

6/12/61

✓ EVALUATING PUBLIC DEFENSE SERVICES FOR CRIMINAL CASES:

AN EXAMINATION OF DATA FROM MONTANA

×

By

Keith R. Fernsler

A.B., Indiana University, 1967

M.A., Indiana University, 1973

Presented in partial fulfillment
of the requirements for the degree of

Doctor of Philosophy

UNIVERSITY OF MONTANA

1979

NCJRS
SEP 20 1979
ACQUISITIONS

Approved by:

Chairman, Board of Examiners

Dean, Graduate School

Date

Fernsler, Keith R., Ph.D., 1979

Sociology

Evaluating Public Defense Services for Criminal Cases: An Examination
of Data from Montana (214 pp.)

Director: Robert Balch

In this dissertation the effects of different types of defense counsel on dispositions and sentences received by defendants in felony and misdemeanor criminal cases are examined. Both general theory and prior research are evaluated and lead to the conclusion that there is no clear reason to believe that private attorneys are any more effective than public defenders or court appointed attorneys in securing case dismissals or less severe sentences for their clients. However, because no prior research is concerned with the kind of data examined in this study--data for an entire western state with a very low population density--exploratory questions rather than directional hypotheses are utilized to guide the data analysis. The multivariate data analysis produces a clear pattern of results indicating that the type of defense counsel is a relatively insignificant factor in criminal justice at the district court level in Montana. Private attorneys are somewhat more likely to secure case dismissals for their clients, but the overwhelming majority of clients of all types of attorney plead guilty to the charges brought against them. The analysis of the data for the entire State indicates that the specific offense at sentencing and the bail status of the defendant are the variables most strongly related to both the types of sentences and the length of sentences received by defendants; type of defense counsel is generally the poorest predictor of the severity of sentences of all the independent variables. For a subsample of cases, information on the prior record of defendants is introduced and the results indicate that prior record, along with the offense at sentencing, and to a lesser extent the bail status of the defendant, are the most important predictors of the characteristics of sentences. Once again, type of defense counsel is relatively insignificant. Throughout the data analysis, a control for the urban-rural characteristics of judicial districts is introduced. The data analysis indicates that the general pattern of results are confirmed in the most urban and most rural of the judicial districts. In one set of districts designated as mid-range between the most urban and most rural, type of defense counsel is a moderately significant factor in sentencing, suggesting that in any given state a researcher may be able to identify some districts where type of attorney is a significant factor. However, the general findings in this dissertation support the contention that type of defense counsel is a negligible factor in criminal case dispositions and sentences received by defendants. The implications of these findings for future research and for issues of equity in criminal justice are discussed in the final chapter of the dissertation.

CONTENTS

	Page
Abstract	ii
Acknowledgments	vi
List of Tables	vii
List of Figures	xvii
Chapter	
I. Introduction: A Problem of Equity	1
II. Evaluating Public Defense Counsel: A Review of Issues and Research	6
Introduction	6
Two Case Studies of Public Defense Counsel	8
Criticisms of Public Defense Services	11
Are Private Attorneys Better?	14
Statistical Evaluations of Defense Counsel	19
Conclusion	22
III. Description of the Data and Strategies for Analysis ..	24
Description of the Data	24
The Independent and Dependent Variables	27
The Zero-Order Relationships	29
The First Control Variable: The Rural-Urban Distinction	30
Additional Control Variables	32
Prior Record as a Control Variable	38
Data Analysis and the Control Variables	39

Contents	Page
Chapter	
Introduction to the Data Analysis	40
A Hypothetical Example of MGA Analysis	40
Summary	44
IV. The Caseloads of Public and Private Counsel	46
Introduction	46
Caseloads	46
The Problem of Multicollinearity	52
Caseloads Within Types of Judicial Districts	55
Conclusion	65
V. Attorneys and Case Dispositions	67
Introduction	67
Analysis of Dispositions for the State	67
Analysis of Dispositions by Types of Districts	75
Conclusion	75
VI. The Acid Test: Defense Counsel and Sentencing	83
Introduction	83
Analysis of the Types of Sentences	84
Analysis of the Length of Sentences	93
Analysis of the Sentence Weight	97
Summary of Analysis of Sentencing for the State	99
VI. Chapter VI (Continued): Sentencing Within Types of Districts	100
Introduction	100
Urban Judicial Districts	100
Mid-Range Judicial Districts	113
Rural Judicial Districts	123

Contents	Page
Chapter	
Conclusion	132
Appendix to Chapter VI: Zero-Order Associations Among Independent Variables At Sentencing for the State and Types of Judicial Districts	133
VII. The Importance of Prior Record	143
Introduction	143
Sentencing Patterns for the Sample	144
Sentencing Within Types of Judicial Districts: Introduction	154
Sentencing Patterns in Urban Districts	156
Sentencing Patterns in Mid-Range Districts	165
Sentencing Patterns in Rural Districts	172
Conclusion	176
Appendix to Chapter VII: Matrices of Associations Among Independent Variables at Sentencing	179
VIII. Summary and Implications for Future Research	184
Summary	184
The Mid-Range Districts: Implications for Future Research	185
Additional Possibilities for Future Research	187
Conclusion	189
Appendix: Sample Court Form and Coding Manual	191
References	211

ACKNOWLEDGMENTS

In order to accomplish the research for this dissertation, I intermittently intruded into the lives of a great many people. In this brief preface, I wish to publicly express my appreciation to some of those people.

Court clerks, judges, the staff of the Montana Board of Crime Control, and the staff of the Montana Supreme Court freely gave their cooperation in the data collection phase of the research. Two former public defenders in Missoula County, Montana, especially helped shape some of my insights. The members of the faculty and staff of the Department of Sociology at the University of Montana made it possible to gain access to the data, secure the funds for expenses, and helped shape the final form of this dissertation in a variety of ways. Bill Johnson provided invaluable assistance in coding and preparing the data for analysis. Cheryl Anderson provided her much needed expertise in typing the final draft. The staff of the Law Enforcement Assistance Administration's Office of Criminal Justice Education and Training made the research possible by providing the funds for expenses. My family and colleagues consistently encouraged my work and demonstrated a substantial capacity for patience.

I particularly wish to acknowledge the contributions of Drs. Rob Balch, Paul Miller, G. LeRoy Anderson, Gordon Browder, and William McBroom for their professional advice and personal friendship. They and all the others who provided assistance made this dissertation a pleasant and rewarding experience.

TABLES

	Page
Chapter III	
Table	
-1 Distribution of Cases by Offense Type for Montana Supreme Court Study and Current Study	26
-2 Matrix of Correlations Among Ranks of Judicial Districts on Five Criterion Variables	33
-3 Range of Ranks on Five Criterion Variables for Types of Judicial Districts	34
-4 Averages (Means) of Five Criterion Variables for Types of Judicial Districts	35
-5 Effects of Race and Sex on Average Weekly Wages Received by Employees	42
Chapter IV	
Table	
-1 Distribution of Cases by Type of Defense Attorney	47
-2 Type of Charge at Arraignment by Type of Defense Attorney	49
-3 Most Serious Offense at Arraignment by Type of Defense Attorney	50
-4 Bail Status by Attorney, Controlling for Type of Charge at Arraignment (Per Cents in Cells)	51
-5 Number of Charges at Arraignment by Attorney, Controlling for Type of Charge at Arraignment (Per Cents in Cells)	53
-6 Matrix of Measures of Association Among Independent Variables	54
-7 Type of Charge at Arraignment by Attorney for Each Type of Judicial District (Per Cents in Cells)	56

Tables

	Page
-8 Most Serious Offense at Arraignment by Attorney for Each Type of Judicial District (Per Cents in Cells) ..	58
-9 Bail Status by Attorney for Each Type of Judicial District (Per Cents in Cells)	59
-10 Bail Status of Defendants in Felony Cases by Attorney for Each Type of Judicial District (Per Cents in Cells) ..	60
-11 Bail Status of Defendants in Misdemeanor Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	61
-12 Number of Charges at Arraignment by Attorney for Each Type of Judicial District (Per Cents in Cells)	62
-13 Number of Charges at Arraignment for Felony Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	63
-14 Number of Charges at Arraignment for Misdemeanor Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	64
-15 Correlation Matrices of Measures of Association Among Independent Variables for Each Type of Judicial District	66

Chapter V

Table

-1 Summary of Case Dispositions by Attorney, Controlling for Type of Charge at Arraignment (Per Cents in Cells) ..	69
-2 Case Dispositions by Attorney, Controlling for Type of Charge at Arraignment (Per Cents in Cells)	70
-3 Dispositions of Narcotics Cases by Attorney, Controlling for Type of Charge at Arraignment (Per Cents in Cells) ..	71
-4 Dispositions of Felony Assault Charges by Attorney ...	73
-5 Effects of Attorney, Bail Status, Number of Charges, and Offense at Arraignment on Dispositions of Felony and Misdemeanor Cases (Per Cent Guilty Pleas)	74
-6 Disposition of Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	76

Tables

	Page
-7 Disposition of Felony Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	77
-8 Disposition of Misdemeanor Cases by Attorney for Each Type of Judicial District (Per Cents in Cells)	78
-9 Effects of Attorney, Bail Status, Number of Charges at Arraignment, and Offense at Arraignment on Dispositions of Cases for Urban Judicial Districts (Per Cent Guilty Pleas)	79
-10 Effects of Attorney, Bail Status, Number of Charges at Arraignment, and Offense at Arraignment on Dispositions of Cases for Mid-Range Judicial Districts (Per Cent Guilty Pleas in Cells)	80
-11 Effects of Attorney, Bail Status, Number of Charges at Arraignment, and Offense at Arraignment on Dispositions of Cases for Rural Judicial Districts (Per Cent Guilty Pleas in Cells)	81

Chapter VI

-1 Type of Sentence by Attorney, Controlling for Type of Charge at Sentencing (Per Cents in Cells)	85
-2 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Felons Receiving Prison Sentences (Per Cents in Cells) .	87
-3 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Misdemeanants Receiving Jail Sentences Exclusively (Per Cents in Cells)	89
-4 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Defendants Receiving Suspended Sentences for Felons and Misdemeanants (Per Cents in Cells)	90
-5 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Defendants Receiving Deferred Sentences for Felons and Misdemeanants (Per Cents in Cells)	91
-6 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Length of Prison Sentences for Felons	94

Tables

	Page
-7 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Suspended Sentences (in months) by Type of Charge at Sentencing (Average Months in Cells)	95
-8 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Length of Deferred Sentences (in months) by Type of Charge at Sentencing (Average Months in Cells)	96
-9 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing (Weight Scores in Cells)	98

Chapter VI continued

-10 Type of Sentence Received by Defendants by Attorney for Each Type of Judicial District (Per Cents in Cells) ..	101
-11 Type of Sentence Received by Felons by Attorney for Each Type of Judicial District (Per Cents in Cells)	102
-12 Type of Sentence Received by Misdemeanants by Attorney For Each Type of Judicial District (Per Cents in Cells)	103
-13 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Felons Receiving Prison Sentences in Urban Judicial Districts (Per Cents in Cells)	104
-14 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Misdemeanants Receiving Jail Sentences (Exclusively) in Urban Judicial Districts (Per Cents in Cells)	106
-15 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Defendants Receiving Suspended Sentences by Type of Charge at Sentencing for Urban Judicial Districts (Per Cents in Cells)	107
-16 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Defendants Receiving Deferred Sentences by Type of Charge at Sentencing for Urban Judicial Districts (Per Cents in Cells)	108

-17	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Length of Prison Sentences Received by Felons in Urban Judicial Districts (Average Years in Cells)	109
-18	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Suspended Sentences Received by Defendants by Type of Charge at Sentencing for Urban Judicial Districts (Average Months in Cells)	110
-19	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Deferred Sentences Received by Defendants by Type of Charge at Sentencing for Urban Judicial Districts (Average Months in Cells)	111
-20	Effects of Attorney, Bail Status, Number of Charges at Sentencing on Sentence Weight by Type of Charge at Sentencing for Urban Judicial Districts (Weight Scores in Cells)	112
-21	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Felons Receiving Prison Sentences in Mid-Range Judicial Districts (Per Cents in Cells)	114
-22	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Misdemeanants Receiving Jail Sentences (Exclusively) in Mid-Range Judicial Districts (Per Cents in Cells) .	115
-23	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Defendants Receiving Suspended Sentences by Type of Charge at Sentencing for Mid-Range Judicial Districts (Per Cents in Cells)	116
-24	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Defendants Receiving Deferred Sentences by Type of Charge at Sentencing for Mid-Range Judicial Districts (Per Cents in Cells)	118
-25	Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Prison Sentences Received by Felons in Mid-Range Judicial Districts (Average Years in Cells)	119

Tables

	Page
-26 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Suspended Sentences Received by Defendants by Type of Charge at Sentencing for Mid-Range Judicial Districts (Average Months in Cells)	120
-27 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Length of Deferred Sentences by Type of Charge at Sentencing for Mid-Range Judicial Districts (Average Months in Cells)	121
-28 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing for Mid-Range Judicial Districts (Weight Scores in Cells)	122
-29 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Felons Receiving Prison Sentences in Rural Judicial Districts (Per Cents in Cells)	124
-30 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Misdemeanants Receiving Jail Sentences (Exclusively) in Rural Judicial Districts (Per Cents in Cells)	125
-31 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Percentage of Defendants Receiving Suspended Sentences by Type of Charge at Sentencing for Rural Judicial Districts (Per Cents in Cells)	126
-32 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Percentage of Defendants Receiving Deferred Sentences by Type of Charge at Sentencing for Rural Judicial Districts (Per Cents in Cells)	127
-33 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Prison Sentences Received by Felons in Rural Judicial Districts (Average Years in Cells)	128
-34 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Suspended Sentences Received by Defendants by Type of Charge at Sentencing for Rural Judicial Districts (Average Months in Cells)	129

-35 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on the Length of Deferred Sentences Received by Defendants by Type of Charge at Sentencing for Rural Judicial Districts (Average Months in Cells) 130

-36 Effects of Attorney, Bail Status, Number of Charges at Sentencing, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing for Rural Judicial Districts (Weight Scores in Cells) 131

Chapter VI Appendix

-37 Type of Charge at Sentencing by Attorney 134

-38 Offense At Sentencing by Attorney 135

-39 Bail Status by Attorney at Sentencing 136

-40 Number of Charges at Sentencing by Attorney 137

-41 Matrix of Measures of Association Among Independent Variables at Sentencing 138

-42 Number of Charges at Sentencing by Attorney for Each Type of Judicial District (Per Cents in Cells) 139

-43 Bail Status at Sentencing by Attorney for Each Type of Judicial District (Per Cents in Cells) 140

-44 Type of Charge at Sentencing by Attorney for Each Type of Judicial District (Per Cents in Cells) 141

-45 Matrix of Measures of Association for Relationships Among Independent Variables for Convicted Defendants at Sentencing 142

Chapter VII

-1 Prior Record of Defendants by Attorney by Type of Charge at Sentencing (Per Cents in Cells) 145

-2 Type of Sentence by Attorney, Controlling for Prior Record of Defendants (Per Cents in Cells) 146

-3 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record, and Offense at Sentencing on the Percentage of Felons Receiving Prison Sentences (Per Cents in Cells) 147

Tables

	Page
-4 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record, and Offense at Sentencing on the Percentage of Defendants Receiving Probationary Sentences by Type of Charge at Sentencing (Per Cents in Cells)	148
-5 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record, and Offense at Sentencing on Lengths of Prison Sentences for Felonies (Average Years in Cells)	150
-6 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record, and Offense at Sentencing on the Average Lengths of Probationary Sentences by Type of Charge at Sentencing (Average Months in Cells)	151
-7 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record, and Offense at Sentencing on Average Sentence Weights by Type of Charge at Sentencing (Average Weight Scores in Cells)	153
-8 Pre-Sentence Investigations for Each Type of Judicial District by Type of Charge at Sentencing (Per Cents in Cells)	155
-9 Prior Record of Defendants by Attorney for Each Type of Judicial District (Per Cents in Cells)	157
-10 Type of Sentence by Attorney for Each Type of Judicial District (Per Cents in Cells)	158
-11 Type of Sentence Received by Defendants With No Prior Record or Minor Prior Record by Attorney for Each Type Of Judicial District (Per Cents in Cells)	159
-12 Type of Sentence Received by Defendants with Major or Prior Prison Records by Attorney for Each Type of Judicial District (Per Cents in Cells)	160
-13 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Felons Receiving Prison Sentences in Urban Judicial Districts (Per Cents in Cells)	162
-14 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Defendants Receiving Probationary Sentences by Type of Charge at Sentencing For Urban Judicial Districts (Per Cents in Cells)	163

-15 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Length of Probationary Sentences Received by Defendants by Type of Charge at Sentencing for Urban Judicial Districts (Average Months of Sentences in Cells) 164

-16 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing for Urban Judicial Districts (Average Weight Scores in Cells) 166

-17 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Felons Receiving Prison Sentences in Mid-Range Judicial Districts (Per Cents in Cells) 167

-18 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Defendants Receiving Probationary Sentences by Type of Charge at Sentencing for Mid-Range Judicial Districts (Per cents in Cells) 169

-19 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Length of Probationary Sentences Received by Defendants by Type of Charge at Sentencing for Mid-Range Judicial Districts (Average Months on Sentences in Cells) 170

-20 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing for Mid-Range Judicial Districts (Average Weight Scores in Cells) 171

-21 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Felons Receiving Prison Sentences in Rural Judicial Districts (Per Cents in Cells) 173

-22 Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Percentage of Defendants Receiving Probationary Sentences by Type of Charge at Sentencing for Rural Judicial Districts (Per Cents in Cells) 174

Tables

Page

-23	Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on the Length of Probationary Sentences Received by Defendants by Type of Charge at Sentencing for Rural Judicial Districts (Average Months in Cells) ...	175
-24	Effects of Attorney, Bail Status, Number of Charges at Sentencing, Prior Record of Defendants, and Offense at Sentencing on Sentence Weight by Type of Charge at Sentencing for Rural Judicial Districts (Average Weight Scores in Cells)	177

Chapter VII Appendix

-25	Matrix of Associations Among Independent Variables at Sentencing	180
-26	Matrix of Associations Among Independent Variables at Sentencing for Urban Judicial Districts	181
-27	Matrix of Associations Among Independent Variables at Sentencing for Mid-Range Judicial Districts	182
-28	Matrix of Associations Among Independent Variables at Sentencing for Rural Judicial Districts	183

FIGURES

	Page
Chapter III	
Figure	
-1 Map of Montana's Judicial Districts Classified by Degree of Urbanization	36

CHAPTER I:

INTRODUCTION:

A PROBLEM OF EQUITY

This dissertation is concerned with a problem of justice in the criminal courts. Specifically, this research will attempt to determine whether there is any reason to believe that those accused who are represented by a publicly provided defense counsel suffer from any particular disadvantage in comparison with those able to retain private defense counsel.

Through its actions, the Supreme Court has affirmed the commitment to equity for the poor. In a series of decisions culminating in Gideon v. Wainwright (1963), the Court moved to reinforce the right to counsel for those accused of felonious crimes. Since then, total funding for defense services in criminal cases has ballooned from \$16.9 million in 1966 to a conservatively estimated \$150 million in 1975 (The National Study Commission on Defense Services, 1975:xiii). A more recent decision, Argersinger v. Hamlin (1972), affirmed the right to counsel in those cases where a misdemeanor charge implies the threat of incarceration. Because of difficulties in ascertaining at the onset of a case which charges carry the threat of incarceration, the National Study Commission on Defense Services (1975:5) concluded from a review of legal authorities that most of those authorities recommend the extension of the right to counsel for indigent defendants to all misdemeanor cases. The consequences of this decision, like those of

the Gideon case, are likely to include a substantially increased demand for publicly funded defense services for the poor. (See the discussion of the potential impact of Argersinger in the report of the National Study Commission on Defense Services, 1975:3-5.)

The Supreme Court has not been acting alone in stimulating this real and potential growth of defense services. Additional pressures have come from evaluative studies which have been critical of inadequacies in current programs and from studies which have been monitoring new programs designed to respond to the mandates of the Court. (See, for example, the recent study by Krantz, et al., 1975, which examined the response to the Argersinger decision.)

Many previous studies have focused on the extent to which the supply of publicly funded defense services has met the demand. Clearly however, this is only a partial solution to the problem of equity; increases in funding do not automatically guarantee that indigent defendants are provided effective assistance in pleading their cases. Planners and organizers of public defense service programs also need to be concerned with the quality of services.

Unfortunately, planners have had little evidence on which to base any assessments of quality. In fact, the National Study Commission on Defense Services arrived at the following conclusion after a thorough study of defense services (1975:xiv):

Due to the relative infancy of the field, the body of knowledge about the defender systems and of the method of providing the most effective service is small. Defender systems have grown like topsy in response to immediate needs to provide representation and have been subjected to little planning or study. (My emphasis.)

If there is to be any assurance that public defense services actually serve the commitment to equity, evaluative research on the quality of

services is needed.

Hopefully, the research in this dissertation will provide some of this much needed evaluative information. The data for the research consist of criminal cases which have been heard in the Montana criminal courts. The principal task of the data analysis will be to provide a systematic comparison of the characteristics of publicly defended cases with those cases defended by privately retained attorneys.

It should be stressed that this research is exploratory, partly because of the fact that I know of no studies that have attempted a state-wide comparison of defense counsel in a state like Montana. Therefore, the research is designed to answer general questions about inequities attributable to types of defense counsel in Montana's criminal courts.

The limitations of data from court records--the source of information in the study--place many possible hypothetical explanations for any differences among type of defense counsel beyond the scope of this study. Questions about differences in legal training of defense counsel, or differences in attitudes toward defendants on the part of different types of attorneys, cannot be considered. Furthermore, we cannot tell from court records how localized norms and social relationships within the court community might effect the performance of different types of defense counsel. These kinds of questions will have to wait for more appropriate kinds of data from surveys or case studies. This research will attempt to answer the logically prior question of whether any differences actually exist among types of defense counsel which need explaining.

There is one other limitation of the data which is significant enough

to deserve special mention. Because the data for this dissertation come from the district courts, criminal defendants are not encountered until after arrest and pre-trial hearings in the lower, or justice of the peace, courts. Consequently, the role of defense lawyers cannot be evaluated for that time period. It may be that actions by defense attorneys in the pre-trial phase are crucial to any final dispositions of cases.

Ideally one should measure those effects directly, but for this dissertation that would have meant tracking defendants to files in the justice of the peace courts --a time-consuming and costly enterprise. Instead, I have made the simplifying assumption that any differences in effectiveness by type of attorney in the pre-trial phase will be reflected indirectly in the decisions made at the district court level--decisions, that is, in terms of case dismissals and the weight of sentences imposed on convicted defendants. Essentially this means that the data are biased in the sense that it excludes cases which are so marginal that they do not proceed past the lower courts. At this time, it is my judgement that this does not represent a serious defect in the data because I believe that a defendant's greatest need for an effective defense occurs when cases are serious enough and the evidence strong enough to require a hearing in the higher court.

In addition, the data do not reflect outcomes of appeals or other actions on behalf of defendants after conviction and sentencing in the district court. Obviously a successful appeal is of great importance to a defendant, and it would have been interesting to evaluate the relationship between type of attorney and appellate decisions. Again, however, I do not consider this a serious defect of the data largely because the reports from which the data for this dissertation were generated indicated that appeals were filed for only a handful of cases,

far too few for any significant statistical analysis.

To summarize, the data in this dissertation are limited to the district court phase of the criminal justice process. Those researchers primarily interested in the effects of type of attorney in the pre- or post-trial phase will have to consult other data.

CHAPTER II:
EVALUATING PUBLIC DEFENSE COUNSEL:
A REVIEW OF ISSUES AND RESEARCH

Introduction

One of the perplexing questions of criminology concerns the differential treatment of defendants in the criminal justice system. There is no doubt that defendants are treated in different ways. The question is whether the differences in treatment are caused by the legal particulars of the defendant's cases--such as the type of offense, the seriousness of the offense, and the presence or absence of evidence--or if the differences are caused by some kind of systematic discrimination operating independently of legal particulars.

The question is perplexing because studies which have focused on the social class and race of the defendant--two logical sources of discrimination--have produced unspectacular and inconsistent results.* This outcome of the research was summarized in a recent article which suggested that studies of such attributes "...have failed to produce conclusive evidence regarding the quality of justice in the United States" (Swigert and Farrell, 1977:17). Those same authors go on to suggest that while there may be little evidence of the kinds of "...invidious discrimination charged by the more vocal critics of

*For examples of such studies, see Bullock, 1961; Chiricos, et al., 1972; Kelly, 1976; Lehtinen and Smith, 1974; Newman, 1956; and Smith, 1970.

criminal justice..." (Swigert and Farrell, 1977:27), there may be inequities attributable to the defense services offered to the poor:

It must be noted...that the variable most affected by occupational status (that is, attorney) is, in fact, for sale. Little effort is made to disguise the importance of financial status in the ability to retain private counsel. Rather judicial practices based on economic advantage have become institutionalized to the extent that inherent inequities are not part of the public consciousness. (Swigert and Farrell, 1977:27).

What is the nature of these institutionalized inequities? To Swigert and Farrell, the presence of public defense counsel acts as a labelling device: "Assignment of public defense counsel identifies the individual with that class of persons, the indigent, out of which the criminal stereotype is formulated..." (1977:30). The correspondence with the criminal stereotype facilitates the presumption of guilt and justifies a less "combative" posture on the part of public defense counsel. That is unfortunate for the indigent defendant because it is assumed by Swigert and Farrell that a combative posture is "...essential for successful defense of their cases..." (1977:30). Presumably, the public defense counsel, because he or she is swayed by the criminal stereotype, is more likely than the private attorney to counsel the defendant into pleading guilty, to waiving a jury trial, to make little effort to seek the defendant's release on bail, and, in general, to make little effort to challenge the prosecutor's version of events or recommendations for sentencing. Apparently, private attorneys are immune to the effects of the criminal stereotype because they are paid by the defendant--an act which removes vestiges of the criminal stereotype.

The current nature of this article suggests that questions about the quality of public defense services have not been adequately answered

by prior research. In the remainder of this chapter, we shall examine several aspects of the literature to see whether the kinds of conclusions drawn by Swigert and Farrell seem reasonable.

Two Case Studies of Public Defense Counsel

Serious doubts have been raised about the effectiveness of public defense counsel as a consequence of in-depth case studies of public defender agencies. Such studies appear to reflect an implicit or explicit assumption that public defense counsel is inferior to private counsel without really providing comparative evidence from the study of private attorneys (Lehtinen and Smith, 1974:14). The result is that public defense counsel becomes stereotyped (rather than the defendant). Still, such studies do provide substantial insight into the nature of public defender activities and are worthy of detailed review.

One example is found in David Sudnow's (1965) description of a public defender office. In this large California defender agency, the lawyers are characterized as spending little time with their clients prior to a court appearance (pp. 265-266); they tend to presume "...that people charged with crimes have committed crimes..." and treat their clients accordingly (p. 269). As a result of this presumption of guilt, their principal defense strategy involves plea-bargaining. A key point is that over a period of time, the defenders have developed with the members of the prosecutor's office a sophisticated system of shared linguistic cues that facilitate the striking of plea-bargain agreements. (pp. 258-262).

The defense service provided most defendants is essentially a perfunctory one: The accused has committed what the public defender sees as a normal crime which is to be handled with routine plea-bargaining.

For any offense category, the public defender can "provide a verbal characterization of a 'normal crime'."*

On rare occasions, the client has committed a normal crime but is too "stubborn" to accept the normal plea-bargain agreement. In this type of case, the perfunctory defense takes the form of the "routine trial" (Sudnow, 1965:272): "When the P.D. enters the courtroom, he takes it that he is going to lose, e.g., the defendant is going to prison. When he 'prepares' for trial, he doesn't prepare to 'win'." On what are presumably even rarer occasions, an atypical or abnormal case occurs which requires an all-out fight in the courtroom. The normal, routine cooperation with the prosecutor's office breaks down, an attorney who has not developed a close relationship with the prosecutor is assigned the case (to avoid strains that might jeopardize "normal" relations), the attorney spends considerably more time with the client, and special attention is given to provide a more than adequate defense (Sudnow, 1965:274-275). Although these atypical cases may come closer to a popular image of a true adversary proceeding, it is clear from Sudnow's account that they represent only a very small minority of the business of the public defender office.

In a similar study (once again in a large California public defender agency), Mather (1973) has elaborated on many of Sudnow's findings. Mather depicts the public defenders as having developed a system for determining defense strategy based on the seriousness of the charge, the strength of the prosecutor's case, and their calculation

*"I shall call normal crimes those occurrences whose typical features, e.g., the ways they usually occur and the characteristics of the persons who commit them (as well as typical victims and typical scenes), are known and attended to by the P.D. [public defender]" (Sudnow, 1965:260).

of possible sentence. Most cases are "dead bang," e.g., certain of conviction, and the defense strategy involves plea-bargaining. Exceptions primarily occur when the defendant's prior record is a particularly bad one, the charge is very serious, and the sentence is likely to be severe, in which case the defendant does not risk a heavier sentence by going to trial. To Mather, the atypical cases which are more likely to go to trial (unless a very good plea-bargain agreement can be struck) are those involving reasonable doubt about the client's guilt, often because of "inadequate screening" of cases or "sloppy" work on the part of the police and the prosecutor. Nevertheless, it is clear that in Mather's account, like that of Sudnow, most cases are routine, handled by plea-bargaining, and that trials occur rarely.

Taken together, these two studies dramatize the non-combative posture of public defense counsel alluded to by Swigert and Farrell. However, it should be clear that these two studies do not justify any conclusions about the relative effectiveness of public defense counsel in general, or public defender agencies in particular (Platt and Pollock, 1974:236; Neubauer, 1974:67). First, a dozen similar case studies would not provide an adequate sample of public defender agencies. There may be great diversity arising from differences in the size, locale, and organizational structure of the various public defender agencies that exist in this country. Second, they have nothing to say about other types of public and private systems for providing counsel to the indigent. Third, neither study offers any comparative evidence on the characteristics of private defense counsel. Although it is clear that a "Perry Mason" image is not appropriate for public defenders, there is no basis for an assumption which views that image as appropriate for private attorneys. Finally, however we might speculate on the behavior

of private attorneys, there is no evidence in these studies that the techniques of public defenders produce worse results than any achieved by private attorneys.

Admittedly, it was not the objective of these case studies to produce a random sample or to provide comparative evidence or to evaluate results. However, I fear that an incautious reader might come away from these studies with a very critical view of public defenders and an unconscious image of the privately retained attorney as the exact opposite. One reason for that response to these studies might lie in the fact that the findings parallel the kinds of arguments used against public defender systems when they first came into being. Those criticisms deserve at least a brief review.

Criticisms of Public Defense Services

Perhaps the oldest and most pervasive of the critiques of public defender systems concerns the fact that the public defender tends to be employed by the same governmental body as the prosecutor--usually the county government. Given this employment condition, it is argued that public defenders will bow to their instincts of self-preservation and tend to place the highest priority on the interests of those upon whom they are most dependent, i.e., the interests of the state (Dimock, 1956).^{*} In any contest between the needs of the state, represented by the prosecutors and judges, and the needs of clients, the dependency

^{*}The apparent contradiction in the state hiring an attorney to be the state's opposition has been so impressive that two commentators on the future of the criminal justice system have recently predicted that the contradiction will be the basis for a successful challenge to the public defender system as inherently disadvantageous to the indigent. As a result, they predict that the public defender system will be replaced by a voucher system (Clear and Clear, 1974:26).

of the public defender on the state insures that the clients' needs will come off second best. In this version of the case against public defenders, it is assumed that the private attorney, who is not dependent on the state, will place the highest priority on the interests of the client. This argument has not been applied to court appointed attorneys because their state employment is somewhat temporary. However, in the actual operation of court appointed systems, appointments can be limited to very few attorneys and may be looked upon as a political sinecure. There is certainly no guarantee that court appointed attorneys might not feel the same pressures as a public defender.

A second type of argument against public defenders is concerned with the size of the public defender's caseload (Stewart, 1948; Smith, 1970:31). The idea is that prior to the existence of public defenders, criminal cases were handled by a relatively large number of private and court appointed attorneys, most of whom combined their limited practice in criminal law with a large civil law practice. The substantial number of indigent defendants were represented by these same attorneys through some form of the rotating, court appointed attorney system. But, with the advent of public defenders, the large numbers of indigent cases were concentrated in the caseloads of a very few public attorneys within any jurisdiction. Under this condition, it is assumed that the public defender cannot possibly give each case the individual attention it received under the old system. Instead of the provocative challenge of the occasional criminal case, the caseload of the public defender is so large that cases tend to be treated bureaucratically--sorted, categorized, and approached in the routine ways described by Sudnow (1965) and Mather (1974). Because individual attention is assumed to be superior to mass processing, it is concluded that the clients of

public defenders are at a disadvantage.

A third argument against public defenders was raised earlier in this discussion by Swigert and Farrell (1977). If it is true that stereotypes of criminals tend to influence court procedure, and if it is true that these criminal stereotypes tend to be associated with those who are lower class, then it would seem reasonable to conclude that the presence of a publicly appointed defense counsel confirms in the minds of the people of the court that the defendant is lower class and likely to fit the stereotype. In effect, the defendant is labelled by the members of the court via the symbolic presence of the public attorney, and this labelling tends to justify the presumption of guilt. Obviously, this criticism applies to both public defenders and court appointed attorneys.

