable, though still rather consistent, across the six districts studied. The amount of variance that could be explained in the in-out decision in five of the six districts ranged from 20.0 percent for the Northern District of Illinois to 37.5 percent in the Southern District of New York. The Eastern District of Michigan diverged markedly from this pattern of generally low predictability, boasting a rather staggering level of explanation—60.9 percent.[20]

At the same time, the two decisions are also quite distinguishable in terms of their respective predictive criteria across the districts. The in-out decision appears to turn primarily on the offender's prior record for the districts studied;[21] the how-long decision, on the offense involved. Beyond these principal considerations, however, districts vary (more so than did the circuits) in terms of the factors that best explain the residual variation in the respective decisions.

In the first place, the residual predictors differed with respect to their relative importance to the two kinds of sentencing decisions across the jurisdictions studied. Whereas method of conviction was fairly important to whether an offender was imprisoned in the Central District of California (ranking second to prior record as a predictor and independently explaining 6.7 percent of the variance), it appeared negligible to the imprisonment decision in the Eastern District of New York and the Eastern District of Michigan. The differential importance of various factors to the sentence-length decision is similarly evident. In four of the six districts, the best three or four predictors of sentence length pertain to either the offense or to the method of conviction. In the other two districts, although offense was still the most important single factor, the age (the Southern District of Texas) and race (the Central District of California) of the offender emerged as the most powerful predictors of the residual variation in sentence length.

In the second place, the district-level analysis yielded a greater variety of predictors of sentence outcome than did analysis at either the circuit or the national level. In fact, nearly every factor used in the analysis emerged as a predictor of one or the other sentencing decision within at least one of the focal jurisdictions; some factors of negligible import to the national and circuit patterns appeared with surprising consistency across the districts.

The race of the offender, for example, independently accounted for some variation in sentence outcome in four of the six focal districts, even after the most salient factors had been weighed. Interestingly, race appeared to have a minor impact on both type and length of sentence. In the Southern District of New York and the Eastern District of Michigan, for instance, blacks were more likely than whites to receive a sentence of imprisonment. In three districts—the Central District of California, the

[19] It should be noted in this regard that the predictability of maximum terms of imprisonment in the Eastern District of Michigan (R^2 = .737) was *exceptionally* high. The next highest figure was 62.0 percent for the Southern District of New York.

[20] The in-out decision in the Eastern District of Michigan seems to reflect a consideration of the offender's criminal record ($r_{REC,ST}$ = .734), whether the offender commited bank robbery ($r_{ROB,ST}$ = .452), and finally race ($r_{BLACK,ST}$ = .409). Clearly, criminal record accounted for the preponderance of the explained variance in outcome. Controlling for record, a robbery (versus any other offense) conviction accounted for an additional 5 percent of the total variation. The impact of race is interesting. At the zero order, being black appeared fairly strongly correlated with a sentence of imprisonment. However, if the offender's prior record and whether he/she was convicted of robbery or not are first considered, then the impact of race by itself explains only 2.0 percent of the variation in sentence type. It is interesting that this exceptional level of prediction prevails in a district that uses a sentencing council and that over half the variation in the in-out decisions for eight offense groups for an entire year turned on the prior record of the offender.

[21] It should be noted, however, that the optimal prediction of type of sentence can be made without regard to the prior record of the offender in two of the districts—the Eastern District of New York and the Northern District of Illinois.

Southern District of Texas, and the Southern District of New York—race was also independently associated with the length of an offender's sentence of imprisonment: in California whites received shorter terms than blacks; but in the Southern District of Texas and the Southern District of New York, contrary to expectations based on the popular literature, white offenders were sentenced to longer terms than were blacks. Only in the Southern District of New York did race appear to affect *both* type and length of sentence. Yet, curiously, the direction of the association was not constant: in the Southern District of New York, blacks were more likely than whites to be imprisoned; given a sentence of imprisonment, however, blacks were more likely than whites to get a shorter term.

One of the interesting aspects of this influx of "new" predictors was their selective applicability to one or the other phase of the sentencing decision.[22] Knowing the sex of the offender, for example, helped to predict the likelihood of imprisonment for offenders sentenced in half the districts studied—the Southern and Eastern Districts of New York and the Southern District of Texas. Age, on the other hand, was fairly strongly (positively) associated with the maximum prison term imposed against offenders in the Southern District of Texas and the Northern District of Illinois. Finally, the method by which a case was initiated (waiver of indictment versus indictment) appeared more strongly related to the length than to the likelihood of imprisonment. In the Eastern District of New York, the Northern District of Illinois, and the Central District of California, a waiver of one's right to an indictment proceeding, although bearing no notable effect on whether an offender was imprisoned, was associated with a shorter prison term for those who were incarcerated.[23]

On the whole, the district-level findings strongly suggest that many of the various criteria relevant to "sentencing" relate specifically to one or the other aspect of the decision, but not to both. The sex and prior record of the offender were important in the determination of whether or not an offender would be imprisoned, less so in the decision about the length of incarceration. Inversely, although age of the offender appeared of little consequence in the in-out decision, it consistently appeared to influence sentence length. Type of offense and method of conviction, regularly among the strongest predictors of sentence weight, clearly influenced *both* type and length of sentence.