Together these criticisms dominate the literature, courtroom gossip, and the private views of many attorneys (c.f., Rosett and Cressey, 1976:203-204; Johnson and Hood, Jr., 1974:30). However, the most serious problem may be that these views dominate the thoughts of the defendants. In 1970-71, Jonathan Casper (1971) conducted in-depth interviews with seventy-two Connecticut defendants, two-thirds of whom had been represented by public defenders. Aside from the fact that the public defender clients reported that their lawyers spent little time with them, the principal criticisms seem to arise from the public defenders' state employment. This employment condition creates what clients perceive as an alliance with the prosecutor, resulting in hasty plea-bargaining that serves the interests of the public defenders more than the interests of the clients. By cooperating, the public defenders are seen as improving their own chances of becoming prosecutors or judges, what their clients perceive as main career objectives. In that sense,

the public defenders have little to gain by fighting hard for their clients. By contrast, private attorneys are seen as having to fight hard for their clients because they operate in a very competitive marketplace.

It is interesting to note that the outcome of the client's case did not appear to affect the client's perception of the public defender for Casper's sample: Those clients who received case dismissals, probation, or relatively light sentences did not credit the public defender for their "success"; rather, they continued to be critical of their counsel (Casper, 1971:8).

This study raises a serious question about the efficacy of the public defender system: for if public defender clients do feel that the legal counsel they receive is inferior, it is unlikely that they will gain respect for legal processes from their experiences in court.

Are Private Attorneys Better?

It may be that the critics are very wrong about public defense services. Errors of analysis appear to rest in both the implicit assumptions made about private criminal law practice--which is the subject of this section--and in the conclusions drawn about the effectiveness of public defense services--which will be discussed in a later section.

The view that currently dominates the criminal justice literature does not assume that public defense counsel is inferior to private counsel. Rather, both types of counsel are seen as caught up in the bureaucratic enterprise of the court system in such a way as to diminish the traditional adversary role of all types of defense counsel. Faced with overwhelming and substantially increasing caseloads, the criminal court system has evolved from a "due process" model--which

resembled a "legalistic obstacle course to serve the needs and rights of individual defendants" (Blumberg, 1967:7)--to a "crime control" model designed to process excessively large caseloads within the limits of scarce resources through "bureaucratically ordained shortcuts" (Blumberg, 1967:xi; see also Packer, 1964). In this crime control model, believed to be most descriptive of the current court system, the behavior of court personnel is characterized as reflecting institutionalized procedures for meeting "production norms" and solving the problems created by the contradictions between these norms of efficiency and the legal tradition of the adversary hearing by redefining the meaning and practice attached to the concepts of due process. The men and women of the court behave the way they do because they are bound into a system which demands and rewards cooperative behavior, thereby speeding up the processing of cases. If court personnel lack "judicious qualities of mind" (Tappan, 1960:343), leading them to place a higher priority on efficient administration than on traditional concepts of due process, it is because qualities of adversariness have become inconsistent with the institutionalized goals and procedures of the organization.

Private attorneys are no less immune to these pressures for efficiency than public defense counsel:

Most private defense attorneys...operate on a theory of defense similar to that of the public defender, and bargain as willingly as he. This theory presupposes the guilt of the client, as a general matter, and the fact that pleas of guilty are so common tends to reinforce the presumption of guilt throughout the system. It is a theory that stresses administrative regularity over challenge, and emphasizes decisions most likely to maximize gain and minimize loss in the negatively valued commodity of penal time. (Skolnick, in Cole, 1972:259-260)

In other words, both public defense counsel and private attorneys

tend to feel that it is to the client's advantage to admit guilt. This strategy is believed to be the most effective way to reduce the weight of the sentence, given the limited resources of the criminal justice system.

The descriptive literature on the criminal courts tends to support this point of view. Defense counsel in general take very few cases to trial, for trials overtax the limited resources of the court. Nationally, fewer than 20% of all cases are resolved by jury trial (Ruth, Jr., in Rossett and Cressey, 1976:xi; Skolnick, in Cole, 1972:251-252; Jones, 1965:2). Defense counsel of all kinds tend to encourage guilty pleas: Nationally, guilty pleas account for over 80% of all cases processed through to conviction (Tappan, 1960:364; Blumberg, 1967:28, 31-32, 50; Rosett and Cressey, 1976:xi). Finally, it is likely that defense counsel of all kinds tend to accept the version of events in each case as they are promulgated by the police and the prosecutor (Chambliss and Seidman, 1971:408-409; Mayer, 1967:181-182; Wells, 1970:155-160).

The obvious conclusion is that there are overriding bureaucratic pressures in the criminal courts which minimize differences among different types of defense counsel. Is there, then, any truth to those traditional criticisms of public defense counsel that we reviewed earlier?

Consider the argument about the public defenders' state employment and the private attorneys' relative independence from the state. That distinction is probably meaningless in light of both kinds of counsel's mutual dependence on the good will of the court, and, if Skolnick is to be believed (in Cole, 1972), that difference does not produce distinctions among types of defense counsel in terms of behavior in court.

Furthermore, it does not seem reasonable to assume that the public

defender's career objectives are any different from those of private attorneys or court appointed attorneys, as it was assumed by the defendants interviewed by Casper (1971). In the absence of evidence to the contrary, it seems just as reasonable to conclude that many private attorneys also aspire to be judges and prosecutors. In fact, the public service part of most defender's careers tends to be somewhat transitory, and public defender's careers tend to follow a variety of paths when they leave governmental service (Platt and Pollock, 1974).

Another criticism--that the public defender's characteristically large caseload forces routinization, while the private attorney's smaller number of cases allows for individual attention--also seems to distort the real-life situation of private attorney-client relationships. While it is obvious that the clients of private attorneys are not indigent, it is likely that most do not have substantial funds to invest in their defense (with the possible exceptions of some white collar criminals and some highly successful professional criminals; see Rhodes, 1977:114-115). As a result, the typical private attorney who devotes much of his or her practice to criminal law must do a volume business to compensate for the small fee their clients can afford (Cole, in Cole, 1972:178-179). Criminal cases seldom offer the promise of a sizable remuneration, unlike most civil cases. Furthermore, because many private attorneys charge a set fee for a criminal case, or because they must charge extra for the additional work necessary for trials, it would seem to be in the private attorney's best financial interests, given the limited resources of the typical client, to resolve cases speedily.

Given the pressures for a volume business, it is not surprising that trials are rare for private criminal lawyers. The findings of a major survey of private criminal lawyers concluded that "...over half...

practically never take a case to trial court. The stereotype of the criminal trial lawyer applies to less than a fourth who practice in this field" (Wood, 1956:54; for a more current discussion, see Wood, 1967, and Hoffman, 1974:38-39).

Admittedly, private attorneys do not seem to represent the same proportion of criminal cases as public defenders. It is a generally recognized axiom in the empirical literature that public defenders often have a larger volume of criminal cases than all private attorneys together--and certainly more than any single private attorney--in many jurisdictions (Fernsler, 1974; Skolnick, in Cole, 1972:261; Rhodes, 1977:115). However, most private criminal lawyers must combine a large volume of both low paying criminal and civil cases to earn a relatively modest living (Wood, 1956; 1967). It is the pressure of caseload in general which restricts the amount of attention private attorneys can give to any single criminal case.

The fact that public defenders' caseloads consist of a larger proportion of criminal cases may be a substantial advantage for the public defender. For one thing, the public defender gains more experience and possibly more knowledge of the criminal law because of this concentration. In addition, because of the sheer volume of the public defenders' business before the criminal court, the public defender has considerably more potential to disrupt the smooth flow of cases in court by insisting on jury trials. As Skolnick has stated, "...the public defender...ultimately enjoys a greater capacity to frustrate, precisely because he controls so many cases..." (in Cole, 1972:261). Of course, this power is seldom utilized in fact because the public defender also faces substantial administrative demands for case processing. However, the potential advantage is always present.

The argument that defendants are labelled because of the presence of public defense counsel (Swigert and Farrell, 1977) is not so easily resolved. It raises a thorny theoretical issue. If we presume that the public defender's clients do plead guilty more often and receive more severe sentences, is that difference due to labelling or due to the actual characteristics of the public defender's clients? Rhodes appears to believe that the latter may be the case (1977:114):

While it may be true that a public defender is more apt to plead his clients guilty than are retained counselors, this is probably explained by the fact that a public defender's client is either a repeated offender or an obvious offender. High-visibility crimes seem to be a functional aspect of poverty, and the public defender represents indigent clients exclusively.

Clearly any resolution of this argument depends on empirical investigation. While Swigert and Farrell appear to be convinced that their evidence justifies the conclusion that such labelling devices produce differences in the effectiveness of different types of counsel, we shall see in the next section that there is considerable evidence to the contrary.*

Statistical Evaluations of Defense Counsel

For the most part, statistical studies that have made systematic comparisons of public defense counsel and private attorneys have not attempted to develop elaborate scenarios for testing propositions developed from the issues we have discussed. Rather, they have tended to ask the more fundamental exploratory question of whether an examination of criminal cases reveals any consistent differences that might be attributable to type of attorney. There is good reason for this, for if no discernible differences appear, then further testing

*Curiously, that evidence is not cited by Swigert and Farrell.

of theoretical arguments that do predict differences would most likely be unproductive.

At the same time, the search for differences has been guided by two basic questions which emerge from arguments about the quality of public defense services: (1) Do public defenders plead more clients guilty than private attorneys? (2) Do the clients of public defenders tend to receive harsher penalties than the clients of private attorneys? (For a more complete list of questions, see Smith, 1970:35.) These questions are usually addressed to data compiled from criminal court proceedings on misdemeanor and/or felony cases for specific court jurisdictions. To weed out effects that might be attributable to sources other than type of attorney, the studies attempt to compare cases that are as alike as possible (within the limits of the data) with respect to the type of offense and characteristics of the defendants.

The findings of these studies have been surprisingly consistent. Before control variables are introduced, it does appear that more of the public defender's cases are resolved through pleas of guilty; fewer clients of public defenders have the charges against them dismissed or are acquitted than is the case for clients of private attorneys (Silverstein, 1972:56-57, 71; Smith, 1970:53; Rhodes, 1977:166; Fernsler, 1974:6, 16). Again, before controls are introduced, clients of public defenders appear to receive more severe sentences than clients of private attorneys (Smith, 1970:58, 77-78; Lehtinen and Smith, 1974:16; Silverstein, 1972:53-54; Fernsler, 1974:23, 30, 32). While these findings are interesting, the most significant results occur when controls are introduced.* There are two key control variables. One

*Logically, controlling means that cases are categorized in such a way that comparisons are made on cases which are alike in all possible

is type of offense: the clients of public defenders are more likely to be accused of the more serious felonies (Fernsler, 1974:6, 32) and property crimes (Smith, 1970:44; Smith and Wendall, 1968:14), while private attorneys are more likely to represent clients accused of misdemeanors and violent crimes (Fernsler, 1974:6, 32; Smith, 1970:4; Smith and Wendall, 1968:14). Another key control variable is the prior record of the defendant: a much larger proportion of the clients of public defenders seem to have prior criminal records (Fernsler, 1974:7-8; Smith and Wendall, 1968:14; Smith, 1970:53).

When introducing these control variables, most observers have focused on what appears to be the most crucial test of the defense attorney's effectiveness: the sentence received by the convicted defendant. This emphasis reflects the fact that the overwhelming majority of cases result in convictions by way of guilty pleas; therefore, the sentence is likely to be the most crucial concern of the client. Also, the studies assume that if there are differences by type of attorney, they would most likely show up in the sentences received by clients; sentencing is the "acid test" of the effectiveness of defense counsel. (These reasons are discussed in more detail in Smith, 1970:72-73).

When the nature of the offense and the prior record of the client are held constant, most of the differences in sentences received by clients of different types of defense counsel are reduced substantially. The slight differences which persist indicate that clients of public defenders tend, on the average, to receive at most a few more months of incarceration or probation (Smith and Wendall, 1968:14; Lehtinen and

respects except for type of defense counsel. By holding all of these other variables "constant" their effect is nullified. The variations in judicial processing that are then observed are assumed to be attributable to type of attorney.

Smith, 1974:14-16; Smith, 1970:79-81; Fernsler, 1974:29-33).

These small differences which persist may very well be attributable to other factors which are difficult to introduce as controls because they are not easy to measure, such as the characteristics of the particular crime or the strength of the evidence. This information is not reflected in general statistical categories like "type of offense." For example, Silverstein (1972:53) has suggested that "...poor people may be less skillful at committing crime and therefore more likely to be caught in open and shut cases." Similarly, Rhodes (1977:114-115) argues that indigents may be more likely to commit high visibility crime. These contentions are clearly debatable, but it must be emphasized that they represent only a minor issue. The major conclusion is that differences in sentences received by clients are too small to provide any basis for the contention that public defense counsel are any less effective than privately retained counsel (Lehtinen and Smith, 1974:16; Smith, 1970:81; Fernsler, 1974:33; Rhodes, 1977:115-116).

Conclusion

Defense lawyers exercise their options for a given case within an atmosphere of expectations present in their local criminal justice system. Currently, that atmosphere seems to be one in which the overwhelming majority of cases are resolved by pleas of guilty, with few cases going to trial (Silverstein, 1965; Smith, 1970; Blumberg, 1967; Skolnick, 1966). Given this general situation, it is not too surprising that comparisons of private attorneys and public defenders produce few dramatic differences. Nor is it surprising that what differences do exist are more attributable to type of client than to type of attorney. Given that the crowded calendars of the criminal courts

create pressures for the adoption of bureaucratic procedures to resolve cases speedily, it might be expected that the classification system which emerges for routinizing the dispensation of justice depends heavily on the type of offense and the prior record of the defendant. Since these characteristics of clients seem to be of such substantial importance in determining the outcome, there may be relatively few strategic options open to the defense attorney--public or private--which would significantly alter what happens to defendants.

From prior research comparing the effectiveness of attorneys, it would appear that the most reasonable conclusion is to assume that (1) when they are defending similar types of clients, public defenders and private attorneys tend to confront the system in similar ways, and (2) the few differences which do exist are of little consequence in terms of the comparative effectiveness of different types of attorneys.

However, any final conclusions about the effectiveness of public defense counsel cannot yet be reached. Most systematic studies in the past have been conducted in urban counties with large staffs of public defenders. I know of no study that has included data from an entire state, especially a state as unique as Montana. The nature of the data for this study and the unique contribution that can be made by this research are the subjects of the next chapter.

CHAPTER III:

DESCRIPTION OF THE DATA AND STRATEGIES FOR ANALYSIS

Description of the Data

The raw data for this study were collected by the Criminal Justice Data Center of the Montana Board of Crime Control. Since 1974 the Data Center has sent forms to the clerks of the district courts; when a criminal case is disposed of, the clerks fill out one of the forms and return it to the Data Center for analysis.* The data pool for this study includes all of the forms submitted by the clerks for criminal cases completed in the district courts during the time period July 1974 to July 1976.

Ideally, the data should include every criminal case processed by the courts during the time period. Unfortunately, that is not true. Some forms were incomplete or ambiguous and had to be considered missing data. Also, no forms were submitted by clerks in a few of the smallest rural districts in the State. Although that may mean that no criminal cases were processed there during the time period, it is more likely that the clerks did not complete and return the forms. These weaknesses of the data suggest that one ought not to draw very fine distinctions in reaching conclusions from the data; accordingly, my emphasis will be

* A sample form is included in the Appendix to this dissertation. Up to now, the forms have been hand-tabulated for statistical analysis by the Data Center staff. In exchange for access to the data for this study, I agreed to share with the Data Center information on the methods used in this dissertation for computerized analysis. I also agreed to share my findings with the Data Center.

on clearly discernible patterns emerging from the data analysis.

However incomplete the data might be, the data pool does seem to provide a reasonably accurate approximation of the real activities of the criminal courts in Montana. Comparisons between the data of this study and data presented in a study of the Montana district courts for the year 1972 (Supreme Court, 1974:14-18) show strong similarities. For example, the distribution of cases by type of offense is very similar for the two studies (Table III-1). The minor discrepancies may be attributed to changes in the kinds of crimes committed during the two time periods, differences in the exercise of discretion by prosecutors in taking cases before the district courts, and differences in collecting and reporting on the data. Given all the possible sources of differences, the strong similarities suggest that we may be relatively confident that the data reported on here do reflect the real activities in the district courts in Montana.

If there are minor weaknesses in the data for this study, there is also a great strength: There is information for an entire state.^{*} To my knowledge, all prior research has been limited to the confines of single counties or cities (e.g., Los Angeles County, Erie County, Denver, etc; see Rhodes, 1977:115-117). Because the various counties differ greatly in terms of criminal codes and legal procedures, this

* Admittedly, Montana is a somewhat unusual State. Because it is predominantly rural, has few cities of any substantial size, and has a very low population density, it is doubtful that the findings from this study can be generalized to many other states. However, the stark contrast between Montana and the sites of most prior research is more a strength than a weakness of this study. While research in comparable areas is important, it can also be redundant. The study of an extreme case like Montana may either greatly strengthen our confidence in generalizations from other studies, or it may generate serious doubts about our knowledge of the performance of public defense counsel in diverse geographical areas.

TABLE III-1

DISTRIBUTION OF CASES BY OFFENSE TYPE FOR MONTANA
SUPREME COURT STUDY AND CURRENT STUDY

<u>Type of Offense</u>	<u>Study of Court Activities</u>	
	<u>Supreme Court Study (%)</u> *	<u>Current Study (%)</u>
Dangerous Drugs	24	33
Burglary	16	21
Theft	12	16
Assault	9	5
Checks and Forgery	10	5
Robbery	4	4
Unclassified	25	17
Total (N)	100 (1829)	100 (1523)

* Statistics for the Supreme Court Study are for the year 1972 (Supreme Court, 1974:17-18).

limitation means, in effect, that one can only be uncertain about the generalizability of the findings to any other counties or districts within a state, or to the state as a whole. (For a more detailed discussion of problems of comparability, see Eisenstein and Jacob, 1974.) In addition, it is difficult to subdivide counties or cities into meaningful units of analysis for purposes of comparisons since the same judges, prosecutors and defense counsel preside over all the legal activities of the area. Because the data for this study cover an entire State, it is possible to subdivide the State into various units of analysis, such as districts or counties, all of which operate under the same criminal codes and approximately the same legal procedures but with different judges, prosecutors and defense counsel. The data for this study offer possibilities for comparisons that do not exist when studies are confined to single counties or cities. As we shall see, I have taken advantage of this quality of the data by differentiating between predominantly rural and urban courts and then introducing the rural-urban dimension as a control variable.* However, before examining the control variables, I will first discuss the independent and dependent variables and the proposed analysis of the zero-order relationships.

The Independent and Dependent Variables

The principal objective of this study is to determine whether the differential treatment of defendants by the criminal justice system

*When I began this research, I expected to compare individual districts. An analysis of the data soon revealed that, even with over 1500 cases, N's were too small in most districts to carry out that analysis with any credibility. However, the classification of districts as urban and rural should not be viewed as a salvage operation. It should be of greater interest to sociologists and for that reason should allow me to make more of a contribution in this dissertation than would have been possible if I had pursued analysis by individual districts.

is dependent upon the type of defense counsel representing the defendants in court. In other words, the key independent variable throughout the analysis will be the type of defense attorney. There are basically three types of defense counsel for criminal cases in Montana: (1) privately retained attorneys whose services are purchased privately by the defendant; (2) public defenders who are retained by the county government for a specified period of time to represent all indigent defendants who request the services of an attorney^{*}; and (3) court appointed attorneys who are usually appointed by the court from a pool of available attorneys to represent defendants on a per case basis. Occasionally defendants waive the services of an attorney and have no counsel, but such cases are rare (less than 3% of the defendants in this study had no counsel of record). Therefore, the basic categories of defense counsel that are of concern in this study include privately retained attorneys and the two types of public defense counsel--public defenders and court appointed attorneys--whose services are paid for out of public, governmental funds.

To examine the treatment of defendants, the analysis will focus on two dependent variables which summarize in broad terms the fate of the defendants. The first dependent variable is the type of outcome of a case. Usually a case will result in either a conviction or a dismissal of all charges; because trials are relatively rare (as we shall see), the third type of outcome, acquittal on all charges, will not be of much importance.

The second dependent variable is concerned with the sentences

* In Montana, public defenders are very similar to court appointed attorneys in that most (if not all) combine their public defender activities with a private practice.

received by those defendants who are convicted. Sentences will be examined in three ways: (1) the type of sentence, which refers to the alternatives of probation (deferred or suspended sentence), confinement in the county jail, or confinement in the state prison; (2) the length of the sentence, defined by the number of months of probation or confinement that the court stipulates in handing down the sentence; and (3) an ordinal scale of sentence weight which purports to measure the severity of the sentence by taking into account both the type of sentence and the length of the sentence.*

The Zero-Order Relationships

How does the independent variable relate to the dependent variables? The assumption in this study is that differences in the quality of the defense should effect both the outcomes of cases and the nature of sentences passed down to convicted defendants. If the treatment of defendants really depends on the type of defense counsel, the findings should clearly show that outcomes and sentences are much different for the different types of defense counsel.

Prior research suggests that clients of public defenders and court appointed attorneys fare much worse than clients of private attorneys, but that differences disappear when comparisons take into account characteristics of cases like the socioeconomic status of clients, the offense involved, and the prior record of the client. On the basis of

*This ordinal scale was developed by Smith (1970) and modified by Fernsler (1974) for sentencing practices in Montana. The weighting system for the scale can be found in the Appendix. Because the weighting procedures assume that types of sentences can be ranked in terms of severity, the weight scores must be interpreted cautiously. However, the scale does have pragmatic utility in that it provides a convenient summary of the effects of defense counsel on sentences when type of sentence and length of sentence are taken into account simultaneously.

this research, one might predict that substantial differences will appear in the zero-order relationships. However, because this prior research has been carried out in areas which are quite different from Montana, and because prior studies have not included as many diverse judicial districts as are present in the data in this study, it does not appear that prior research provides an adequate basis for making directional predictions.

Therefore, it would seem most appropriate to focus the analysis on a rather general question. The principal question for the zero-order relationships can be stated as follows:

Are there any differences in terms of case outcomes or sentences received by convicted defendants when comparisons are made among criminal cases defended by types of public counsel and those cases defended by privately retained counsel?

Because of the exploratory nature of this study, this question should be an adequate guide to the analysis. However, the question should not be construed as strictly statistical in nature. The data analysis will utilize percentage differences and measures of association to evaluate the relationships, but there are no strict guidelines for accepting or rejecting statistical hypotheses in this study.

In one sense, this "open-ended" approach has an advantage over strict statistical hypothesis testing for this study. One must keep in mind that the data reflect the real life fate of defendants who come before the bar. Differences of a year or two in prison sentences might not produce statistical significance but have great real-life significance for the defendants. Throughout the analysis of the data, both the statistical and the human consequences of the findings must be evaluated.

The First Control Variable: The Rural-Urban Distinction

While in this study any number of comparisons are possible among

judicial units, they are not all equal. The purposes of this study will best be served if the units of analysis correspond to a meaningful sociological distinction. It has long been axiomatic in criminology that the nature of offenders, patterns of criminal behavior, and such court-related matters as conviction rates, are different in rural and urban environments (c.f., Clinard, 1942 and 1944; Sutherland and Cressey, 1970). In the absence of evidence on this point, we are free to speculate that urban-rural differences effect the nature of court communities in important ways. (For more on the variation among court communities, see Eisenstein and Jacob, 1977.) Perhaps the members of rural courts have a more personal knowledge of each other and of the defendants who enter their domain. Perhaps they are a more tightly knit community, predisposed toward a less formal and more personal, individualized sort of justice. Perhaps the rural court differs in ways which have a substantial effect on the performance of different kinds of defense counsel.

In order to evaluate the performance of different types of defense counsel in rural and urban areas, judicial districts were classified in terms of their ranks on five criterion variables.* Two of these, population density and the size of the population in each district's largest city, were measures of the district's degree of urbanization. The remaining three--population per judge, caseload per judge, and per capita court expenditures--combined population and court-related characteristics. When the ranks on each criterion variable were compared they turned out to be highly correlated; the five variables

*The information for each of the criterion variables (as well as the map which appears in Figure 1) was taken from the study, "Montana's District Courts", prepared for the State Legislature Subcommittee on Judiciary, December 1976:16-28. Copies of the report are available from the Montana Legislative Council, State Capitol, Helena, Montana, 59601.

appear to form a reasonably adequate scale of degree of urbanization among judicial districts (Table. III-2).

The pattern which emerged is illustrated in Table III-3. Those districts considered urban tended to form a cluster well above the median, the rural districts clustered well below the median, and the districts I have chosen to call "mid-range" hovered around the mid-point of the ranks on each criterion variable. The differences among the types of districts become clearly apparent when mean averages are calculated for each criterion variable (Table III-4). Population density, the size of the largest city, the population per judge, and the caseload per judge all decreased as the urbanization of the district decreased. Not surprisingly, the costs per capita for maintaining the district's courts was greater in the more rural districts, since the costs of the same perfunctory investment must be shared by a smaller number of people. The net result of the classification process is illustrated in Figure III-1.

Throughout the remainder of this study, all references to "types of judicial districts" will refer to those districts as they are designated in Figure III-1. The urban include districts 2, 4, 8, 13, and 18; the mid-range include districts 1, 3, 11, and 12; the rural include all the remaining districts.

Additional Control Variables

Prior research suggests that a wide variety of independent variables might effect the basic relationships between type of attorney and the dependent variables in this study. In order to account for the effects of some of these variables, the following variables will be introduced as control variables in the multivariate analysis of the data.

TABLE III-2

MATRIX OF CORRELATIONS* AMONG RANKS OF JUDICIAL
DISTRICTS ON FIVE CRITERION VARIABLES

Variable	Variable				
	Population Density	Size of Largest City	Population per Judge	N of cases Per Judge	Per Capita Court Expen- ditures
Population Density76	.71	.79	.70
Size of Lar- gest City	59	.79	.67
Population per Judge		87	.81
N of Cases per Judge			68

*The correlation coefficient is Spearman's ρ ; the formula and a discussion of ρ may be found in Nie, et. al., 1975:277, 289.

TABLE III-3

RANGE OF RANKS ON FIVE CRITERION VARIABLES FOR
TYPES OF JUDICIAL DISTRICTS

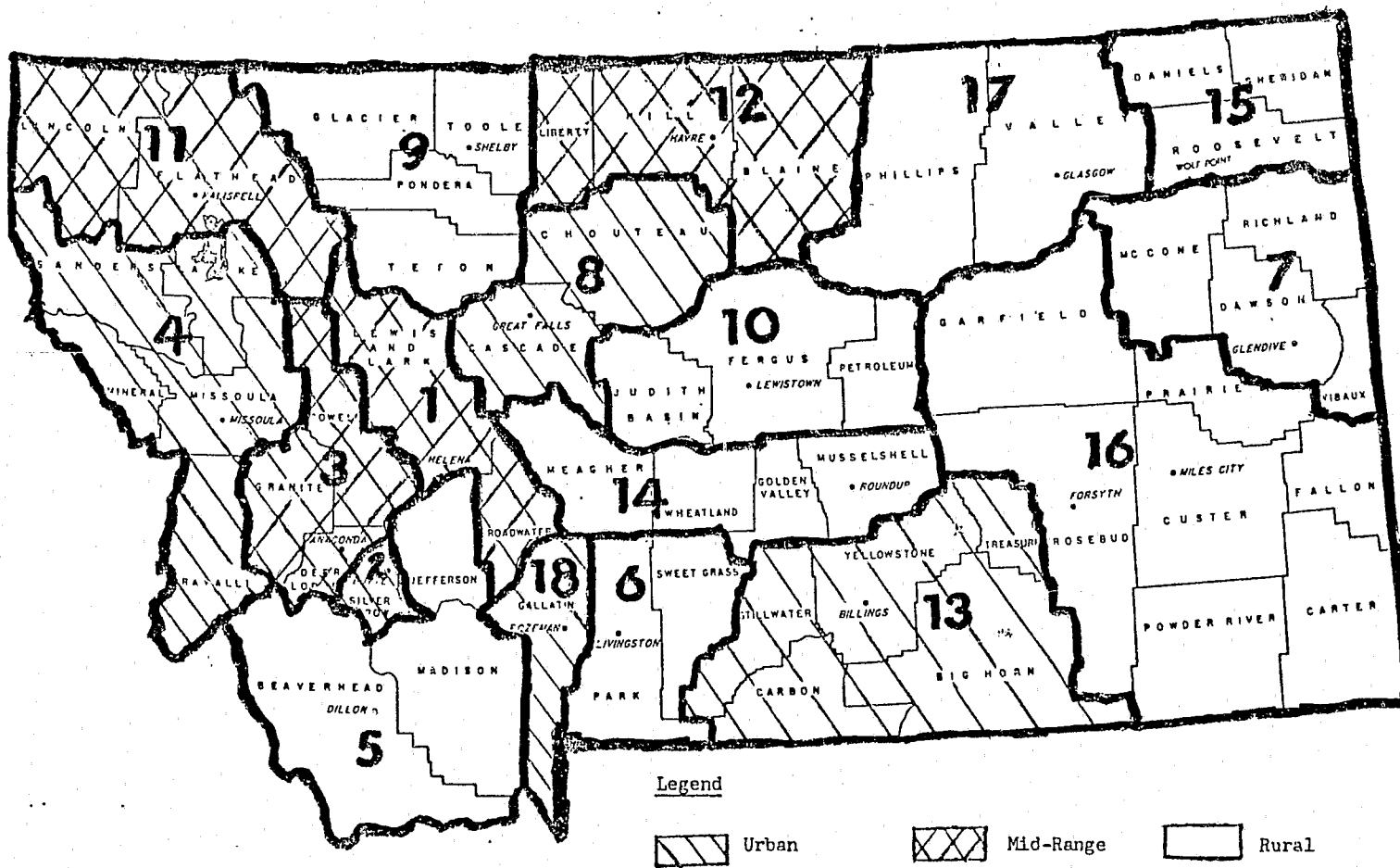
Type of District	District Number	Ranks	
		Low Rank	High Rank
Urban	2	9	16
	4	15	16
	8	15	17
	13	16	17
	18	14	16
	Mid-Range	1	8	13
	3	10	11
	11	12	13
	12	9	12
Rural	5	3	5
	6	4	8
	7	7	10
	9	6	10
	10	5	6
	14	1	2
	15	6	8
	16	3	5
	17	4	5

TABLE III-4

AVERAGES (MEANS) OF FIVE CRITERION VARIABLES
FOR TYPES OF JUDICIAL DISTRICTS

<u>Type of District</u>	<u>Criterion Variable</u>				
	<u>Population Density (per sq. mi.)</u>	<u>Size of Largest City</u>	<u>Population Per Judge</u>	<u>N of Cases Per Judge</u>	<u>Per Capita Court Expen- ditures (\$)</u>
Urban	20.6	41,460	30,400	943.6	2.59
Mid-Range	5.6	10,920	24,525	758.5	3.27
Rural	2.4	5,122	18,222	396.1	4.29

Figure III-1: Map of Montana's Judicial Districts
 Classified by Degree of Urbanization



Prior research indicates that the type of offense is certainly related to the nature of the sentence received by convicted defendants. Although case outcomes have been examined less systematically in prior research, it seems reasonable to suppose that the proportions of case convictions and dismissals also depend on the type of offense. The type of offense will be measured in two ways in this study: (1) there is the type of charge, which refers to the distinction between the less serious misdemeanors and the more serious felonies; and (2) the specific offense, which refers to the defendant's alleged violation of a specific category of the criminal code. Not surprisingly, these two measures are highly correlated (Cramer's $V=.70$) in the data for this study. To avoid problems of multicollinearity in the multivariate analysis of the data, the two measures will not be introduced as simultaneous control variables. Instead, the specific offense will be examined for felonies and misdemeanors separately in the analysis.

Another important control variable is the bail status of the defendant. One study in Denver, Colorado has suggested that clients of privately retained counsel are usually employed, more likely to be perceived by the court as good risks, more likely to be released on bail, and less likely to be convicted. The opposite characteristics appear to apply to public defender clients (Rhodes, 1977:116-117). Accordingly, bail status will be taken into account as a control variable in this study. It is defined as a simple dichotomy: either the defendant is released or not released pending the outcome of the case.

Another variable which will be introduced as a control concerns the number of charges against the defendant. Although this variable has not been considered much in prior research, it seems reasonable to

presume that the number of charges may effect both the case outcome and the type of sentence the defendant receives if convicted. Accordingly, this variable will be introduced throughout the multivariate data analysis.

Prior Record as a Control Variable

Previous research clearly indicates that prior record has a substantial effect on the fate of the defendant (c.f., Smith, 1970; Fernsler, 1974). Information was requested on the court forms from which the data for this study was generated, but unfortunately that information went unreported.

Data on prior record had to be added, but limitations of time and money forced a compromise. First, two judicial districts were selected from each of the urban, mid-range, and rural categories. Second, from the fourteen counties which reported cases (only one county did not), a random sample of cases was generated for those large counties which reported a substantial number of cases and all the cases were included in the sample from the smaller districts. (In the data analysis, the cases from these smaller counties were weighted so that the final sample approximates a random sample from the six districts without the loss of data that would have resulted from strict random sampling.)* Third, I collected the data on prior record for the sample cases by visiting nine of the counties in the sample, and secured data from the remaining counties through the use of mailed questionnaires sent to the court clerks (the response rate was 100%). Finally, the information on prior record was added to those cases which appeared in this sample from the data pool.