Before proceeding to the offense-specific analysis at the district level, two unique patterns exhibited in Table 17 merit brief discussion. The first relates to the determination of the maximum length of prison terms imposed for the eight focal offenses in the Eastern District of Michigan. Earlier, it was pointed out that nearly three-quarters of the variance in that decision in the Eastern District of Michigan could be explained by the predictors used. The interesting aspect of this unparalleled level of predictability is that all the significant predictors were related to the type of offense committed—robbery, larceny, and auto theft. Having taken these factors into consideration, there is an inability to significantly improve the prediction of sentence length by the addition of any of the offender or process-related factors available. That is, information about the offense for which the offender was convicted better enables us to predict sentence than does information about the offender, or the manner of conviction. In fact, sentence can be predicted as well knowing *only* offense as knowing *everything* about the offender (including prior record) and method of conviction.

The Northern District of Illinois exhibits another notable pattern. Whereas the determinations of type and length of sentence were quite distinguishable for most jurisdictions, variations in the two decisions in the Northern District of Illinois appeared to turn on essentially the same criteria and in similar proportion. There, whether to imprison an offender convicted of any of the eight focal offenses and the maximum length of the term *both* appeared to be a function, first, of the offense—robbery or narcotics—and second, of the method of conviction. For no other jurisdiction were the two sentencing decisions so comparable.[24]

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[22]Many of these "new" criteria—for example, the less serious offense groups—appeared to impact on both types of sentencing decision at the district level. Incidentally, every one of the eight offense types was noted as a predictor of one of the two sentence decisions in two of the six districts.

[23]Only in the Southern District of New York, which has a heavy caseload, did a waiver of the indictment proceeding appear *independently* to affect (reduce) the likelihood of an offender's being imprisoned.

[24]One should note that both districts that exhibited these peculiar patterns, the Eastern District of Michigan and the Northern District of Illinois, employed the sentencing council approach.

Controlling for Offense at the District Level

Because so few focal offenses were disposed of by any single district court, it is difficult to extend the district-level analysis to specific offenses. However, if particular offenses and jurisdictions are cautiously selected, in a manner similar to the selection of the circuits, it is possible to a limited extent to assess how well the circuit-level findings describe sentencing activity in the districts themselves.

Table 24 summarizes the total variance explained and the specific factors that most accurately predict the sentence weight received by offenders convicted of two major Federal offenses—robbery and narcotics—in five Federal district courts. Most conspicuous is the variability across districts in the degree to which variations can be accounted for in sentences imposed for bank robbery, a pattern that is not consistent with the generally high levels of explanation yielded at the aggregate level for both circuits and districts. Only an eighth ($R^2_{\text{sentence weight}}$ = .120) of the variance can be explained in sentences imposed for robbery in the Eastern District of New York on the basis of the predictors used here; however, for the same offense, using the same predictors, nearly three-fourths of the variance can be explained in sentences imposed in the Eastern District of Michigan, even though sentences in the two districts exhibited almost identical means and standard deviations.[25] Levels in the Southern District of New York (R^2 = .322) and the Central District of California (R^2 = .397) were closer to the national figure.

Sentencing of narcotics offenders, on the other hand, is not only more predictable, it is more consistently so across districts. For each of the districts in Table 24, about half the variance can be explained in narcotics sentences, ranging from the Central District of California's low of 42.5 percent to the Eastern District of New York's high of 68.3 percent. It is important to note in this regard that the uniformity of sentencing—or whatever the multiple R^2 statistic is assumed to measure—does not appear to be *broadly* characteristic of all sentence decisions rendered within a jurisdiction; hence, conclusions about sentencing ought not to be generalized much beyond the specific offenses involved in the analysis. For, as can be seen from this analysis, the district that falls at about the median for predictability of sentences imposed for all offenses can fall at either end of the predictability continuum when we focus on specific offenses.

Even more discrepant than the variability in explanatory levels from district to district are the constellations of factors that best predict sentence weight for the different offenses within each jurisdiction. As expected, prior record appears fairly consistently as a salient factor in sentencing for both offenses, though slightly more so for robbery than for narcotics.

Robbery sentences in all focal districts but the Eastern District of New York could best be predicted by the record of the offender, as shown in Tables 25 through 28. In the Eastern District of New York, where little of the total variation could be explained at all (R^2 = .120), the prior record of the offender did not enter the solution. Instead, method of conviction and manner of case initiation accounted for essentially all of the variation that could be explained in robbery sentences imposed there in 1971.

In the other three districts, when record was controlled, the balance of the solutions were altogether dissimilar (Table 24). Sex emerged as the second predictor (after record) in the Southern District of New York; whether the defendant was represented by counsel or not appeared second in the Eastern District of Michigan, though it explained little of the residual; method of conviction was the next best predictor (after record) in the Central District of California.

Although prior record also appears to have been important in the sentencing of narcotics offenders, it was not the strongest predictor for any of the focal districts presented in Table 24. Instead, method of conviction, method of case initiation, and the age of the offender variously appeared as the best predictors of narcotics sentence outcome across the districts. For each district, record then entered the solution second, being generally followed by factors relating to method of disposition (where such factors had not already been considered).

Notable here is the appearance of race as a significant predictor of narcotics sentences in the Southern District of New York. Its apparent influence is important from two perspectives. The first is the lack of diminution of its impact when important controls are introduced. At the zero order, race explained 9 percent of the variation in sentence weight. After the effects of the best two predictors—

[25] The Eastern District of Michigan had a 1971 mean sentence weight of 40.0 with a standard deviation of 17.4 for robbery sentences. The Eastern District of New York had a mean of 35.4, and a standard deviation of 15.7

TABLE 24 **Proportion of variance explained in and significant predictors of** sentence weight for robbery and narcotics offenses in selected districts, 1971

NOTE: See NOTE, Table 8.

Independent variable	Robbery					Narcotics offenses				
		District					District			
	Nation	Eastern New York	Southern New York	Eastern Michigan	Central California	Nation	Eastern New York	Southern New York	Southern Texas	Central California
Multiple R^2	.250	.120	.322	.712	.397	.419	.683	.536	.656	.425
Number of cases	1,078	63	53	45	69	1,014	70	105	59	83
Offender variables:										
Sex	3		3		2				1	
Race: White					1				1	
Black								2		
Record	4		4	4	4	3	3	3	3	3
Age						1	2		4	
Process variables:										
Indictment			1			2		1		4
Waiver		3	1		1			4		
Interval to disposition	1									
Plea of guilty:										
Unchanged		4	2							
Changed					1				2	
Trial: Court					3					
Jury	2		1							
Trial (Court or jury)						4	4			2
Counsel: Assigned									1	
Retained							1			
None/waived				3	1					
Court variables[a]										

[a]Not applicable.

TABLE 25 **Proportion of variance explained in sentence weights imposed** for robbery in the Eastern District of New York, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Unchanged plea	.328	.108	.108	−.328
Waiver	.346	.120	.012	−.210

TABLE 26 **Proportion of variance explained in sentence weights imposed** for robbery in the Southern District of New York, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.298	.089	.089	.298
Sex	.406	.164	.076	.289
Unchanged plea	.478	.228	.064	−.242
Indictment	.504	.254	.025	−.011
Waiver	.558	.311	.057	−.105
Jury trial	.567	.322	.011	.257

TABLE 27 **Proportion of variance explained in sentence weights imposed** for robbery in the Eastern District of Michigan, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.832	.693	.693	.832
No counsel	.843	.712	.019	.030

waiver and record—were simultaneously controlled, race still independently accounted for 6.9 percent of the variance in narcotics sentences. The second point of note is the *direction* of the association between race and sentence weight. The inverse

TABLE 28 **Proportion of variance explained in sentence weights imposed** for robbery in the Central District of California, 1971

NOTE: See NOTE, Table 3.

Independent variable	Multiple R	R^2	R^2 change	r
Record	.366	.134	.134	.366
Court trial	.459	.211	.077	−.271
Sex	.516	.266	.055	.308
Waiver	.564	.318	.052	−.257
Changed plea	.594	.353	.035	−.140
No counsel	.620	.384	.031	−.180
White	.630	.397	.013	−.232

correlation (r = −.304) suggests that black narcotics offenders in the Southern District of New York were likely to get more lenient sentences than white offenders. Further investigation reveals that the focus of this relative leniency appears to be in the decision relating to *type* rather than *length* of sentence. The zero-order correlation between length of sentence and being black was a negligible −.037, compared to a zero-order inverse association of −.409 between being black and being sentenced to prison.

Summary

In sum, the analysis of selected districts generally confirms the tentative conclusions about regional variation generated by this study. Specifically, when all offenses are considered in *aggregate:*

1) While sentence length is notably more predictable than sentence type within each of the districts studied, the respective levels of prediction for the two decisions varied only slightly across the districts.

2) The best predictors of sentence length consistently related to the offense committed—particularly robbery and narcotics; though less consistently, the prior record of the offender emerged as the best single predictor of sentence type; method of conviction appeared fairly consistently as a residual predictor of both decisions.

3) The age, sex, and race of the offender appear

to exert some limited independent influence on sentence outcome within some districts: sex, primarily on the *type* of sentence imposed; age, on the *length* of imprisonment; and race, on both decisions. The impact of these variables was not always consistent, however. For example, in the Central District of California whites received shorter terms than blacks; but in the Southern District of Texas and the Southern District of New York, white offenders were sentenced to longer terms than were blacks.

4) The specific configuration of predictors for any given jurisdiction and the relative weight assigned to each predictor become more and more distinguishable as the focus on jurisdiction and offense becomes more refined.[26]

When each offense is analyzed separately:

1) The variability across districts in the discrepancy between the predictability of sentence type and the predictability of sentence length is greater for any one offense than it was for the aggregate of offenses; moreover, the precise magnitude of that variability across districts depends on the specific offense being considered.

2) The best predictors of sentence outcome across the jurisdictions studied tended to be comparable with those yielded at the national level analysis, sentences for property offenses (robbery, auto theft) being primarily a function of the offender's prior record; sentences for drug offenses (narcotics) being a function of the method of conviction.

3) Once the most salient predictor of sentences imposed for each offense had been controlled, residual predictors generally varied radically from one jurisdiction to the next but more so for narcotics than for robbery offenses. As the analysis became sufficiently refined, every predictor included in the analysis appeared *somewhere* as a significant[27] predictor of sentence outcome.

[26]Some of the variability in predictors at the more refined levels may arise, in part, from the small number of cases involved at those levels.

[27]"Significant" indicates that a variable entered the stepwise regression solution and independently accounted for better than 1 percent of the variance in the sentence decision.

The Sentencing Panel

Since the early sixties, a few Federal jurisdictions have been experimenting with an innovative scheme of collaborative sentencing. As noted, by 1964, the Eastern District of New York, the Northern District of Illinois, and the Eastern District of Michigan had adopted the practice.[28] The technique generally involves a meeting of three or more district judges who, having read all the presentence information about a case that is available to the "sentencing judge," issue their recommendations for sentence. In no event is the sentencing judge *bound* by the recommendations of the council, but it is generally presumed that as a result of collaboration, judges are drawn toward a more uniform approach to sentencing.[29]

Claims about the impact of collaborative sentencing tend to be adamant, despite their lack of empirical support.[30] Lacking evidence, speaking directly to the point, for example, two of the best studies on sentence councils assert that the collaboration facilitated by the use of a panel has effected a consensus among judges with respect to both the specific factors that ought to be regarded as relevant to sentence and the appropriate "weights" that ought to be assigned to those factors.[31]

[28]It should be noted, however, that as time passed, the number of judges actually participating in the Northern District of Illinois' council decreased. In 1971, only about half of the district's dozen active judges took part. (Telephone conversation with Ms. Frances DiAndre, U.S. Probation Department statistician for the North District of Illinois, March 21, 1974). The significance of this decline in participation for sentencing uniformity is a matter of conjecture. It might be that whatever influence the council exerted on judges there was retained by them despite their subsequent lack of participation in the council processes.