*Dr. Loftsgaarden of the Mathematics Department at the University of Montana was helpful in providing advice on sampling techniques.

Because prior record can only be included as a variable for this sample of cases, it will be included in a special section at the end of the rest of the data analysis.

Data Analysis and the Control Variables

Most of the control variables involve characteristics of the defendants and their cases and can now be included in a straightforward restatement of the general question guiding this study: After taking into account differences among defendants in terms of type of offense, bail status, number of charges, and (for the sample) prior record, are there any differences in terms of case outcomes or sentences received by defendants when comparisons are made among criminal cases defended by public counsel and those cases defended by privately retained counsel? The remaining control variable is the rural-urban distinction. This variable will be included by repeating the general question for each of the types of judicial districts.

It is appropriate at this point to indicate what the reader can expect in succeeding chapters. In the next chapter I will present general descriptive information on the caseloads of the different types of counsel. The chapters which follow will (1) examine the relationships among the variables for the state-wide data and (2) examine those same relationships for the urban, mid-range, and rural judicial districts. The remaining data analysis will involve the sample of cases for which additional information was collected on the prior record of defendants. The final chapter will state the conclusions which emerge from the data.^{*}

* There is one final technical point about the data. Although a single form filled out by a court clerk may list multiple defendants, the unit of analysis in this study will be the individual defendant, and the term "case" will always refer to an individual defendant. This approach directly links the type of attorney with the fate of specific defendants,

Introduction to the Data Analysis

The analysis of the data in succeeding chapters will rely on prepared programs found in the Statistical Package for the Social Sciences (Nie, et al., 1975). When more than one control variable is introduced, multiple classification analysis (MCA) will be used to assess the relative effects of each of the independent variables (without the loss of cases that is inevitable in contingency table analysis where controls require substantial elaboration of tables). (For more information on MCA analysis, see Andrews, et al., 1973, and Nie, et al., 1975:409-410.)

Multiple classification analysis is basically a form of regression analysis utilizing dummy variables, and the data is reported in the form of mean scores for the various categories of an independent variable before and after those mean scores are adjusted for the effects of a set of control variables. Of course, this preceding statement may not mean much to readers who are not trained in statistical techniques in the social sciences. For the sake of those readers, the brief guide to the interpretation of MCA tables which follows may be helpful.

A Hypothetical Example of MCA Analysis

Suppose a researcher suspects that there are substantial differences by race in terms of weekly wages. The researcher might simply calculate the mean average weekly wages for whites and non-whites and report those. However, one might suspect that a number of factors effect this relationship and that one should introduce controls for those other factors. For the sake of simplicity, let us focus on one control variable, sex,

and places the focus on a social unit rather than some legal unit like a "filing". This would seem more satisfactory than would follow from the confusion of sometimes having "cases" refer to single defendants and sometimes multiple defendants. (For more on these points, see the discussion in Eisenstein and Jacob, 1974:715-718.)

perhaps because we suspect that sex is important in determining wages and that there may be differences in the distribution of men and women in the white and non-white categories of the work force. We might submit the data on wages, race and sex and find that the final results take the form illustrated in the hypothetical MCA Table III-5.

To interpret Table III-5, the researcher might first examine the unadjusted means for the racial categories. These means are "unadjusted" in the sense that they are calculated in the usual straightforward manner for the means of categories and do not include in the computations any information on any other variables, or to be specific about the example, do not include any information on the sexual distribution. One finds in the example that indeed whites do have much higher average weekly wages (\$110) than non-whites (\$60).

But what about the possible effects of sexual differences in the two racial categories? One way to statistically control for the effects of sex is to eliminate the differences between the racial categories by statistically giving each category the same proportions of males and females. In other words, one can standardize or adjust the means to take into account the differences in the sexual distribution by race. These standardized scores are reported in Table III-5 as the adjusted means for the racial categories. By examining the adjusted means and comparing them with the unadjusted means, the researcher can determine the degree to which sex (the control variable) effects the relationship between race (the independent variable) and average weekly wages (the dependent variable).

In the hypothetical example, the difference in the adjusted means is less (\$30) than the difference for the unadjusted means (\$50).*

*In usual practice, the unadjusted and adjusted scores are reported

TABLE III-5*

EFFECTS OF RACE AND SEX ON AVERAGE WEEKLY
WAGES RECEIVED BY EMPLOYEES

<u>Variables</u>	<u>Average Weekly Wages (in dollars)</u>	
	<u>Unadjusted</u>	<u>Adjusted</u>
	(grand X=100)	
<u>Race</u>		
White	110	106
Non-White	60	76
	eta=.63	beta=.38
<u>Sex</u>		
Male	112	108
Female	82	88
	eta=.47	beta=.31
	$R^2=.42$	

* This hypothetical table is adapted from Nie, et. al., 1975:410.

The researcher could appropriately conclude that (1) there is a substantial difference in average wages by race, (2) part of the difference is due to the relationship between the sex and race of employees (apparently there are more non-white women than white women in the sample data), but that (3) a substantial difference by race remains even after the effects of sex are taken into account.

The interpretation of the adjusted scores might be clearer if one imagines a more dramatic possible result. Suppose the adjusted means had been equal, say \$100 for both whites and non-whites. In this case the researcher could conclude that the perceived difference by race in the unadjusted scores was not really due to race at all but to differences by sex in the racial categories--a classic example of a spurious relationship. Of course, there are numerous possible results which could have emerged in the data other than those examples I have cited here. However, these examples should provide enough assistance to permit most readers to understand the most important findings to be presented in this dissertation.

The MCA table also provides the researcher with correlation coefficients to assist the interpretation of the data. Eta (which will be familiar to users of the analysis of variance technique on which MCA is based) may be squared and interpreted as a proportional reduction of error measure. In the hypothetical data in Table III-5 for example, the eta of .63 can be interpreted to mean that approximately 40 per cent of the variation in weekly wages can be explained by racial differences

as deviations from the grand mean in MCA tables. (The grand mean in the hypothetical example is the average weekly wage for everyone in the sample regardless of race or sex.) To increase the readability of the MCA tables in this dissertation, I have taken the extra step of calculating the actual scores by adding or subtracting the deviations from the grand mean.

alone. However, Andrews et. al. (1973) have suggested that the adjusted correlation coefficients, or betas, cannot be interpreted in this manner because specific beta scores are somewhat unreliable due to computational factors. On the other hand, the relative size of the beta's for the different variables is stable enough to permit rank order comparisons.

For example, the researcher can examine the etas in Table III-5 and see that the eta for race (.63) is much larger than that for sex (.47), and that the beta scores show the same rank order. An appropriate interpretation is that race remains the most significant variable in explaining average weekly wages even after the control for sex is introduced because the rank order of the variables does not change.*

The MCA table also provides a multiple R^2 which will be reported in the data in this dissertation. However, since the R^2 in MCA analysis is not directly comparable to the R^2 in regression analysis and therefore has no clear interpretation, the R^2 's will not be relied on to reach conclusions from the data.

Summary

The procedure for interpretation of the data in this dissertation can now be summarized. First, I will compare the unadjusted scores focusing on differences by type of defense counsel. Second, I will compare the unadjusted scores with the adjusted scores to see if differences by type of defense counsel increase, decrease, or remain the

* Recent evidence suggests that beta squared is actually directly analogous to eta squared and can also be interpreted as a proportional reduction of error measure. This information appeared too late to be a factor in this dissertation and the validity of this interpretation may still be open to speculation. The interested reader should consult the discussion in the article by Walter Gove and Michael Hughes, "Possible Causes of the Apparent Sex Differences in Physical Health: An Empirical Investigation," in the American Sociological Review 1979, volume 44 (February): 126-146. See especially pages 135-136.

same when the control variables are introduced. Finally, I will compare the rank order of the η 's and β 's to assess the relative importance of type of attorney in determining the fate of defendants. This procedure should permit conclusions about whether type of defense counsel is important or unimportant in determining case outcomes and sentences received by defendants, and also how important type of defense counsel is in comparison to the type of offense, the bail status, the number of charges, and the prior record of defendants.

CHAPTER IV:

THE CASELOADS OF PUBLIC AND PRIVATE COUNSEL

Introduction

In this chapter there are two primary concerns. One is to provide general descriptive information on the kinds of cases defended by the different types of defense counsel. For that we will examine the relationships among type of attorney and the other independent variables. The second concern is a more technical one: the problem of multicollinearity. Because much of the ensuing data analysis will be multivariate in form, it is essential to know whether any of the independent variables are so strongly interrelated that they might produce interaction effects which would make multivariate analysis meaningless. To determine this, we will examine the associations among all of the independent variables. For each of these two concerns, we will look first at the data for the entire state, and then at the data within types of judicial districts.

Caseloads

It is obvious from Table IV-1 that public defenders and court appointed attorneys defend most of the cases in Montana's criminal courts (66.3%)*.

*At first glance, this figure of 66.3% seems unusually high. A comparable figure from Smith's study of Los Angeles (1970:43, Table 1) would be about 60%. But because Montana is a very rural state with a relatively low per capita income, it is not surprising that indigency is greater in Montana. A comparable figure in the 1972 Montana study (Supreme Court, 1974:15) is 47%, but that percentage is based on totals which included appeals from lower courts, which were excluded from our sample. The higher percentage reported here may reflect increased activity on the part of public counsel, or it may reflect a more liberal attitude on the part of the court and public defenders in granting the services

TABLE IV-1
DISTRIBUTION OF CASES BY TYPE OF DEFENSE ATTORNEY

<u>Type of Defense Attorney</u>	<u>Caseload</u>	
	<u>Number of Cases</u>	<u>Per Cent</u>
Private	522	33.7
Public Defender	785	50.7
Court Appointed	242	15.6
<hr/> Total	<hr/> 1,549	<hr/> 100.0

Public counsel also carry a larger share of felony cases in their caseloads than private attorneys (Table IV-2), but the difference of about 10% is less than might have been expected, given the stress placed on type of charge as a control variable in prior research. However, if a charge is considered a felony rather than a misdemeanor, it may carry with it a much more severe sentence upon conviction. Therefore, even small differences among types of counsel in terms of the character of the charge can make a substantial difference in any comparisons by type of attorney.

The kind of offense with which the defendant is charged is also important (Table IV-3). Clients who can afford private counsel appear to specialize in drug offenses; nearly half (43.4%) of the private attorneys' caseloads consist of possession or sale of narcotics cases, while only about a fourth of the public defenders' (27.1%) and court appointed attorneys' (26.5%) caseloads are made up of drug cases. On the other hand, indigent defendants appear to specialize in burglary cases; the percentage of burglary cases for public counsel is more than three times that for private counsel. For other offenses, the distribution by attorney reveals no startling differences.

Not surprisingly, the clients of public counsel are less likely to secure their release pending the outcome of their case by posting a bond or by being released on their own recognizance (Table IV-4). Because of the seriousness of felony cases, a defendant is probably less likely to be released on his or her own recognizance, and has to post a substantial bond to be released. The inability of indigent clients to make bail for

of public counsel. Because there are no strict guidelines determining indigency in Montana, any figure on the per cent of indigent cases is likely to be relatively unstable.

TABLE IV-2
 TYPE OF CHARGE AT ARRAIGNMENT BY TYPE OF DEFENSE ATTORNEY

Type of Charge At Arraignment	Type of Defense Attorney		
	Private %	Public Defender %	Court Appointed %
Felony	63.3	74.4	74.4
Misdemeanor	36.7	25.6	25.6
Total	100.0	100.0	100.0
(N)	(498)	(762)	(234)
		V=.12	

TABLE IV-3
 MOST SERIOUS OFFENSE AT ARRAIGNMENT BY TYPE OF DEFENSE ATTORNEY

Offense	Type of Defense Attorney		
	Private %	Public Defender %	Court Appointed %
Possession, Drugs	34.2	22.5	20.7
Burglary	8.4	26.6	26.6
Theft and Related	16.9	15.9	16.0
Sale, Drugs	9.2	4.6	5.9
Assault and Related	6.1	5.3	8.0
Checks and Forgery	3.7	5.9	3.8
Robbery	2.2	5.1	3.8
Motor Vehicle'	2.9	3.1	3.0
Sex Offenses	3.5	2.1	4.2
Homicide	2.8	1.3	2.5
Unclassified	10.0	7.7	5.5
Total (N)	100.0 (509)	100.0 (779)	100.0 (237)
		V=.19	

TABLE IV-4
 BAIL STATUS BY ATTORNEY, CONTROLLING FOR TYPE OF
 CHARGE AT ARRAIGNMENT (PER CENTS IN CELLS)

Bail Status	Type of Charge									
	All			Felony			Misdemeanor			
	Attorney*	PA	PD	CA	PA	PD	CA	PA	PD	CA
Released		55.9	41.9	28.8	49.3	37.0	21.3	67.5	57.5	58.8
Not Released		44.1	58.1	71.2	50.7	63.0	78.7	32.5	42.5	41.2
Total		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
(N)		(438)	(668)	(177)	(268)	(479)	(136)	(154)	(167)	(34)
		V=.18			V=.19			V=.10		

*PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

felony cases is obvious from Table IV-4.

For the last of the independent variables, the number of charges at arraignment, there appear to be few differences among types of defense counsel (Table IV-5). It seems that in Montana prosecutors tend to file only one charge against the great majority of defendants, and this appears to be true for both felonies and misdemeanors.

For these data, the clients of public defenders and court appointed attorneys are more likely to be charged with felonies, and are less likely to be released on bail (especially in felony cases) than the clients of private attorneys. Clients of public counsel are more likely to be charged with the victim-related crimes of burglary, while the clients of private attorneys are more likely to be charged with the "victimless" crime of possessing drugs. Finally, all defendants tend to face only one charge when they enter court regardless of the type of defense counsel.

The Problem of Multicollinearity

When researchers engage in multivariate analysis, one problem that may be encountered involves highly intercorrelated independent variables which produce very complicated interaction effects when acting upon a dependent variable. This problem, technically called multicollinearity, is especially a problem for the technique used in this study, multiple classification analysis (Nie, et. al., 1975:410). In order to rule out strong interaction effects, measures of association were calculated for all possible relationships among the independent variables. The results are presented in Table IV-6.

Most of the variables are only moderately related to each other--certainly not enough to generate concern about multicollinearity. This finding is consistent with that of other researchers who have focused on the

TABLE IV-5
 NUMBER OF CHARGES AT ARRAIGNMENT BY ATTORNEY,
 CONTROLLING FOR TYPE OF CHARGE AT ARRAIGNMENT
 (PER CENTS IN CELLS)

N of Charges	Type of Charge								
	All			Felony			Misdemeanor		
	Attorney*			Attorney*			Attorney*		
	PA	PD	CA	PA	PD	CA	PA	PD	CA
1 Charge	80.6	80.9	88.6	72.9	76.5	84.5	92.3	92.3	100.0
2 Charges	12.9	15.2	8.9	18.8	19.1	12.1	3.8	5.1	0.0
3 or More Charges	6.5	3.9	2.5	8.3	4.4	3.4	3.8	2.6	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(510)	(774)	(237)	(314)	(565)	(174)	(183)	(195)	(60)
	V=.07			V=.08			V=.08		

* PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

TABLE IV-6
 MATRIX OF MEASURES OF ASSOCIATION AMONG INDEPENDENT
 VARIABLES

Variables	Variables				
	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney07	.18	.12	.19
N of Charges10	.21	.22
Bail Status21*	.19
Type of Charge70

*The starred measure of association is phi for a two by two table.
 All other reported measures are Cramer's V's.

criminal courts and tested for multicollinearity (Eisenstein and Jacob, 1977:187). The lone exception is the relationship between the type of charge and the specific offense. Accordingly, the multivariate analysis of data in this study will examine the effects of type of offense on dependent variables separately for felonies and misdemeanors (rather than entering the two variables simultaneously in MCA analysis). With this method, the information provided by each of these independent variables can enter into the analysis without the problems of interaction effects.

Caseloads within Types of Judicial Districts*

In all three types of judicial districts, three-fourths of the caseload of public counsel consists of felony cases (Table IV-7). The principal differences between private and public counsel are found in the increased proportion of misdemeanor cases that make up the private attorneys caseload as the degree of urbanization of the districts decreases. In

*For the analysis of data within types of judicial districts, public defenders and court appointed attorneys have been collapsed to form one category of public defense counsel. One reason for this is theoretical. As we shall see throughout the analysis for the entire state, public defenders and court appointed attorneys are more often alike than different; therefore, I felt that there was not much to be gained by maintaining the distinction. Another reason was technical. Within any one judicial district, some counties may have public defender systems while others rely on court appointed attorneys. Therefore, comparisons within a district would result in comparing public defenders from some counties with private attorneys who practice throughout the district, and court appointed attorneys in some counties with private attorneys in all counties. That may appear to be a fine point, but I feared that comparisons of that sort were less than valid and would have introduced a note of confusion into the analysis. The problem could have been overcome, but technical solutions would have resulted in a loss of cases that would have been critical for some comparisons. Combining the two types of public defense counsel into one category was simpler, consistent with the general finding of few differences between the two in the data, and this solution does no violence to the general purposes of this study.

TABLE IV-7
 TYPE OF CHARGE AT ARRAIGNMENT BY ATTORNEY FOR EACH
 TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Charge	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Felony	66.3	74.0	60.3	72.6	55.0	76.7
Misdemeanor	33.7	26.0	39.7	27.4	45.0	23.3
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(329)	(601)	(58)	(201)	(109)	(193)
	phi=.08		phi=.11		phi=.22	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

fact, in the rural districts the private attorneys caseload is almost evenly divided between felony and misdemeanor cases. This difference is also apparent in the distribution of offenses within types of districts (Table IV-8): over 40% of rural private attorneys' caseload is made up of drug possession cases. Apart from this distinction, the distribution of caseloads within types of districts approximates that of the distribution for the entire state: Public counsel again appear to specialize in burglary cases, while private counsel appear to specialize in drug possession cases.

In the data for the entire state, the clients of public defense counsel were less likely than those of private counsel to secure release on bail, especially for felony cases. That distinction is also true within types of judicial districts, except for the mid-range districts where the differences among types of counsel are minimal (Tables IV-9, IV-10, IV-11). In fact, public counsel in the mid-range districts are slightly more likely to have clients released on bail than are private counsel, regardless of the type of charge. It is also worth noting that fewer of the private attorneys' clients are able to secure release on bail regardless of charge in the mid-range and rural districts than the private attorneys' clients in urban districts. This finding raises the possibility that those defendants in the more rural districts who can afford private attorneys may be relatively poorer in the resources they can command in providing for their defense than their counterparts in urban areas.

As in the distribution for the entire state, most defendants face one charge in court, and the differences among types of counsel are not significant (Tables IV-12, IV-13, IV-14). It is also apparent that the relationships among all of the independent variables are about the same

TABLE IV-8
 MOST SERIOUS OFFENSE AT ARRAIGNMENT BY ATTORNEY FOR EACH
 TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Offense	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney*	PA	PD-CA	PA	PD-CA	PA	PD-CA
Drugs (Poss.)		34.5	24.5	20.3	14.3	41.2	22.1
Burglary		8.1	26.6	15.3	31.5	6.1	21.5
Theft		16.8	15.9	23.8	14.8	14.0	17.4
Drugs (Sale)		9.9	3.7	1.7	5.4	11.4	8.2
Assault		4.8	5.8	1.7	4.4	12.3	7.7
Checks and Forgery		4.2	5.5	6.8	5.4	0.9	3.6
Robbery		3.0	5.7	0.0	3.4	0.9	3.6
Motor Vehicle		2.4	1.9	8.5	4.9	0.9	4.6
Sex Offenses		3.9	2.6	3.4	2.0	2.6	3.1
Homicide		3.0	1.3	5.1	2.0	0.9	2.0
Unclassified		9.6	6.5	13.6	11.8	8.8	4.6
Total		100.0	100.0	100.0	100.0	100.0	100.0
(N)		(334)	(617)	(59)	(203)	(114)	(195)
		V=.27		V=.24		V=.33	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE IV-9
 BAIL STATUS BY ATTORNEY FOR EACH TYPE OF JUDICIAL DISTRICT
 (PER CENTS IN CELLS)

Bail Status	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Released	61.2	39.8	39.6	44.1	47.1	29.9
Not Released	38.8	60.2	60.4	55.9	52.9	70.1
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(304)	(540)	(48)	(170)	(85)	(134)
	phi=.21		phi=.04		phi=.17	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE IV-10
 BAIL STATUS OF DEFENDANTS IN FELONY CASES BY ATTORNEY FOR EACH
 TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Bail Status	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Released	54.9	33.8	35.5	41.7	34.1	23.3
Not Released	45.1	66.2	64.5	58.3	65.9	76.7
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(193)	(391)	(31)	(120)	(44)	(103)
	phi=.20		phi=.05		phi=.11	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE IV-11
 BAIL STATUS OF DEFENDANTS IN MISDEMEANOR CASES BY ATTORNEY FOR
 EACH TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Bail Status	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney *	PA	PD-CA	PA	PD-CA	PA	PD-CA
Released		73.3	58.9	43.8	54.3	63.9	53.8
Not Released		26.7	41.1	56.3	45.7	36.1	46.2
Total		100.0	100.0	100.0	100.0	100.0	100.0
(N)		(101)	(129)	(16)	(46)	(36)	(26)
		phi=.15		phi=.09		phi=.10	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE IV-12
 NUMBER OF CHARGES AT ARRAIGNMENT BY ATTORNEY FOR EACH TYPE OF
 JUDICIAL DISTRICT (PER CENTS IN CELLS)

N of Charges	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
1 Charge	75.9	80.8	88.1	88.1	90.4	83.1
2 Charges	15.8	15.3	8.5	9.4	7.0	13.3
3 or More Charges	8.3	3.9	3.4	2.5	2.6	3.6
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(336)	(613)	(59)	(202)	(114)	(195)
	V=.09		V=.03		V=.10	

*PA=Private Attorney; PA-CA=Public Defender and Court Appointed.

TABLE IV-13
 NUMBER OF CHARGES AT ARRAIGNMENT FOR FELONY CASES BY ATTORNEY
 FOR EACH TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

N of Charges	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney*	PA	PD-CA	PA	PD-CA	PA	PD-CA
1 Charge		67.6	75.8	85.7	85.7	85.0	78.5
2 Charges		21.9	19.9	8.6	10.9	13.3	16.8
3 or More Charges		10.5	4.3	5.7	3.4	1.7	1.7
Total		100.0	100.0	100.0	100.0	100.0	100.0
(N)		(219)	(443)	(135)	(147)	(60)	(149)
		V=.13		V=.05		V=.09	

*PA=Private Attorney; PD-CA=Public Defenders and Court Appointed Attorneys.

TABLE IV-14
 NUMBER OF CHARGES AT ARRAIGNMENT FOR MISDEMEANOR CASES BY ATTORNEY
 FOR EACH TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

N of Charges	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
1 Charge	90.9	92.9	91.3	94.4	95.9	97.7
2 Charges	4.5	3.8	8.7	5.6	0.0	2.3
3 or More Charges	4.5	3.2	0.0	0.0	4.1	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(110)	(156)	(23)	(54)	(49)	(44)
	V=.04		V=.06		V=.18	

*PA=Private Attorney; PD-CA=Public Defenders and Court Appointed Attorneys.

within each type of judicial district (Table IV-15). Once again, the only substantial relationship, in terms of the problem of multicollinearity, occurs between the type of charge and the specific offense.

The general pattern of differences among types of counsel observed for the entire state appear to hold for the individual types of districts, except for the relationship between bail status and type of counsel in the mid-range districts. Yet it is apparent that differences in terms of type of charge, the specific offense, and the bail status of defendants are more or less pronounced depending on the type of district. This suggests that there are indeed valid differences associated with the degree of urbanization of judicial districts.

Conclusion

In this chapter we have briefly looked at the patterns of relationships among the independent variables to discern any differences among types of defense counsel and to test for the problem of multicollinearity. We have seen that the pattern of differences is about what would have been expected from prior research: (1) public counsel handle a larger proportion of felony cases; (2) the clients of public counsel are less likely to be released on bail, especially for felony charges; (3) these distinctions are also true, though more or less pronounced, for rural and urban districts, and the patterns do not always hold for the mid-range districts; (4) most defendants face only one charge in court, and this is also true for each of the types of judicial districts; and (5) that any problems of multicollinearity can be overcome by separating the highly related variables of type of charge and most serious offense at arraignment.

TABLE IV-15
CORRELATION MATRICES OF MEASURES OF ASSOCIATION AMONG INDEPENDENT VARIABLES FOR EACH TYPE OF JUDICIAL DISTRICT

URBAN JUDICIAL DISTRICTS					
Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney09	.21*	.08*	.27
N of Charges13	.22*	.21
Bail Status22*	.27
Type of Charge67

MID-RANGE JUDICIAL DISTRICTS					
Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney03	.04*	.12*	.24
N of Charges04	.12*	.25
Bail Status13	.28
Type of Charge73

RURAL JUDICIAL DISTRICTS					
Variables	Attorney	N of Charges	Bail Status	Type of Charge	Offense
Attorney10	.17*	.23*	.33
N of Charges10	.23*	.30
Bail Status28*	.32
Type of Charge77

* The starred measures are phi's for two by two tables. All other reported measures are Cramer's V's.

CHAPTER V:

ATTORNEYS AND CASE DISPOSITIONS

Introduction

A defendant may walk out of the courtroom free, may be assigned to a probation office, or may be detained in jail or prison. Obviously, the judge has the keys to all of these exit doors, but the defense counsel must persuade the judge to open the door which brings the least pain to the defendant.

In this chapter, we will examine the ways in which the cases of the different types of defense counsel typically come to an end. Essentially there are three alternatives: (1) a case may be dismissed; or (2) the defendant may be convicted, either through a plea of guilty or a conviction in a trial; or (3) the defendant may be acquitted in a trial. Presumably, the alternative which occurs depends heavily on the strength of the evidence. However, there may be differences in dispositions which are effected by the type of defense counsel. We will explore that possibility in this chapter.

Analysis of Dispositions for the State

Almost every observer of the criminal courts has made the point that trials severely tax the limited resources of the court, that the number of trials must be limited or the system will crumble. If that is true, Montana's criminal courts do not appear to be in danger. Out of over 1500 cases in this sample, only 71 went to trial--less than 5%. Although there are some slight differences in the tendency to take cases

to trial among types of defense counsel (Table V-1), those differences are overwhelmed by the fact that trials are a very rare occurrence for any type of defense counsel.

Because of the small number of trials, any assessment of differences in dispositions by type of attorney must focus on the remaining alternatives--dismissals and convictions by guilty pleas. In Table V-2, we can see the relationship more clearly after trials have been eliminated from the data. Although the differences are not great, there is a discernible tendency for clients of private attorneys to have their cases dismissed more often, especially for misdemeanor cases. For the more serious felony cases, the differences among types of counsel are negligible; however, the private attorney manages to get almost twice as many of his or her misdemeanor cases dismissed.*

There are two kinds of offenses which are of special interest in terms of dispositions. One involves drug charges which are important partly because of the frequency of occurrence in this data, and partly because of the controversy over the treatment of drug offenses as a crime in our society. In Table V-3, we see that the pattern for dispositions of drug charges is in the same direction as for all cases, but the relationship is more pronounced. Again, private attorneys' clients have more misdemeanor cases dismissed, but the differences for felony cases are negligible (if we ignore the distribution for court appointed attorneys

* Cases are usually dismissed either because of insufficient evidence or because the interests of justice would not be served by prosecution. Either may be a consequence of the strategy of the attorney. Evidence is not likely to appear insufficient if the attorney does not challenge the prosecutor's case and eschew a routine guilty plea. On the other hand, "the interests of justice" would seem to be a subjective enough category to depend on the persuasive powers of the defense counsel in making the case for such a dismissal to the prosecutor or to the judge.

TABLE V-1
 SUMMARY OF CASE DISPOSITIONS BY ATTORNEY, CONTROLLING
 FOR TYPE OF CHARGE AT ARRAIGNMENT
 (PER CENTS IN CELLS)

Disposition	Type of Charge									
	All			Felony			Misdemeanor			
	Attorney*	PA	PD	CA	PA	PD	CA	PA	PD	CA
Dismissal		18.3	11.8	9.7	11.0	9.2	5.8	23.5	12.4	11.7
Guilty Plea		75.1	84.6	86.5	79.4	86.9	90.6	74.9	84.5	83.3
Trial-Conviction		3.7	2.6	3.0	5.2	2.8	2.9	1.6	2.1	3.3
Trial-Acquittal		2.9	1.0	0.8	4.5	1.1	0.6	0.0	1.0	1.7
Total (N)		100.0 (515)	100.0 (779)	100.0 (237)	100.0 (310)	100.0 (563)	100.0 (171)	100.0 (183)	100.0 (194)	100.0 (60)
		V=.10			V=.10			V=.12		

*PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

TABLE V-2
CASE DISPOSITIONS BY ATTORNEY, CONTROLLING FOR TYPE OF
CHARGE AT ARRAIGNMENT (PER CENTS IN CELLS)

Disposition	Type of Charge									
	Attorney*	All			Felony			Misdemeanor		
		PA	PD	CA	PA	PD	CA	PA	PD	CA
Dismissal		19.5	12.3	10.1	12.1	9.6	6.1	23.9	12.8	12.3
Guilty Plea		80.5	87.7	89.9	87.9	90.4	93.9	76.1	87.2	87.7
Total (N)		100.0 (481)	100.0 (751)	100.0 (228)	100.0 (280)	100.0 (541)	100.0 (165)	100.0 (180)	100.0 (188)	100.0 (57)
		V=.11			V=.07			V=.15		

*PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

TABLE V-3
DISPOSITIONS OF NARCOTICS CASES BY ATTORNEY, CONTROLLING
FOR TYPE OF CHARGE AT ARRAIGNMENT (PER CENTS IN CELLS)

Disposition	Type of Charge									
	All			Felony			Misdemeanor			
	Attorney [*]	PA	PD	CA	PA	PD	CA	PA	PD	CA
Dismissal		21.7	12.9	4.9	11.6	13.8	0.0	25.6	10.9	7.0
Guilty Plea		78.3	87.1	95.1	88.4	86.3	100.0	74.4	89.1	93.0
Total (N)		100.0 (212)	100.0 (202)	100.0 (61)	100.0 (86)	100.0 (80)	100.0 (18)	100.0 (121)	100.0 (119)	100.0 (43)
		V=.16			V=.12			V=.21		

*PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

because of the small number of cases).

The second type of offense involves assault charges, which, in the folklore of criminology, are difficult to prosecute because assaults often take place between family members or friends who are reluctant to see a case through to disposition. Apparently, once a felony assault case gets as far as a district court, it is likely to result in a guilty plea (Table V-4). However, private attorneys, in the case of this type of felony, do tend to secure more dismissals than public counsel. (Unfortunately, there were only five misdemeanor assault cases in the sample, not enough for reliable analysis.)

There is a discernible pattern in these data, but the question is whether that pattern is really caused by differences among type of defense counsel or by the effect of the other independent variables on the type of case disposition. Table V-5, presents the results of the multivariate analysis on the percentage of cases which resulted in guilty pleas. Clearly, the tendency for private attorneys' clients to secure a larger percentage of dismissals is a persistent finding, though slightly less pronounced for felonies than misdemeanors, even when the percentages are adjusted for the effects of the other independent variables. However, the differences are not great, with public counsel tending to settle about 10% more of their cases by guilty pleas.

This finding would seem to offer some slight support to the contention that public counsel are less adversarily oriented and plead their clients guilty more routinely than private counsel, but it must be emphasized that the support for this thesis is not strong. In fact, the significant finding in Table V-5 is that the percentages of dispositions by guilty pleas are high regardless of type of attorney. (The low multiple R^2 's are partly a consequence of the fact that there is

TABLE V-4
DISPOSITIONS OF FELONY ASSAULT CHARGES BY ATTORNEY

Disposition	Attorney		
	Private %	Public Defender %	Court Appointed %
Dismissal	20.0	10.0	7.1
Guilty Plea	80.0	90.0	92.9
Total (N)	100.0 (20)	100.0 (30)	100.0 (14)

V=.16

CONTINUED

1 OF 3

A
TABLE V-5
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES, AND OFFENSE AT ARRAIGNMENT
ON DISPOSITIONS OF FELONY AND MISDEMEANOR CASES
(PER CENT GUILTY PLEAS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted %	Adjusted	N	Unadjusted %	Adjusted
		(Grand Mean=84%)			(Grand Mean=79%)	
ATTORNEY						
Private	268	78	80	152	73	74
Public Defender	477	85	84	168	84	83
Court-Appointed	136	91	91	34	83	81
		eta=.13	beta=.10		eta=.12	beta=.11
BAIL STATUS						
Released	337	81	82	218	75	76
Not Released	544	86	85	136	85	84
		eta=.06	beta=.04		eta=.11	beta=.09
NUMBER OF CHARGES						
AT ARRAIGNMENT						
1 Charge	673	84	84	327	79	79
2 Charges	158	79	81	15	80	80
3 or More Charges	50	94	94	12	75	78
		eta=.08	beta=.07		eta=.02	beta=.01
OFFENSE AT ARRAIGNMENT						
Motor Vehicle	...	..	..	34	94	92
Possession, Drugs	86	84	85	227	78	79
Sale, Drugs	82	81	82	6	84	83
Homicide and Related	23	69	70	...	...	..
Assault and Related	66	71	71	5	40	36
Robbery	53	83	82	...	..	..
Sex Offenses	38	71	71	2	100	104
Burglary	246	93	92	15	87	82
Theft and Related	180	87	80	20	80	81
Checks and Forgery	45	100	99	10	90	89
Unclassified	62	82	82	35	66	68
		eta=.22	beta=.21		eta=.21	beta=.19
		$R^2=.07$			$R^2=.06$	

74

very little variation in dispositions to explain.) The strategies of all types of defense counsel appear to be oriented toward pleading clients guilty. Apparently, as Blumberg (1967) has suggested, once a person is caught up in the machinery of the criminal court, conviction by way of a guilty plea is almost a foregone conclusion.