[29]But cf., A. Partridge and W. Eldridge, **The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit** (Washington, D.C., Federal Judicial Center) August, 1974, pp. 23, 33-34.

[30]Note, for example, the Second Circuit study's findings (based on the performance of the Eastern District of New York judges in an experimental setting) that "the generation of a common approach should not be regarded as one of the major benefits (of the council strategy)." Ibid., p. 34

[31]See Levin, "Toward a More Enlightened Sentencing Procedure,: 45 **Nebr. L. Rev.** 499 (1966). Levin's observations pertain to the performance of the council in the Eastern District of Michigan. See also Zavatt, "Sentencing Procedure in the United States District Court for the East District of New York," 41 **F.R.D.** 470 (1967).

Moreover, one of the studies[32] asserts that the impact of the council approach is cumulative over time: the longer the council functions, the greater the agreement among judges with respect to both the propriety and priority of various sentencing criteria.

When one examines the scanty data that are offered as demonstrative of these claims, it becomes clear that the problem is partially semantic; at any rate, claims are grossly misleading. Available data *may* indicate that the use of councils corresponds with an increase in the leniency of sentences, that is, an increase in the relative use of probation[33] and some change in the mean length of prison sentences.[34] That judges tend to change or even to systematically lower their sentences *may* suggest that there is less variability in sentences as a result—although not necessarily; moreover, by itself such a finding in no way warrants the inference that those sentences reflect a more systematic or uniform consideration of the factors believed relevant to sentencing nor even that those sentences reflect the uniform consideration of *any* factors, at all. In short, that councils affect sentence is fairly well documented; but to say that they effect a more uniform policy exceeds the limits of the data.

The analytical approach used here can be used to assess the impact of sentencing panels from two perspectives: the extent to which we are able to systematically account for sentence variations in the various panel and non-panel districts and the specific predictors that best explain sentences in the respective jurisdictions. From the first perspective, the "uniformity of variations" can be assessed within districts by looking at how much of the total variance can be explained on the basis of the criteria introduced here. If, for example, 100 percent of the variance in sentences for a given jurisdiction could be explained on the basis of three factors, it would suggest first, that consideration of only three criteria could effectively explain variations in judges' decisions in that district and second, that similar cases (those cases exhibiting common values along each of the predictive dimensions) received the same sentence. Conversely, to the degree that the variation in sentences within a given jurisdiction cannot be accounted for, it may be concluded that sentencing is unrelated to the variables studied or that whatever association they may bear to sentencing is nonlinear.[35]

When the sentencing patterns for the six focal districts for both 1964 and 1971 are examined, districts that use sentencing panels are characterized by no special or clear-cut patterns with respect either to the uniformity or the propriety of sentencing. In fact, it will become apparent that the Eastern District of Michigan is the only council district whose sentencing appears consonant with claims made by advocates of the panel method.

In the first place, the districts did not vary markedly in the predictability of sentence outcome in the respective jurisdictions (Table 17). It is true that sentences imposed in the Eastern District of Michigan were substantially more explainable in terms of available predictors ($R^2 = .812$) than were sentences that were imposed in any of the non-council districts, reflecting considerable uniformity in the 1971 sentencing picture—a finding that would lend some credibility to the arguments of panel proponents. But at the same time, the other panel districts, the Eastern District of New York and the Northern District of Illinois, appeared indistinguishable from non-panel districts in terms of uniformity of overall sentencing practices.

Earlier, it was noted that the apparent uniformity of sentencing within a jurisdiction (based on analysis of *aggregated* data) could easily mask important differences in the divergent way in which a jurisdiction might respond to *different* offense groups. That is apparently not the case with respect to the Eastern District of Michigan: sentences for the specific offense group studied (robbery; $R^2 = .712$) were nearly as predictable as were sentences imposed for the aggregate of focal offenses ($R^2 = .812$). It was the case for the Eastern District of New York, however, inasmuch as the predictability of sentence outcome in the Eastern District of New York varied

[32]Levin, op. cit.

[33]Both the Levin and Zavatt studies suggest this pattern.

[34]Although both Levin and Zavatt suggest that prison sentences were shorter after the inception of the council than they were before it came into use, the data are not conclusive. In the first place, Zavatt's conclusions (the Eastern District of New York) are based on a weighted *index* of sentence severity that does not directly measure *sentence length*. Moreover, the precise sentencing impact of *collaboration*, per se, is not clear. It is true, as Levin indicates, that the annual *mean length* of sentences imposed in the Eastern District of Michigan dropped with the advent of the panel. However, when the focus is on the decision process *within* the council, the pattern is not so clear; for in slightly more than half the cases studied, the sentencing judge imposed a longer sentence than was initially recommended as appropriate after hearing the opinions of other judges.