Analysis of Dispositions by Types of Districts

The same general pattern holds for the individual types of districts as in the State: In all districts, the clients of private attorneys have their cases dismissed more often; these differences are minimal for felony cases, and are relatively substantial for misdemeanor cases. The principal exception is in the mid-range districts where differences are less pronounced (Tables V-6, V-7, and V-8).

The multivariate analysis confirms the findings in the cross-tabulations. In Tables V-9, V-10, and V-11, we see that the differences by type of defense counsel persist for misdemeanor cases and are negligible for felony cases, except in the mid-range districts where the differences are less pronounced. In all three types of districts, the vast majority of cases are settled by guilty pleas, while about 10 to 25% of the cases are dismissed.

Conclusion

The substantive finding of this analysis is that all types of counsel tend to plead their clients guilty. The clients of private attorneys tend to have their cases dismissed more often than clients of public counsel, especially for misdemeanor cases, but the differences are not great. For the most part, this general finding is also true for the types of districts. The differences are somewhat more pronounced in the rural districts and less significant in the mid-range districts.

TABLE V-6
DISPOSITION OF CASES BY ATTORNEY FOR EACH TYPE OF
JUDICIAL DISTRICT (PER CENTS IN CELLS)

Disposition	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Dismissal	17.6	12.3	16.1	9.6	27.6	12.2
Guilty Plea	82.4	87.7	83.9	90.4	72.4	87.8
Total (N)	100.0 (319)	100.0 (600)	100.0 (56)	100.0 (198)	100.0 (105)	100.0 (180)
	phi=.07		phi=.09		phi=.19	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE V-7
DISPOSITION OF FELONY CASES BY ATTORNEY FOR EACH
TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Disposition	Type of Judicial District					
	Urban		Mid-Range		Rural	
	<u>Attorney*</u>		<u>Attorney*</u>		<u>Attorney*</u>	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Dismissal	12.1	9.3	12.5	5.7	12.5	10.4
Guilty Plea	87.9	90.7	87.5	94.3	87.5	89.6
Total (N)	100.0 (199)	100.0 (428)	100.0 (32)	100.0 (141)	100.0 (48)	100.0 (135)
	phi=.04		phi=.10		phi=.03	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE V-8
DISPOSITION OF MISDEMEANOR CASES BY ATTORNEY FOR
EACH TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Disposition	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		Attorney*		Attorney*	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Dismissal	21.3	11.3	21.7	17.0	30.6	11.9
Guilty Plea	78.7	88.7	78.3	83.0	69.4	88.1
Total (N)	100.0 (108)	100.0 (151)	100.0 (23)	100.0 (53)	100.0 (49)	100.0 (42)
	phi=.14		phi=.06		phi=.23	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE V-9
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT ARRAIGNMENT, AND OFFENSE AT ARRAIGNMENT ON DIS-
POSITIONS OF CASES FOR URBAN JUDICIAL DISTRICTS (PER CENT GUILTY PLEAS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted % (Grand Mean=85%)	Adjusted	N	Unadjusted % (Grand Mean=80%)	Adjusted
ATTORNEY						
Private	193	80	81	99	75	76
Public	390	88	87	129	84	83
		eta=.11	beta=.08		eta=.11	beta=.10
BAIL STATUS						
Released	237	82	83	148	77	78
Not Released	346	87	87	80	86	85
		eta=.07	beta=.05		eta=.12	beta=.08
NUMBER OF CHARGES AT ARRAIGNMENT						
1 Charge	427	85	85	208	80	80
2 Charges	118	82	82	10	90	86
3 or More Charges	38	95	90	10	70	69
		eta=.08	beta=.08		eta=.07	beta=.07
OFFENSE AT ARRAIGNMENT						
Motor Vehicle	...	..	..	16	94	92
Possession, Drugs	68	86	86	152	80	81
Sale, Drugs	52	85	86	1	100	92
Homicide and Related	17	71	73	...	..	..
Assault and Related	40	73	74	5	40	36
Robbery	39	80	79	...	..	..
Sex Offenses	24	79	81	1	100	107
Burglary	152	93	92	7	86	81
Theft and Related	120	79	80	17	83	83
Checks and Forgery	30	100	100	6	100	95
Unclassified	41	86	87	23	65	68
		eta=.21	beta=.19		eta=.23	beta=.22
		R ² =.06			R ² =.08	

TABLE V-10
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT ARRAIGNMENT, AND OFFENSE
AT ARRAIGNMENT ON DISPOSITIONS OF CASES FOR MID-RANGE JUDICIAL DISTRICTS (PER CENT GUILTY PLEAS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted % (Grand Mean=90%)	Adjusted	N	Unadjusted % (Grand Mean=81%)	Adjusted
ATTORNEY						
Private	31	84	83	16	75	76
Public	120	92	92	46	83	83
		eta=.11	beta=.12		eta=.08	beta=.08
BAIL STATUS						
Released	61	89	88	32	78	77
Not Released	90	91	92	30	84	85
		eta=.04	beta=.09		eta=.07	beta=.09
NUMBER OF CHARGES AT ARRAIGNMENT						
1 Charge	131	90	90	57	83	82
2 Charges	14	87	87	5	60	67
3 or More Charges	6	100	101	..	..	..
		eta=.08	beta=.08		eta=.15	beta=.11
OFFENSE AT ARRAIGNMENT						
Motor Vehicle	..	..	..	12	92	91
Possession, Drugs	4	100	100	30	80	80
Sale, Drugs	10	80	79	1	100	101
Homicide and Related	3	100	104	..	..	..
Assault and Related	7	86	84	..	..	..
Robbery	7	86	85	..	..	..
Sex Offenses	6	83	83	..	..	..
Burglary	62	93	94	6	84	83
Theft and Related	32	84	84	3	67	70
Checks and Forgery	8	100	100	3	67	75
Unclassified	12	92	91	7	72	72
		eta=.19	beta=.20		eta=.19	beta=.16
		$R^2=.06$			$R^2=.06$	

TABLE V-11
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT ARRAIGNMENT, AND OFFENSE AT ARRAIGNMENT ON
DISPOSITIONS OF CASES FOR RURAL JUDICIAL DISTRICTS (PER CENT GUILTY PLEAS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted % (Grand Mean=78%)	Adjusted	N	Unadjusted % (Grand Mean=73%)	Adjusted
ATTORNEY						
Private	44	71	76	36	67	68
Public	103	81	79	26	81	80
		eta=.11	beta=.03		eta=.16	beta=.13
BAIL STATUS						
Released	39	72	73	37	68	71
Not Released	108	80	80	25	80	75
		eta=.08	beta=.07		eta=.14	beta=.04
NUMBER OF CHARGES AT ARRAIGNMENT						
1 Charge	115	80	81	60	72	71
2 Charges	26	70	65	2	100	139
3 or More Charges	6	72	77	..	..	..
		eta=.09	beta=.14		eta=.11	beta=.27
OFFENSE AT ARRAIGNMENT						
Motor Vehicle	..	..	..	5	100	97
Possession, Drugs	14	79	78	44	69	71
Sale, Drugs	20	75	80	4	75	81
Homicide and Related	3	34	31	..	..	..
Assault and Related	19	64	64	..	..	..
Robbery	7	100	100	..	..	..
Sex Offenses	8	38	35	1	100	98
Burglary	32	94	93	2	100	94
Theft and Related	28	83	84	..	..	..
Checks and Forgery	7	100	98	1	100	109
Unclassified	9	56	53	5	60	38
		eta=.41	beta=.42		eta=.26	beta=.31
		$R^2=.19$			$R^2=.13$	

81

Finally, the differences tend to persist even after other variables are introduced as controls by way of multivariate analysis.

CHAPTER VI:
THE ACID TEST:
DEFENSE COUNSEL AND SENTENCING

Introduction

If differences among types of defense counsel in terms of proportions of case dismissals tend to be relatively small, and if the principal strategy of all types of defense counsel is to plead the client guilty--both findings in the last chapter--then the acid test of the quality of counsel must be in the sentences received by clients. As the drama of sentencing unfolds, the judge is asked to pronounce the most appropriate punishment. His or her perception of the seriousness of the crime, the interests of the society, and the needs of the defendant may all effect the option the judge chooses. Might the kind of defense counsel also be a factor? When the private attorney pleads for leniency, does the judge tend to be agreeable? When a public defender or court appointed attorney stands with the defendant, does the obvious lower class status of the defendant predispose the judge toward a more severe punishment? Is the defense provided by public counsel so perfunctory and disinterested that it fails to mitigate any tendency of the judge to lean toward a harsh punishment?

These questions cannot be answered directly in this study, nor can much be said about any individual case. However, sentencing patterns can be examined to determine if there are any clear trends associated with type of counsel. The first crucial decision the judge makes concerns

the type of sentence--prison, jail, or probation. The second involves the length of confinement or probation. We will examine sentencing patterns in that order. We will also look at a summary index--sentence weight--which is an attempt to combine the seriousness of the type of sentence and the length of the sentence into one scale of more or less severe punishment. In the analysis, sentencing patterns for the entire state will be presented first, and then for each of the types of judicial districts.

Analysis of the Types of Sentences *

In Table VI-1, the four main kinds of sentences are broken down by type of attorney and type of charge at sentencing. The most obvious characteristic is that a much larger percentage of the clients of public counsel who are charged with felonies are likely to receive prison sentences. While the percentage difference of about 10% is only marginally significant from a statistical point of view, it must be remembered that a prison sentence represents a substantial departure from the other types of sentences. The fact that 10% more of the clients of public counsel experience the unique environment of a state prison and the social stigma that attaches to a prison record in later life may be much more significant than simple statistics can indicate. Apart from the differences in prison sentences, it is also apparent that clients of public counsel are less likely to receive deferred sentences when charged with felonies. In addition, clients of court appointed attorneys are somewhat more likely to receive suspended rather than deferred sentences,

*The relationships among the independent variables at sentencing are essentially the same as those at arraignment and do not need to be presented here. However, for the sake of the interested reader, those tables are presented in an appendix to this chapter.

TABLE VI-1
 TYPE OF SENTENCE BY ATTORNEY, CONTROLLING FOR TYPE OF
 CHARGE AT SENTENCING (PER CENTS IN CELLS)

Type of Sentence	Type of Charge									
	All			Felony			Misdemeanor			
	Attorney*	PA	PD	CA	PA	PD	CA	PA	PD	CA
Prison		7.8	18.4	14.7	12.6	25.1	20.0	NA**	NA**	NA**
Jail		4.0	3.2	2.1	1.3	0.7	0.0	8.8	10.0	7.4
Suspended		18.0	15.4	25.8	18.6	17.2	25.2	16.1	11.2	27.8
Deferred		70.2	62.9	57.4	67.5	57.0	54.8	75.2	78.8	64.8
Total (N)		100.0 (372)	100.0 (618)	100.0 (190)	100.0 (231)	100.0 (442)	100.0 (135)	100.0 (137)	100.0 (170)	100.0 (54)
		V=.12			V=.11			V=.11		

* PA=Private Attorney; PD=Public Defender; CA=Court Appointed.

** NA=Not Applicable. As a rule, misdemeanants cannot be sentenced to prison. Rare exceptions sometimes occur when a judge desires to give a defendant a short term "dose" of prison life; however, I have never encountered such a case for a misdemeanant in Montana.

especially for misdemeanors. Once again, this represents a qualitative difference in punishment in that the defendant who receives a suspended sentence has a record of a prior conviction while the defendant who receives a deferred sentence may have his or her record expunged if the terms of probation are met successfully. Finally, there are no substantial differences in the percentages of defendants who receive jail sentences.*

Because the differences among types of defense counsel are not statistically very great, they might be expected to disappear when controls for bail status, the number of charges at sentencing, and the specific offense at sentencing are introduced. To test for that possibility, dummy coding techniques were used to produce the multivariate tables.

The multivariate analysis of the percentages of those receiving prison sentences is presented in Table VI-2. The differences in the adjusted percentages among categories of defense counsel (which take into account the effects of the other independent variables) are slightly smaller than the differences for the zero-order (or unadjusted) percentages. Clearly, both the bail status of the defendant and the specific offense involved in the charge are better predictors of a prison sentence than type of attorney. Some offenses--particularly homicide, robbery and sex offenses

*The category of "jail" in Table VI-1 and all subsequent tables contains those convicted defendants who received only jail sentences. Sometimes jail sentences are combined with suspended or deferred sentences. I have not made the attempt to assess any differences among types of defense counsel in terms of these combinations in the analysis of the type of sentence. Furthermore, there were too few cases to establish any clear statistical trends in terms of length of sentence for those who received exclusively jail sentences, and I felt it would be confusing to examine length of jail sentence for those defendants sentenced to jail combined with those who received some combination of jail and probation. Therefore, jail sentences have been excluded from the analysis of the length of sentences. However, the effects of jail sentences or combinations of jail and probation are taken into account in the index of sentence weights, so any substantial differences would presumably show up there.

TABLE VI-2
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT
SENTENCING, AND OFFENSE AT SENTENCING ON PERCENTAGE OF
FELONS RECEIVING PRISON SENTENCES (PER CENTS IN CELLS)

Variables	N	% of Prison Sentences	
		Unadjusted	Adjusted
(Grand Mean=19%)			
ATTORNEY			
Private	209	13	15
Public Defender	399	22	22
Court-Appointed	123	19	17
		eta=.10	beta=.08
BAIL STATUS			
Released	264	8	10
Not Released	467	25	24
		eta=.21	beta=.18
NUMBER OF CHARGES			
AT SENTENCING			
1 Charge	599	18	18
2 Charges	104	23	23
3 or More Charges	28	22	24
		eta=.05	beta=.05
OFFENSE AT SENTENCING			
Motor Vehicle	...	..	..
Possession, Drugs	73	7	9
Sale, Drugs	59	11	12
Homicide and Related	18	50	51
Assault and Related	49	19	19
Robbery	41	39	34
Sex Offenses	21	24	27
Burglary	222	17	16
Theft and Related	149	20	20
Checks and Forgery	46	20	19
Unclassified	53	23	24
		eta=.22	beta=.20

$R^2 = .09$

--are much more likely to result in a prison sentence than others. The fact that those who are not released on bail are more likely to receive prison sentences (regardless of the specific offense involved) may indirectly measure the court's perception of the seriousness of the crime, since one might expect that more serious crimes would involve a higher bail. The small differences which persist after controls are introduced are not very significant statistically, and it may not reflect differences in terms of the quality of defense counsel. It must be remembered that the prior records of defendants have not yet been taken into account, and that factor may well explain the small differences which persist. Therefore, any final judgement can be postponed until the next chapter when the effects of prior record will be assessed.

The differences among types of defense counsel in percentages of defendants sentenced exclusively to jail were small in Table VI-1, especially for felons. The multivariate analysis of the percentage of misdemeanants sentenced to jail is presented in Table VI-3. Both the unadjusted and adjusted percentage differences for types of defense attorney are negligible. Again, most of the variation in percentages of defendants sentenced to jail is primarily explained by the type of offense, and to some extent by the bail status of the defendant.

In Table VI-4, it can be seen that there are no substantial differences among types of attorney in terms of the percentages of defendants receiving suspended sentences for felonies. For misdemeanors, however, court appointed attorneys appear to have considerably more clients who receive suspended sentences. When these results are compared with those for deferred sentences in Table VI-5, it becomes obvious that misdemeanants with court appointed attorneys tend to receive suspended rather than deferred sentences, even after the effects of the other independent

TABLE VI-3
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING OF PERCENTAGE OF MISDEMEANANTS RECEIVING JAIL SENTENCES EXCLUSIVELY (PERCENTS IN CELLS)

Variables	Per Cent Jail Sentences		
	N	Unadjusted (Grand Mean=8%)	Adjusted
ATTORNEY			
Private	125	8	7
Public Defender	161	8	9
Court-Appointed	33	6	5
		eta=.03	beta=.05
BAIL STATUS			
Released	190	6	5
Not Released	129	11	12
		eta=.09	beta=.11
NUMBER OF CHARGES AT SENTENCING			
1 Charge	300	8	8
2 Charges	11	9	8
3 or More Charges	8	12	13
		eta=.02	beta=.03
OFFENSE AT SENTENCING			
Motor Vehicle	33	18	16
Possession, Drugs	196	4	4
Sale, Drugs	6	0	-3
Homicide and Related	...	..	..
Assault and Related	6	16	13
Robbery	...	..	..
Sex Offenses	5	80	83
Burglary	13	7	6
Theft and Related	25	12	12
Checks and Forgery	10	10	7
Unclassified	25	12	12
		eta=.37	beta=.38
		$R^2=.15$	

TABLE VI-4
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING
ON PERCENTAGE OF DEFENDANTS RECEIVING SUSPENDED SENTENCES FOR FELONS AND MISDEMEANANTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=18%)	Adjusted	N	Unadjusted (Grand Mean=13%)	Adjusted
ATTORNEY						
Private	209	18	18	125	13	14
Public Defender	399	17	17	161	10	9
Court-Appointed	123	22	22	33	27	29
		eta=.05	beta=.05		eta=.15	beta=.17
BAIL STATUS						
Released	264	17	17	190	12	14
Not Released	467	19	19	129	14	11
		eta=.02	beta=.02		eta=.02	beta=.04
NUMBER OF CHARGES AT SENTENCING						
1 Charge	599	17	17	300	14	13
2 Charges	104	18	18	11	9	15
3 or More Charges	28	32	33	8	0	9
		eta=.08	beta=.08		eta=.07	beta=.02
OFFENSE AT SENTENCING						
Motor Vehicle	...	..	..	33	51	53
Possession, Drugs	73	8	8	196	6	6
Sale, Drugs	59	22	21	6	0	0
Homicide and Related	18	22	22	...	..	..
Assault and Related	49	27	27	6	33	34
Robbery	41	10	9	...	..	..
Sex Offenses	21	14	14	5	20	15
Burglary	222	17	17	13	15	15
Theft and Related	149	22	23	25	12	12
Checks and Forgery	46	26	27	10	0	1
Unclassified	53	11	12	25	16	15
		eta=.15	beta=.15		eta=.41	beta=.43
		$R^2=.03$			$R^2=.20$	

TABLE VI-5
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON PERCENTAGE OF DEFENDANTS RECEIVING DEFERRED SENTENCES FOR FELONS AND MISDEMEANANTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=55%)	Adjusted	N	Unadjusted (Grand Mean=69%)	Adjusted
ATTORNEY						
Private	209	63	60	125	68	69
Public Defender	399	53	54	161	71	71
Court-Appointed	123	47	51	33	61	60
		eta=.11	beta=.06		eta=.07	beta=.07
BAIL STATUS						
Released	264	71	68	190	70	69
Not Released	467	46	47	129	67	70
		eta=.24	beta=.20		eta=.03	beta=.01
NUMBER OF CHARGES AT SENTENCING						
1 Charge	599	57	57	300	68	69
2 Charges	104	46	47	11	82	79
3 or More Charges	28	39	34	8	75	67
		eta=.10	beta=.11		eta=.06	beta=.04
OFFENSE AT SENTENCING						
Motor Vehicle	...	..	..	33	24	24
Possession, Drugs	73	85	83	196	80	80
Sale, Drugs	59	64	64	6	67	67
Homicide and Related	18	16	16	...	..	..
Assault and Related	49	34	34	6	50	50
Robbery	41	19	26	...	..	..
Sex Offenses	21	42	40	5	0	3
Burglary	222	60	60	13	69	70
Theft and Related	149	53	53	25	76	75
Checks and Forgery	46	47	48	10	80	79
Unclassified	53	62	61	25	48	47
		eta=.32	beta=.30		eta=.44	beta=.44
		$R^2=.16$			$R^2=.20$	

92

variables are taken into account. Since both suspended and deferred sentences are forms of probation, and since misdemeanors are punished much less severely than felonies (as we shall see), this difference probably represents a somewhat marginal increase in the type of punishment received by clients of court appointed attorneys. It is also apparent from Table VI-5 that the percentage differences among types of defense counsel for felony defendants receiving deferred sentences are reduced to very little after controls for the other independent variables are introduced. Finally, in Tables VI-4 and VI-5 the results suggest that the bail status of the defendant makes very little difference in the percentages for those receiving suspended sentences, or for the percentage of misdemeanants receiving deferred sentences. However, felons who are not released on bail or their own recognizance are less likely to receive deferred sentences. Again, the best predictor of type of probation regardless of the type of charge is the specific offense at sentencing.

The principal conclusion that can be drawn from this analysis of the type of sentence is that public counsel--especially public defenders--are more likely to have felony defendants sentenced to prison. The difference is not great (about 7%) after controls are introduced for the other independent variables and could easily be explained by prior record, which shall be examined in the next chapter. For the remaining types of sentences, the only significant difference is that clients of court appointed attorneys are somewhat more likely to receive suspended than deferred sentences, especially for misdemeanors. Whether that represents a significant difference in the quality of punishment is questionable.

Analysis of the Length of Sentences

If clients of public defenders are more likely to be sentenced to prison, are they also likely to receive longer sentences? The results presented in Table VI-6 indicate that they are not: The difference of a little over one year for the adjusted averages is not a very great increase over the basic prison sentence of ten years for felons. The significant finding is that clients of court appointed attorneys are sentenced to prison for a much shorter period of time, and this difference is not explained by the other independent variables. Whatever the reason for this result, this finding suggests that a court appointed attorney is not a handicap to the defendant when the judge decides upon the length of the prison sentence.

There are not many months difference in the length of suspended sentences among types of defense counsel for either felons or misdemeanants after the other independent variables are introduced as controls (Table VI-7). The felony defendants with public counsel receive shorter sentences on the average--especially the clients of court appointed attorneys. Otherwise, differences are minimal.

Similarly, the analysis of the length of deferred sentences indicates that there are only slight variations by type of attorney in the adjusted sentence lengths. At most, the differences amount to an average of one to three months difference on probation, which is probably not a very substantial difference in the severity of punishment experienced by the defendants (Table VI-8).

The results of the analysis of sentence lengths suggest that clients of public counsel are treated no more severely by the court than clients of private attorneys, regardless of the type of charge at sentencing. To some extent, the clients of court appointed attorneys receive shorter sentences, but apart from the difference for prison sentences, the lengths

TABLE VI-6
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT
SENTENCING, AND OFFENSE AT SENTENCING ON LENGTH OF PRI-
SON SENTENCES FOR FELONS

Variables	N	Length of Prison Sentence (Years)	
		Unadjusted	Adjusted
		(Grand Mean=10.5)	
ATTORNEY			
Private	35	11.1	10.1
Public Defender	113	11.4	11.4
Court-Appointed	37	6.9	6.9
		eta=.10	beta=.08
BAIL STATUS			
Released	29	6.2	8.6
Not Released	156	11.3	10.8
		eta=.11	beta=.05
NUMBER OF CHARGES AT SENTENCING			
1 Charge	143	9.9	9.7
2 Charges	35	12.6	14.1
3 or More Charges	7	11.1	8.1
		eta=.06	beta=.10
OFFENSE AT SENTENCING			
Possession, Drugs	5	3.8	5.4
Sale, Drugs	7	8.4	8.3
Homicide and Related	10	54.5	54.6
Assault and Related	16	11.3	10.9
Robbery	29	7.8	7.4
Sex Offenses	9	11.7	13.0
Burglary	49	7.1	7.2
Theft and Related	35	4.6	4.6
Checks and Forgery	11	5.8	4.9
Unclassified	14	16.3	16.4
		eta=.64	beta=.64
		$R^2=.43$	

TABLE VI-7
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF SUSPENDED SENTENCES (IN MONTHS) BY TYPE OF CHARGE AT SENTENCING (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=44.3)	Adjusted	N	Unadjusted (Grand Mean=9.5)	Adjusted
ATTORNEY						
Private	47	46.3	49.5	17	8.5	9.3
Public Defender	90	46.3	44.8	16	10.7	9.7
Court-Appointed	40	37.3	37.0	10	9.4	9.6
		eta=.15	beta=.18		eta=.25	beta=.05
BAIL STATUS						
Released	52	40.9	40.3	24	9.0	9.0
Not Released	125	45.6	45.9	19	10.3	10.2
		eta=.09	beta=.10		eta=.17	beta=.16
NUMBER OF CHARGES AT SENTENCING						
1 Charge	136	43.4	44.0	42	9.6	9.5
2 Charges	31	49.5	47.1	1	6.0	10.4
3 or More Charges	10	40.2	39.2	..	....	....
		eta=.10	beta=.07		eta=.14	beta=.04
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	17	11.0	10.9
Possession, Drugs	6	44.0	42.4	14	10.2	10.4
Sale, Drugs	14	36.4	34.9	..	....	....
Homicide and Related	5	22.8	20.5	..	....	....
Assault and Related	20	49.5	49.3	2	5.0	4.2
Robbery	15	57.9	54.4	..	....	....
Sex Offenses	7	29.9	34.2	1	6.0	6.8
Burglary	50	41.6	43.1	2	11.5	10.7
Theft and Related	39	44.6	44.1	3	5.7	6.4
Checks and Forgery	14	45.8	46.4	..	....	....
Unclassified	7	59.7	59.5	4	6.0	5.9
		eta=.30	beta=.28		eta=.56	beta=.55
		$R^2=.12$			$R^2=.34$	

TABLE VI-8.
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON LENGTH OF DEFERRED SENTENCES (IN MONTHS) BY TYPE OF CHARGE AT SENTENCING (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=29.7)	Adjusted	N	Unadjusted (Grand Mean=12.6)	Adjusted
ATTORNEY						
Private	133	29.5	29.6	85	12.2	12.2
Public Defender	216	30.5	30.1	115	13.3	13.3
Court-Appointed	59	27.4	28.2	21	11.0	10.6
		eta=.08	beta=.05		eta=.11	beta=.12
BAIL STATUS						
Released	190	26.7	27.2	133	13.0	12.8
Not Released	218	32.3	31.9	88	12.1	12.5
		eta=.20	beta=.17		eta=.06	beta=.02
NUMBER OF CHARGES AT SENTENCING						
1 Charge	349	29.3	29.2	206	12.7	12.7
2 Charges	48	30.1	30.1	9	15.3	15.6
3 or More Charges	11	41.5	42.1	6	6.5	6.3
		eta=.14	beta=.15		eta=.17	beta=.18
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	8	10.5	10.0
Possession, Drugs	62	29.4	28.8	158	12.9	13.0
Sale, Drugs	38	27.3	26.8	4	15.0	15.1
Homicide and Related	3	24.0	26.4	...	....	....
Assault and Related	17	33.2	34.2	3	6.0	5.7
Robbery	10	66.0	64.8	...	....	....
Sex Offenses	9	34.7	34.2	...	....	....
Burglary	133	27.3	27.7	9	14.7	14.6
Theft and Related	80	29.2	29.5	19	13.0	12.4
Checks and Forgery	22	28.6	28.5	8	10.1	10.7
Unclassified	34	30.5	30.2	12	11.5	11.2
		eta=.43	beta=.42		eta=.17	beta=.18
		$R^2=.24$			$R^2=.07$	

of sentences for clients of court appointed attorneys are roughly equivalent to those for the other types of defense counsel.

Analysis of Sentence Weight

Since the differences among types of defense counsel in terms of types of sentence and lengths of sentences are not very substantial, it is doubtful that the additive effects of these two characteristics of sentences are very great. This additive effect is summarized in a scale of weight scores for each sentence; the analysis of sentence weights is presented in Table VI-9.*

Clearly the net effect of type of counsel on the severity of sentences is minimal once the controls for other independent variables are introduced. The slightly higher adjusted score for felons defended by public defenders is largely due to the fact that clients of public defenders are slightly more likely to be sentenced to prison (prison sentences receive a much greater weight in the scale).

The adjusted weight scores also summarize the net effects of the other independent variables on the severity of the sentence. For felons, defendants who are released on bail are likely to receive more severe sentences. Also, as the number of charges increases, the severity of the sentence increases, although this variable has a less substantial net effect than bail status. Clearly, the specific offense at sentencing makes the most difference in the severity of sentence, with homicide, robbery, and sex offenses producing the most severe punishment. For misdemeanants, the variation in scores is not very great within the

*Smith (1970:75) suggests, "While it is true that the higher the weight the more severe the punishment...the reader is cautioned...to interpret the sentencing weights as crude indicators of the punishment received." The overall average sentence weight for both felonies and misdemeanors in this sample was 11.4, slightly greater than the average of 9.0 for Smith's data for Los Angeles County in 1968(1970:75).

TABLE VI-9
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND
OFFENSE AT SENTENCING ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING (WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=14.9)	Adjusted	N	Unadjusted (Grand Mean=3.0)	Adjusted
ATTORNEY						
Private	208	12.3	13.4	112	2.3	2.3
Public Defender	394	16.3	16.2	148	3.7	3.8
Court-Appointed	122	15.0	13.5	32	2.6	2.3
		eta=.11	beta=.09		eta=.11	beta=.12
BAIL STATUS						
Released	263	9.3	10.3	169	2.5	2.5
Not Released	461	18.1	17.6	123	3.7	3.7
		eta=.26	beta=.22		eta=.10	beta=.12
NUMBER OF CHARGES AT SENTENCING						
1 Charge	592	14.1	14.1	274	3.1	3.1
2 Charges	104	18.8	18.6	11	3.7	1.5
3 or More Charges	28	18.5	19.2	7	2.1	1.6
		eta=.11	beta=.11		eta=.03	beta=.06
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	30	3.4	2.9
Possession, Drugs	73	7.1	7.6	180	2.5	2.6
Sale, Drugs	59	11.6	11.8	4	2.5	1.7
Homicide and Related	17	42.7	43.0	...	...	...
Assault and Related	47	18.4	18.8	6	1.7	0.9
Robbery	41	31.6	29.1	...	...	...
Sex Offenses	21	25.6	27.0	5	5.0	5.0
Burglary	219	12.9	12.9	13	5.9	5.4
Theft and Related	148	12.8	12.7	25	2.2	2.4
Checks and Forgery	46	14.0	13.8	9	2.2	2.0
Unclassified	53	15.7	16.0	20	6.4	6.8
		eta=.43	beta=.41		eta=.21	beta=.22
		$R^2=.26$			$R^2=.07$	

categories of any of the independent variables. Variation is greatest among the types of specific offenses, with sex offenses, burglary, and some of the less common misdemeanors (unclassified) resulting in the most severe punishment.

Summary of Analysis of Sentencing for the State

The analysis of sentence weights provides a convenient summary of the findings. Differences attributable to type of attorney in terms of sentences received by defendants are minimal regardless of the type of charge at sentencing. One might speculate from this data that the major factors effecting decisions by judges in determining sentences are the specific offense involved and, perhaps, the seriousness of the crime (in so far as that is reflected in the bail status of the defendant). The kind of defense counsel does not appear to have much effect on the fate of the average defendant.

CHAPTER VI (CONTINUED)

SENTENCING WITHIN TYPES OF DISTRICTS

Introduction

Although there may be few differences in sentencing patterns among types of counsel in the data for the entire State, there may be differences within the individual types of judicial districts.

Tables VI-10, VI-11, and VI-12 present the overall relationships between the type of sentence and type of attorney broken down by type of charge at sentencing within each type of judicial district. As in the data for the entire state, the clients of public counsel appear more likely to receive prison sentences and somewhat less likely to receive deferred sentences. As the measures of association indicate, these differences are particularly greater in the mid-range and rural judicial districts for felons. For misdemeanants, the principal difference is in the mid-range districts, where clients of public counsel are much more likely to receive jail sentences and less likely to receive deferred sentences.

In the remainder of this chapter, the multivariate analysis of type of sentence and sentence lengths will be examined within each type of judicial district.