[35]As indicated earlier, a low level of predictability does not mean that sentencing, itself, is random.

markedly across offense groups. With respect to robbery, for example, variations in sentences imposed in the Eastern District of New York were quite unsystematic (R^2 = .120) in view of the fact that sentences imposed for the same offense in another council district (the Eastern District of Michigan) were so closely linked to the same universe of predictors (R^2 = .712). With regard to narcotics offenses, on the other hand, sentences in the Eastern District of New York were more predictable (R^2 = .683) than was the case for any of the other districts studied. At any rate, the data do not support claims that sentences at either the aggregate or offense-specific level that are imposed in jurisdictions employing the council approach are any more or less systematic than those imposed elsewhere.

Nor does it appear that the panel approach generates a convergence of sentencing policy or practice over time. Sentencing panels were being used in the Eastern District of New York, the Northern District of Illinois, and the Eastern District of Michigan in both 1964 and 1971, two years for which comparable data are available. Yet, the ability to predict sentences imposed in the three districts improved over time only for the Eastern District of Michigan[36]—from 59.0 percent in 1964 to 86.2 percent in 1971. Sentences in the Eastern District of New York and the Northern District of Illinois, however, were much *less* predictable in 1971 than in 1964. The proportion of explained variance in the Eastern District of New York's sentences diminished from 86.2 percent to 51.3 percent of the total. For the Northern District of Illinois, the figure decreased from 60.2 to 51.2. If advocates of the collaborative sentencing are correct, it would be expected that sentences would become more uniform with time, as participants converged toward common sentencing philosophies or strategies (assuming that basically the same judges serve throughout the period and that the principal criteria on which sentences are made to turn in both periods are included in the data set). Of course, it is possible that sentencing in the Eastern District of New York and the Northern District of Illinois has become more systematic over time; but if that is so, the bases (i.e., predictors) of variations simply were not included in the constellation of predictors studied. It should be made clear, therefore, that the findings here ought not to be taken as conclusive of the merits or failings of sentencing councils because there may be salient factors that are not included in the data base.

On another level, it is interesting that the same factors are not necessarily the best predictors of sentence outcome across the different panel districts. That is, the basically similar collective approach appears to produce not only dissimilar outcomes but, perhaps more importantly, divergent "rules" for effecting outcome. A narcotics conviction and the method of conviction were fairly powerful predictors of the severity of sentences imposed in the Northern District of Illinois and the Eastern District of New York, yet they independently accounted for virtually none of the variation in sentences imposed in the Eastern District of Michigan. Conversely, of minor importance in the Northern District of Illinois and the Eastern District of New York, the prior record of the offender appears to weigh heavily on the scales of justice in the Eastern District of Michigan.

Moreover, from the previous review of district criteria, it is clear that those factors that best predicted "panel-induced" sentences are equally familiar to judges in other districts who presumably act independently of their colleagues. That is, the best "overall" predictors—for example, offense, record, method of conviction—are important considerations in both type of districts.

In review, findings with respect to the impact of sentencing councils are mixed. At the aggregate and offense-specific levels, the council approach may or may not lend greater uniformity to sentences. It is also questionable whether the approach has effected greater uniformity of sentencing over time. Only the Eastern District of Michigan consistently displayed the patterns expected on the basis of claims made by advocates of the collaborative approach. Finally, it seems clear that variations in sentences imposed in concert can be explained by the same kinds of factors that describe sentences imposed unilaterally; furthermore, the respective weights assigned to those factors appear to vary among *council* districts just as they do among jurisdictions not employing the panel method.

[36]Recall that the Eastern District of Michigan was the focus of Levin's study. These data would thus appear to lend some support to Levin's hypothesis, at least insofar as the focus of his study—the Eastern District of Michigan—is concerned.

Conclusion

This survey of regional and district sentencing patterns has revealed that sentencing policy varies across jurisdiction. The proportion of variance explained at the aggregate level (all offenses considered at once) is at the same time higher and less variable across jurisdiction than the explanatory levels yielded at the offense-specific levels of analysis. At the aggregate level, variation in sentences was most systematic (that is, the proportion of variance explained was highest) in the Midwest (Sixth and Seventh Circuits). Conversely, sentence variations were least systematically related to the predictors used in this study for the Northeast (Second Circuit). Despite some differences among the circuits, predictability was generally high (relative to the levels of predictability yielded at most steps in the analysis) across all the circuits studied.

The discrepancy across individual districts in the proportion of variance explained for the aggregate of sentences was considerably greater, although the general level of explanation was basically comparable to that exhibited at the regional level. Across the various offense groups, the extent of geographic variability was even greater (at both circuit and district levels).

When the factors most strongly associated with sentence outcome were considered, and as the analysis moved both from aggregate to offense-specific analysis and from circuit to district, the constellations of predictive factors became increasingly distinguishable across jurisdictions. Whereas sentences imposed for robbery offenders in one court in 1971 turned on the prior record and sex of the offender, in another, variations in severity were best explained by factors relating only to how the criminal case, itself, was initiated and disposed of. Moreover, although robbery sentences imposed in one district were almost wholly explained on the basis of the predictors used here, in another, the same set of predictors bore virtually no relation to sentence outcome.

The data were also explored in an effort to assess the uniformity and uniqueness of sentences in jurisdictions using a sentencing council. The results suggest no definitive conclusions. In the first place, districts employing the sentencing council approach did not consistently display higher levels of explained variance than did non-council districts. In fact, despite their use of sentence councils, both the Eastern District of New York and the Northern District of Illinois exhibited among the lowest aggregate levels of explained variation of any of the focal districts in 1971. Thus, there is cause for questioning popular claims that the council approach facilitates the development of a consensus of approach among participating judges.[37]

In the second place, the literature suggests that the council exercises a moderating influence on the judge ultimately responsible for imposing sentence, but that, too, is questionable on its face. The evidence here does not yield such a conclusion, nor does it suggest that sentences produced by the council method are even *less variable* than sentences that were imposed unilaterally—irrespective of our ability to account for those variations. In short, this analysis does not support the proposition that sentencing councils are instrumental in generating any kind of systematic *policy* whose effects transcend the individual case.