Urban Judicial Districts

The results presented in Table VI-13 show that after control variables are introduced there is almost no difference in the adjusted percentages of clients sentenced to prison among the types of defense counsel. Clearly, the bail status of the defendant and the specific

TABLE VI-10
 TYPE OF SENTENCE RECEIVED BY DEFENDANTS BY ATTORNEY FOR EACH
 TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Sentence	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison	9.9	17.0	2.3	21.5	4.0	15.4
Jail	4.0	2.9	0.0	3.7	5.3	2.6
Suspended	17.5	15.4	18.6	19.6	18.7	23.7
Deferred	68.7	64.8	79.1	55.2	72.0	58.3
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(252)	(488)	(43)	(163)	(75)	(156)
	V=.10		V=.24		V=.20	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-11
 TYPE OF SENTENCE RECEIVED BY FELONS BY ATTORNEY FOR EACH TYPE
 OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Sentence	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison	15.2	23.1	4.0	29.2	7.1	20.9
Jail	1.2	0.9	0.0	0.0	2.4	0.0
Suspended	18.3	16.7	12.0	18.3	23.8	27.3
Deferred	65.2	59.4	84.0	52.5	66.7	51.8
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(164)	(347)	(25)	(120)	(42)	(110)
	V=.09		V=.25		V=.22	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-12
 TYPE OF SENTENCE RECEIVED BY MISDEMEANANTS BY ATTORNEY FOR EACH
 TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Sentence	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Jail	9.3	8.1	0.0	14.3	9.4	8.9
Suspended	15.1	12.5	27.8	23.8	12.5	15.6
Deferred	75.6	79.4	72.2	61.9	78.1	75.6
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(86)	(136)	(18)	(42)	(32)	(45)
	V=.05		V=.22		V=.04	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-13
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES IN URBAN JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Prison Sentences		
	N	Unadjusted	Adjusted
ATTORNEY			
Private	151	14	17
Public	329	21	20
		eta=.08	beta=.04
BAIL STATUS			
Released	184	7	8
Not Released	296	26	26
		eta=.23	beta=.22
NUMBER OF CHARGES AT SENTENCING			
1 Charge	387	19	19
2 Charges	73	23	23
3 or More Charges	20	10	12
		eta=.06	beta=.06
OFFENSE AT SENTENCING			
Motor Vehicle	...	..	..
Possession, Drugs	55	9	11
Sale Drugs	40	15	18
Homicide and Related	13	54	53
Assault and Related	31	22	23
Robbery	30	26	20
Sex Offenses	15	26	27
Burglary	134	19	18
Theft and Related	97	19	20
Checks and Forgery	30	13	12
Unclassified	35	17	18
		eta=.19	beta=.17
		$R^2=.09$	

offense at sentencing are much better predictors of a prison sentence than the type of defense counsel.

Similarly, the results in Table VI-14 indicate that clients of public counsel appear only slightly more likely to exclusively receive jail sentences for misdemeanors. There are virtually no differences among types of defense counsel in the percentages of defendants receiving suspended sentences regardless of the type of charge at sentencing (Table VI-15). For deferred sentences (Table VI-16), the percentage differences among types of attorney are reduced to near equality for felons when adjusted, and show only a slight tendency for misdemeanor clients of private attorneys to receive more deferred sentences. The most consistent predictor of both suspended and deferred sentences is the specific offense at sentencing.

Are there any differences among types of defense counsel in terms of lengths of sentences in urban judicial districts? The results in Table VI-17 show that the differences in the lengths of prison sentences are small to begin with, and insignificant when adjusted for the effects of the other independent variables. However, the findings in Table VI-18 indicate that clients of public counsel tend to receive much shorter suspended sentences once the sentence lengths are adjusted, and this difference is especially pronounced for felony defendants. There is no significant difference in the length of deferred sentences (Table VI-19) for felons by type of attorney, but misdemeanor clients of public counsel tend to receive deferred sentences that are about three months longer on the average.

The net effect of type of counsel on sentencing can be seen in the analysis of sentence weights for urban districts (Table VI-20). Felony defendants of public counsel tend to receive a slightly higher score,

TABLE VI-14
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON PERCENTAGE OF MISDEMEANANTS RECEIVING JAIL SENTENCES (EXCLUSIVELY) IN URBAN JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	% Receiving Jail Sentences	
		Unadjusted	Adjusted
		(Grand Mean=8%)	
ATTORNEY			
Private	84	9	7
Public	127	8	9
		eta=.02	beta=.03
BAIL STATUS			
Released	133	7	6
Not Released	78	9	11
		eta=.04	beta=.08
NUMBER OF CHARGES AT SENTENCING			
1 Charge	196	8	8
2 Charges	8	13	15
3 or More Charges	7	0	3
		eta=.06	beta=.06
OFFENSE AT SENTENCING			
Motor Vehicle	16	19	19
Possession, Drugs	138	5	5
Sale Drugs	2	0	-3
Homicide and Related	...	..	..
Assault and Related	2	0	-1
Robbery	...	..	..
Sex Offenses	4	75	78
Burglary	9	12	10
Theft and Related	17	12	12
Checks and Forgery	6	0	-3
Unclassified	17	6	7
		eta=.39	beta=.40
		R ² =.16	

TABLE VI-15
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON
PERCENTAGE OF DEFENDANTS RECEIVING SUSPENDED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR URBAN
JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=1.6%)	Adjusted	N	Unadjusted (Grand Mean=11%)	Adjusted
ATTORNEY						
Private	151	18	17	84	12	11
Public	329	15	16	127	10	11
		eta=.03	beta=.02		eta=.03	beta=.01
BAIL STATUS						
Released	184	18	19	133	11	12
Not Released	296	14	14	78	10	10
		eta=.05	beta=.06		eta=.02	beta=.03
NUMBER OF CHARGES AT SENTENCING						
1 Charge	387	14	14	196	11	11
2 Charges	73	18	19	8	13	17
3 or More Charges	20	40	41	7	0	6
		eta=.14	beta=.15		eta=.07	beta=.04
OFFENSE AT SENTENCING						
Motor Vehicle	...	..	..	16	50	50
Possession, Drugs	55	7	6	138	6	6
Sale, Drugs	40	20	16	2	0	1
Homicide and Related	13	23	25	...	..	..
Assault and Related	31	16	16	2	0	1
Robbery	30	13	16	...	..	..
Sex Offenses	15	20	21	4	25	24
Burglary	134	17	18	9	11	12
Theft and Related	97	17	18	17	6	6
Checks and Forgery	30	23	25	6	0	1
Unclassified	35	9	9	17	24	23
		eta=.12	beta=.13		eta=.40	beta=.40
		$R^2=.04$			$R^2=.16$	

TABLE VI-16
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING DEFERRED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=57%)	Adjusted	N	Unadjusted (Grand Mean=70%)	Adjusted
ATTORNEY						
Private	151	62	58	84	71	75
Public	329	55	56	127	70	67
		eta=.07	beta=.02		eta=.01	beta=.09
BAIL STATUS						
Released	184	71	68	133	68	69
Not Released	296	48	50	78	73	71
		eta=.22	beta=.18		eta=.06	beta=.02
NUMBER OF CHARGES AT SENTENCING						
1 Charge	387	60	60	196	69	70
2 Charges	73	46	45	8	75	69
3 or More Charges	20	40	34	7	86	76
		eta=.13	beta=.15		eta=.07	beta=.03
OFFENSE AT SENTENCING						
Motor Vehicle	...	..	..	16	32	32
Possession, Drugs	55	84	84	138	77	77
Sale, Drugs	40	63	66	2	100	102
Homicide and Related	13	16	14	...	...	...
Assault and Related	31	39	38	2	100	103
Robbery	30	27	33	...	...	...
Sex Offenses	15	40	38	4	0	-4
Burglary	134	56	57	9	67	69
Theft and Related	97	59	58	17	83	83
Checks and Forgery	30	54	54	6	100	99
Unclassified	35	72	69	17	34	34
		eta=.31	beta=.30		eta=.43	beta=.44
		R ² =.15			R ² =.19	

TABLE VI-17
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON LENGTH OF PRISON SENTENCES RECEIVED BY FELONS IN URBAN JUDICIAL DISTRICTS (AVERAGE YEARS IN CELLS)

Variables	N	Length of Prison Sentence (Years)	
		Unadjusted (Grand Mean=10.0)	Adjusted
ATTORNEY			
Private	28	9.8	10.2
Public	93	10.1	10.0
		eta=.01	beta=.00
BAIL STATUS			
Released	18	6.6	9.9
Not Released	103	10.6	10.0
		eta=.08	beta=.00
NUMBER OF CHARGES AT SENTENCING			
1 Charge	92	9.4	8.8
2 Charges	26	13.0	14.6
3 or More Charges	3	4.0	8.1
		eta=.10	beta=.13
OFFENSE AT SENTENCING			
Possession, Drugs	5	3.8	5.0
Sale Drugs	6	9.2	8.3
Homicide and Related	7	59.3	59.7
Assault and Related	11	9.4	9.6
Robbery	18	6.8	6.4
Sex Offenses	6	10.0	11.3
Burglary	33	6.3	6.5
Theft and Related	22	4.7	4.4
Checks and Forgery	6	5.7	4.0
Unclassified	7	13.4	13.9
		eta=.68	beta=.69

$$R^2 = .48$$

TABLE VI-18
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF SUSPENDED SENTENCES RECEIVED BY DEFENDANTS BY TYPE OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=44.1)	Adjusted	N	Unadjusted (Grand Mean=9.8)	Adjusted
ATTORNEY						
Private	33	46.9	54.4	10	9.6	10.6
Public	71	42.8	39.3	14	10.0	9.3
		eta=.07	beta=.27		eta=.07	beta=.23
BAIL STATUS						
Released	37	39.3	38.1	15	9.7	9.7
Not Released	67	46.8	47.4	9	10.0	10.0
		eta=.14	beta=.17		eta=.05	beta=.04
NUMBER OF CHARGES AT SENTENCING						
1 Charge	73	41.8	42.0	23	10.0	9.8
2 Charges	22	54.3	53.9	1	6.0	9.6
3 or More Charges	9	38.0	37.3	..	....	....
		eta=.21	beta=.20		eta=.30	beta=.02
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	8	11.1	11.3
Possession, Drugs	4	45.0	50.7	9	11.1	11.1
Sale, Drugs	8	29.3	22.9	..	....	....
Homicide and Related	3	30.0	27.9	..	....	....
Assault and Related	9	40.7	38.2	..	....	....
Robbery	13	60.3	53.7	..	....	....
Sex Offenses	5	38.4	42.7	1	6.0	5.3
Burglary	30	41.8	44.7	1	12.0	12.4
Theft and Related	20	43.4	42.6	1	5.0	5.6
Checks and Forgery	9	43.3	47.2	..	....	....
Unclassified	3	76.0	81.8	4	6.0	5.6
		eta=.36	beta=.38		eta=.86	beta=.92
		$R^2=.21$			$R^2=.78$	

TABLE VI-19
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF DEFERRED SENTENCES RECEIVED BY DEFENDANTS BY TYPE OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=30.3)	Adjusted	N	Unadjusted (Grand Mean=12.3)	Adjusted
ATTORNEY						
Private	93	29.7	30.1	59	10.7	10.6
Public	181	30.7 eta=.04	30.5 beta=.02	89	13.4 eta=.19	13.5 beta=.21
BAIL STATUS						
Released	131	26.8	27.3	90	12.3	12.3
Not Released	143	33.6 eta=.27	33.1 beta=.24	58	12.5 eta=.01	12.4 beta=.01
NUMBER OF CHARGES AT SENTENCING						
1 Charge	233	29.6	29.6	136	12.4	12.4
2 Charges	33	32.2	31.4	6	16.0	16.5
3 or More Charges	8	45.0 eta=.22	45.8 beta=.22	6	6.5 eta=.20	6.2 beta=.22
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	5	12.0	11.3
Possession, Drugs	46	30.5	29.9	107	12.4	12.5
Sale, Drugs	25	30.6	29.2	2	18.0	16.7
Homicide and Related	2	18.0	18.9	...	....	....
Assault and Related	12	33.0	34.3	2	6.0	4.8
Robbery	9	53.3	52.3	...	....	....
Sex Offenses	6	34.0	34.6	...	....	....
Burglary	75	28.4	28.5	6	16.0	15.2
Theft and Related	57	29.6	30.5	14	11.1	10.9
Checks and Forgery	16	27.5	27.6	6	12.0	13.2
Unclassified	26	27.5 eta=.37	27.6 beta=.36	6	12.0 eta=.19	13.2 beta=.19

R²=.24

R²=.12

A

TABLE VI-20
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON
SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (WEIGHT SCORES IN
CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=14.9)	Adjusted	N	Unadjusted (Grand Mean=3.3)	Adjusted
ATTORNEY						
Private	150	12.9	13.9	75	2.1	1.9
Public	323	15.9	14.5	114	4.0	4.2
		eta=.09	beta=.04		eta=.13	beta=.16
BAIL STATUS						
Released	183	9.2	10.3	114	2.6	2.5
Not Released	290	18.5	17.9	75	4.4	4.4
		eta=.29	beta=.23		eta=.12	beta=.12
NUMBER OF CHARGES						
AT SENTENCING						
1 Charge	380	14.0	13.9	175	3.4	3.4
2 Charges	73	19.7	19.6	8	2.4	2.2
3 or More Charges	20	14.7	16.7	6	1.5	1.7
		eta=.13	beta=.13		eta=.05	beta=.05
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	15	3.3	3.9
Possession, Drugs	55	7.8	8.2	122	2.6	2.7
Sale, Drugs	40	13.5	13.5	2	3.0	0.9
Homicide and Related	12	41.3	41.6	...	...	...
Assault and Related	29	18.6	19.2	2	1.0	-0.2
Robbery	30	28.1	25.2	...	...	...
Sex Offenses	15	24.3	25.0	4	4.8	4.8
Burglary	131	13.8	13.6	9	7.8	6.8
Theft and Related	96	12.5	12.9	17	2.2	2.3
Checks and Forgery	30	13.3	12.8	6	2.0	1.1
Unclassified	35	12.5	13.7	12	8.6	9.2
		eta=.40	beta=.38		eta=.25	beta=.27
		$R^2=.24$			$R^2=.10$	

perhaps reflecting the slightly higher percentage who are sentenced to prison, but type of attorney is a much worse predictor of the severity of sentences than any of the other independent variables for felons. However, for misdemeanants in urban districts, type of attorney is the second best predictor of the severity of sentence. Although misdemeanor clients of public counsel clearly receive a more severe sentence, it must be remembered that punishment for misdemeanors in general is much less severe than that for felonies, and this difference is probably not very critical in terms of effects on the lives of defendants. In urban judicial districts, there is little evidence that type of defense counsel makes a difference in sentencing patterns.

Mid-Range Judicial Districts

The number of cases defended by private attorneys in these data for mid-range districts are too few to inspire confidence in the results of the analysis. We can see from Table VI-21 that almost none of the private attorneys' clients were sentenced to prison, severely restricting the range of variation that might be explained by the control variables. The 21% figure for clients of public counsel is almost identical to the unadjusted percentages for felons receiving prison sentences in both urban and rural judicial districts. Perhaps a larger sample of cases for private attorneys would have reduced the disparity. Still, the difference is striking and it may be that private attorneys in mid-range districts are simply doing a much better job than their counterparts in the rest of the State.

Similarly, misdemeanor clients of private attorneys are not at all likely to exclusively receive jail sentences (Table VI-22). In Table VI-23, we see that felony defendants of private counsel are much

TABLE VI-21
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES IN MID-RANGE JUDICIAL DISTRICTS (PERCENTS IN CELLS)

Variables	N	% Receiving Prison Sentences	
		Unadjusted	Adjusted
		(Grand Mean=18%)	
ATTORNEY			
Private	25	4	1
Public	109	21	22
		eta=.17	beta=.21
BAIL STATUS			
Released	51	8	8
Not Released	83	24	24
		eta=.21	beta=.20
NUMBER OF CHARGES AT SENTENCING			
1 Charge	117	17	17
2 Charges	13	23	26
3 or More Charges	4	25	26
		eta=.06	beta=.08
OFFENSE AT SENTENCING			
Motor Vehicle	...	..	..
Possession, Drugs	6	0	0
Sale Drugs	6	0	-8
Homicide and Related	3	33	34
Assault and Related	6	17	17
Robbery	5	40	35
Sex Offenses	4	25	35
Burglary	58	10	11
Theft and Related	28	18	16
Checks and Forgery	8	38	44
Unclassified	10	50	49
		eta=.35	beta=.37
		$R^2 = .21$	

TABLE VI-22
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF MISDEMEANANTS RECEIVING JAIL SENTENCES (EXCLUSIVELY) IN MID-RANGE JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	% Receiving Jail Sentences	
		Unadjusted	Adjusted
(Grand Mean=10%)			
ATTORNEY			
Private	14	0	0
Public	38	14	14
		eta=.20	beta=.20
BAIL STATUS			
Released	28	4	6
Not Released	24	17	15
		eta=.22	beta=.14
NUMBER OF CHARGES			
AT SENTENCING			
1 Charge	50	10	11
2 Charges	2	0	-25
3 or More Charges	..	..	..
		eta=.07	beta=.24
OFFENSE AT SENTENCING			
Motor Vehicle	11	19	18
Possession, Drugs	23	0	-1
Sale Drugs	2	0	-5
Homicide and Related	..	..	..
Assault and Related	1	100	91
Robbery	..	..	..
Sex Offenses	..	..	..
Burglary	3	0	-4
Theft and Related	4	0	7
Checks and Forgery	3	34	30
Unclassified	5	20	31
		eta=.56	beta=.57
		$R^2=.39$	

TABLE VI-23
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE
PERCENTAGE OF DEFENDANTS RECEIVING SUSPENDED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE
JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=17%)	Adjusted	N	Unadjusted (Grand Mean=25%)	Adjusted
ATTORNEY						
Private	25	12	9	14	36	26
Public	109	18 eta=.07	19 beta=.10	38	21 eta=.15	25 beta=.01
BAIL STATUS						
Released	51	16	16	28	25	25
Not Released	83	18	18	24	25 eta=.00	25 beta=.01
NUMBER OF CHARGES AT SENTENCING						
1 Charge	117	17	17	50	26	25
2 Charges	13	15	12	2	0	25
3 or More Charges	4	25 eta=.04	24 beta=.06	..	.. eta=.12	.. beta=.00
OFFENSE AT SENTENCING						
Motor Vehicle	...	..	..	11	73	73
Possession, Drugs	6	0	-1	23	9	9
Sale, Drugs	6	17	15	2	0	0
Homicide and Related	3	33	32	..	..	..
Assault and Related	6	67	67	1	0	1
Robbery	5	0	-1	..	..	..
Sex Offenses	4	0	-1	..	..	..
Burglary	58	10	10	3	17	16
Theft and Related	28	25	27	4	50	49
Checks and Forgery	8	37	37	3	0	0
Unclassified	10	10 eta=.38	9 beta=.40	5	0 eta=.65	0 beta=.64
			$R^2=$			$R^2=.42$

more likely to receive deferred sentences (Table VI-24) than their counterparts defended by public counsel. There are almost no differences in adjusted percentages by type of counsel in terms of probationary sentences for misdemeanants.

In spite of the small number of cases for private attorneys, the multivariate analysis of the length of prison sentences suggests that differences by type of counsel are minimal (Table VI-25). In Table VI-26, we see that felony defendants of private counsel tend to receive much shorter suspended sentences when the averages are adjusted for the effects of other variables. (Although the multivariate analysis for misdemeanor suspended sentences is presented in Table VI-26, the number of cases is too small to establish any stable statistical trend.) For deferred sentences (Table VI-27), there are no significant differences by attorney for felony defendants, but misdemeanor clients of private counsel tend to receive much longer periods of probation.

The net effects of type of counsel on sentences in mid-range judicial districts are summarized by sentence weights in Table VI-28. Punishment received by felony defendants is much greater if they are defended by public counsel. This is probably largely due to the fact that more of the clients of public counsel are sentenced to prison in mid-range districts for this sample. There is virtually no difference among types of counsel in the weight scores for misdemeanants.

Although there are clearly differences by type of counsel--especially for felons--in the mid-range judicial districts, the reader is cautioned to interpret these results carefully because of the small number of cases defended by private attorneys in this data.

TABLE VI-24
 EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE
 PERCENTAGE OF DEFENDANTS RECEIVING DEFERRED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE
 JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=56%)	Adjusted	N	Unadjusted (Grand Mean=62%)	Adjusted
ATTORNEY						
Private	25	76	81	14	58	66
Public	109	51	50	38	64	61
		eta=.19	beta=.24		eta=.05	beta=.05
BAIL STATUS						
Released	51	69	67	28	68	66
Not Released	83	48	49	24	55	58
		eta=.20	beta=.17		eta=.14	beta=.08
NUMBER OF CHARGES AT SENTENCING						
1 Charge	117	56	54	50	60	61
2 Charges	13	62	65	2	100	94
3 or More Charges	4	50	77	..	..	..
		eta=.04	beta=.10		eta=.16	beta=.13
OFFENSE AT SENTENCING						
Motor Vehicle	..	..	..	11	0	2
Possession, Drugs	6	100	103	23	92	93
Sale, Drugs	6	83	93	2	100	103
Homicide and Related	3	0	-4	..	..	..
Assault and Related	6	17	15	1	0	8
Robbery	5	0	5	..	..	..
Sex Offenses	4	50	38	..	..	..
Burglary	58	38	37	3	67	69
Theft and Related	28	46	46	4	50	48
Checks and Forgery	8	25	18	3	34	35
Unclassified	10	30	32	5	80	70
		eta=.51	beta=.54		eta=.77	beta=.62
			$R^2=.36$			$r^2=.62$

TABLE VI-25
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF PRISON SENTENCES RECEIVED BY FELONS IN MID-RANGE JUDICIAL DISTRICTS (AVERAGE YEARS IN CELLS)

Variables	N	Length of Prison Sentence	
		Unadjusted	Adjusted
		(Grand Mean=11.69)	
ATTORNEY			
Private	3	9.0	14.4
Public	33	11.9	11.5
		eta=.06	beta=.06
BAIL STATUS			
Released	8	6.8	8.8
Not Released	28	13.1	12.6
		eta=.19	beta=.11
NUMBER OF CHARGES AT SENTENCING			
1 Charge	32	10.0	11.1
2 Charges	3	20.0	8.5
3 or More Charges	1	40.0	39.1
		eta=.40	beta=.34
OFFENSE AT SENTENCING			
Homicide and Related	2	27.5	12.0
Assault and Related	1	50.0	52.7
Robbery	5	8.4	10.4
Sex Offenses	2	12.5	16.2
Burglary	9	7.2	8.0
Theft and Related	8	4.9	4.9
Checks and Forgery	3	5.3	6.5
Unclassified	6	21.5	21.5
		eta=.70	beta=.65

$R^2 = .54$

TABLE VI-26
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF SUSPENDED SENTENCES RECEIVED BY DEFENDANTS BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=48.5)	Adjusted	N	Unadjusted (Grand Mean=9.2)	Adjusted
ATTORNEY						
Private	5	41.8	39.6	5	8.2	8.1
Public	29	49.7	50.0	8	9.9	10.0
		eta=.10	beta=.13		eta=.25	beta=.28
BAIL STATUS						
Released	12	48.4	44.4	7	8.7	9.5
Not Released	22	48.6	50.8	6	9.8	8.9
		eta=.00	beta=.11		eta=.17	beta=.09
NUMBER OF CHARGES AT SENTENCING						
1 Charge	31	49.6	50.2	13	...	...
2 Charges	2	26.0	22.2	..	...	...
3 or More Charges	1	60.0	48.7	..	...	...
		eta=.21	beta=.24			
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	8	10.8	10.8
Possession, Drugs	..	....	....	2	5.5	4.8
Sale, Drugs	1	36.0	30.5	..	....	....
Homicide and Related	2	12.0	11.7	..	....	....
Assault and Related	4	75.0	75.3	..	....	....
Robbery	2	42.0	39.7	..	....	....
Sex Offenses	1	12.0	12.9	..	....	....
Burglary	9	46.2	47.9	1	11.0	10.6
Theft and Related	10	50.2	49.2	2	6.0	6.9
Checks and Forgery	3	59.7	62.4	..	....	....
Unclassified	2	48.0	45.7	..	....	....
		eta=.53	beta=.55		eta=.72	beta=.72
			$R^2=.35$			$R^2=.56$

TABLE VI-27
 EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON LENGTH
 OF DEFERRED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS (AVERAGE MONTHS
 IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=27.3)	Adjusted	N	Unadjusted (Grand Mean=14.5)	Adjusted
ATTORNEY						
Private	19	27.3	28.4	8	20.3	21.3
Public	57	27.3 eta=.00	26.9 beta=.03	24	12.5 eta=.45	12.2 beta=.53
BAIL STATUS						
Released	35	26.2	27.8	19	15.7	16.7
Not Released	41	28.2 eta=.05	26.8 beta=.02	13	12.7 eta=.20	11.2 beta=.37
NUMBER OF CHARGES AT SENTENCING						
1 Charge	66	27.4	27.3	30	14.8	14.6
2 Charges	8	24.1	27.8	2	9.0	13.1
3 or More Charges	2	36.0 eta=.09	29.9 beta=.02	..	.... eta=.19	.... beta=.05
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	..	....	....
Possession, Drugs	6	22.0	22.3	21	16.3	16.0
Sale, Drugs	5	17.0	17.7	2	12.0	14.7
Homicide and Related	..	....	....	..	....	....
Assault and Related	1	36.0	35.9	..	....	....
Robbery	1	180.0	180.0	..	....	....
Sex Offenses	2	36.0	34.3	..	....	....
Burglary	43	25.3	25.4	2	12.0	11.9
Theft and Related	13	25.4	25.4	2	9.0	7.1
Checks and Forgery	2	27.0	26.2	1	6.0	5.9
Unclassified	3	31.7 eta=.91	30.7 beta=.91	4	12.0 eta=.38	13.2 beta=.38
		$R^2=.83$			$R^2=.46$	

TABLE VI-28
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS (WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=15.3)	Adjusted	N	Unadjusted (Grand Mean=2.7)	Adjusted
ATTORNEY						
Private	25	10.0	8.9	13	2.9	2.9
Public	109	16.5	16.8	37	2.6	2.6
		eta=.15	beta=.19		eta=.05	beta=.08
BAIL STATUS						
Released	51	10.9	11.5	27	2.8	2.9
Not Released	83	18.1	17.7	23	2.6	2.4
		eta=.21	beta=.18		eta=.07	beta=.12
NUMBER OF CHARGES AT SENTENCING						
1 Charge	117	15.1	15.5	48	2.7	2.8
2 Charges	13	15.8	16.8	2	1.5	0.3
3 or More Charges	4	20.8	5.8	..	...	...
		eta=.06	beta=.10		eta=.12	beta=.25
OFFENSE AT SENTENCING						
Motor Vehicle	...	....	....	10	3.4	3.3
Possession, Drugs	6	3.7	3.1	23	2.7	2.6
Sale, Drugs	6	4.3	1.2	2	2.0	2.0
Homicide and Related	3	44.3	46.3	..	...	...
Assault and Related	6	20.2	20.4	1	1.0	1.6
Robbery	5	38.2	36.4	..	...	...
Sex Offenses	4	30.8	35.8	..	...	...
Burglary	58	10.3	10.4	3	1.7	1.6
Theft and Related	28	14.4	13.6	4	1.3	0.9
Checks and Forgery	8	16.9	19.9	2	3.5	3.5
Unclassified	10	30.4	29.8	5	3.0	4.0
		eta=.55	beta=.59		eta=.34	beta=.42
		$R^2=.38$			$R^2=.17$	

Rural Judicial Districts

The rather substantial difference by type of attorney in the percentage of felons receiving prison sentences in rural districts nearly disappears when the percentages are adjusted for the effects of the other independent variables (Table VI-29). The percentages by type of counsel for misdemeanants receiving jail sentences (exclusively) are not substantially different even though they are unaffected by the control variables (Table VI-30). Finally, the adjusted percentages for both suspended and deferred sentences reveal no substantial differences by type of counsel, regardless of the type of charge at sentencing (Tables VI-31 and VI-32).

As in the mid-range districts, the number of clients of private attorneys sentenced to prison is quite small. However, disparities in the length of the prison sentences are also quite small in both districts; the results for rural districts are presented in Table VI-33. The tendency of the sentence length to be reduced when adjusted in rural districts suggests that a larger sample of cases defended by private attorneys might have reduced the difference by type of attorney even further. The average length of suspended sentences in rural districts is somewhat shorter for felony clients of public counsel than for similar clients of private attorneys, but the difference is not great (Table VI-34). (As in the mid-range districts, the number of cases for misdemeanor suspended sentences is too small for stable statistical analysis.) The adjusted average lengths of deferred sentences by type of counsel are very similar for both felonies and misdemeanors (Table VI-35).

Once again, the net effects of type of counsel on sentencing are summarized in the analysis of sentence weights (Table VI-36). When the weights are adjusted for the effects of the other independent variables there are practically no differences in the weight scores by type of

TABLE VI-29
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING,
AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF FELONS RECEIVING
PRISON SENTENCES IN RURAL JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	% Receiving Prison Sentences	
		Unadjusted	Adjusted
		(Grand Mean=17%)	
ATTORNEY			
Private	33	9	15
Public	84	20	18
		eta=.13	beta=.03
BAIL STATUS			
Released	29	7	14
Not Released	88	20	18
		eta=.16	beta=.04
NUMBER OF CHARGES AT SENTENCING			
1 Charge	95	14	15
2 Charges	18	22	18
3 or More Charges	4	75	63
		eta=.30	beta=.23
OFFENSE AT SENTENCING			
Motor Vehicle	..	..	..
Possession, Drugs	12	0	-1
Sale Drugs	13	0	2
Homicide and Related	2	50	54
Assault and Related	12	8	10
Robbery	6	100	91
Sex Offenses	2	0	2
Burglary	30	13	11
Theft and Related	24	21	22
Checks and Forgery	8	25	25
Unclassified	8	12	15
		eta=.57	beta=.53
		$R^2 = .38$	

TABLE VI-30
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING,
AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF MISDEMEANANTS RECEIV-
ING JAIL SENTENCES (EXCLUSIVELY) IN RURAL JUDICIAL DISTRICTS (PER
CENTS IN CELLS)

Variables	% Receiving Jail Sentences		
	N	Unadjusted (Grand Mean=9%)	Adjusted
ATTORNEY			
Private	26	11	11
Public	28	7	7
		eta=.08	beta=.07
BAIL STATUS			
Released	28	7	6
Not Released	26	11	13
		eta=.08	beta=.12
NUMBER OF CHARGES AT SENTENCING			
1 Charge	52	7	8
2 Charges	1	0	-22
3 or More Charges	1	100	102
		eta=.43	beta=.46
OFFENSE AT SENTENCING			
Motor Vehicle	5	0	0
Possession, Drugs	34	6	8
Sale Drugs	2	0	-5
Homicide and Related	..	..	..
Assault and Related	3	0	-2
Robbery	..	..	..
Sex Offenses	1	100	103
Burglary	1	0	-1
Theft and Related	4	25	32
Checks and Forgery	1	0	1
Unclassified	3	33	1
		eta=.52	beta=.54
		$R^2=.45$	

TABLE VI-31
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING SUSPENDED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=26%)	Adjusted	N	Unadjusted (Grand Mean=11%)	Adjusted
ATTORNEY						
Private	33	24	25	26	8	10
Public	84	27	26	28	14	12
		eta=.03	beta=.01		eta=.10	beta=.04
BAIL STATUS						
Released	29	6	3	28	7	10
Not Released	88	32	33	26	15	12
		eta=.25	beta=.29		eta=.13	beta=.02
NUMBER OF CHARGES AT SENTENCING						
1 Charge	95	27	27	52	11	11
2 Charges	18	27	28	1	0	13
3 or More Charges	4	0	2	1	0	12
		eta=.11	beta=.10		eta=.07	beta=.01
OFFENSE AT SENTENCING						
Motor Vehicle	..	..	..	5	20	19
Possession, Drugs	12	16	18	34	9	9
Sale, Drugs	13	30	38	2	0	1
Homicide and Related	2	0	7	..	..	..
Assault and Related	12	19	22	3	67	66
Robbery	6	0	-5	..	..	..
Sex Offenses	2	0	6	1	0	-1
Burglary	30	26	26	1	0	-2
Theft and Related	24	37	35	4	0	0
Checks and Forgery	8	25	20	1	0	2
Unclassified	8	25	24	3	0	0
		eta=.23	beta=.23		eta=.46	beta=.45
		$R^2=.14$			$R^2=.21$	

TABLE VI-32
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON PER-
CENTAGE OF DEFENDANT'S RECEIVING DEFERRED SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUD-
ICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=50%)	Adjusted	N	Unadjusted (Grand Mean=74%)	Adjusted
ATTORNEY						
Private	33	64	54	26	69	70
Public	84	44	48	28	78	78
		eta=.18	beta=.05		eta=.11	beta=.09
BAIL STATUS						
Released	29	83	80	28	82	70
Not Released	88	39	40	26	65	70
		eta=.38	beta=.35		eta=.19	beta=.01
NUMBER OF CHARGES AT SENTENCING						
1 Charge	95	53	52	52	75	75
2 Charges	18	39	42	1	100	111
3 or More Charges	4	25	35	1	0	-20
		eta=.14	beta=.09		eta=.24	beta=.32
OFFENSE AT SENTENCING						
Motor Vehicle	..	..	..	5	60	57
Possession, Drugs	12	84	82	34	85	84
Sale, Drugs	13	62	51	2	0	4
Homicide and Related	2	50	37	..	..	..
Assault and Related	12	34	36	3	33	31
Robbery	6	0	16	..	..	..
Sex Offenses	2	50	40	1	0	-6
Burglary	30	50	52	1	100	95
Theft and Related	24	42	43	4	75	67
Checks and Forgery	8	50	56	1	100	103
Unclassified	8	37	39	3	67	99
		eta=.35	beta=.29		eta=.52	beta=.54
		$R^2=.25$			$R^2=.35$	

TABLE VI-33
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF PRISON SENTENCES RECEIVED BY FELONS IN RURAL JUDICIAL DISTRICTS (AVERAGE YEARS IN CELLS)