[37]An important limitation on this apparent pattern relates to the structure of the council. Because judges sit in panels of three and because there is constant turnover in the membership of the various panels that operate within a jurisdiction, it is possible that the mechanism of the panel may work effectively (in developing a uniform approach) for some groups of three but work poorly for others. By the same token, if the council strategy is generally effective on a micro level but produces a different type of "consensus" across the different panels, then it could be that the constant turnover in panel membership inhibits the emergence of a clear aggregate pattern. At any rate, until research clearly focuses on the sentencing council rather than the council district as the unit of analysis and concerns itself with the interplay of normative and substantive decision processes *within* various panel groups, there can be only speculation about the effect (or effectiveness) of judicial collaboration for criminal sentencing.

At the same time, it must also be acknowledged that whatever consistency exists in some council districts may relate to factors other than those analyzed in this study.

APPENDIX Independent Variables

The mnemonic terms in parentheses in the definitions below (e.g., ROB) have been used in some of the analytic reports in this series and in the source document from which these analytic reports derive.

1. Offense. Each of eight offenses was dummied and treated as an independent variable. This means that a variable was created for *each* offense and coded such that all persons convicted for that offense were assigned one value, e.g., 1, and all persons convicted for any of the other seven focal offenses were assigned another value, e.g., 0. These dummied variables included bank robbery (ROB), bank embezzlement (EMB), larceny from interstate commerce (LARC), counterfeiting (COUNT), auto theft (AUTO), Marihuana Tax Act (MARH), narcotics (NARC), and Selective service violations (SS).

2. Age. The age of the offender at the time of sentencing was also reported. Where dichotomized in the analysis, age was broken so that about half the population would be in each category. The "young" category includes those under 30 years of age, the "old" includes everone 30 years of age or older.

3. Race. Only about 1 percent of all offenders were reported to be neither white nor black. However, it was not known into which category—for practical or theoretical reasons—these individuals ought to be placed. Consequently, race was dichotomized as two variables: white/other than white and black/other than black.

4. Sex. Sex forms a natural male/female dichotomy and was so coded. Other than individual offenders—that is, corporations and firms—were excluded from the analysis, since they were quite rare.

5. Prior Criminal Record (REC). Criminal record forms a natural ordinal scale. Least serious is "no record of prior conviction." Next is a "prior conviction which resulted in a nonincarcerative sentence," for example, fine, probation, or suspended sentence. Third is a "prior conviction which resulted in an institutional commitment for a maximum of less than 1 year" (misdemeanor). Fourth is a "prior conviction and institutional commitment under juvenile delinquency procedures."[1] Fifth and most serious is a "prior conviction resulting in imprisonment for a maximum of more than 1 year" (felony). When dichotomized, prior record was broken into record of incarceration (for those having been convicted and previously institutionalized for *any* period of time) and no record of incarceration (for those having either no prior convictions at all, or a conviction that resulted in a nonincarcerative sentence).

6. Type of Counsel. Legal representation falls basically into one of three categories: 1) waived or no counsel (NOCNS); 2) assigned counsel, whether court-appointed or a public defender (ACNS); and 3) privately retained counsel (RCNS). A simple counsel/no counsel dichotomy would not permit exploration of the possibly differential impact on sentence of assigned versus private counsel. Therefore, each of the three categories was dummied (dichotomized) according to the presence or absence of the type of representation: counsel/no counsel, assigned counsel/not assigned counsel (the latter referring to defendants with retained counsel or no counsel), and retained counsel/no retained counsel (the latter referring to defendants with assigned counsel or no counsel).

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[1]One might dispute the relatively high rank of a juvenile record. But it must be realized that juveniles (under 18 years of age at the time of the offense) 1) are generally committed for only the more serious offenses and 2) are seldom institutionalized for their first conviction. For example, the Federal Bureau of Prisons' **Statistical Report, Fiscal Years 1971 and 1972,** Table B-15A, pp. 136-137, reports that most juveniles committed under the Federal Juvenile Delinquency Act (F.J.D.A.) had been convicted of auto theft (84 out of 280 juveniles, or 30 percent), drug offenses (30 out of 280, or 11 percent, or robbery (22 out of 280, or 8 percent). Moreover, an annual statistical report of the Administrative Office of the U.S. Courts, **Federal Offenders in U.S. District Courts, 1971,** reports that of the 261 youths who were received by prisons in 1971 as F.J.D.A. commitments and for whom information on prior record was reported, 189 (72 percent of the total number sentenced to prison) already had a prior criminal record (Table 20, p. 58).

Perhaps most salient to the severe scaling of juvenile record is that the Bureau of Prisons, op. cit., Table B-16A, pp. 142-143, reports that the mean maximum sentence length for a Federal juvenile delinquent committed in 1971 was relatively substantial. Nearly three-fourths (203 out of 280) were committed for the duration of their "minority"—that is, until they reached legal adulthood (age 21) an interval that averaged 39.6 months. The average sentence of those committed for less than their minority was 22.7 months. By comparison, the average maximum term for *all* sentenced offenders received by the Bureau of Prisons in 1971 was 34.6 months.

The point, in sum, is that a record of prior juvenile commitment can be fairly viewed as more serious than a record of incarceration for less than 1 year.

7. Method of Conviction. One may be convicted in one of several ways: by an original (unchanged) plea of guilty or nolo contendere; by a plea of guilty or nolo contendere after an original plea of not guilty; by a court or "bench" trial (judge sitting without a jury); or by a jury trial. Because pleas of nolo contendere are relatively rare and are essentially pleas of guilty, the two types of plea were not distinguished. As a result, four variables, each dummied in the fashion described above, were created: unchanged plea of guilty (UPLEA)/other than unchanged plea of guilty, changed plea of guilty (CPLEA)/other than changed plea of guilty, court trial (CTRIAL)/other than court trial, and jury trial (JTRIAL)/other than jury trial. Additionally, in order to explore the broader relationship of method of conviction to sentence, a fifth dichotomized variable, conviction by trial (TRIAL)/plea of guilty was created.

8. Interval (INT). The interval of time elapsed from the original filing of the case to its ultimate disposition by the court (sentencing) is recorded in months. Where it was necessary to dichotomize the time interval, the break was made so that the created categories were approximately equal in size—3 months or less/over 3 months.

9. Method of Case Initiation. Two variables were dummied to describe method of case initiation: case initiated by indictment (INDICT)/other than indictment, and defendant waived right to formal indictment hearing and consented to be charged by information (WAIVER)/other than waiver.

The following district-related factors were computed from 1971 data and were used only in the 1971 analysis.

10. Criminal Dispositions per Judgeship (CRDPJ). Criminal dispositions per judgeship refers to the number of criminal cases disposed of (including dismissals and acquittals)[2] in a district, divided by the number of judgeships authorized for that district in the same fiscal year (1971).[3]

11. Total Dispositions per Judgeship (TDPJ). Because much of the business of Federal courts relates to civil processes, one might argue that a truly representative measure of the judicial workload—inasmuch as one is exploring the relationship between criminal sentences and the caseload (or "business") of the court—ought to include civil as well as criminal cases. This variable measures the *total* dispositions per judgeship in the same fashion as criminal dispositions per judgeship measured the crime-related workload.[4] The number of total dispositions per judgeship ranged from 119 (Delaware) to 1,058 (Southern California).

12. Weighted Filings per Judgeship (WFPJ). This more sophisticated measure of judicial workload considers not only the number but also the difficulty of the kinds of cases being handled. The weighting scheme was developed by the Administrative Office on the basis of the amount of time required for the disposition of different types of both civil and criminal cases.[5] Thus, two districts that rank the same on weighted filings can be considered to have comparable workloads, even though one may annually process hundreds more cases than the other. Across the 88 districts, the number of weighted filings per judge ranged from 98 (North Dakota) to 577 (Western Wisconsin) in fiscal year 1971.

13. Criminal Dispositions Standardized by Civilian Population (ZDISP). This weighted measure of court caseload standardizes the number of criminal cases disposed of in fiscal year 1971 by units of 100,000 civilian population.[6] In 1971, the

[2]The number of criminal dispositions was derived directly from the data tapes used in the analysis. According to that record, 47,945 cases were disposed of by Federal courts in 1971. This number *excludes* 75 cases from the Southern District of New York, which were coded as "statistical dismissals"—cases that, in fact, had not yet actually been disposed of in 1971.

The number for all percentage figures subsequently based on the number of criminal dispositions per district was derived by subtracting from the total number of criminal dispositions: 1) all cases that were coded as "statistical dismissals," 2) all Narcotic Addiction Rehabilitation Act commitments [28 USC 2902(a), (b)], and 3) cases having no value recorded for method of conviction. There were few instances of any of the three cases.

[3]The number of authorized judgeships for each Federal district in 1971 is reported in Administrative Office of the U.S. Courts, **Management Statistics for U.S. Courts, 1971.** The actual value used here was computed by dividing the number of "vacant judgeship months" for each district by 12 and then subtracting this number from the reported number of authorized judgeships for the year. The correction, while yielding a more precise measure of the actual number of judges sitting in a jurisdiction, resulted in only minor adjustments of the original figure for "authorized judgeships."

[4]Since the data tapes used in this analysis have no information relating to noncriminal cases, these figures were obtained from the Administrative Office of the U.S. Courts **1972 Annual Report of the Director,** Table 20, pp. II-35, II-36.

[5]Data for this variable were obtained from **Management Statistics, 1971,** op. cit.

[6]The 1970 census figures for Federal judicial districts is reported in **Reports of the Proceedings of the Judicial Conference of the United States,** March 15-16 and October 28-29, 1971, (Washington, D.C.: U.S. Government Printing Office), 1972, Table X-10, pp. 421-423.

districts ranged from 6 (Northern New York) to 214 (Southern California) criminal dispositions per 100,000 population.

14. Median Interval from Filing to Disposition of All Cases (MINT). This factor is a measure of the median time (in months) required for the disposition of *all* cases disposed of within the jurisdiction during fiscal year 1971.[7] Values ranged from .3 (Southern Texas) to 12.4 months (New Jersey).

With respect to the variables that follow, two points are important: first, for all rate figures that used total criminal dispositions as a base, all statistical dismissals, Narcotic Addiction Rehabilitation Act commitments, and cases with missing values were excluded from the base figures before the rates were calculated;[8] second, no rate was calculated if the base "N" was less than 10.

15. Dismissal Rate (DSMRT). Dismissal rate is the percent of all criminal defendants who were disposed of by the dismissal of charges. Clearly, dismissal rates varied widely across the nation. In Southern Texas, for example, only 7 percent of all dispositions were by dismissal. In contrast, nearly half (47 percent) of those cases that were concluded in Nevada were dismissed.