Variables	N	Length of Prison Sentence	
		Unadjusted	Adjusted
		(Grand Mean=10.8)	
ATTORNEY			
Private	4	21.8	14.7
Public	24	9.0	10.1
		eta=.28	beta=.10
BAIL STATUS			
Released	3	2.7	5.3
Not Released	25	11.8	11.5
		eta=.18	beta=.12
NUMBER OF CHARGES AT SENTENCING			
1 Charge	19	12.3	11.7
2 Charges	6	7.2	9.4
3 or More Charges	3	8.7	8.3
		eta=.14	beta=.08
OFFENSE AT SENTENCING			
Sale, Drugs	1	4.0	-1.4
Homicide and Related	1	75.0	69.6
Assault and Related	4	6.8	8.6
Robbery	6	10.3	10.8
Sex Offenses	1	20.0	19.2
Burglary	7	10.9	11.3
Theft and Related	5	3.8	2.8
Checks and Forgery	2	7.0	6.2
Unclassified	1	5.0	10.4
		eta=.82	beta=.76
		$R^2=.68$	

TABLE VI-34
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF SUSPENDED SENTENCES RECEIVED BY DEFENDANTS BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=41.0)	Adjusted	N	Unadjusted (Grand Mean=10.4)	Adjusted
ATTORNEY						
Private	9	46.6	44.8	4	7.8	7.6
Public	30	42.6	39.8	8	11.8	11.8
		eta=.19	beta=.13		eta=.27	beta=.29
BAIL STATUS						
Released	3	31.7	29.7	...	....	....
Not Released	36	41.7	41.9	...	....	....
		eta=.17	beta=.20			
NUMBER OF CHARGES AT SENTENCING						
1 Charge	32	40.9	40.9	...	....	....
2 Charges	7	41.1	41.7	...	....	....
3 or More Charges	..	....	....	...	....	....
		eta=.10	beta=.02			
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	2	12.0	10.6
Possession, Drugs	2	42.0	37.4	7	9.6	10.6
Sale, Drugs	5	48.0	46.2	...	....	....
Homicide and Related	..	....	....	...	....	....
Assault and Related	7	46.3	46.9	2	5.0	3.6
Robbery	..	....	....	...	....	....
Sex Offenses	1	5.0	5.4	...	....	....
Burglary	11	37.0	38.3	1	24.0	22.6
Theft and Related	9	41.2	41.7	...	....	....
Checks and Forgery	2	36.0	35.9	...	....	....
Unclassified	2	47.0	44.5	...	....	....
		eta=.45	beta=.43		eta=.67	beta=.65
		$R^2=.25$			$R^2=.50$	

TABLE VI-35
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING ON THE LENGTH OF DEFERRED SENTENCES RECEIVED BY DEFENDANTS BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=29.8)	Adjusted	N	Unadjusted (Grand Mean=12.2)	Adjusted
ATTORNEY						
Private	21	30.6	29.5	18	13.5	13.6
Public	37	29.5	30.0	22	11.2	11.2
		eta=.03	beta=.02		eta=.18	beta=.19
BAIL STATUS						
Released	24	27.0	27.8	23	13.4	13.3
Not Released	34	31.8	31.8	17	10.6	10.8
		eta=.21	beta=.15		eta=.23	beta=.19
NUMBER OF CHARGES AT SENTENCING						
1 Charge	50	30.2	29.7	39	11.9	12.3
2 Charges	7	27.4	31.2	1	24.0	9.9
3 or More Charges	1	24.0	23.5	..	....	....
		eta=.11	beta=.09		eta=.30	beta=.06
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	3	8.0	10.4
Possession, Drugs	10	28.8	29.1	29	12.2	12.0
Sale, Drugs	8	23.3	24.2	..	....	....
Homicide and Related	1	36.0	37.9	..	....	....
Assault and Related	4	33.0	32.6	1	6.0	6.0
Robbery	..	....	....	..	....	....
Sex Offenses	1	36.0	37.9	..	....	....
Burglary	15	28.0	27.9	1	12.0	14.4
Theft and Related	10	32.4	31.8	3	24.0	24.0
Checks and Forgery	4	19.5	18.8	1	3.0	0.6
Unclassified	5	45.6	45.1	2	9.0	9.0
		eta=.56	beta=.55		eta=.63	beta=.64
		$R^2=.34$			$R^2=.45$	

TABLE VI-36
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, AND OFFENSE AT SENTENCING
ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (WEIGHT SCORES
IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=14.4)	Adjusted	N	Unadjusted (Grand Mean=2.3)	Adjusted
ATTORNEY						
Private	33	11.4	14.9	23	2.2	2.1
Public	84	15.6	14.3	28	2.3	2.4
		eta=.12	beta=.02		eta=.04	beta=.13
BAIL STATUS						
Released	29	7.4	8.4	27	2.2	2.2
Not Released	88	16.8	16.4	24	2.3	2.4
		eta=.26	beta=.22		eta=.04	beta=.07
NUMBER OF CHARGES AT SENTENCING						
1 Charge	95	13.0	13.2	49	2.2	2.2
2 Charges	18	17.5	17.2	1	4.0	3.4
3 or More Charges	4	35.5	30.4	1	6.0	6.2
		eta=.27	beta=.21		eta=.42	beta=.42
OFFENSE AT SENTENCING						
Motor Vehicle	..	....	....	4	1.5	1.3
Possession, Drugs	12	5.5	5.2	34	2.1	2.2
Sale, Drugs	13	9.0	9.0	..	...	...
Homicide and Related	2	48.5	51.6	..	...	...
Assault and Related	12	17.1	16.9	3	2.3	2.3
Robbery	6	43.7	38.9	..	...	...
Sex Offenses	2	25.0	28.4	1	6.0	6.0
Burglary	30	13.6	13.2	1	2.0	1.8
Theft and Related	24	11.9	12.1	4	3.3	3.1
Checks and Forgery	8	13.8	13.6	1	1.0	1.4
Unclassified	8	11.0	11.6	3	3.3	2.1
		eta=.56	beta=.53		eta=.52	beta=.47
		$R^2=.40$			$R^2=.40$	

defense counsel for rural districts. For felons, all of the other independent variables are better predictors of the severity of sentence than type of defense counsel. For misdemeanors, the specific offense at sentencing is the best predictor, although the range of variation is so narrow that any differences tend to be small.

Conclusion

In some respects, the results of this analysis of sentencing patterns by type of attorney are startling. Given the emphasis on the importance of prior record in previous research, one might have expected that at least some substantial difference by type of counsel would have emerged from this analysis. However, no significant differences were found, except in mid-range judicial districts where the vagaries of the sample suggest caution in interpreting the results. Furthermore, the fact that differences are almost nonexistent in the two extreme types of judicial districts--the urban and the rural--lends credence to a general conclusion that the type of defense counsel has little net effect on the sentences received by defendants.

If prior record is a significant variable in sentencing--as both prior research and my own informal conversations with district judges across the state would suggest--why do no significant differences emerge before prior record is taken into account? What difference does prior record make? The answers to these questions may be found in the next chapter.

APPENDIX TO CHAPTER VI:

ZERO-ORDER ASSOCIATIONS AMONG INDEPENDENT VARIABLES
AT SENTENCING FOR THE STATE AND TYPES OF JUDICIAL DISTRICTS

(TABLES VI-37 TO VI-45)

TABLE VI-37
 TYPE OF CHARGE AT SENTENCING BY ATTORNEY

Type of Charge	Attorney		
	Private %	Public Defender %	Court Appointed %
Felony	60.8	71.7	73.2
Misdemeanor	39.2	28.3	26.8
Total	100.0	100.0	100.0
(N)	(403)	(699)	(213)
		V=.11	

TABLE VI-38
OFFENSE AT SENTENCING BY ATTORNEY

Offense	Attorney		
	Private %	Public Defender %	Court Appointed %
Possession of Drugs	33.7	23.4	22.4
Burglary	9.4	27.8	27.6
Theft and Related	19.4	14.7	15.0
Sale of Drugs	8.7	3.7	5.6
Assault and Related	5.2	5.1	7.0
Checks and Forgery	3.7	6.8	4.7
Robbery	2.2	4.3	4.2
Motor Vehicle	3.5	3.6	2.3
Sex Offenses	2.2	1.6	3.3
Homicide and Related	2.2	1.3	2.3
Unclassified	9.7	7.6	5.6
Total (N)	100.0 (403)	100.0 (672)	100.0 (214)
		V=.18	

TABLE VI-39
 BAIL STATUS BY ATTORNEY AT SENTENCING

Bail Status	Attorney		
	Private %	Public Defender %	Court Appointed %
Released	55.9	41.9	28.8
Not Released	44.1	58.1	71.2
Total (N)	100.0 (438)	100.0 (668) V=.18	100.0 (177)

TABLE VI-40
 NUMBER OF CHARGES AT SENTENCING BY ATTORNEY

Number of Charges	Attorney		
	Private %	Public Defender %	Court Appointed %
One Charges	84.4	85.4	90.1
Two Charges	11.1	11.6	9.0
Three or More Charges	4.5	2.8	0.9
Total	100.0	100.0	100.0
(N)	(404)	(670)	(212)
		V=.05	

TABLE VI-41
 MATRIX OF MEASURES OF ASSOCIATION AMONG INDEPENDENT
 VARIABLES AT SENTENCING

Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney05	.18	.11	.18
N of Charges09	.18*	.16
Bail Status21*	.22
Type of Charge68

*The starred measure of association is phi for a two by two table.
 All other reported measures are Cramer's V's.

CONTINUED

2 OF 3

TABLE VI-42
 NUMBER OF CHARGES AT SENTENCING BY ATTORNEY FOR EACH TYPE OF
 JUDICIAL DISTRICT (PER CENTS IN CELLS)

Number of Charges	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney*	PA	PD-CA	PA	PD-CA	PA	PD-CA
1 Charge		81.8	86.1	85.4	90.4	92.6	84.1
2 Charges		12.8	11.3	12.5	7.9	4.9	13.5
3 or More Charges		5.5	2.6	2.1	1.7	2.5	2.4
Total		100.0	100.0	100.0	100.0	100.0	100.0
(N)		(274)	(533)	(48)	(177)	(81)	(170)
		V=.08		V=.07		V=.13	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-43
 BAIL STATUS AT SENTENCING BY ATTORNEY FOR EACH TYPE OF
 JUDICIAL DISTRICT (PER CENTS IN CELLS)

Bail Status	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		PA	PD-CA	PA	PD-CA
Released	61.2	39.8	39.6	44.1	47.1	29.9
Not Released	38.8	60.2	60.4	55.9	52.9	70.1
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(304)	(540)	(48)	(170)	(85)	(134)
	phi=.21		phi=.04		phi=.17	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-44
 TYPE OF CHARGE AT SENTENCING BY ATTORNEY FOR EACH TYPE OF
 JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Charge	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Felony	63.2	71.0	57.1	75.6	55.6	72.5
Misdemeanor	36.8	29.0	42.9	24.4	44.4	27.5
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(272)	(534)	(49)	(176)	(81)	(171)
	phi=.08		phi=.17		phi=.17	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VI-45

MATRIX OF MEASURES OF ASSOCIATION FOR RELATIONSHIPS AMONG INDEPENDENT
VARIABLES FOR CONVICTED DEFENDANTS AT SENTENCING

URBAN JUDICIAL DISTRICTS					
Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney08	.21*	.08*	.27
N of Charges11	.19*	.18
Bail Status23*	.27
Type of Charge67

MID-RANGE JUDICIAL DISTRICTS					
Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney07	.04*	.17*	.28
N of Charges16	.16*	.29
Bail Status15*	.28
Type of Charge69

RURAL JUDICIAL DISTRICTS					
Variables	Attorney	N Of Charges	Bail Status	Type of Charge	Offense
Attorney13	.17*	.17*	.32
N of Charges12	.19*	.27
Bail Status24*	.31
Type of Charge72

*The starred measures are phi's for two by two tables. All other reported measures are Cramer's V's.

CHAPTER VII:

THE IMPORTANCE OF PRIOR RECORD

Introduction

To this point, the analysis of sentencing patterns has produced relatively little evidence to support the contention that clients of public defense counsel receive more severe sentences than clients of private counsel. The two most significant findings of non-negligible differences by type of attorney were in the fact that a somewhat larger percentage of the clients of public defenders were sentenced to prison, and that clients of public counsel charged with felonies consistently received more severe punishment in one of the three types of judicial districts, the mid-range districts.

However, these findings do not reflect the effects of the prior records of defendants because that information was not available for the total data pool. In order to take that crucial variable into account, information on prior record was collected for a sample of cases. (See the discussion on the sampling procedures and the methods of data collection in Chapter III.) The purpose of this chapter is to analyze sentencing patterns to assess the impact of prior record on any differences by type of attorney for this sample of cases.*

*The zero-order associations among independent variables in the sample approximated those for the total data pool. Although in some instances the measures of association were more pronounced because of the smaller number of cases in the sample, the test for multicollinearity produced about the same pattern as that for the total data pool. The matrices of measures of association for the total sample and for each of the types of judicial districts are presented in an appendix to this chapter.

Sentencing Patterns for the Sample

The distribution of defendants with prior records by type of attorney for the sample is consistent with findings from previous research: A larger percentage of the clients of public counsel charged with felonies have major or prior prison records; differences for misdemeanants are negligible (Table VII-1). Although the percentage differences are statistically not very great, even these small differences are important because of the potential impact of prior record on the sentences received by defendants. This impact is reflected in Table VII-2: Defendants with major or prior prison records are much more likely to be sentenced to prison and much less likely to receive probationary sentences. Perhaps the more significant finding from Table VII-2 is that prior record, acting alone as a control variable, does not explain the differences by type of attorney. Clients of public counsel with major or prior prison records appear much more likely to be sentenced to prison than similar clients of private counsel.

Prior record is the best predictor of all the independent variables in the multivariate analysis of the percentage of felons sentenced to prison (Table VII-3). A slight tendency for public counsel's clients to be more likely to receive prison sentences persists even when percentages are adjusted for the effects of other variables, but it should be stressed that type of attorney is the worst predictor of a prison sentence of all the independent variables.

The multivariate analysis of the percentage of defendants receiving probationary sentences (Table VII-4) indicates that differences for felons by type of defense counsel virtually disappear when percentages are adjusted for the effects of the other independent variables; again, prior record is the best predictor of a probationary sentence for felons.

TABLE VII-1

PRIOR RECORD OF DEFENDANTS BY ATTORNEY BY
TYPE OF CHARGE AT SENTENCING (PER CENTS IN CELLS)**

Prior Record	Type of Charge					
	All		Felony		Misdemeanor	
Attorney*	PA	PD-CA	PA	PD-CA	PA	PD-CA
None or Minor	85.5	78.3	80.8	72.0	93.2	96.0
Major or Prison	14.5	21.7	19.2	28.0	6.8	4.0
Total (N)	100.0 (151)	100.0 (264)	100.0 (94)	100.0 (195)	100.0 (56)	100.0 (67)
	phi=.09		phi=.10		phi=.06	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

** Because of the smaller number of cases in the sample, public defenders and court-appointed attorneys have been combined into one category of public defense counsel. Also, suspended and deferred sentences are combined into one category of probationary sentences. The categories for prior record are largely self-explanatory. Minor prior records reflect lengthy juvenile detentions and/or prior convictions for misdemeanors. Major prior records reflect prior convictions for felonies (which did not involve prison sentences) or more than three prior convictions for misdemeanors.

TABLE VII-2

TYPE OF SENTENCE BY ATTORNEY, CONTROLLING FOR
PRIOR RECORD OF DEFENDANTS (PER CENTS IN CELLS)

Prior Record

Type of Sentence	All		None or Minor		Major or Prison	
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison	4.5	11.8	2.2	5.7	19.5	32.9
Jail	3.6	1.0	3.1	1.3	7.2	0.0
Suspended	16.2	21.2	15.3	17.6	23.2	36.3
Deferred	75.6	66.0	79.3	75.5	50.1	30.8
Total (N)	100.0 (144)	100.0 (248)	100.0 (123)	100.0 (197)	100.0 (19)	100.0 (49)
	V=.17		V=.11		V=.31	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VII-3

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF
CHARGES AT SENTENCING, PRIOR RECORD, AND OFFENSE AT SENTENCING
ON THE PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES
(PER CENTS IN CELLS)

Variables	N	Per Cent Prison Sentences	
		Unadjusted (Grand Mean=12%)	Adjusted
ATTORNEY			
Private	93	7	9
Public	192	14	13
		eta=.11	beta=.06
BAIL STATUS			
Released	126	4	5
Not Released	159	19	17
		eta=.23	beta=.18
N OF CHARGES			
1 Charge	212	11	11
2 Charges	60	14	14
3 or More Charges	13	21	25
		eta=.31	beta=.29
PRIOR RECORD			
No Priors	140	5	5
Minor Priors	72	10	11
Major Priors	54	23	22
Prior Prison	18	41	38
		eta=.31	beta=.29
OFFENSE			
Sale, Drugs	25	0	7
Possession, Drugs	35	4	10
Homicide and Related	7	9	16
Assault and Related	10	6	12
Robbery	10	32	28
Sex Offenses	11	0	2
Burglary	84	14	9
Theft and Related	62	0	11
Checks and Forgery	24	21	18
Unclassified	19	25	23
		eta=.24	beta=.16

$$R^2 = .18$$

.A
TABLE VII-4
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD,
AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING PROBATIONARY SENTENCES BY TYPE
OF CHARGE AT SENTENCING (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=80%)	Adjusted	N	Unadjusted (Grand Mean=94%)	Adjusted
ATTORNEY						
Private	93	84	80	55	92	90
Public	192	78	80	67	96	97
		eta=.07	beta=.01		eta=.09	beta=.14
BAIL STATUS						
Released	126	92	91	86	95	95
Not Released	159	70	72	36	91	91
		eta=.28	beta=.24		eta=.07	beta=.10
N OF CHARGES						
1 Charge	212	82	82	..	..	..
2 Charges	60	79	79	..	..	..
3 or More Charges	13	58	52	..	..	..
		eta=.12	beta=.16			
PRIOR RECORD						
No Priors	140	89	90	94	93	92
Minor Priors	72	86	84	22	95	98
Major Priors	54	62	63	7	100	103
Prior Prison	18	39	42	..	..	..
		eta=.37	beta=.35		eta=.06	beta=.13
OFFENSE						
Motor, Vehicle	..	..	..	11	81	79
Sale, Drugs	25	90	79	2	100	93
Possession, Drugs	35	96	89	82	96	96
Homicide and Related	7	82	76	..	..	..
Assault and Related	10	81	72	2	74	74
Robbery	10	51	56	..	..	..
Sex Offenses	11	68	65	..	..	..
Burglary	84	76	82	5	100	103
Theft and Related	62	83	84	6	88	91
Checks and Forgery	24	74	78	4	100	100
Unclassified	19	72	75	10	94	94
		eta=.24	beta=.17		eta=.23	beta=.26
		$R^2=.25$			$R^2=.09$	

For misdemeanants, it appears that clients of public counsel are more likely to receive probationary sentences rather than be sentenced to jail, but that finding may be misleading since probationary sentences may be combined with jail sentences for any given defendant. That fact may account for the finding that defendants with prior records appear to be more likely to receive probationary sentences.* (As we shall see in the examination of sentence weight scores for misdemeanants, this would appear to be true because the average sentence weights for those with prior records are greater.)

The multivariate analysis of the lengths of prison sentences received by felons is presented in Table VII-5. Clearly, the type of offense and the prior record of the defendant are the best predictors of the length of sentences, but clients of public counsel do appear to receive longer sentences, about three years on the average, even when sentence length is adjusted for the effects of the other independent variables. Although this difference is not statistically very great, it does indicate a potentially greater period of confinement for clients of public counsel sentenced to prison.

Those felons who receive probationary sentences and are defended by public counsel tend to receive slightly longer periods of probation, but that difference by type of defense counsel is substantially reduced when the effects of the other independent variables are taken into account (Table VII-6). Similarly, misdemeanant defendants of public counsel tend to receive slightly longer sentences, and that difference is effected very little by the other independent variables. However,

* Because there was very little variation in the number of charges brought against misdemeanants in the sample, that variable would not have been present in very many multivariate tables and may have produced misleading results. Therefore, the number of charges was dropped as a variable in all tables for misdemeanants.

TABLE VII-5

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF
CHARGES AT SENTENCING, PRIOR RECORD, AND OFFENSE AT SENTENCING
ON LENGTHS OF PRISON SENTENCES FOR FELONIES
(AVERAGE YEARS IN CELLS)

Variables	Length of Prison Sentence		
	N	Unadjusted (Grand Mean=9.7)	Adjusted
ATTORNEY			
Private	11	6.1	7.6
Public	40	10.7	10.3
		eta=.14	beta=.08
BAIL STATUS			
Released	7	5.6	6.9
Not Released	45	10.3	10.1
		eta=.11	beta=.08
N OF CHARGES			
1 Charge	36	10.9	10.7
2 Charges	12	6.0	7.2
3 or More Charges	4	10.2	8.2
		eta=.15	beta=.11
PRIOR RECORD			
No Priors	13	8.9	8.5
Minor Priors	10	14.4	16.0
Major Priors	18	8.9	6.6
Prior Prison	11	7.7	10.7
		eta=.17	beta=.24
OFFENSE			
Sale, Drugs	..	....	....
Possession, Drugs	1	5.0	2.6
Homicide and Related	1	27.5	29.4
Assault and Related	1	20.0	24.6
Robbery	5	10.3	9.9
Sex Offenses	3	9.3	8.6
Burglary	19	5.3	5.8
Theft and Related	10	4.7	4.5
Checks and Forgery	6	6.0	6.8
Unclassified	5	34.7	32.8
		eta=.67	beta=.64

$R^2 = .49$

TABLE VII-6
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD,
AND OFFENSE AT SENTENCING ON THE AVERAGE LENGTHS OF PROBATIONARY SENTENCES BY TYPE OF CHARGE
AT SENTENCING (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=36.3)	Adjusted	N	Unadjusted (Grand Mean=11.7)	Adjusted
ATTORNEY						
Private	83	34.5	36.0	51	10.7	10.7
Public	127	37.5 eta=.08	36.5 beta=.01	56	12.5 eta=.16	12.6 beta=.17
BAIL STATUS						
Released	104	33.0	33.3	77	11.5	11.8
Not Released	106	39.6 eta=.18	39.3 beta=.16	29	12.0 eta=.04	11.4 beta=.03
N OF CHARGES						
1 Charge	153	35.2	35.0	..	....	....
2 Charges	47	36.9	37.2	..	....	....
3 or More Charges	9	52.7 eta=.19	54.7 beta=.18	..	....	....
PRIOR RECORD						
No Priors	112	33.2	33.3	83	11.2	11.0
Minor Priors	57	38.6	39.0	17	12.1	12.8
Major Priors	31	42.0	41.3	7	16.4	17.6
Prior Prison	10	40.7 eta=.19	39.3 beta=.18	..	.... eta=.23	.... beta=.30
OFFENSE						
Motor Vehicle	...	....	....	6	10.0	7.9
Sale, Drugs	17	28.7	31.8	..	....	....
Possession, Drugs	34	33.4	33.3	74	12.4	12.4
Homicide and Related	6	23.9	29.3	..	....	....
Assault and Related	7	32.1	35.5	2	2.8	3.2
Robbery	6	47.0	43.9	..	....	....
Sex Offenses	7	36.0	37.0	..	....	....
Burglary	58	39.8	38.7	5	11.9	12.5
Theft and Related	46	34.9	34.3	5	12.0	12.9
Checks and Forgery	17	39.8	39.0	4	12.0	12.0
Unclassified	12	43.3 eta=.25	43.8 beta=.19	9	8.4 eta=.30	8.6 beta=.33

$R^2=.15$

$R^2=.19$

prior record and the type of offense are much better predictors of the length of probationary sentences for misdemeanants than type of defense counsel.

The net effects of type of counsel on the sentences received by defendants are summarized in the multivariate analysis of the index of sentence weights (Table VII-7). For felons, differences by type of defense counsel are virtually negligible when the weight scores are adjusted for the effects of the other independent variables. The slightly higher average weight for clients of public counsel reflects the fact that a marginally higher percentage are likely to receive prison sentences that are also longer than those received by clients of private counsel. However, type of defense counsel is clearly the worst predictor of the severity of sentence for felons; the prior record of the defendant is clearly the best predictor. For misdemeanants, differences by type of counsel are not very great and are unaffected by the other independent variables. Although the severity of the sentence for misdemeanants does increase slightly for those defendants with prior records, the best predictor of the severity of sentence is the type of offense.

In general, the clients of public counsel appear to fare about as well as clients of private counsel when comparisons take into account the effects of the control variables. A slightly higher per cent of indigent defendants are likely to be sentenced to prison and to receive longer sentences, but these differences are not statistically very significant. It is apparent from this analysis, that the criteria which effect sentencing the most are the prior record of the defendant, the type of offense, and the bail status of the defendant. In comparison with these variables, the type of defense counsel is a very poor predictor of the severity of sentences received by defendants.

TABLE VII-7
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD,
AND OFFENSE AT SENTENCING ON AVERAGE SENTENCE WEIGHTS BY TYPE OF CHARGE AT SENTENCING (AVERAGE
WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=12.6)	Adjusted	N	Unadjusted (Grand Mean=2.2)	Adjusted
ATTORNEY						
Private	91	10.6	11.8	54	2.3	2.3
Public	190	13.5 eta=.10	12.9 beta=.04	67	2.1 eta=.06	2.1 beta=.06
BAIL STATUS						
Released	124	7.7	8.3	85	2.2	2.2
Not Released	157	16.5 eta=.31	15.9 beta=.27	36	2.1 eta=.02	2.2 beta=.01
N OF CHARGES						
1 Charge	208	12.1	11.8	..	...	...
2 Charges	60	12.9	12.8	..	...	...
3 or More Charges	13	21.2 eta=.13	23.9 beta=.18	..	...	...
PRIOR RECORD						
No Priors	137	9.0	8.0	93	2.2	2.1
Minor Priors	72	10.9	12.2	22	2.3	2.4
Major Priors	53	18.2	17.7	7	2.7	2.7
Prior Prison	18	29.2 eta=.40	27.8 beta=.37	..	... eta=.07	... beta=.09
OFFENSE						
Motor Vehicle	...	....	....	10	1.9	1.8
Sale, Drugs	24	6.4	10.5	2	1.7	1.7
Possession, Drugs	35	6.9	10.1	82	2.4	2.4
Homicide and Related	7	19.9	23.0	..	...	...
Assault and Related	8	9.5	13.4	2	1.0	1.1
Robbery	10	23.6	21.3	..	...	...
Sex Offenses	11	14.6	16.0	..	...	...
Burglary	82	13.6	11.5	5	1.9	2.0
Theft and Related	61	10.8	10.3	6	1.9	1.9
Checks and Forgery	24	15.6	14.2	4	2.0	2.0
Unclassified	19	20.0 eta=.31	19.2 beta=.24	10	1.9 eta=.16	1.8 beta=.17

$R^2=.32$

$R^2=.04$

SENTENCING WITHIN TYPES OF JUDICIAL DISTRICTS*

Introduction

Although the prior record of defendants is of substantial importance in sentencing for the sample, its importance may vary by type of judicial district. For example, judges appear to be much more likely to request and defendants are much less likely to waive their right to pre-sentence investigations in urban judicial districts, especially in felony cases (Table VII-8).** It is also apparent that defendants with major or prior prison records are encountered less often in the most rural judicial districts (Table VII-9). Together, these findings suggest the possibility that prior record might be a less significant and less stable predictor of sentencing patterns in the most rural districts. (Although it turns out that that possibility does not seem to be realized in the case of this particular study, as we shall see, the findings are worthy of presentation here as a caveat to future researchers.)

While public counsel defend more clients with major or prior

*The reader is reminded that the data for the sample in the analysis to this point was weighted by county to approximate a random sample. Those weights were removed for the analysis within districts so that each case could make its full contribution to the data analysis. A more complete discussion can be found in Chapter III.

**This finding raises an issue concerning measurement. Since the researcher must rely on pre-sentence investigations to measure prior record, while the court may have other personal knowledge of the defendant, we cannot be absolutely certain that the lower proportion of defendants with prior records in the rural districts (Table VII-9) reflects a lower incidence of such defendants or a lower incidence of pre-sentence investigations. I am convinced that the former is likely to be the case in this instance because of the pattern of results which emerge from the data analysis. However, I would caution other researchers to investigate the possibility that judges in some districts rely on information from sources other than pre-sentence investigations in determining prior record.

TABLE VII-8
 PRE-SENTENCE INVESTIGATIONS FOR EACH TYPE OF JUDICIAL DISTRICT
 BY TYPE OF CHARGE AT SENTENCING (PER CENTS IN CELLS)

Pre-Sentence Investigation	Type of Charge								
	All			Felony			Misdemeanor		
	Urban	Mid- Range	Rural	Urban	Mid- Range	Rural	Urban	Mid- Range	Rural
Ordered	67.9	33.7	21.6	81.9	38.8	26.8	39.2	16.7	12.9
Waived	32.1	66.3	78.4	18.1	61.3	73.2	60.8	83.3	87.1
	100.0 (246)	100.0 (104)	100.0 (88)	100.0 (166)	100.0 (80)	100.0 (56)	100.0 (79)	100.0 (24)	100.0 (31)
	V=.40			V=.50			V=.27		

prison records than private counsel in all three types of districts, the difference is least pronounced in the rural districts (Table VII-9). From Table VII-10, it is obvious that clients of public counsel are more likely to receive prison sentences in all three types of districts, but especially in the mid-range districts. That difference is greatly reduced for defendants with no worse than a minor record in urban districts, but it is still substantial for such defendants in the other districts--again, especially in the mid-range districts where all of the private attorney's clients receive probationary sentences (Table VII-11). When sentences for defendants with major or prior prison records are examined (Table VII-12), it can be seen that such clients of public counsel are much more likely to receive prison sentences in the urban and mid-range districts. However, the number of defendants with major or prior prison records in the mid-range and rural districts is so small that the results of the crosstabulation analysis in Table VII-12 are likely to be misleading. Therefore, it is appropriate to turn to the multivariate analysis for each type of judicial district.

Sentencing Patterns in Urban Districts*

The greater tendency for clients of public counsel to be sentenced

* Unfortunately, the number of cases of defendants sentenced to prison was too small to permit stable multivariate analysis of the length of prison sentences within types of districts. For example, the number of cases was greatest in urban districts (28), but two defendants charged with aggravated kidnapping who had minor prior records and were defended by private attorneys made it appear in the analysis that private attorney's clients received much longer sentences (beta of .16) and that defendants with minor prior records were much more likely to receive longer sentences (beta=.92). Of course, these extreme cases could have been dropped from the analysis, but the N of cases was already dangerously small. It seemed best to assess any differences in the lengths of prison sentences indirectly by examining the sentence weights for felonies, where any substantial differences in prison sentences would be reflected in the overall weight scores.

TABLE VII-9
 PRIOR RECORD OF DEFENDANTS BY ATTORNEY FOR EACH TYPE OF JUDICIAL DISTRICT
 (PER CENTS IN CELLS)

Prior Record	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*		PA	PD-CA	PA	PD-CA
None or Minor	84.6	76.5	88.0	76.5	92.0	87.3
Major or Prison	15.4	23.5	12.0	23.5	8.0	12.7
	100.0 (91)	100.0 (149)	100.0 (25)	100.0 (68)	100.0 (25)	100.0 (55)
	phi=.10		phi=.13		phi=.07	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VII-10
 TYPE OF SENTENCE BY ATTORNEY FOR EACH TYPE OF JUDICIAL DISTRICT (PER
 CENTS IN CELLS)

Type of Sentence	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison		4.6	10.0	0.0	17.5	4.8	15.1
Jail		4.6	0.7	0.0	3.2	0.0	1.9
Suspended		17.2	19.3	8.0	25.4	19.0	20.8
Deferred		73.6	70.0	92.0	54.0	76.2	62.3
		100.0	100.0	100.0	100.0	100.0	100.0
		(87)	(140)	(25)	(63)	(21)	(53)
		V=.16		V=.37		V=.17	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VII-11
 TYPE OF SENTENCE RECEIVED BY DEFENDANTS WITH NO PRIOR RECORD OR MINOR
 PRIOR RECORD BY ATTORNEY FOR EACH TYPE OF JUDICIAL DISTRICT (PER CENTS
 IN CELLS)

Type of Sentence	Type of Judicial District					
	Urban		Mid-Range		Rural	
	Attorney*					
	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison	2.7	4.5	0.0	8.3	0.0	8.9
Jail	4.0	0.9	0.0	4.2	0.0	2.2
Suspended	16.0	13.6	5.0	25.0	21.1	22.2
Deferred	77.3	80.9	95.0	62.5	78.9	66.7
	100.0	100.0	100.0	100.0	100.0	100.0
	(75)	(110)	(20)	(48)	(19)	(45)
	V=.11		V=.33		V=.19	

*PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

TABLE VII-12
 TYPE OF SENTENCE RECEIVED BY DEFENDANTS WITH MAJOR OR PRIOR PRISON RECORDS BY ATTORNEY FOR EACH TYPE OF JUDICIAL DISTRICT (PER CENTS IN CELLS)

Type of Sentence	Type of Judicial District						
	Urban		Mid-Range		Rural		
	Attorney	PA	PD-CA	PA	PD-CA	PA	PD-CA
Prison		16.7	30.0	0.0	38.5	50.0	42.9
Jail		8.3	0.0	0.0	0.0	0.0	0.0
Suspended		25.0	40.0	33.3	30.8	0.0	14.3
Deferred		50.0	30.0	66.7	30.8	50.0	42.9
		100.0	100.0	100.0	100.0	100.0	100.0
		(12)	(30)	(3)	(13)	(2)	(7)
		V=.33		V=.35		V=.19	

* PA=Private Attorney; PD-CA=Public Defender and Court Appointed.

to prison in urban districts is apparently due to the combined effects of the other independent variables (Table VII-13). The relationship is reversed and percentage differences are negligible when percentages are adjusted for the effects of the other independent variables. The prior record, bail status, and the type of offense are the crucial variables in predicting the possibility of a prison sentence in urban districts; the number of charges and the type of attorney are relatively insignificant variables.

Similarly, the relationship by type of attorney for felons receiving probationary sentences in urban judicial districts is reversed and the percentage difference is reduced when the effects of the other independent variables are taken into account (Table VII-14). Clearly the type of attorney is the worst predictor of the likelihood of receiving a probationary sentence when compared to the other independent variables. For misdemeanants, clients of public counsel are apparently much more likely to receive probationary rather than jail sentences, but, again, this finding may be misleading because of the possibility that the probationary sentences may be combined with jail sentences.

The results presented in Table VII-15 indicate that there are virtually no differences by type of counsel in the length of probationary sentences for felons either before or after the sentence lengths are adjusted; all of the other variables are better predictors of the length of probationary sentences than type of attorney. Misdemeanant clients of public counsel tend to receive longer periods of probation, and this difference is unaffected by the other variables. However, the difference of three months on the average is probably not very significant in terms of real-life consequences for the defendants.

The net effects of type of counsel on the severity of sentences

TABLE VII-13

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES IN URBAN JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	Per Cent Prison Sentences	
		Unadjusted	Adjusted
		(Grand Mean=11%)	
ATTORNEY			
Private	56	7	12
Public	107	13	10
		eta=.09	beta=.03
BAIL STATUS			
Released	80	4	4
Not Released	83	18	17
		eta=.23	beta=.21
N OF CHARGES			
1 Charge	121	11	11
2 Charges	35	11	12
3 or More Charges	7	14	16
		eta=.02	beta=.04
PRIOR RECORD			
No Priors	70	4	3
Minor Priors	48	8	11
Major Priors	35	20	19
Prior Prison	10	40	35
		eta=.30	beta=.28
OFFENSE			
Sale, Drugs	11	0	7
Possession, Drugs	25	4	8
Homicide and Related	4	0	5
Assault and Related	4	0	9
Robbery	5	0	-4
Sex Offenses	7	0	1
Burglary	50	14	9
Theft and Related	33	15	15
Checks and Forgery	14	21	19
Unclassified	10	20	23
		eta=.23	beta=.18
		$R^2=.16$	

TABLE VII-14
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING PROBATION-
ARY SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=82%)	Adjusted	N	Unadjusted (Grand Mean=97%)	Adjusted
ATTORNEY						
Private	56	86	80	33	91	90
Public	107	80	83	40	98	99
		eta=.08	beta=.04		eta=.14	beta=.21
BAIL STATUS						
Released	80	94	92	51	97	97
Not Released	83	70	72	22	91	90
		eta=.31	beta=.27		eta=.10	beta=.14
N OF CHARGES						
1 Charge	121	84	84	..	...	...
2 Charges	35	80	80	..	...	...
3 or More Charges	7	58	52	..	...	...
		eta=.14	beta=.17			
PRIOR RECORD						
No Priors	70	92	92	57	95	94
Minor Priors	48	90	88	12	92	95
Major Priors	35	63	64	4	100	101
Prior Prison	10	40	46	..	...	...
		eta=.40	beta=.37		eta=.08	beta=.07
OFFENSE						
Motor Vehicle	...	...	...	2	50	52
Sale, Drugs	11	91	80	1	100	94
Possession, Drugs	25	96	90	55	95	95
Homicide and Related	4	100	92	..	...	...
Assault and Related	4	100	84	1	100	95
Robbery	5	80	85	..	...	...
Sex Offenses	7	72	70	..	...	...
Burglary	50	74	82	3	100	102
Theft and Related	33	82	82	3	100	103
Checks and Forgery	14	72	76	3	100	102
Unclassified	10	80	75	5	100	103
		eta=.24	beta=.13		eta=.34	beta=.34
		$R^2=.27$			$R^2=.16$	

A
TABLE VII-15

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD OF DEFENDANTS,
AND OFFENSE AT SENTENCING ON THE LENGTH OF PROBATIONARY SENTENCES RECEIVED BY DEFENDANTS BY TYPE
OF CHARGE AT SENTENCING FOR URBAN JUDICIAL DISTRICTS (AVERAGE MONTHS OF SENTENCES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean =36.0)	Adjusted	N	Unadjusted (Grand Mean =11.8)	Adjusted
ATTORNEY						
Private	51	35.3	36.8	30	10.3	10.2
Public	92	36.4	35.5	39	13.0	13.1
		eta=.03	beta=.03		eta=.22	beta=.24
BAIL STATUS						
Released	76	32.4	32.7	49	11.5	11.8
Not Released	67	40.1	39.7	20	12.6	11.7
		eta=.21	beta=.19		eta=.08	beta=.02
N OF CHARGES						
1 Charge	107	34.4	34.2	..	....	....
2 Charges	31	38.1	38.5	..	....	....
3 or More Charges	5	57.6	58.9	..	....	....
		eta=.24	beta=.25			
PRIOR RECORD						
No Priors	67	33.1	33.7	54	11.3	11.3
Minor Priors	44	38.0	37.6	11	12.3	11.8
Major Priors	26	40.4	40.3	4	18.0	19.5
Prior Prison	6	34.0	31.1	..	....	....
		eta=.16	beta=.15		eta=.26	beta=.32
OFFENSE						
Motor Vehicle	...	....	....	1	11.0	10.0
Sale, Drugs	10	31.8	34.1	1	12.0	10.7
Possession, Drugs	24	33.8	32.5	52	12.6	12.5
Homicide and Related	4	25.5	32.7	..	....	....
Assault and Related	4	25.5	29.2	1	1.0	.2
Robbery	5	48.0	44.1	..	....	....
Sex Offenses	7	34.3	34.7	..	....	....
Burglary	42	40.1	39.2	3	12.0	12.4
Theft and Related	28	34.6	34.2	3	10.0	11.3
Checks and Forgery	11	37.6	37.8	3	12.0	12.2
Unclassified	8	33.0	36.4	5	7.0	7.5
		eta=.24	beta=.17		eta=.33	beta=.32

R² = .16

R² = .24

in urban districts are summarized in the multivariate analysis of sentence weights (Table VII-16). The initial tendency of weight scores to be higher for felony defendants represented by public counsel is reversed and the differences by type of counsel are reduced when scores are adjusted for the effects of the other independent variables. For misdemeanants, clients of public counsel tend to receive less severe sentences as measured by weight scores, and this relationship is unaffected by the other variables.

In the urban judicial districts, the findings are quite clear. The type of defense counsel is a very poor predictor of either the type of sentence or the length of sentences, particularly in comparison to the effects of prior record, the bail status of the defendant and the type of offense, in the analysis for defendants charged with felonies. For misdemeanants, clients of public counsel tend to receive less severe sentences, but differences by type of counsel tend to be relatively small.

Sentencing Patterns in Mid-Range Districts

The results of the data analysis for the mid-range districts tell a story quite different from the results for urban districts. First, it is apparent from Table VII-17 that the significantly larger percentage of clients of public counsel sentenced to prison is unaffected by the other control variables.* In fact, type of attorney is a much better predictor of a prison sentence than either prior record or bail status in mid-range districts.

* Because private attorneys in mid-range districts in the sample had no clients sentenced to prison, there were no cases to be adjusted in that category. However, the percentage for public counsel could have been adjusted downward by the effects of the other variables. The fact that it remains unchanged, and the difference by type of counsel remains the same, is the significant finding in Table VII-17.

TABLE VII-16
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING
FOR URBAN JUDICIAL DISTRICTS (AVERAGE WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=12.0)	Adjusted	N	Unadjusted (Grand Mean=2.3)	Adjusted
ATTORNEY						
Private	56	10.6	12.8	33	2.5	2.5
Public	106	12.8	11.6	40	2.2	2.2
		eta=.08	beta=.05		eta=.06	beta=.10
BAIL STATUS						
Released	80	7.9	8.6	5	2.3	2.3
Not Released	82	16.0	15.4	51	2.3	2.3
		eta=.32	beta=.26		eta=.00	beta=.00
N OF CHARGES						
1 Charge	120	11.5	11.4	..	...	...
2 Charges	35	12.0	12.1	..	...	...
3 or More Charges	7	20.3	22.2	..	...	...
		eta=.14	beta=.17			
PRIOR RECORD						
No Priors	70	8.5	8.2	57	2.3	2.3
Minor Priors	48	10.2	11.3	12	2.3	2.3
Major Priors	34	16.9	16.6	4	3.0	3.0
Prior Prison	10	29.2	26.9	..	...	...
		eta=.42	beta=.39		eta=.08	beta=.09
OFFENSE						
Motor Vehicle	...	....	....	2	1.5	1.5
Sale, Drugs	11	7.0	10.6	1	2.0	2.2
Possession, Drugs	25	7.0	9.0	55	2.6	2.6
Homicide and Related	4	10.8	13.2	..	...	...
Assault and Related	4	4.5	9.9	1	1.0	1.2
Robbery	5	12.0	10.3	..	...	...
Sex Offenses	7	11.8	12.9	..	...	...
Burglary	49	14.7	12.2	3	2.0	2.1
Theft and Related	33	11.6	11.4	3	1.7	1.6
Checks and Forgery	14	16.4	15.0	3	2.0	2.1
Unclassified	10	16.4	18.5	5	1.4	1.1
		eta=.27	beta=.18		eta=.21	beta=.23
		$R^2=.30$			$R^2=.06$	

TABLE VII-17

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES IN MID-RANGE JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	Per Cent Prison Sentences	
		Unadjusted	Adjusted
		(Grand Mean=13%)	
ATTORNEY			
Private	17	0	0
Public	54	17	17
		eta=.21	beta=.21
BAIL STATUS			
Released	23	5	8
Not Released	48	17	15
		eta=.17	beta=.10
N OF CHARGES			
1 Charge	58	11	10
2 Charges	11	19	24
3 or More Charges	2	50	50
		eta=.21	beta=.24
PRIOR RECORD			
No Priors	42	7	11
Minor Priors	10	10	14
Major Priors	12	25	11
Prior Prison	7	29	25
		eta=.25	beta=.12
OFFENSE			
Sale, Drugs	6	0	-1
Possession, Drugs	1	0	-1
Homicide and Related	3	34	25
Assault and Related	3	0	6
Robbery	2	50	44
Sex Offenses	1	0	-1
Burglary	25	8	10
Theft and Related	19	11	10
Checks and Forgery	5	0	0
Unclassified	6	50	52
		eta=.45	beta=.43
		$R^2=.32$	

From Table VII-18, it can be seen that clients of public counsel are less likely than clients of private counsel to receive probationary sentences for both felonies and misdemeanors, and this difference is largely unaffected by the controls for other variables (although slightly reduced for misdemeanants). However, the percentage differences by type of counsel are not as great for felons receiving probationary sentences as for those receiving prison sentences, and prior record and type of offense are clearly the best predictors of a probationary sentence.

Table VII-19 presents the results of the multivariate analysis of the length of probationary sentences in mid-range districts. Felony clients of public counsel tend to receive periods of probation about five months longer on the average than clients of private counsel. and, once again, this difference is largely unaffected by the other variables. Clients of public counsel charged with misdemeanors tend to receive shorter sentences on the average, but the difference of about two months is not as significant as the measure of association indicates.

Not surprisingly, the overall sentence weight average for felons defended by public counsel is about twice that for felony clients of private counsel and this difference persists even after the scores are adjusted for the effects of the other independent variables. For misdemeanants, clients of public counsel tend to receive slightly less severe sentences, but the difference is not very significant (Table VII-20).

In the mid-range districts for this sample, clients of public counsel are more likely to be sentenced to prison and are less likely to receive probationary sentences for felonies. In general, clients of public counsel tend to receive more severe sentences for felonies than clients of private counsel. On the other hand, the sentencing

TABLE VII-18
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING PROBATIONARY
SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=76%)	Adjusted beta	N	Unadjusted (Grand Mean=90%)	Adjusted beta
ATTORNEY						
Private	17	88	88	8	100	94
Public	54	72 eta=.16	72 beta=.15	13	84 eta=.25	88 beta=.10
BAIL STATUS						
Released	23	87	84	15	93	88
Not Released	48	71 eta=.18	72 beta=.12	6	83 eta=.15	95 beta=.12
N OF CHARGES						
1 Charge	58	76	76	..	...	..
2 Charges	11	82	81	..	...	..
3 Or More Charges	2	50 eta=.12	59 beta=.08	..	...	..
PRIOR RECORD						
No Priors	42	86	81	14	85	84
Minor Priors	10	70	64	7	100	101
Major Priors	12	67	68	..	...	...
Prior Prison	7	43 eta=.32	51 beta=.24	..	... eta=.23	... beta=.27
OFFENSE						
Motor Vehicle	..	...	..	6	100	90
Sale, Drugs	6	100	101	..	...	...
Possession, Drugs	1	100	103	7	100	105
Homicide and Related	3	33	37	..	...	...
Assault and Related	3	100	100	1	0	2
Robbery	2	0	2	..	...	...
Sex Offenses	1	100	103	..	...	...
Burglary	25	84	83	1	100	102
Theft and Related	19	74	76	..	...	...
Checks and Forgery	5	100	89	1	100	110
Unclassified	6	33 eta=.55	34 beta=.52	5	80 eta=.75	80 beta=.76

$R^2=.40$

$R^2=.61$

TABLE VII-19
 EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD OF DEFENDANTS,
 AND OFFENSE AT SENTENCING ON THE LENGTH OF PROBATIONARY SENTENCES RECEIVED BY DEFENDANTS BY TYPE
 OF CHARGE AT SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS (AVERAGE MONTHS ON SENTENCES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=36.0)	Adjusted	N	Unadjusted (Grand Mean=10.8)	Adjusted
ATTORNEY						
Private	16	26.8	26.4	8	12.0	11.5
Public	44	31.1 eta=.10	31.2 beta=.11	11	10.0 eta=.31	10.3 beta=.18
BAIL STATUS						
Released	21	30.6	29.0	14	11.4	11.2
Not Released	39	39.6 eta=.03	30.4 beta=.04	5	9.4 eta=.27	9.9 beta=.18
N OF CHARGES						
1 Charge	50	29.6	29.3	..	....	....
2 Charges	9	28.1	3.12	..	....	....
3 Or More Charges	1	60.0 eta=.21	50.3 beta=.15	..	....	....
PRIOR RECORD						
No Priors	38	27.9	29.6	12	10.2	10.0
Minor Priors	9	24.7	23.8	7	12.0	12.4
Major Priors	8	34.5	27.2	..	....	....
Prior Prison	5	47.6 eta=.32	47.0 beta=.30	..	.... eta=.27	.... beta=.36
OFFENSE						
Motor Vehicle	..	....	....	6	10.7	10.0
Sale, Drugs	6	20.2	21.4	..	....	....
Possession, Drugs	1	36.0	36.3	7	10.1	10.7
Homicide and Related	2	12.0	14.6	..	....	....
Assault and Related	3	52.0	55.9	..	....	....
Robbery	..	....	....	..	....	....
Sex Offenses	1	36.0	36.3	..	....	....
Burglary	23	28.0	28.3	1	11.0	13.4
Theft and Related	16	29.5	28.5	..	....	....
Checks and Forgery	5	37.2	36.6	1	12.0	13.1
Unclassified	3	40.0 eta=.41	36.0 beta=.41	4	12.0 eta=.23	11.2 beta=.29
			$R^2=.30$			$R^2=.24$

TABLE VII-20
 EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
 OF DEFENDANTS, AND OFFENSE AT SENTENCING ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING
 FOR MID-RANGE JUDICIAL DISTRICTS (AVERAGE WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=14.4)	Adjusted	N	Unadjusted (Grand Mean=2.1)	Adjusted
ATTORNEY						
Private	16	8.6	7.7	8	2.3	2.4
Public	54	16.1 eta=.18	16.4 beta=.21	13	2.1 eta=.07	2.0 beta=.18
BAIL STATUS						
Released	22	7.6	8.7	15	2.3	2.1
Not Released	48	17.6 eta=.27	17.0 beta=.22	6	1.8 eta=.17	2.3 beta=.23
N OF CHARGES						
1 Charge	57	14.2	14.2	..	...	...
2 Charges	11	11.4	14.1	..	...	...
3 Or More Charges	2	35.5 eta=.22	21.9 beta=.07	..	...	...
PRIOR RECORD						
No Priors	41	10.4	11.5	14	2.0	2.0
Minor Priors	10	13.0	16.9	7	2.4	.18
Major Priors	12	22.1	15.8	..	...	...
Prior Prison	7	26.9 eta=.34	25.5 beta=.25	..	... eta=.17	... beta=.23
OFFENSE						
Motor Vehicle	..	....	....	6	2.3	2.6
Sale, Drugs	6	4.3	4.7	..	....	...
Possession, Drugs	1	6.0	4.5	7	2.6	1.5
Homicide and Related	3	44.3	43.2	..	...	...
Assault and Related	3	10.7	13.1	1	1.0	.8
Robbery	2	44.0	41.9	..	...	...
Sex Offenses	1	6.0	4.5	..	...	...
Burglary	25	9.9	10.5	1	1.0	.8
Theft and Related	18	12.2	10.8	..	...	...
Checks and Forgery	5	6.6	13.5	1	2.0	2.1
Unclassified	6	36.0 eta=.65	32.0 beta=.59	5	3.0 eta=.52	3.1 beta=.67
			$R^2=.56$			$R^2=.30$

patterns for misdemeanants show no substantial differences by type of counsel.

Sentencing Patterns in Rural Districts

The results of the multivariate data analysis for rural districts are very similar to the results for urban districts. The substantially greater tendency of clients of public counsel to be sentenced to prison (see Table VII-10) is substantially changed when the effects of the other independent variables are accounted for: The relationship is reversed and the difference by type of counsel is greatly reduced (Table VII-21). Prior record and the type of offense are clearly the best predictors of a prison sentence. The findings for probationary sentences presented in Table VII-22, indicate that clients of public counsel become somewhat more likely to receive probationary sentences for felonies when the percentages are adjusted for the effects of the other variables. Again, the type of offense and the prior record of the defendant are the best predictors of a probationary sentence for felonies. For misdemeanants, the difference by type of attorney is relatively insignificant, indicating that clients of both type of counsel are about equally likely to receive either jail or probationary sentences for misdemeanors.

The analysis of the length of probationary sentences (Table VII-23) indicates that clients of public counsel are likely to receive shorter periods of probation than clients of private counsel for either felonies or misdemeanors, and these differences are increased when sentence lengths are adjusted for the effects of the other independent variables.

Bail status is the best predictor of the length of probationary sentences for felonies, while the type of offense is the best predictor for misdemeanors.

TABLE VII-21

EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF FELONS RECEIVING PRISON SENTENCES IN RURAL JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Variables	N	Per Cent Prison Sentences	
		Unadjusted (Grand Mean=16%)	Adjusted
ATTORNEY			
Private	15	7	19
Public	36	20	15
		eta=.16	beta=.05
BAIL STATUS			
Released	14	0	15
Not Released	37	22	16
		eta=.27	beta=.02
N OF CHARGES			
1 Charge	35	12	14
2 Charges	13	23	19
3 or more Charges	3	34	30
		eta=.18	beta=.12
PRIOR RECORD			
No Priors	38	6	11
Minor Priors	6	34	15
Major Priors	5	60	64
Prior Prison	2	50	-5
		eta=.52	beta=.44
OFFENSE			
Sale, Drugs	11	0	0
Possession, Drugs	4	0	3
Homicide and Related	..	...	...
Assault and Related	4	7	15
Robbery	4	100	107
Sex Offenses	2	0	8
Burglary	5	20	15
Theft and Related	13	0	5
Checks and Forgery	5	40	40
Unclassified	3	0	-17
		eta=.77	beta=.81
		R ² =.79	

TABLE VII-22
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE PERCENTAGE OF DEFENDANTS RECEIVING PROBATION-
ARY SENTENCES BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (PER CENTS IN CELLS)

Type of Charge

Variables	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=75%)	Adjusted	N	Unadjusted (Grand Mean=92%)	Adjusted
ATTORNEY						
Private	15	74	68	9	89	90
Public	36	75 eta=.02	78 beta=.10	17	94 eta=.09	93 beta=.06
BAIL STATUS						
Released	14	86	67	14	93	91
Not Released	37	71 eta=.16	78 beta=.11	12	91 eta=.02	93 beta=.06
N OF CHARGES						
1 Charge	35	78	76	..	..	..
2 Charges	13	70	78	..	..	..
3 or More Charges	3	67 eta=.09	53 beta=.13	..	..	..
PRIOR RECORD						
No Priors	38	85	80	20	90	85
Minor Priors	6	50	65	4	100	111
Major Priors	5	40	39	2	100	120
Prior Prison	2	50 eta=.38	106 beta=.32	..	... eta=.16	... beta=.46
OFFENSE						
Motor Vehicle	...	...	...	7	85	70
Sale, Drugs	11	82	84	1	100	106
Possession, Drugs	4	100	108	14	100	105
Homicide and Related	...	...	...	..	...	...
Assault and Related	4	25	35	1	100	109
Robbery	4	0	-9	..	...	...
Sex Offenses	2	50	39	..	...	...
Burglary	5	80	86	..	...	...
Theft and Related	13	100	94	3	66	73
Checks and Forgery	5	60	54	..	...	...
Unclassified	3	100 eta=.70	122 beta=.76	..	... eta=.42	... beta=.63
		$R^2=.59$			$R^2=.30$	

174

A
TABLE VII-23
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON THE LENGTH OF PROBATIONARY SENTENCES RECEIVED BY DE-
FENDANTS BY TYPE OF CHARGE AT SENTENCING FOR RURAL JUDICIAL DISTRICTS (AVERAGE MONTHS IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=34.8)	Adjusted	N	Unadjusted (Grand Mean=10.5)	Adjusted
ATTORNEY						
Private	11	40.4	43.5	8	12.8	13.3
Public	28	32.6	31.4	16	9.4	9.1
		eta=.21	beta=.33		eta=.40	beta=.50
BAIL STATUS						
Released	12	19.0	20.0	13	10.7	10.6
Not Released	27	41.8	41.4	11	10.4	10.3
		eta=.64	beta=.60		eta=.03	beta=.04
N OF CHARGES						
1 Charge	28	34.3	33.3	..	....	....
2 Charges	9	38.7	40.1	..	....	....
3 or More Charges	2	24.0	31.2	..	....	....
		eta=.19	beta=.18			
PRIOR RECORD						
No Priors	33	32.0	32.5	18	10.7	10.3
Minor Priors	3	64.0	53.4	4	10.5	11.7
Major Priors	2	48.0	44.6	2	9.0	9.8
Prior Prison	1	12.0	33.3	..	....	....
		eta=.59	beta=.36		eta=.12	beta=.13
OFFENSE						
Motor Vehicle	..	....	....	6	10.0	11.2
Sale, Drugs	9	29.3	28.6	1	6.0	7.4
Possession, Drugs	4	27.0	38.1	14	10.3	9.9
Homicide and Related	..	....	....	..	....	....
Assault and Related	1	36.0	24.4	1	6.0	3.2
Robbery	..	....	....	..	....	....
Sex Offenses	2	48.0	48.6	..	....	....
Burglary	4	27.0	38.3	..	....	....
Theft and Related	13	36.0	36.6	2	18.0	17.5
Checks and Forgery	3	28.0	32.2	..	....	....
Unclassified	3	64.0	32.2	..	....	....
		eta=.60	beta=.30		eta=.64	beta=.67
		$R^2=.71$			$R^2=.60$	

The net effects of type of counsel on sentencing patterns are presented in the multivariate analysis of sentence weights (Table VII-24). The relationship by type of counsel is reversed when average sentence weights are adjusted, although the gap remains essentially the same. It is clear that for felons, the initial differences by type of attorney are essentially due to the effects of the type of offense, prior record, and the bail status of the defendant in rural judicial districts. For misdemeanants, clients of public counsel tend to receive less severe sentences, but the difference is not very great; the large beta score for type of attorney is a function of the small amount of variation in sentence weights for misdemeanants.

Conclusion

We have seen that prior record is a consistently important variable in predicting sentencing patterns and that felony clients of public counsel are more likely to have major or prior prison records than felony clients of private counsel. In spite of those findings, the addition of prior record as a control variable does not generally alter the conclusions reached in the previous chapter. There it appeared that overall differences by type of counsel were not very large to begin with, and became even smaller when controls for the other independent variables were introduced. Although the statistics for the sample and the total data pool are not directly comparable because of differences in the data analysis, it appears that the addition of prior record as a control variable has the effects of reducing the differences by type of attorney and increasing the proportion of variance explained by all of the independent variables acting together. (For example, compare the results in Table VI-9 with the results in Table VII-7.) For misdemeanants, the addition of prior record does not seem to make

TABLE VII-24
EFFECTS OF ATTORNEY, BAIL STATUS, NUMBER OF CHARGES AT SENTENCING, PRIOR RECORD
OF DEFENDANTS, AND OFFENSE AT SENTENCING ON SENTENCE WEIGHT BY TYPE OF CHARGE AT SENTENCING
FOR RURAL JUDICIAL DISTRICTS (AVERAGE WEIGHT SCORES IN CELLS)

Variables	Type of Charge					
	Felony			Misdemeanor		
	N	Unadjusted (Grand Mean=13.3)	Adjusted	N	Unadjusted (Grand Mean=1.6)	Adjusted
ATTORNEY						
Private	12	11.1	15.7	8	1.9	2.0
Public	35	14.0 eta=.08	12.5 beta=.09	17	1.5 eta=.24	1.5 beta=.37
BAIL STATUS						
Released	12	3.3	8.1	13	1.6	1.7
Not Released	35	16.7 eta=.38	15.0 beta=.20	12	1.7 eta=.04	1.6 beta=.09
N OF CHARGES						
1 Charge	32	12.1	12.3	..	...	...
2 Charges	12	15.5	14.6	..	...	...
3 or More Charges	3	16.7 eta=.11	19.0 beta=.12	..	...	...
PRIOR RECORD						
No Priors	35	9.3	11.9	19	1.6	1.6
Minor Priors	5	20.8	10.6	4	1.8	1.9
Major Priors	5	27.6	25.7	2	1.5	1.6
Prior Prison	2	28.0 eta=.46	12.6 beta=.28	..	... eta=.09	... beta=.16
OFFENSE						
Motor Vehicle	..	....	....	6	1.7	1.8
Sale, Drugs	9	6.2	7.2	1	1.0	1.2
Possession, Drugs	4	4.5	7.9	14	1.6	1.5
Homicide and Related	..	....	....	..	...	...
Assault and Related	2	30.0	21.8	..	...	...
Robbery	4	43.0	42.9	1	1.0	.6
Sex Offenses	2	25.0	26.5	..	...	...
Burglary	5	12.2	12.3	..	...	...
Theft and Related	13	6.2	7.2	3	2.3	2.4
Checks and Forgery	5	18.8	18.3	..	...	...
Unclassified	3	10.7 eta=.74	4.4 beta=.70	..	... eta=.45	... beta=.53
			$R^2=.67$			$R^2=.32$

much difference; type of offense remains the crucial variable in explaining the small amount of variation in misdemeanor sentences.

The results of the analysis of the sample data for urban and rural judicial districts also tend to support our general findings. For these two extremes, there seems to be no substantial evidence to support contentions that one type of counsel is more effective than the other. However, it is significant that the differences by type of counsel in the mid-range districts--which consistently show that felony clients of public counsel receive more severe sentences--persist even when a control for prior record is introduced. It is clear that there are differences by type of counsel in mid-range districts that cannot be explained by the control variables utilized in this study.

Because differences by type of counsel are relatively insignificant in the extreme cases of urban and rural districts, it does not seem reasonable to conclude that the degree of urbanization is a crucial factor in determining differences by type of defense counsel. Instead, it would appear that some other combination of circumstances is operating in the mid-range districts to make public counsel less effective. This finding suggests that future researchers who include in their sample a wide variety of judicial districts are likely to encounter some districts where there are substantial differences by type of attorney. However, the general findings of the data suggest that such districts are likely to be the exception and that the general effects of type of counsel are likely to be minimal.

APPENDIX TO CHAPTER VII :

MATRICES OF ASSOCIATIONS AMONG
INDEPENDENT VARIABLES AT SENTENCING
(TABLES VII-25 TO VII-28)

TABLE VII-25
 MATRIX OF ASSOCIATIONS AMONG INDEPENDENT
 VARIABLES AT SENTENCING

Variables	Variables					
	Attorney	Bail Status	N of Charges	Prior Record	Type of Charge	Offense
Attorney33*	.11	.09*	.06*	.34
Bail Status01	.12*	.18*	.36
N Of Charges06	.29	.19
Prior Record24*	.29
Type of Charge68

*The starred measures of association are phi's; all others are Cramer's V.

TABLE VII-26

MATRIX OF ASSOCIATIONS AMONG INDEPENDENT VARIABLES
AT SENTENCING FOR URBAN JUDICIAL DISTRICTS

Variables	Variables					
	Attorney	Bail Status	N of Charges	Prior Record	Type of Charge	Offense
Attorney37*	.17	.10*	.05*	.41
Bail Status02	.12*	.14*	.43
N Of Charges11	.31	.20
Prior Record26*	.32
Type of Charge65

*The starred measures of association are phi's; all others are Cramer's V.

TABLE VII-27

MATRIX OF ASSOCIATIONS AMONG INDEPENDENT VARIABLES AT
SENTENCING FOR MID-RANGE JUDICIAL DISTRICTS

Variables	Variables					
	Attorney	Bail Status	N of Charges	Prior Record	Type of Charge	Offense
Attorney12*	.03	.13*	.09*	.34
Bail Status07	.13*	.27*	.34
N Of Charges15	.18	.35
Prior Record23*	.35
Type of Charge81

*The starred measures of association are phi's; all others are Cramer's V.

TABLE VII-28

MATRIX OF ASSOCIATIONS AMONG INDEPENDENT VARIABLES AT
SENTENCING FOR RURAL JUDICIAL DISTRICTS

Variables						
Variables	Attorney	Bail Status	N of Charges	Prior Record	Type of Charge	Offense
Attorney24*	.18	.07*	.00*	.49
Bail Status04	.19*	.18*	.46
N Of Charges15	.27	.32
Prior Record10*	.37
Type of Charge79

*The starred measures of association are phi's; all others are Cramer's V.

CHAPTER VIII:
SUMMARY AND IMPLICATIONS
FOR FUTURE RESEARCH

Summary

During the last three decades, research on the criminal justice system has attempted to identify inequities which might be based on the race, ethnicity, or socioeconomic status of defendants (c.f., Bullock, 1961; Chiricos, et al., 1972; Green, 1964, Kelly, 1976). Perhaps because the results of such research have often been inconsistent, the focus sometimes shifted to a concentration on the lawyers who typically serve as advocates for the poor and members of minority groups in the courtroom--public defenders and court appointed attorneys (Swigert and Farrell, 1977). This emphasis gained support from traditional criticisms of public defense services (Dimock, 1956; Stewart, 1948), from early studies which presented descriptive statistical data which demonstrated differences by type of attorney (e.g., Silverstein, 1965), from case studies which revealed that public defender agencies were bureaucratic and impersonal in their approach to defendants (Sudnow, 1965; Mather, 1973), and from evidence that indigents were not very satisfied with the services they were provided (Casper, 1971). We have argued that this emphasis was also buttressed by unstated assumptions to the effect that private attorneys operate much differently in court and tend to be much more adversarily oriented than public counsel.

In the midst of that research emphasis, studies were gradually

accumulating with results that challenged beliefs about the characteristics of private attorneys (Wood, 1956, 1967) and which failed to find any statistical evidence to support the contention that the fate of the defendant depended on the type of defense counsel (Fernsler, 1974; Lehtinen and Smith, 1974; Neubauer, 1974; Smith and Wendall, 1968; Smith, 1970). These latter studies have generally found that initial differences by type of attorney in terms of the sentences received by defendants were actually a result of differences in the clientele and the kinds of cases each type of attorney had in their caseloads.

The results of this study support the thesis that observable differences by type of defense counsel are largely the function of other variables. We have found that the fate of defendants in the criminal courts of Montana primarily depends on the type of charge, the type of offense, the prior record of defendants, the bail status of defendants, and, to a lesser extent, on the number of charges brought against defendants. When the effects of these variables are taken into account, the differences by type of attorney tend to be too small to support any claims that public counsel are any less effective as defense attorneys than private counsel. For most of the multivariate data analysis, the type of defense counsel proves to be an unimpressive predictor of case dispositions, and, in comparison to the other variables, the worst predictor of sentencing patterns. These findings are particularly pronounced for the most urban and the most rural of the judicial districts in our sample, where differences by type of attorney are negligible.

The Mid-Range Districts: Implications for Future Research

The principal exception to the general findings occurs in the mid-range judicial districts, which fall in the middle of the urban-rural

continuum devised for the data analysis (discussed in Chapter III). In those districts, clients of public counsel appear to receive more severe sentences than clients of private counsel and those differences are not explained by the effects of other independent variables.