16. Plea Rate (PRT). Plea rate refers to the proportion of criminal case dispositions in a district that were effected by a changed or an unchanged plea of guilty or nolo contendere. Plea rates ranged from a low of 37 percent in Nevada to a high of 90 percent in Southern Texas.

17. Trial Rate (TRT). Trial rate refers to the proportion of a district's total criminal case dispositions that were effected by a court or a jury trial. A high trial rate suggests that a district is expending considerable human and material resources on the adjudication process compared to districts that have high dismissal and/or plea rates. District values range from a low 2 percent for Southern Texas to a marked 36 percent in Eastern Tennessee. Half the defendants processed in 1971 were disposed of in jurisdictions wherein fewer than 15 percent of all dispositions were by trial.

18. Jury Trial Rate (JRT). This factor (jury trials as a percentage of all trials) refers to the proportion of all trials that were heard before a judge and jury (vis-a-vis bench trials that are argued before a single judge without a jury). The distribution of court and jury trials varied considerably from one district to the next. In Middle North Carolina, for example, only one in five trials (21 percent) in 1971 was heard by a jury. On the other hand, every one of Rhode Island's 22 Federal trials was presented to a jury. Across districts, "preference" was clearly for *jury* trials in 1971, despite their apparent "cost" to the defendant in terms of relatively severe sentences, a factor that will be explored in detail in reports in this series. In 1971, half the persons convicted in the 88 major Federal district courts were convicted in districts where nearly three-quarters of all trials were jury trials.

19. Conviction Rate (CVRT). A summary rate of convictions for each district was also calculated and assigned to each individual record. Any disposition other than a dismissal, an acquittal, a statistical dismissal, or a missing value was tabulated as a conviction. The lowest conviction rate of any district was 49 percent (Nevada). In sharp contrast, more than 9 in 10 (92 percent) of those persons whose cases were processed in Southern Texas were convicted. Half of all defendants disposed of in 1971 were processed in jurisdictions exhibiting conviction rates of better than 68 percent.

20. Plea Conviction Rate (PCRT). This variable reflects the number of pleas of guilty or nolo contendere expressed as a percentage of all convictions in a district. This rate is extremely high, ranging from a low of 63 percent (Eastern Tennessee) to a high of 98 percent (Southern Texas), emphasizing that the preponderance of convictions in every Federal court derive from the defendants' own admissions of guilt.

21. Trial Conviction Rate (TCRT). Trial conviction rate is a measure of trial "effectiveness," as it reflects the percent of all trials within each jurisdiction that resulted in convictions. Values ranged from 31 percent in Alaska to a staggering 100 percent in Hawaii. Most jurisdictions have a better than even record of trial victories; indeed, over half (which were responsible for disposing of about half of all Federal cases) exhibited trial conviction rates of around 75 percent in 1971!

22. Court Trial Conviction Rate (CCRT). Court trial conviction rate measures the "effectiveness"—with respect to convictions—of nonjury trials, that is, those heard only by a judge without a jury. The proportion of victories in court

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[7]The values for this variable were taken from **Management Statistics, 1971,** op. cit.

[8]These exclusions were generally limited to no more than 2 or 3 percent of the respective district totals.

trials ranged from 32 percent (New Jersey) to 100 percent (Hawaii and Kansas).

23. Jury Trial Conviction Rate (JCRT). The counterpart of court conviction rates for jury trials relates a district's conviction rate for all jury trials. Not unlike the range for court effectiveness, jury trial effectiveness ranged from 30 percent (Alaska) to 96 percent (Western Kentucky). On the whole, however, jury trials were much more "effective" than court trials.

24. Juror Usage Index (JUI). A popular hypothesis used to account for the often cited relationship between a jury trial conviction and a severe sentence relates to the relative "cost" and tedium—in terms of human and material resources—of a jury trial versus the economy and expedience of a guilty plea. The Juror Usage Index provides a rather sophisticated measure of how the expense of jury trials may vary from district to district.[9]

The Index is a ratio of the number of jurors on hand and paid *per jury trial day* during the year. One "jury trial day" is counted for each day each trial is being held in the district. Thus, if there were five jury trials going on for 4 days, that would count as 20 jury trial days. If 400 jurors were compensated during that period, the index for the 4-day period would be 400 jurors paid divided by 20 jury trial days = 20 (actually, the JUI is tabulated for the entire year). In 1971, JUI ranged from an economical 15 jurors paid per jury trial day (Colorado, Wyoming, Western Michigan) to a high of 58 (Southern New York).

[9]The Index was developed by the Administrative Office and is defined and reported in **Management Statistics, 1971,** op. cit.

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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

USER EVALUATION QUESTIONNAIRE

Federal Sentencing Patterns:
A Study of Geographical Variations
Analytic Report No. 18

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 Utilization of Criminal Justice Statistics project. We have provided this form for whatever opinions you wish to express about this report. Please cut out both of these pages, staple them together on one corner, and fold 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 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. How will this report be useful to you?

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- ☐ Other *(please specify)* _____
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4. Are there any other data sources you could suggest to address the topic of this report?

5. Would you like to see any other analyses of the data contained in this report?

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6. Which parts of the report, if any, were difficult to understand or use? How could they be improved?

7. Can you point out specific parts of the text or table notes that are not clear or terms that need to be defined?

8. Can you point out any specific statistical techniques or terminology used in this report that you feel should be more adequately explained? How could these be better explained?

9. Are there ways this report could be improved that you have not mentioned?

10. Please suggest other topics you would like to see addressed in future analytic reports.

11. Please suggest any specific criminal justice data bases or sources of criminal justice data that could be explored in future analytic reports. (Please give as full a citation as possible.)

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16. Additional comments

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