There might be any number of reasons for this discrepant finding. First, it may be that public counsel is really much worse in those districts. Second, the results may be a function not of defense counsel, but of prejudices harbored by a few judges whose sentencing decisions make it appear that public counsel is less effective in those districts. Third, it may be that the results are a consequence of sampling error. Because of the relatively small size of the samples for the mid-range and rural districts, there is a higher probability that the results are not representative than is the case for the urban districts; a different pattern might emerge with a larger number of cases. Finally, the differences might be a result of criteria which are not measured in this study. For example, one might argue that court personnel in the mid-range districts have less access to either the bureaucratically generated information about defendants found in pre-sentence investigation reports for urban districts, or the personal knowledge of defendants which might be more available to court personnel in the most rural districts. As a consequence, prejudices against indigent defendants might have a more significant impact on sentencing patterns in mid-range districts.

Whatever the reasons for this finding in the mid-range districts, future research on the criminal justice system in Montana would benefit from a closer examination of those districts. Presuming that the findings from this study would be verified by such research, it would be interesting to know why clients of public counsel fare so much worse in those mid-range districts. Are public counsel really less effective

in those districts, and, if so, why?

Most prior research, which has generally focused on one county or judicial district for each study, has ended with the conclusion that differences by type of counsel are minimal. In the case of this study, we have been able to identify a set of districts where differences are relatively substantial. It is our contention that an understanding of the effects of the type of defense counsel on the criminal justice process would profit greatly from an in-depth analysis of districts where we have reason to believe there are differences by type of attorney. An in-depth study of the mid-range districts in Montana would be a worthwhile project.

Additional Possibilities for Future Research

Apart from the findings for the mid-range districts, the results of this study suggest that the services provided by public counsel are comparable to those provided by private attorneys, when those services are assessed in terms of case dispositions and sentencing patterns. However, there are other criteria which reach beyond the scope of this study and which might be useful in future research on public defense services in Montana. Our point of departure for the evaluation of public defense services has been the services provided by private attorneys, but a more complete assessment of public services might include two other criteria.

First, there is the consumer's perspective. What do the clients think about the services they receive from public counsel, and how does their level of satisfaction compare with that of clients of private attorneys? If the clients of public counsel do have serious criticisms, those criticisms might indicate ways in which public services could

be improved. Certainly the consumer's perspective is important because the level of client satisfaction may have consequences for the court's ability to exercise deterrant effects on the future criminal behavior of defendants.

The second criterion involves a concept of equity which is broader in scope than the concept which has been used in this study. In the case of any individual defendant, the resources needed to protect the rights of the defendant (and especially to establish innocence) may go far beyond any minimal services typically provided by a private attorney. Therefore, future evaluations ought to consider questioning the ability of the system of public defense services in Montana to deliver the resources needed to meet the needs of indigent clients. That kind of question goes beyond comparisons with services available privately. In fact, we believe that the needs of indigent clients are often greater than the needs of the typical client of the private attorney. The data from this study indicate that indigent defendants are more likely to be charged with felonies, to have a major or prior prison record, and are more likely to be detained in jail pending the outcome of their cases than are the clients of private attorneys. It is also apparent that defendants with these characteristics are likely to receive much more severe sentences than other defendants. It seems reasonable to suggest that these defendants may require substantial resources to establish their innocence or to uncover information that might mitigate the severity of the punishment they receive. Are those resources available in Montana, and are they adequate?

The results of this study show that comparisons of public counsel with private counsel reveal few differences when the effects of other

variables are taken into account, but that does not mean that legal services for indigents accused of crimes are adequate in terms of any higher concept of justice. This study has attempted from a limited perspective to assess the degree to which the fate of defendants is determined by the type of defense counsel. We have found very little evidence to show that any systematic differences by type of attorney exist in Montana, except in the mid-range judicial districts. However, there are issues of equity that go beyond the scope of this project. One kind of issue concerns the extent to which the clients of public counsel feel they received an adequate defense, and another involves the availability and adequacy of resources at the command of public counsel. A complete assessment of the quality of public defense services in Montana requires further research on these issues.

Conclusion

Although there are issues for research which go beyond the scope of the kind of study done for this project, we believe that statistical comparisons of public counsel with private attorneys will continue to be important. On one hand, they are a useful instrument for discovering districts where there are substantial inequities in the administration of justice. As such, they are an invaluable tool for policy makers and criminologists who are concerned about the quality of justice administered to defendants. In addition, the accumulated results of these studies are beginning to strengthen the belief that type of counsel is a relatively unimportant variable in determining the fate of defendants. Because the data from this study come from a state with a relatively low population density and few major urban areas, unlike the sites of most previous research, the results lend support to the contention that

the generalizations from previous statistical comparisons are applicable to a wide variety of geographical areas. As more research accumulates from diverse localized criminal justice systems, we may become even more confident that differences by type of attorney which have consequences for the ultimate fate of the defendant are largely nonexistent.

APPENDIX:

SAMPLE COURT FORM

AND CODING MANUAL

For every new criminal action filed you must place one set (1 wht. & 1 yell.) page in front of each court file. Fill in dates and blanks as the case progresses. When a case is disposed of by judgment, dismissal, i.e., tear off at perforation and forward the white copy to the Montana Board of Crime Control. Should there be further activity as to a deferred sentence or revocation, it will be necessary, when completed, to mail in the balance of the white page to the Montana Board of Crime Control, 1336 Helena Ave., Helena, MT 59601.

POST-SENTENCE REVOCATION/DISMISSAL DATA (DEFERRED AND SUSPENDED ONLY)

REVOCAION PETITION _____ DOCKET # _____

REVOCAION HEARING _____

FINAL ACTION TAKEN _____

DISMISSAL ON DEFERRED SENTENCE _____

DOCKET # _____ COUNTY _____ DISTRICT # _____

NAME _____ IDENTIFICATION # _____

PRETRIAL [] J.P. TRANSFER [] PRELIMINARY HEARING

[] DIRECT [] APPEAL J.P. [] APPEAL POLICE CT. DATE ____/____/____

CHARGES AT TIME OF FILING _____ STATUTE # _____

FIRST APPEARANCE [IN DIST. COURT] TYPE OF COUNSEL [] PRIVATELY RETAINED

[] COURT APPOINTED [] PUB. DEFENDER

ARRAIGNMENT INITIAL PLEA [] GUILTY [] NOT GUILTY

REASONS FOR DELAY OF ARRAIGNMENT [] CONTINUANCE [] DEF. AT LARGE [] PSYCH. EVAL.

[] OTHER _____

CHARGES AT TIME OF ARRAIGNMENT _____ STATUTE # _____

AMENDED INFORMATION

INITIAL BAIL \$ _____ OWN RECOGNIZANCE _____ RELEASE

REDUCTION OR FINAL BAIL \$ _____

CHANGE OF PLEA PLEA GIVEN [] GUILTY [] NOT GUILTY

CHARGES AT TIME PLEA CHANGED _____ STATUTE # _____

PRETRIAL MOTIONS [] SUPPRESS EVID. [] QUASH INFO. [] PRODUCE EVID. [] OTHER _____

[] COMMITMENT TO WARM SPRINGS

DISMISSAL [PRETRIAL]

DISMISSAL [] UPON MOTION OF COUNTY ATTORNEY

REASON FOR DISMISSAL _____

[] INSUFF. EVID. [] INT. OF JUSTICE [] CHARGES UNFOUNDED [] OTHER _____

TRIAL

BEGUN ____/____/____ ENDED ____/____/____ FOUND [] GUILTY

[] NOT GUILTY

IF FOUND GUILTY

CHARGES UPON TRIAL DETERMINATION _____

STATUTE # _____

SENTENCE

[] PRESENTENCE INVESTIGATION ORDERED [] WAIVED

JUDGMENT OR SENTENCE

CHECK ALL RELEVANT BOXES AND INDICATE THE TIME TO BE SPENT IN THAT PORTION OF THE JUDGMENT.

[] CONVICTED OF MULTIPLE CHARGES OR COUNTS (LIST ADDITION INFOR. BELOW)

[] CONFINEMENT, PRISON TIME _____ JAIL TIME _____

[] SUSPENSION OF SENTENCE, TIME _____

[] DEFERRED IMPOSITION OF SENTENCE, TIME _____

[] FINE \$ _____ [] PRIOR CHARGE _____

[] PRIOR CONVICTION _____

SPECIAL CONDITIONS [] ALCOHOL TREATMENT [] DRUG REHAB. [] WORK RELEASE

[] RESTITUTION ADDITIONAL INFOR. _____

[] CONCURRENT OR [] CONSECUTIVE SENTENCES _____

[] COMMITMENT TO WARM SPRINGS, TIME _____

APPEAL MADE. FINAL DETERMINATION _____

CODING MANUAL: MONTANA DISTRICT COURT DATA 1974-76

<u>ITEM</u>	<u>Card 1, Col #</u>
I. Identifying Information:	
1. Card Number	1
2. Case Number	2-6
3. Date of Case Initiation Date case filed in District Court, or first date appearing on form. Inap.: 88. NA: 99	
3a. Month	7-8
3b. Year	9-10
4. County	11-12
See page 1A.	
5. Judicial District	13-14
See page 1B.	
II. Pretrial Information	
6. Number of Codefendants	15
(Or, number of cases with same docket #.)	
Code exact number. 7 or more, code 7. Inap: 8 NA: 9	
7. Form of Case at Filing	16
1. Transfer from JP Court	
2. Appeal from JP Court	
3. Appeal from Police Court	
4. Direct Filing into District Court	
5. Filed for Preliminary Hearing in District Court	
6. Other	
8. Inap.	
9. NA	

CODES FOR JUDICIAL DISTRICTS
(District Number and Counties)

- | | |
|--|--|
| 01. Lewis and Clark | 11. Lincoln, Flathead |
| 02. Silver Bow | 12. Liberty, Hill,
Blaine |
| 03. Powell, Granite,
Deer Lodge | 13. Stillwater, Yellowstone,
Treasure, Hardin, Carbin, Big Horn |
| 04. Missoula, Sanders, Lake,
Mineral, Ravalli | 14. Meagher, Wheatland, Golden
Valley, Musselshell |
| 05. Jefferson, Beaverhead,
Madison | 15. Daniels, Sheridan,
Roosevelt |
| 06. Park, Sweet Grass | 16. Garfield, Rosebud, Custer,
Powder River, Carter, Fallon, Prarie |
| 07. McCone, Richland,
Dawson, Wilboux | 17. Phillips, Valley |
| 08. Chouteau, Cascade | 18. Gallatin |
| 09. Glacier, Toole,
Pondora, Teton | 99. NA |
| 10. Judith Basin, Fergua,
Petroleum | |

CODES FOR COUNTY

01. Silver Bow	20. Valley	39. Fallon
02. Cascade	21. Toole	40. Sweet Grass
03. Yellowstone	22. Big Horn	41. McCone
04. Missoula	23. Mussellshell	42. Carter
05. Lewis and Clark	24. Blaine	43. Broadwater
06. Gallatin	25. Madison	44. Wheatland
07. Flathead	26. Pondera	45. Prarie
08. Fergus	27. Richland	46. Granite
09. Powder River	28. Powell	47. Meagher
10. Carbon	29. Rosebud	48. Liberty
11. Phillips	30. Deer Lodge	49. Park
12. Hill	31. Teton	50. Garfield
13. Ravalli	32. Stillwater	51. Jefferson
14. Custer	33. Treasure	52. Wibaux
15. Lake	34. Sheridan	53. Golden Valley
16. Dawson	35. Sanders	54. Mineral
17. Roosevelt	36. Judith Basin	55. Petroleum
18. Beaverhead	37. Daniels	56. Lincoln
19. Chouteau	38. Glacier	99. NA

ITEMCard 1, Col. #

8. Most Serious Charge at Filing 17-20

For offense codes, see Appendix I.
 If there is more than one type of charge, the most serious is defined as the felony over misdemeanors. If the charges are all felonies or misdemeanors, then code as most serious the charge which survives to sentencing (or to a trial outcome). If all charges are still the same, code as most serious the first charge that appears in the listing. Once this ranking is determined, the second most serious charge follows logically.

9. Second Most Serious Charge at Filing 21-24

For offense codes, See Appendix I.

10. Total Number of Charges or Counts at Filing 25

1. One charge (or count)
2. Two charges
3. Three Charges
4. Four charges
5. Five or more charges
6. Other
8. Inap.
9. NA

- II. Type of Most Serious Charge at Filing 26

If the type of charge is not indicated on the form, the coder will have to make a guess. In Montana, type depends on the sentence, unless otherwise indicated in the Criminal Code. If in the sentence jail confinement, or deferment or suspension of sentence is one year or less, code the type as a misdemeanor. If the sentence exceeds one year, code type as a felony.

1. Felony
2. Misdemeanor
3. Other
8. Inap. (no charge, appeal)
9. NA

- III. Arraignment Information

12. Type of Defense Counsel 27

1. Privately retained

ITEMCard 1, Col. #

2. Public Defender
 3. Court Appointed
 4. No attorney of record; defendant refused
counsel/waived counsel
 5. Defendant own counsel
 6. Other
 8. Inap.
 9. NA
13. Initial Plea at Arraignment 28
1. Guilty
 2. Not Guilty
 3. No plea
 4. Guilty to some counts, not guilty to others
 5. Other
 6. Other
 8. Inap. (no arraignment)
 9. NA
14. Delay in Arraignment, Reasons 29
1. Continuance
 2. Defendant at large
 3. Psychological evaluation
 4. Other
 5. Other
 7. No delay
 8. Inap. (No arraignment)
 9. NA
15. Most Serious Charge at Arraignment 30-33
- See Appendix I.
16. Second Most Serious Charge at Arraignment 33-37
- See Appendix I.
17. Total Number of Charges or Counts at Arraignment 38
- See Item 10.
18. Type of Most Serious Charge at Arraignment 39
- See Item 11.
19. Amending of Information 40
1. Amended, with additional charges
 2. Amended, More serious charges
 3. Amended, additional and more serious charges

ITEMCard 1, Col. #

4. Amended, fewer charges
 5. Amended, less serious charges
 6. Amended, fewer and less serious charges
 7. Not Amended
 8. Amended, but charge unknown
 9. Inap. (no information) or NA
20. Initial Bail 41-42
- See page 4A.
21. Final Bail 43-44
- See page 4A. If no indication of change in bail, code same as in Item 20.
22. Difference between Initial and Final Bail 45
1. Bail increased
 2. Bail decreased
 3. No indication of change; bail same
 4. Other
 8. Inap
 9. NA
23. Change in Plea 46
1. Not guilty to guilty
 2. No plea to guilty
 3. Guilty to not guilty
 4. Other to not guilty
 5. Other: Not guilty to nollo contendre
 6. Other
 7. No change in plea
 8. Inap. (charges dismissed)
 9. NA
24. Most Serious Charge at Plea Change 47-50
- See Appendix I.
25. Second Most Serious Charge at Plea Change 51-54
- See Appendix I.
26. Total Number of Charges or Counts at Plea Change 55
- See Item 10.
27. Type of Most Serious Charge at Plea Change 56
- See Item 11.

CODES FOR INITIAL AND FINAL BAIL

- | | |
|--|------------------------------------|
| 01. Own Recognizance; or custody of attorney, relative, etc. | 20. 8,500 to LT 9,000 |
| 02. Less than \$100 | 21. 9,000 to LT 9,500 |
| 03. 100 to LT 500 | 22. 9,500 to LT 10,000 |
| 04. 500 to LT 1,000 | 23. 10,000 to LT 10,500 |
| 05. 1,000 to LT 1,500 | 24. 10,500 to LT 11,000 |
| 06. 1,500 to LT 2,000 | 25. 11,000 to LT 11,500 |
| 07. 2,000 to LT 2,500 | 26. 11,500 to LT 12,000 |
| 08. 2,500 to LT 3,000 | 27. 12,000 to LT 12,500 |
| 09. 3,000 to LT 3,500 | 28. 12,500 to LT 13,000 |
| 10. 3,500 to LT 4,000 | 29. 13,000 to LT 13,500 |
| 11. 4,000 to LT 4,500 | 30. 13,500 to LT 14,000 |
| 12. 4,500 to LT 5,000 | 31. 14,000 to LT 14,500 |
| 13. 5,000 to LT 5,500 | 32. 14,500 to LT 15,000 |
| 14. 5,500 to LT 6,000 | 33. 15,000 to LT 20,000 |
| 15. 6,000 to LT 6,500 | 34. 20,000 to LT 25,000 |
| 16. 6,500 to LT 7,000 | 35. 25,000 to LT 30,000 |
| 17. 7,000 to LT 7,500 | 36. 30,000 to LT 50,000 |
| 18. 7,500 to LT 8,000 | 37. 50,000 or more |
| 19. 8,000 to LT 8,500 | 38. INAP., no bail set for offense |
| | 99. Non-Ascertained |

28. "Plea-Bargaining" Indication 57

1. Plea change to guilty with lesser charge(s)
2. Plea change to guilty with fewer charge(s)
3. Plea change to guilty with lesser and fewer charges
4. No plea change, but initial guilty plea or later guilty plea accompanied by dismissal of one or more charges
5. Other--charge reduction through amended information
6. Plea change to guilty, no change in charges
7. No change in plea
8. Inap
9. NA

29. Motions during Pretrial Period 58

1. Evidentiary: Suppress and/or produce evidence
2. Quash Information or suppress information
3. Other: 2 or more motions
4. Commitment to hospital treatment
5. Dismissal of some or all charges
6. Other
7. No motions
8. Inap.
9. NA

IV. Charge and/or Case Dismissals

30. Procedure of Dismissals 59

1. Motion of County Attorney
2. Motion of Defense Counsel
3. Dismissal by higher court
4. Dismissal by amended information
5. Other: Charges dropped between filing and arraignment/or commitment to hospital
7. Charges not dismissed; no motion
8. Inap.
9. NA

31. Reason for Dismissal, Charges or Case 60

1. Insufficient evidence
2. Interests of Justice
3. Charges unfounded
4. Other (No reason given; commitment to state hospital; improper search and seizure; death of defendant; etc.)
5. Dismissal by higher court
6. Other

ITEMCard 1, Col. #

- 7. Charges not dismissed
- 8. Inap.
- 9. NA

V. Trial Information

- 32. Verdict, or Trial Outcome 61
 - 1. Guilty (Or, if appeal, appeal denied)
 - 2. Not guilty
 - 3. Other; Reversal of lower court on appeal
 - 4. Other
 - 7. No trial
 - 8. Inap
 - 9. NA

VI. Sentencing Information

- 33. Pre-sentence Investigation 62
 - 1. Ordered
 - 2. Waived
 - 3. Other
 - 8. Inap
 - 9. NA
- 34. Most Serious Charge at Sentencing 63-66
See Appendix I.
- 35. Second Most Serious Charge at Sentencing 67-70
See Appendix I.
- 36. Total Number of Charges or Counts at Sentencing 71
See Item 10.
- 37. Type of Most Serious Charge at Sentencing 72
See Item 11.
- 38. Prison Sentence 73-75

Note: If the individual is convicted of more than one offense, and the sentences are not to run concurrently, then the coder should add together the total time for each type of sentence to determine the codes. If the sentences are to run concurrently, then the codes should reflect the maximum time for the principal type of sentence. It should also be assumed that if not all of a sentence is suspended,

ITEMCard 1, Col. #

the remainder constitutes a part of the sentence. For example, if the sentence is for 3 years in prison, with 2 years suspended, the codes should reflect 1 year in prison with 2 years suspended, unless there is some indication to the contrary.

Code the exact time of the sentence to the nearest year, with the usual rounding convention. For example, one year and six months would round to two years and would code 002.

Less than one year, code 001.

Code "life" and "life" plus additional years as 700.

Inap: 888 NA: 999

39. Jail Sentence 76-78

Code the exact number of months to the nearest month. Less than one month, code 001.

Inap: 888 NA 999

Identifying Information: Repeat

40. Year of Case Initiation 79-80

Code last two digits of year.

Card 2, Col. #

41. Card Number 1

42. Case Number 2-6

VI. Sentencing Information, continued

43. Probation, Suspended Sentence 7-9

Code the exact number of months to the nearest month.

Less than one month: 001

Inap: 888 NA: 999

44. Probation, Deferred Sentence/or deferred Prosecution 10-12

Code the exact number of months to the nearest month.

ITEMCard 2, Col. #

Less than one month: 001

Inap: 888 NA: 999

45. Fines or payments to court 13-16

Code the exact amount of the fine to the nearest dollar.

For a fine of \$9,997 or more: 9997

Inap: 9998 NA: 9999

46. Special Conditions of Sentence 17

1. Alcohol treatment and/or drug rehabilitation
2. Alcohol, drug, or other treatment combined with restitution.
3. Work release
4. Restitution--to victim, or other than court
5. Counseling or other psychological rehabilitation
6. Other: (Payments, other than fines, to court, attorney, police, etc.; public service; search without warrant; revocation of driver's license; find work; etc.)
7. No conditions
8. Inap., no sentence
9. NA

47. Summary: Sentence Weight 18-20

See page 8A.

54. Appeal for New Trial 33

1. No appeal
2. Appeal Filed; outcome undetermined
5. Appeal to be filed
8. Inap
9. NA

IX. Elapsed Time Measures

55. Arraignment to Dismissal of Case 34-35
(or to Deferred Prosecution)

Note: If no arraignment, code from filing to dismissal.

Code exact number of months to nearest month, using usual rounding convention.

CODING INSTRUCTIONS FOR SCALE OF WEIGHTS
ASSIGNED TO SENTENCES

- Special Instructions: (1) If more than one type of sentence, add together the separate weights to obtain code.
 (2) If actual sentence length falls between lengths listed here, interpolate to obtain code.
 (3) Use conventional rounding procedures.

Probation:

LT 1 year:	001	4 years:	008
1 year:	002	5 years:	010
2 years:	004	GT 5 years:	012
3 years:	006		

Jail:

1 month:	001	5 months:	005	9 months:	009
2 months:	002	6 months:	006	10 months:	010
3 months:	003	7 months:	007	11 months:	011
4 months:	004	8 months:	008	12 months:	012

Prison:

1 year:	020	5-10 years:	042
2 years:	022	11-20 years:	054
3 years:	026	21-50 years:	060
4 years:	030	51-life:	090
5 years:	034		

Fine only; no other sentence: 777

Inappropriate: 888

Non-Ascertained: 999

ITEMCard 2, Col. #

Inap: 88 NA: 99

56. Arraignment to Dismissal: Summary 36-37
(or to Deferred Prosecution)

- 01. Less than one month
- 02. One month to less than two months
- 03. Two months to less than three months
- 04. Three months to less than four months
- 05. Four months to less than five months
- 06. Five months to less than six months
- 07. Six months to less than one year
- 08. One year or more
- 88. Inap
- 99. NA

57. Arraignment to Sentencing 38-39

Code exact number of months to nearest month.

Inap: 88 NA: 99

58. Arraignment to Sentencing: Summary 40-41

See Item 56.

56. Beginning to End of Trial 42-43

Code exact number of days to nearest day.

Inap: 88 NA: 99

60. Beginning to End of Trial: Summary 44-45

See page 10A.

VII. Prior Record

48. Most serious Prior Charge 21-24

See Appendix I.

49. Total Number of Prior Charges 25

See Item 10.

50. Most Serious Charge at Prior Conviction 26-29

See Appendix I.

51. Total Number of Prior Conviction 30

SUMMARY CODES: BEGINNING TO END OF TRIAL

LT 1 week:	01
1 week to LT 2 weeks:	02
2 weeks to LT 3 weeks:	03
3 weeks to LT 4 weeks:	04
4 weeks to LT 5 weeks:	05
5 weeks to LT 2 months:	06
2 months to LT 3 months:	07
3 months to LT 4 months:	08
5 months to LT 6 months:	09
6 months to LT 1 year:	10
1 year or more:	11

Inap.: 88
(no trial)

NA: 99

See Item 10.

52. Summary of Prior Record 31
1. No prior record indicated
 2. Minor prior record: Three or fewer prior convictions for misdemeanors
 3. Major prior record: More than three prior convictions for misdemeanors, or one or more prior convictions for felony(s).
 4. Prior prison record
 5. Other: Prior Record, specifics unknown
 8. Inap
 9. NA

VIII. Appeals

53. Appeal on Sentence 32
1. No appeal indicated
 2. Appeal filed but denied
 3. Appeal filed, sentence reduced
 4. Appeal filed, sentence set aside
 5. Other: appeal to be filed/or filed, outcome undetermined
 8. Inap
 9. NA

61. Last Date of Action on Case 46-49
- 61A Month (46-47)
61B Year (48-49)

X. Additional Information

62. Summary of Form of Case Outcome 50
1. Dismissal of Case
 2. Settled through Guilty Plea (or nollo contendre)
 3. Trial--conviction
 4. Trial--acquittal
 5. Appeal from lower court
 6. Other--defendants at large
 7. Deferred Prosecution
 8. Inap
 9. NA
63. Release on Bail 51
1. Release indicated
 2. Other
 7. Bail indicated, release not indicated
 8. Inap

ITEMCard 2, Col. #

9. NA

64. Ethnicity

52

Special instructions: If name contains clues to person as Native American, code Native American; e.g. "Wounded Deer", "Stalking Horse", etc. Otherwise, code as non-Indian.

1. Indian
2. Non-Indian
9. Non-Ascertained

65. Sex

53

Special instructions: Code sex on basis of gender of first name.

1. Male
2. Female
9. Non-ascertained

66. Blank

54-80

XI. Additional Information for Sample of Cases

67. Presentence Investigation

54

1. Yes
2. No
8. Inap
9. NA

68. Prior Arrests

55

1. None
2. One
3. Two
4. Three
5. Four
6. Five or more

69. Number of Prior Convictions

56

1. None
2. One
3. Two
4. Three
5. Four
6. Five or more

ITEMCard 2, Col. #

70. Summary of Prior Record

57

1. No prior Record
2. Minor: 3 or fewer misdemeanors;
juvenile only; major traffic
3. Major: More than 3 misdemeanors;
One or more felonies
- 4. Prior Prison Record (Confinement in
prison--sentenced for a month more
than one year.)
8. Inap
9. NA

71. Bail

58

1. Released
2. Not Released
3. Work Release only

APPENDIX I: OFFENSE CODES

The code for specific offenses is to be taken from the last four digits of the statute number to be found in the following:

Montana Criminal Code of 1973. Title 94: 1947 Revised Codes of Montana (Effective January 1, 1974). Indianapolis: The Allen Smith Company.

For example, Forgery is coded 6310; Theft, 6302; Homicide, 5101; etc.

The principal exceptions to this are as follows:

- 1150 Other auto driving offense
- 1155 Operating motor vehicle without license
- 1501 Embezzlement of funds by public officer
- 2071 Failure to cover employees with workman's compensation
- 2142 Driving while intoxicated
- 2143 Reckless Driving
- 4132 Sale of dangerous drugs
- 4133 Possession of dangerous drugs
- 4134 Fraudulently obtaining dangerous drugs
- 6666 Appeal from lower court
- 7777 Charge dismissed
- 8888 Inap.
- 9999 NA

REFERENCES

- Advisory Committee on the Prosecution and Defense Functions
1967 Standards Relating to Providing Defense Services.
New York: American Bar Association.
- Andrews, Frank M., James N. Morgan, John A. Sonquist, and Laura Klem
1973 Multiple Classification Analysis: A Report on a Computer
Program Using Categorical Predictors, 2nd Edition. Ann Arbor:
Institute for Social Research, University of Michigan.
- Blalock, Hubert M.
1972 Social Statistics, 2nd Edition. New York: McGraw-Hill.
- Blumberg, Abraham S.
1967 Criminal Justice. Chicago: Quadrangle.
- Bullock, H.A.
1961 The significance of the racial factor in the length of the
sentence. Journal of Criminal Law, Criminology and Police
Science 52:411-417.
- Casper, Jonathan D.
1971 Did you have a lawyer when you went to court? No, I had a
public defender. Yale Review of Law and Social Action
4 (Spring) : 4-9.
- Chambliss, William J., and Robert B. Seidman
1971 Law, Order, and Power. Reading, Mass.: Addison-Wesley.
- Chiricos, Theodore G., Philip D. Jackson, and Gordon P. Waldo
1972 Inequality in the imposition of a criminal label. Social
Problems 19: 553-572.
- Clear, Val, and Scott Clear
1974 Horizons in the criminal justice system. Crime and Delin-
quency 20 (January) : 25-32.
- Clinard, Marshall B.
1942 The process of urbanization and criminal behavior. American
Journal of Sociology XLVII (September) : 202-213.

1944 Rural criminal offenders. American Journal of Sociology
50 (July) : 38-45.
- Cole, George F., editor
1972 Criminal Justice: Law and Politics. Belmont, Calif.: Dux-
bury Press.

- Dimock, Edward J.
 1956 The public defender: a step toward a police state. American Bar Association Journal 42 (No. 3) : 219-221.
- Eisenstein, James, and Herbert Jacob
 1974 Measuring performance and outputs of urban criminal courts. Social Science Quarterly 59 (March) : 713-724.
 1977 Felony Justice; an Organizational Analysis of Criminal Courts. Boston: Little, Brown.
- Fernsler, Keith
 1974 Public defenders and private attorneys in Missoula County. Unpublished paper.
- Green, Edward
 1964 Inter- and intra-racial crime relative to sentencing. Journal of Criminal Law, Criminology and Police Science 55 : 348-358.
- Hoffman, Paul
 1974 What the Hell Is Justice? Chicago: Playboy Press.
- Johnson, Charles S. and Charles E. Hood, Jr.
 1974 The Lawyers of Montana. Reprinted from Seventeen Articles in The Missoulian. Missoula, Mont.: University of Montana Foundation, Sociology Department, and The Missoulian.
- Kelly, Henry E.
 1976 A comparison of defense strategy and race as influences in differential sentencing. Criminology-14 : 241-249.
- Krantz, Sheldon, Paul Froyd, Janis Hoffman, David Rossman, and Charles Smith
 1975 The Right to Counsel in Criminal Cases: the Mandate of Argersinger v. Hamlin; Executive Summary. U. S. Department of Justice. Law Enforcement Assistance Administration. National Institute of Law Enforcement and Criminal Justice (Mimeo).
- Lehtinen, Marlene W., and Gerald W. Smith
 1974 The relative effectiveness of public defenders and private attorneys: a comparison. NLADA Briefcase 32 : 13-20.
- Mather, Lynn M.
 1973 Some determinants of the method of case disposition: decision making by public defenders in Los Angeles. Law and Society Review 8 : 187-216.
- Mueller, John H., Karl F. Schuessler, and Herbert Costner
 1970 Statistical Reasoning in Sociology, 2nd Edition. Boston: Houghton Mifflin.
- The National Study Commission on Defense Services
 1975 Draft Report and Guidelines for the Defense of Eligible Persons. Volume I. National Legal Aid and Defender Association.

- Neubauer, Donald W.
1974 Criminal Justice in Middle America. Morristown, N. J. :
General Learning Press.
- Newman, Donald J.
1956 Pleading guilty for considerations: a study of bargain justice.
Journal of Criminal Law, Criminology and Police Science
46 : 780-790.
- Nie, Norman J., C. Hadlai Hull, Jean G. Jenkins, Karin Steinbrenner
and Dale H. Bent
1975 Statistical Package for the Social Sciences, 2nd Edition.
New York: McGraw-Hill.
- Packer, Herbert L.
1964 Two models of the criminal process. University of Pennsylvania
Law Review 113 (Nov.) : 1-68.
- Platt, Anthony, and Randi Pollock
1974 Channeling lawyers: the careers of public defenders. In
Herbert Jacob, editor, The Potential for Reform of Criminal
Justice. Beverly Hills: Sage. 1974 : 235-262.
- Rhodes, Robert P.
1977 The Insoluble Problems of Crime. New York: John Wiley.
- Rossett, Arthur, and Donald R. Cressey
1976 Justice by Consent: Plea Bargains in the American Courthouse.
Philadelphia: J. B. Lippincott.
- Rossi, Peter H., Emily Waite, Christine E. Bose, and Richard E. Berk
1974 The seriousness of crimes: normative structure and individual
differences. American Sociological Review 39 : 224-237.
- Ruth, Jr., Henry S.
1976 Foreward. In Rossett and Cressey, 1976 : ix-xiii.
- Silverstein, Lee
1965 Defense of the Poor in Criminal Cases in American State
Courts: A Field Study and Report. Volume I: National
Report. New York: American Bar Foundation.
- Smith, Gerald W.
1970 A Statistical Analysis of Public Defender Activities. Washington,
D. C. : U. S. Department of Justice, Law Enforcement Assistance
Administration, National Institute of Law Enforcement and
Criminal Justice.
- _____, and Max Wendall
1968 Public defender and private attorney: a comparison of cases.
NLADA Briefcase 27 (December).
- Stewart, William Scott
1948 The public defender system is unsound in principle. Journal
of the American Judicature Society 32 : 115-118.

Subcommittee on Judiciary

- 1976 Montana's District Courts: a Report to the Forty-Fifth
Legislature. Helena, Mont.: Montana Legislative Council.

Sudnow, David

- 1965 Normal crimes: sociological features of the penal code in
a public defender office. Social Problems 12 : 255-276.

Supreme Court of the State of Montana

- 1974 The Montana Justice System Survey and Analysis. Helena,
Mont. : Supreme Court.

Swigert, Victoria Lynn, and Ronald A. Farrell

- 1977 Normal homicides and the law. American Sociological Review
42 : 16-32.

Tappan, Paul W.

- 1960 Crime, Justice and Correction. New York: McGraw-Hill.

Wood, Arthur Lewis

- 1956 Informal relations in the practice of criminal law. American
Journal of Sociology 62 : 48-55.

- 1967 Criminal Lawyer. New Haven, Conn. : College and University
Press.

END